

IN THE SUPREME COURT
STATE OF FLORIDA

DELTA PROPERTY MANAGEMENT,
INC.,

Petitioner,

Case No. SC09-2075

vs.

DCA CASE NO. 1D08-515

PROFILE INVESTMENTS, INC.,

Respondent.

AMICUS BRIEF
OF THE PROPERTY APPRAISER FOR DUVAL COUNTY,
THE TAX COLLECTOR FOR DUVAL COUNTY AND
THE CLERK OF THE CIRCUIT AND COUNTY COURTS
FOR DUVAL COUNTY
IN SUPPORT OF RESPONDENT

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**STATEMENT OF THE IDENTITY AND INTEREST
OF AMICUS CURIAE**

This amicus brief is on behalf of the Property Appraiser for Duval County (“Property Appraiser”), the Tax Collector for Duval County (“Tax Collector”) and the Clerk of the Circuit and County Courts for Duval County (“Clerk”). These three constitutional officers are charged by the Florida Legislature with the various duties and responsibilities associated with the tax roll preparation and certification through the enforcement and collection of delinquent taxes, including the tax sale process. In this respect, the Property Appraiser, the Tax Collector and the Clerk have a substantial interest in the outcome of this case.

SUMMARY OF THE ARGUMENT

Florida Statutes provide for a uniform consistent taxation system prescribing the inter-related duties of the Property Appraiser, the Tax Collector and the Clerk. Both the Tax Collector and the Clerk rely upon the Property Appraiser's certified tax roll in order to fulfill the notice requirements for the tax sales process as set forth in Chapter 197, Florida Statutes.

To accept Petitioner's argument and no longer rely upon the certified tax roll for notice requirements would remove certainty from the tax sale process, invite routine challenges to tax deeds and could lead to decreased participation in the tax sale process -- opposite the legislative intent to ensure the continuation of tax revenues.

ARGUMENT

I. PETITIONER'S ARGUMENT WOULD NECESSITATE REWRITING THE STATUTORY DUTIES OF THE PROPERTY APPRAISER, THE TAX COLLECTOR AND THE CLERK

It is important to consider the integrated roles of the Property Appraiser, the Tax Collector and the Clerk in the Florida statutory taxation system.

The Property Appraiser is charged with preparation of the assessment rolls for both real property and tangible personal property. §193.114, Fla. Stat. The real property assessment roll must contain certain information, including the name and

address of the “owner or fiduciary responsible for payment of taxes on the property.” §193.114(2)(p), Fla. Stat. The Property Appraiser “is the custodian of the tax roll.” §193.114(5), Fla. Stat. The rolls must be prepared in the format as specified in section 193.1142 and must be approved by the Department of Revenue. §193.1142, Fla. Stat.

Once the tax assessment roll is prepared and approved by the Department of Revenue, the Property Appraiser must deliver to the Tax Collector the certified assessment or tax roll §197.322(1), Fla. Stat. It is from this certified tax roll that the Tax Collector issues tax bills and complies with the statutory collection and enforcement process for delinquent taxes.

The Tax Collector "has the authority and obligation to collect all taxes as shown on the tax roll by the date of delinquency or to collect delinquent taxes, interest and costs, by sale of tax certificates on real property and by seizure and sale of personal property.” §197.332, Fla. Stat.; *see also* §197.333 (Taxes are due on November 1 and become delinquent on April 1 of the following year.). There is only one tax roll certified each year, and until the next tax roll is certified, the latest certified tax roll is the prior year’s certified tax or assessment roll.

If the holder of a tax certificate makes application for a tax deed with the tax collector, pursuant to section 197.502, Florida Statutes, the Tax Collector must

deliver to the Clerk a statement which contains a list of persons to be notified prior to the sale. Specifically, the Tax Collector must list:

- (a) Any legal titleholder of record if the address of the owner appears on the record of conveyance of the lands to the owner. However, if the legal titleholder of record is the same as the person to whom the property was assessed on the tax roll for the year in which the property was last assessed, then the notice may only be mailed to the address of the legal titleholder as it appears on the latest assessment roll.

§197.502(4)(a), Fla. Stat. (emphasis added). As previously stated, Florida Statutes require that the Property Appraiser certify the assessment or tax roll to the tax collector.¹ The “latest assessment roll” referred to in section 197.502(4)(a), is the latest assessment roll certified by the property appraiser to the tax collector, which, in this case, would have been the 1999 tax roll. The Tax Collector has no discretion or statutory authority to create a different tax roll than the one provided by the property appraiser.

The Clerk is the last constitutional officer in the process. Like the Tax Collector, the duties of the Clerk are statutorily determined, and Florida Statutes mandate certain notice provisions that he or she must carry out as a part of the tax

¹Pursuant to section 197.102, Florida Statutes, "tax rolls" and "assessment rolls" are synonymous and refer to the rolls prepared by the property appraiser pursuant to Chapter 193 and certified pursuant to section 193.122. §197.102, Fla. Stat.

deed sale process. Section 197.522, Florida Statutes, requires that the Clerk notify, by certified mail with return receipt requested, those persons listed in the Tax Collector's statement pursuant to section 197.502(4), which list, of course, includes the legal titleholder's address as contained in the latest assessment roll. In addition to the requirement that the Clerk send notices by certified mail to the legal titleholder of record at the address on the latest assessment roll, the Clerk must prepare notice and provide it to the sheriff of the county where the legal titleholder resides.

