

IN THE SUPREME COURT
STATE OF FLORIDA

CASE NO. SC09-2075
DCA CASE NO. 1D08-515

DELTA PROPERTY MANAGEMENT, INC.,

PETITIONER,

VS.

PROFILE INVESTMENTS, INC.,

RESPONDENT.

BRIEF OF AMICUS CURIAE, THE FLORIDA TAX COLLECTORS, INC., IN
SUPPORT OF THE RESPONDENT

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Statement of Interest of Amicus Curiae

Amicus curiae Florida Tax Collectors, Inc. ("FTC") is a not-for-profit organization that represents the interests of all sixty-seven tax collectors in the State of Florida. FTC is intimately familiar with the state law-based needs, responsibilities and duties of Florida tax collectors under the applicable law of this case. FTC has a unique perspective from the interested parties in this case and will bring valuable insight concerning the use of the certified assessment roll and the utilization of said roll to notify taxpayers throughout the state.

FTC regularly advocates on behalf of its members by lobbying the Legislature, working with various departments of State government, and implementing laws that deal with the specific duties of the tax collectors concerning the collection of property taxes in the State of Florida. In so doing, FTC has often collaborated with the Florida Department of Revenue ("DOR") in the administration of tax collection laws and rules. Therefore, the FTC will bring to this case key knowledge that will inform the Court of the practical realities of current law as well as relevant problems that may arise as a result of the Court's decision in this case.

The interest of the amicus curiae is primarily to advocate on behalf of its member tax collectors and thereby ensure that

their state duties are exercised locally and uniformly in order to protect and to promote due process and the rights and interests of Florida's taxpayers and property owners. The amicus curiae promotes the view that the current statutory and regulatory regime of tax collection supervised by the Florida Department of Revenue should be changed only by the Legislature, and that this established process was followed by the Clerk of the Circuit Court and Tax Collector in and for Duval County, Florida, based upon the established facts in the underlying case.

There is a hard and fast line created by the Legislature that must not be changed by this Court concerning the lawful method for determining the addresses of Florida taxpayers based upon the information in the latest certified assessment roll. This case centers entirely on certain legal aspects of the certified assessment roll. Florida's tax collectors are integral to the process of carrying out the duties found in sections 197.502 and 197.522, Florida Statutes, dealing with these legal aspects of the certified assessment roll.

Reversal in the present case would impact the duties imposed on the tax collectors, changing the existing legislative requirements as implemented by state rule, of the current hard and fast line fixing the official location of addresses of real property owners for tax deed sale purposes. Such a decision

would have a drastic adverse impact. If the ruling of the lower court were reversed, it would fundamentally change this tax collection process for all of Florida's tax collectors. The tax collectors might be required to undertake laborious and costly investigations thereby delaying the issuance of tax deed sales and creating uncertainty and confusion as to where official addresses of taxpayers are located. Such investigations would adversely impact the efficiency and cost of Florida's uniform and accountable administration of tax collection, which would result in public opposition and uncertainty in the tax collection process.

Petitioner does not consent to the filing of this Brief.

Standard of Review

FTC adopts the Respondent's standard of review.

Summary of the Argument

A tax collector's duty to provide notice to delinquent taxpayers involves a hard and fast rule set forth by the Legislature in order to create uniformity and certainty in the tax collection process. This rule also imposes certain duties upon the clerks of court when giving notice to delinquent taxpayers of tax deed sales. Under this rule, the clerk of the circuit court is only required to use the addresses listed in the latest *certified tax roll* (provided by the tax collector, and as certified to the tax collector from the county property appraiser) for notification to a delinquent taxpayer. The Legislature has not imposed a duty on the clerks of court or the tax collectors to retrieve information from the property appraiser or any other source before the information in the tax roll has been certified. This is because the Legislature has assigned the duty to the property appraisers to make sure that taxpayer addresses are accurate and up to date. By assigning this duty to the property appraiser, the Legislature has identified a single source for this information, i.e., the latest certified tax roll thereby providing needed finality and certainty. This Court should not change this bright-line rule created by the Legislature.

