

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC07-1556

THE CROSSINGS AT FLEMING ISLAND
COMMUNITY DEVELOPMENT DISTRICT,

petitioner,

vs.

WAYNE WEEKS, et al.,

respondents.

ON PETITION FOR DISCRETIONARY REVIEW

BRIEF OF PETITIONER ON JURISDICTION

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PRELIMINARY STATEMENT

All references to the appendix are referred to herein by the symbol "A" followed by the page number.

The Crossings At Fleming Island Community Development District, appellee in both cases in this consolidated appeal, and plaintiff at the trial level, will be referred to as the "District." Wayne Weeks, Clay County Property Appraiser, appellant in this consolidated appeal, and defendant at the trial level, will be referred to as "Weeks." Florida Department of Revenue, appellant in this consolidated appeal, and defendant at the trial level, will be referred to as "DOR."

STATEMENT OF THE CASE AND FACTS

The District is a community development district located in Clay County, Florida, and was created pursuant to Chapter 190 Florida Statutes. (A-2). After Weeks denied the District's request for property tax exemption for certain portions of the District, the District filed suit against Weeks and other defendants to obtain a judicial determination that the District was entitled to property tax exemption on certain parcels within the District. (A-3).

Weeks defended at the trial level by asserting, among other defenses, the defense that Section 189.403(1) Florida Statutes was unconstitutional. (A-3, 4). Section 189.403(1) provides that special districts shall be treated as municipalities for the purpose of Section 196.199(1) Florida Statutes. The District contended that Weeks did not have standing to raise unconstitutionality of the statute as a defense, and moved to strike the affirmative defense (A-4), relying in part on the decision of the Second District Court of Appeal in Sun 'N Lake of Sebring Improvement District v. McIntyre, 800 So.2d 715 (Fla. 2nd DCA 2001). (A-13). The trial court granted the District's motion to strike this defense. (A-4).

After a non-jury trial, the trial court entered judgment finding that property tax exemption should be applied to certain

parcels within the District. (A-6). Weeks and DOR appealed the judgment to the First District Court of Appeal. On appeal, Weeks argued, among other things, that the trial court erred when it granted the District's motion to strike the defense of the unconstitutionality of Section 189.403(1). (A-7).

The First District Court of Appeal issued its opinion on May 8, 2007. In its decision, the First District affirmed the trial court's rulings with respect to the tax exempt status of the parcels in question, but reversed the trial court on the issue of Weeks' standing to challenge the constitutionality of Section 189.403(1) Florida Statutes. (A-17).

The District timely filed a motion to certify conflict with the Second District Court of Appeal by virtue of its decision in Sun 'N Lake. On June 26, 2007, the First District granted the District's motion, and certified conflict with Sun 'N Lake on the issue of whether the property appraiser has standing to defensively raise the constitutionality of a statute.

The District timely filed its notice to invoke the discretionary jurisdiction of this Court.

SUMMARY OF ARGUMENT

The procedural posture of, and the relevant facts in, the instant appeal and that presented in Sun 'N Lake of Sebring v.

McIntyre, 800 So.2d 715 (Fla. 2nd DCA 2001) are identical. However, in Sun 'N Lake, the Second District held that the property appraiser did not have standing to challenge the constitutionality of Section 189.401(1) Florida Statutes. In this appeal, the First District held, on the same relevant facts and procedural posture, that Weeks could challenge the constitutionality of Section 189.403(1). Since Weeks is a state officer, the First District's ruling expressly affects a class of constitutional or state officer.

ARGUMENT

This Court Has Jurisdiction Because the Lower Court's Decision Has Been Certified to be in Conflict With Another District Court of Appeal and the Lower Court's Decision Expressly Affects Property Appraisers, a Class of Constitutional or State Officer

In the case at bar, the District, a community development district, applied to the property appraiser, Weeks, for exemption from ad valorem taxation with respect to certain parcels located within the District. (A-3). The District sought an exemption for the parcels because those parcels were used for public purposes. (A-3). Weeks unilaterally refused to follow Section 189.403(1) and denied the exemptions. (A-18, 19). The District filed suit in order to obtain a judicial determination that the parcels were entitled to exemption from ad valorem

property taxes. (A-2). Weeks was a defendant in the suit brought by the District. (A-2).

Weeks defended the District's suit by asserting, among other defenses, an affirmative defense that Section 189.403(1) was unconstitutional, claiming that the legislature lacked the authority to grant to special districts an exemption from ad valorem taxation. (A-3, 4, 12). Weeks contended that since he was a defendant, he was entitled to challenge the constitutionality of the statute. (A-12).

In Sun 'N Lake of Sebring Improvement District v. McIntyre, 800 So.2d 715 (Fla. 2nd DCA 2001), the district made various requests to the property appraiser for exemption from ad valorem taxation pursuant to Section 196.199(1), asserting that the properties in question were used for public purposes. The property appraiser denied all of the requests for exemption.