The sheriff must serve notice on the legal titleholder of record as specified in Chapter 48, Florida Statutes. §197.522(2), Fla. Stat. "[I]f the sheriff is unable to make service, he or she shall post a copy of the notice in a conspicuous place at the legal titleholder's last known address." *Id.* Furthermore, although not applicable in this case, if the legal titleholder does not reside in the county in which the property is located, the sheriff of the county in which the property is located must post a copy of the notice in a conspicuous place on the property itself. *Id.* It is important to note that the statutory methods of notification rely upon the legal titleholder's address as contained in the property appraiser's assessment roll, or certified tax roll. If Petitioner's argument were adopted by this Court, the Tax Collector and the Clerk to go beyond the certified tax roll, and Florida law.

II. *JONES V. FLOWERS*, 547 U.S. 220 (2006) HAS NO BEARING ON FLORIDA'S STATUTORY TAX SALE PROCESS

The United States Supreme Court's decision in *Jones v. Flowers*, 547 U.S. 220 (2006), is not applicable to Florida's statutory taxation system. In *Flowers*, the Arkansas statutory tax system requires only that notice of the pending tax sale be sent to the property owner's address of record by certified mail with return receipt, but it does not require any other type of service. Florida's tax deed statutes, to the contrary, contain additional steps to provide notice before the tax sale takes place. As previously explained, Florida Statutes require that the sheriff serve notice of the impending tax sale on the legal titleholder at the address as found on the latest assessment roll. §197.522, Fla. Stat. If, however, the sheriff is unable to serve the owner, the sheriff must post the notice instead. *Id.* The U.S. Supreme Court specifically recognizes Florida's statutory system as one that requires the additional notice safeguards lacking in the Arkansas statutes. *Flowers*, 547 U.S. at 228 n.2.

The Supreme Court in *Flowers* recognizes that it is not the Court's responsibility to prescribe the form of service. *Id.* at 238. The *Flowers* Court, however, opined on what might have been a reasonable additional step, finding that one such reasonable step is posting notice on the property. *Id.* at 235.

What the *Flowers* Court did not find is that the government should be required to search for a different address to which notice should be sent. *Id.* at 235-36 (government should not be required to search a telephone book or other government records for the new address). The Tax Collector and the Clerk should not be required to search other records for an address.

III. FLORIDA'S TAXATION SYSTEM SUPPORTS UPHOLDING THE LOWER COURT'S DECISION

The purpose behind the tax certificates and tax sale system is to provide a mechanism by which the taxing authorities may continue to receive revenues needed to provide necessary governmental services. This Court has recognized the public policy considerations behind the system for tax assessment challenges to ensure prompt payment of taxes due and provide for a system by which counties may continue to perpetuate revenues on undisputed assessments. *Ward v. Brown*, 894 So. 2d 811, 815 (Fla. 2005). This Court found that the statutory jurisdictional period facilitates tax collection "so that counties may continue to function and count on tax revenues to do so." *Id.*

If the courts were allowed to second guess the notice process each time to decide what additional efforts should be made – i.e., searching through a telephone directory, would likely lead to increased challenges to tax deeds, and also logically lead to decreased participation in the tax sale process, defeating the purpose behind

the tax sale process of securing tax revenues for the government.

There are also practical reasons why the statutory taxation system must continue to rely upon the certified tax roll. For example, section 197.502(6) concerns the minimum opening bids the Clerk must collect for the tax deed sale. The minimum opening bid for non-homestead property includes outstanding tax certificate amounts, omitted years' taxes, delinquent taxes and interest, and costs and fees. For property "assessed on the latest tax roll as homestead," however, in addition to those assessments required for non-homestead property, the minimum bid also requires payment of an amount equal to one-half of the latest assessed value of the homestead. §197.502(6)(c). The Clerk must rely on the latest certified tax roll to determine which property is homestead property. Likewise, the Clerk cannot rely on an unfinished interim assessment roll to obtain the latest assessed value of the homestead property for purposes of determining the minimum bid.

CONCLUSION

The Florida Legislature's public policy behind the statutory tax collection system and tax sale process is clear. Furthermore, the Florida Legislature has chosen the method for notifying delinquent taxpayers of impending tax sales, with which process this Court has acknowledged it will not intervene so long as constitutional due process is provided. There has been no holding by the Florida

Supreme Court or the United States Supreme Court finding that Florida's tax sale notice procedures are unconstitutional. This Court should maintain the integrity of the Florida Statutes taxation system. This Court should uphold the decision of the First District Court of Appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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CERTIFICATE OF TYPEFACE COMPLIANCE

I hereby certify that I have complied with Rule 9.210(a), Florida Rules of Appellate Procedure, and the font size of this brief is Times New Roman 14-point.

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