The Legislature, by general law, has set forth a clear and uniform standard by which the clerks of court must abide when providing notice of tax deed sales to delinquent taxpayers and to other interested parties. This comprehensive statutory system indicates to whom the notice must be sent and how the clerks of court should go about determining the address by which to reach that party. For the parties in this particular case, the notice requirements set forth by the Legislature indicate that only the certified tax roll must be used. If the clerks of court or the tax collectors were required by judicial edict to make inquiries into an incomplete tax roll or some other source, such investigations would not only be contrary to current law, but would create uncertainty and inaccuracy in the notification process. Therefore, the system created by the Legislature requires the use of completed certified tax rolls, and indicates that inquiries into the incomplete tax rolls would be inappropriate. If such a system is to be changed, however, the authority for so doing rests solely with the Legislature. This is because only the Legislature can anticipate and provide for the unintended consequences, repercussions, and changes that may arise from altering the notification requirements. Only the Legislature can modify the current regime appropriately in order both to ensure the substantive and procedural due process rights of taxpayers and to meet the revenue needs of local governments.

Moreover, the Florida statutory requirements already provide for additional notice to be provided to delinquent taxpayers; and second, even when Florida law is applied and subsequently a clerk of the circuit court or tax collector learns of a change after certification of the roll, she or he already has a duty to take reasonable practical steps under applicable case law.

Negative repercussions would result if this Court were to impose additional or different duties on the clerks of court and the tax collectors to investigate the contents of the incomplete tax roll. Such additional duties would surely create greater ambiguity and less finality in the tax collection regime, cost the taxpayers additional money, and could possibly have a negative effect on the general fiscal and budgetary health of Florida's local taxing authorities (i.e., counties, cities, and school boards).

Argument

The Legislature has created a clear statutory regime to provide adequate notice to delinquent taxpayers of pending tax deed sales. Changes to this procedure should only be decreed by the Legislature.

I. THE LEGISLATURE HAS SPECIFICALLY SET FORTH THE PROCESS THAT THE CLERKS OF COURT MUST UNDERTAKE WHEN SENDING NOTICE OF A TAX DEED SALE.

To begin, this Court may find helpful a brief timeline of Florida's statutorily required notice process for tax deed sales. The timeline is as follows:

1. The Property Appraiser assesses every piece of property in the state by July 1 of each year. § 193.023, Fla. Stat. (2009).
2. The Property Appraiser compiles all information, including the addresses and property values on a tax roll. §193.114(2), Fla. Stat. (2009).
3. The Property Appraiser sends the non-final tax roll to the executive director of the DOR for approval by July 1 of each year¹. §193.1142, Fla. Stat. (2009). Once approved, the Property Appraiser certifies the tax roll. § 200.065, Fla. Stat. (2009).

¹There was apparently some confusion in Judge Erwin's dissent wherein it was alleged that the certified assessment roll must be completed by July 1 of each year. *Delta Property Management v. Profile Investments, Inc.*, 830 So. 2d 867, 871 (Fla. 1st DCA 2002). Note that the only things that must take place by July 1 of each year are that the properties are assessed by the Property Appraiser and the non-certified roll is sent to DOR for approval by July 1. In reality, the assessment rolls are generally certified to the Tax Collector in late September through mid October.

4. The Property Appraiser delivers the certified tax roll to the Tax Collector who uses it for tax collection purposes. § 197.322, Fla. Stat. (2009).
5. If a holder of a tax certificate applies for a tax deed, the tax collector sends a statement to the clerk of the circuit court indicating that a tax deed sale will take place and indicating the persons who must receive notice of the tax deed sale. § 197.502, Fla. Stat. (2009).
6. The clerk of the circuit court then sends the notice to the address found on the "latest tax roll." § 197.522, Fla. Stat. (2009).
7. In addition to the notice provided by the clerk of the circuit court above, the sheriff of the county in which the legal titleholder resides shall, at least 20 days prior to the date of sale, notify the legal titleholder of record of the property on which the tax certificate is outstanding. § 197.522(2)(a), Fla. Stat. (2009).²

In the instant case, the only final certified tax roll available to the Tax Collector and the Clerk of the circuit court in and for Duval County was from 1999 as the 2000 certified tax roll was not completed when the Clerk of the circuit court sent its notice to the list of persons set forth by the Tax Collector pursuant to sections 197.502 and 197.522, Florida Statutes. Allegedly, the property owner had sent updated address information to the Tax Collector. However,

²Importantly, it is this last step that distinguishes the instant case from *Jones v. Flowers*, 547 U.S. 220 (2006). In *Jones*, the court held that: "when mailed notice of a tax sale is returned unclaimed, the State must take additional reasonable steps to attempt to provide notice to property owner before selling property, if it is practicable to do so." *Id.* at 225. Because the Florida legislature has already made provision for additional notice, other than via mail, *Jones* does not apply to the instant case.

pursuant to Florida law, this information had not yet been incorporated into the 2000 certified roll that was used by the Clerk of the circuit court for notification purposes.