The district in Sun 'N Lake then filed suit challenging the property appraiser's denial of the requests for exemption. The property appraiser challenged the constitutionality of Section 189.403(1). The trial court ruled that the property appraiser had standing to challenge the constitutionality of the statute, and found the statute unconstitutional.

The Second District in Sun 'N Lake held that under current case law, the property appraiser lacked standing to challenge the constitutionality of the statute. For its rationale, the Second District relied in part on its earlier decision in Turner v. Hillsborough County Aviation Authority, 739 So.2d 175 (Fla. 2nd DCA 1999). The property appraiser sought to distinguish Turner by pointing out that the district had initiated the suit and that he was raising unconstitutionality as a defense; that is, the property appraiser did not institute an action challenging constitutionality. The Second District concluded that had the property appraiser followed the law, the district would not have been forced to file suit, and held that the property could not force the taxpayer to file suit and then claim that he was in a defensive posture, thereby allowing him to challenge the constitutionality of a statute. The Second District ruled on those facts that the mere fact that the property appraiser was not a named plaintiff in the suit did not permit him to avoid the dictates of Turner. The Second District noted conflict between Turner and the Third District Court of Appeal's opinion in Fuchs v. Robbins, 738 So.2d 338 (Fla. 3rd DCA 1998).

In the case at bar, the First District acknowledged the Second District's holding in Sun 'N Lake. (A-12). However, the Court also noted this Court's decision in Fuchs v. Robbins, 818 So.2d 460 (Fla. 2002), in which this Court resolved the conflict between Turner and the Third District's opinion in Fuchs. (A-14). In Fuchs, this Court observed that, historically, an appraiser cannot initiate an action challenging the validity of a taxing statute. This Court noted two well-established exceptions to this prohibition. First, when a taxing statute involves disbursement of public funds, and second, when a taxpayer initiates an action challenging a property assessment. Relying on this Court's enumeration of these exceptions in Fuchs, the First District held in the case at bar that since Weeks was in a defensive posture, the trial court erred when it ruled that Weeks did not have standing to challenge the constitutionality of Section 189.403(1) and struck the defense. (A-17).

The petitioner includes the details of the factual and procedural history of the instant case and that in Sun 'N Lake for the purpose of demonstrating that this Court's decision in Fuchs did not address or resolve the specific issue presented. Significantly, in both Turner and Fuchs, the property appraiser

had instituted the actions challenging the constitutionality of a statute. The precise issue before this Court in Turner and Fuchs was whether the property appraiser could initiate an action and challenge the constitutionality of a statute. In approving Turner and disapproving Fuchs, this Court held only that a property appraiser could not institute an action to challenge the constitutionality of a statute. The language in Fuchs relied upon by the First District was mere dicta.

The issue presented in the case at bar, unlike Turner and Fuchs, is whether a property appraiser may wilfully choose to ignore the law and refuse to exempt eligible property, thereby necessitating an action by the taxpayer to enforce the law the property appraiser refused to apply, and then claim he is in a "defensive" posture for the purpose of challenging the constitutionality of a statute. In Turner and Fuchs, this Court did not have the opportunity to address that issue.

The petitioner respectfully submits that this Court's decision in Fuchs does not overrule, limit or even address the Second District's holding on the issue of standing in Sun 'N Lake. The petitioner respectfully suggests that the First District's reliance on this Court's dicta in Fuchs was misplaced. There is a clear conflict between the First District

and the Second District on the narrow issue of whether a property appraiser may choose to ignore the law, force a taxpayer to file suit, and then claim he has standing to challenge the constitutionality of a statute because he is not the named plaintiff in the case.

The decision of the First District also expressly affects a class of state officer, that of property appraiser, in that it permits those officers, as a class, to unilaterally refuse to follow the law as set forth in Section 189.403(1), then challenge the constitutionality of that statute under the defensive posture exception.

CONCLUSION

For the reasons stated above, the petitioner respectfully submits that there is a conflict between the First District Court of Appeals opinion in the instant action and the Second District's holding in Sun 'N Lake of Sebring Improvement District v. McIntyre, 800 So.2d 715 (Fla. 2nd DCA 2001). Additionally, the decision of the First District in this appeal expressly affects a class of constitutional or state officer. The petitioner respectfully requests that this Court accept jurisdiction and resolve the conflict between the district courts of appeal.

Dated this ____ day of August, 2007, at Jacksonville,
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Nicholas Bykowsky, Esq., Office of the Attorney General, PL-01 The Capitol, Tallahassee, Florida 32399-1050, Larry E. Levy, Esq., The Levy Law Firm, 1828 Riggins Road, Tallahassee, Florida 32308, and Robert M. Bradley, Esq., Kopelousos and Bradley, P.A., Post Office Box 562, Orange Park, Florida 32067-0562, by United States Mail Delivery on the day of August, 2007.

Attorney

CERTIFICATE OF FONT AND FONT SIZE

I HEREBY CERTIFY that this brief has been prepared using the font known as Dark Courier, font size 12.