A. THE LEGISLATURE HAS STATED THAT THE "LATEST ASSESSMENT ROLL" MUST BE USED FOR NOTICE PURPOSES SO THAT ONLY A COMPLETE AND CERTIFIED TAX ROLL IS TO BE USED FOR THIS PURPOSE.

The Legislature intended the clerks of court to use only the certified and complete tax roll when determining the address(es) to which notice of a tax deed sale must be sent. §197.502, Fla. Stat (2009).

The governing statute in this case requires the use of the "latest assessment roll." § 197.502(4)a) Fla. Stat. (2009). The Legislature has indicated, in the definition of "assessment roll," that the assessment only includes the roll prepared by the property appraiser and certified to the tax collector for collection. § 197.102(7)(a), Fla. Stat. (2009). Courts have also indicated that a tax roll is complete when it has been "certified by the assessor and submitted to the county commission." *Mills v. Korash*, 249 So. 2d 765, 768 (Fla. 1st DCA 1971).

The Legislature has also set forth procedures for using the interim tax roll (an incomplete and uncertified tax roll) in certain circumstances. See, e.g., § 193.1145 Fla. Stat. (2009). Since this provision carves out a specific exception that allows

for the use of interim tax rolls in only extraordinary circumstances, this Court should assume that completed and certified tax rolls would be required in all other circumstances.

This Court has previously ruled that steps beyond simply sending notice to the address listed must be undertaken in order to satisfy the due process requirement. *Delta Prop. Mgmt., Inc. v. Profile Invs., Inc.*, 875 So. 2d 443, 448 (Fla. 2004). The extra step which this Court previously imposed requires the clerk to investigate and to insure that the assessment roll in his or her possession is in fact the "latest assessment roll." *Id.* at 445, 447. Therefore, the clerk is required to check that no later roll has been completed and certified since he or she received the information from the certified roll provided by the tax collector. In this case, the Property Appraiser did not certify the year 2000 tax roll until after the notice had been sent so that the Clerk of the circuit court satisfied his duty of utilizing the latest assessment roll.

In sum, the Legislature has indicated that only a complete and certified assessment roll must be used for notification purposes. This Court has previously indicated that the issue in this case was whether the Clerk of the circuit court verified that the roll utilized when sending out notices of the tax deed sale was in fact the "latest assessment roll" and that these

steps combined were sufficient to resolve the issue in this case. *Delta Prop. Mgmt., Inc. v. Profile Invs., Inc.*, 875 So. 2d 443, 445 (Fla. 2004). Since the issue on review was to determine whether the Clerk undertook this step, this Court should not now impose any additional obligations on the Clerk.

B. NEITHER THE TAX COLLECTOR NOR THE CLERK HAS ACCESS TO THE TAX ROLL INFORMATION, INCLUDING MORE RECENT ADDRESSES, BEFORE THE TAX ROLL HAS BEEN CERTIFIED BY THE PROPERTY APPRAISER.

The Legislature has made clear in its tax collection regime that no party will have access to an uncertified tax roll except for the property appraisers; therefore this Court should not impose requirements on the tax collectors or the clerks of court which contradict this prohibition.

In the State of Florida, only property appraisers have the duty and authority to update and to certify tax rolls. §193.114, Fla. Stat. (2009). The property appraiser is the custodian of the tax roll. § 193.114(5), Fla. Stat. (2009).

Assuming arguendo that the updated address was included in the incomplete tax roll at the time when notice was sent, requiring the Clerk of the circuit court and Tax Collector to investigate into the incomplete roll might lead to inconsistencies and uncertainties where different constitutional officers were sending notice to different places based upon different methods of determining the latest address. Such a

result would lead to more confusion. The Clerk of the circuit court did in fact use the only available address that could be used under Florida law. This Court has previously indicated that this is the limited scope of the case, i.e., whether the Clerk of the circuit court utilized the latest assessment roll when sending out the notice of the tax deed sale. Accordingly, the Clerk of the circuit court followed the duties prescribed by law and there is no need for this Court to go beyond the facts of this case.

II. ANY CHANGES IN THE CURRENT STATUTORY REGIME THAT ARE NEEDED TO BETTER ACHIEVE THE STATE'S OBJECTIVES SHOULD BE IMPLEMENTED THROUGH LEGISLATION, NOT THROUGH JUDICIAL INTERPRETATION.

A. THIS COURT SHOULD LIMIT ITS REVIEW TO THE FACTS AND LAW OF THE CASE, AND IF REGULATORY CHANGES NEED TO BE MADE, THEN SUCH ACTION SHOULD BE LEFT FOR THE LEGISLATURE TO DECIDE RATHER THAN THIS COURT.

This Court should not go beyond the scope of review under which this case has come before this Court. If changes are to be made to the statutory process, such changes must be made by the Legislature and not simply mandated by this Court.

This Court and the lower courts have indicated previously that this case would not be used as a means of implementing change in statutory process. *Delta Prop. Mgmt., Inc. v. Profile Invs., Inc.*, 875 So. 2d 443, 445 (Fla. 2004) ("The issue in this case is whether, under chapter 197 of the Florida Statutes, the clerk of the circuit court must verify the legal titleholder's

address prior to mailing the notice of the tax deed sale to that titleholder if the tax assessment roll has been or should have been updated after the tax collector provided the clerk with the tax collector's statement."); *Profile Invs., Inc. v. Delta Prop. Mgmt., Inc.*, 19 So. 3d 1013, 1017 (Fla. 1st DCA 2009) ("The sole question within the scope of previous remands was whether the 2000 assessment roll was available to the clerk of the court when it mailed the notices of sale and, if so, whether Delta's alleged "new" address was contained therein Accordingly, the trial court should have entered summary judgment in favor of Profile on the *only* claim Delta ever raised for adjudication in the prior appeals." (emphasis supplied). Therefore, the procedural process which currently puts this case before the Court has had a limited scope of review. *Profile Invs., Inc. v. Delta Prop. Mgmt., Inc.*, 19 So. 3d 1013, 1017 (Fla. 1st DCA 2009).

This Court has indicated that certain situations should be resolved by the legislative body. As stated earlier, the statutory regime in this case is clear and unambiguous. This Court has previously stated "[i]f the language is clear and unambiguous, then this Court has no further reason to apply the rules of statutory construction." *Arnold, Matheny and Eagan, P.A. v. First American Holdings, Inc.*, 982 So. 2d 628, 633 (Fla. 2008). The language is sections 197.502 and 197.522 Florida

Statutes, is clear. Therefore, the statutory regime in this case does not require construction by this Court.

However, if the statutes did involve ambiguity, this Court has previously stated that when dealing with an ambiguous statute,

the appropriate remedy in this circumstance is not for this Court to impose its speculative interpretation, but for the Legislature to amend the statute to reflect its specific intention, if necessary. When interpreting a statute that is unambiguous and clear, this Court defers to the Legislature's authority to create a new limitation and right of action.

Olmstead v. F.T.C., No. SC08-1009, 2010 WL 2518106 at *16 (Fla. 2010).

This Court has also stated that "it is the function of the Court to interpret the law, not to legislate." *Holley v. Adams*, 238 So. 2d 401, 404 (Fla. 1970). This is especially true where, as in this case, the Legislature has clearly and unambiguously made its intention clear. This Court has also stated that it would not second-guess the wisdom of the Legislature. *Id.* The only situation in which this Court has permitted interference with legislation is one in which there is a plain violation of the Constitution; in which case, the Court should invalidate rather than rewrite the law. *Id.*; *Locklin v. Pridgeon*, 30 So. 2d 102, 104 (Fla. 1947) ("The court cannot, in order to bring a statute within the fundamental law, amend it by construction.").

The statutory regime in this case is clear and does not involve any ambiguity that should be interpreted by the Court. Any changes that would better achieve the state's goals should be implemented by the Legislature, not through judicial redrafting of the statutes.

The Court in this case should not construe the meaning of the statute beyond what it clearly states. Since the statutory regime clearly sets forth what steps must be taken by the property appraiser, tax collector, and clerk of the circuit court, there is little room for judicial construction. Since the law in this case involves a clear and comprehensive system for providing notice and performing tax deed sales, it would be unwise for the Court to alter parts of the regime. Such changes could disrupt the rest of the tax collection system and have devastating repercussions.

B. AS A MATTER OF PUBLIC POLICY, THE COURT SHOULD ONLY IMPOSE THE STATUTORY OBLIGATIONS ON THE TAX COLLECTORS AND CLERKS OF COURT; THE FLORIDA STATUTORY SCHEME ALREADY REQUIRES AND PROVIDES THE REASONABLE STEPS TO PROVIDE NOTICE OTHER THAN BY MAIL; ADDITIONAL JUDICIALLY-IMPOSED OBLIGATIONS MAY HAVE UNINTENDED AND UNPREDICTED NEGATIVE IMPACTS.

As a matter of public policy, only the Legislature should impose any changes in the current statutory regime of tax deed sale notifications. Any changes imposed by the courts will have a greater adverse affect on the current regime than would result from changes by the Legislature.

If this Court were to change some aspects of the tax deed sale regime, it would need to take into account many public policy issues that are resolved better by the Legislature informed fully by the Department of Revenue, the citizens, taxpayers and property owners served by the tax collectors and clerks of court in the general and special purpose local governments. Certain changes may have an effect on the whole statutory regime, in which case a system overhaul would also be more effectively implemented by the Legislature. Legislative changes would more effectively maintain a clear and comprehensive system. The Legislature would have to answer to the public for any undesirable effects of such changes.

Even if such changes are made by the Legislature, the amicus curiae advocates for minor changes in the tax deed sale regime, since changes that increase the cost and decrease the efficiency of the tax collection process may have generally undesirable impacts.³

Tax collection procedures must be efficient and economical because, if they are not, there will likely be a negative effect on substantive and procedural due process and on the overall health of Florida's general and special purpose local governments. Studies have indicated that there is a significant

³Currently, the FTC and the Legislature are considering a comprehensive update and amendment to the tax collection and enforcement law, Chapter 197, Florida Statutes.

connection between property tax delinquency and problems such as housing abandonment and homelessness. Ellen F. Friedman, *The Constitutionality of Request Notice Provisions in In Rem Tax Foreclosures*, 56 *FORDHAM L. REV.* 1209, 1211 (1988). “[T]he threat of foreclosure [from tax deed sales] . . . encourages prompt payment of property taxes and discourages tax delinquency.” *Id.* Some scholars have advocated streamlining the tax foreclosure process, in order to avoid the problems that follow tax delinquencies. *Id.* at n.24 (citing M. STEGMAN, *HOUSING AND VACANCY REPORT: NEW YORK CITY*, at 207 (1988)). Therefore, as a matter of public policy, the Court should not impose unnecessary obligations on the tax collector or the clerk of the circuit courts that will inhibit efficient tax deed sales, because doing so would encourage tax delinquency which, according to this scholarship, could increase the level of housing abandonment and homelessness. Thus, the state has a compelling interest in maintaining the state’s tax deed sale process which serves due process and is both accountable and efficient.

Conclusion

This case involves one central issue and this Court must resolve the entire dispute by applying Florida’s law regarding tax deed sale notifications. This Court and the lower courts have previously stated that the issue in this case is whether the statutory notice requirements have been satisfied. Because

the Clerk of the circuit court utilized the latest assessment roll when sending notice to the delinquent taxpayer of the pending tax deed sale, such requirements have indeed been satisfied. This should end the Court's analysis.

The statutory regime was set forth by the Legislature to ensure that the due process for delinquent taxpayers is satisfied. This Court must not legislate, but rather must determine the sole issue on review: whether the statutory regime has been followed (i.e., whether the Clerk of the Court used and verified that the "latest assessment roll" was utilized when providing notice to the delinquent taxpayer).

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Certificate of Service

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CERTIFICATE OF COMPLIANCE

Pursuant to Florida Rules of Appellate Procedure 9.210(a), I certify that this Amicus Brief was generated using Courier New, not a proportionately spaced font, and with a typeface of 12 points.

Timothy R. Qualls

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RESPONDENT.

_____/

**AMENDED NOTICE OF CERTIFICATE OF SERVICE OF AMICUS
CURIAE, THE FLORIDA TAX COLLECTORS, INC., IN SUPPORT
OF THE RESPONDENT WHICH WAS SERVED ON JULY 23, 2010.**

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. mail, postage prepaid, to the following which were inadvertently omitted from the service list: William S. Graessle, Esquire, William S. Graessle, P.A., 219 Newnan Street, 4th Floor, Jacksonville, FL 32202; Loree L. French, Esquire, 117 West Duval Street, Suite 480, Jacksonville, Florida 32202; Thomas M. Findley, Esquire, Messer, Caparello & Self, P.A., Post Office Box 15579, Tallahassee, FL 32317 and W. Kent Brown, Esquire, Hargrove, Pierson & Brown, P.A., 21 S.E. 5th Street, Suite 200, Boca Raton, Florida 33432 this 26th day of July, 2010. Copies previously forwarded to John R. Hargrove, Esquire, Hargrove, Pierson & Brown, P.A., 21 S.E. 5th Street, Suite 200, Boca Raton, FL 33432 and John R. Beranek, Esquire, Ausley & McMullen, 227 S. Calhoun Street, P. O. Box 391, Tallahassee, FL 32302-0391.

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