

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC09-2075

DELTA PROPERTY MANAGEMENT, INC.
Petitioner,

vs.

PROFILE INVESTMENTS, INC.
Respondent.

ON PETITION FOR DISCRETIONARY REVIEW

AMICUS BRIEF OF
FLORIDA ASSOCIATION OF PROPERTY APPRAISERS
IN SUPPORT OF RESPONDENT

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STATEMENT OF THE IDENTITY AND INTEREST
OF AMICUS CURIAE

The Florida Association of Property Appraisers (FAPA) is a statewide professional organization comprised of locally elected, constitutionally authorized property appraisers. FAPA member counties represent over 80% of the total taxable real estate value and population in the state of Florida.

In Florida, property appraisers are responsible for compiling and certifying the tax assessment rolls. As the issues addressed in this case have considerable implications for the duties and operations of the constitutional officers of which it is comprised, FAPA has a significant interest in the outcome herein.

SUMMARY OF THE ARGUMENT

Florida law clearly provides for reliance on only certified tax rolls when fulfilling the requirements set forth in chapter 197, Florida Statutes. However, Petitioner's argument calls for Florida's constitutional officers to look beyond and disregard these certified tax rolls in fulfilling the notice requirements set forth in chapter 197, Florida Statutes. This position is directly contrary to the procedures and requirements established by law. Accordingly, the approval of Petitioner's argument would undermine the statutory procedures and place an undue burden on the property appraisers and other constitutional officers in Florida.

ARGUMENT

I. PETITIONER'S ARGUMENT SUPPORTING THE USE OF INFORMATION FOR TAX COLLECTION PURPOSES FROM SOURCES OTHER THAN THE CERTIFIED TAX ROLLS IS CONTRARY TO FLORIDA STATUTES AND WOULD PLACE AN UNDUE BURDEN ON FLORIDA'S PROPERTY APPRAISERS

In Florida, the statutory requirements of and constraints on the constitutional officers involved in the collection of taxes, sale of tax certificates, and issuance of tax deeds therein have been clearly established and well defined by the Florida Legislature. Specifically, property appraisers, as constitutional officers involved in real property taxation, bear the duty to prepare the real property assessment rolls pursuant to chapter 193, Florida Statutes. Further, as provided in chapter 197, Florida Statutes, it is the

duty of the tax collector to collect all taxes as shown on the tax roll by the date of delinquency or, if not paid by delinquency, to collect delinquent taxes, interest, and costs by sale of tax certificates on real property. Section 197.502(5)(c), Florida Statutes, provides that in regards to the issuance of a tax deed and the subsequent sale, the clerk “shall advertise and administer the sale and receive such fees for the issuance of the deed and sale of the property as are provided in s. 28.24.” In addition, section 197.522, Florida Statutes sets forth the obligations of the Clerk in providing notice upon application for a tax deed. Accordingly, the role of each of these parties in fulfilling the requirements of Florida law is clearly and definitively established therein.

Chapter 197, Florida Statutes, sets forth the procedures through which these parties must fulfill their above-mentioned statutory duties. Throughout chapter 197, Florida Statutes, in facilitating the efficient collection of taxes and issuance of tax certificates and deeds, the Florida legislature has established reliance on the tax rolls supplied by the property appraiser as the proper source of information to fulfill notice requirements for property owners. In particular, section 197.502(4), Florida Statutes, provides that upon receipt of an application for a tax deed, the tax collector shall deliver to the clerk of the circuit court a statement that the following persons are to be notified prior to the sale of the property: “(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...” and “(f) Any person to whom the property was assessed on the tax roll for the year in which the property was last assessed.”

Additionally, as section 197.102(6), Florida Statutes, provides that the terms “tax rolls” and “assessment rolls” as used throughout chapter 197 are defined as “the rolls prepared by the property appraiser pursuant to chapter 193 and certified pursuant to s. 193.122,” the Florida legislature has made clear that the only tax rolls to be relied upon are the certified tax rolls which are compiled and certified annually. Accordingly, inherent in the procedures required by chapter 197, Florida Statutes, is reliance on the certified tax rolls as prepared and certified by the property appraiser.

Petitioner’s argument calls for the tax collector and clerk to look beyond and essentially disregard these certified tax rolls in obtaining property owner contact information to fulfill their notice requirements. This position is directly contrary to the procedures and requirements established by chapter 197, Florida Statutes, and is flawed for numerous reasons. Accordingly, the approval of such position would undermine this statutory provision and place an undue burden on the property appraisers and other constitutional officers in Florida.

First, a holding that the tax collector and clerk look beyond the certified tax rolls in obtaining property owner contact information to fulfill their notice

requirements is in disregard of section 197.502(4)(a), Florida Statutes, as set forth above. This section clearly contemplates that the tax collector and clerk are entitled to rely on the latest assessment roll where the legal titleholder of record is the same as on the last tax roll, as was the case here, and are not required to take any further action to provide notice should that address be inadequate. Accordingly, a holding in Petitioner's favor would be in direct conflict with the provisions of section 197.502(4)(a), Florida Statutes.

Second, a holding that the tax collector, and hence the clerk, look beyond the certified tax rolls and conduct additional research and investigation to provide notice to property owners would essentially abrogate the statutorily provided requirement that the last certified tax roll be the only tax roll utilized in the issuance of required notices. Specifically, requiring the tax collector and clerk to take additional steps in fulfilling the notice requirements would require these parties to access preliminary or non-certified tax rolls.¹ This is an outcome clearly foreclosed by the provisions of chapter 197, Florida Statutes, as these provisions have made clear that the only tax rolls to be utilized in fulfilling the requirements therein are the certified, final tax rolls. Accordingly, imposing the requirement of increased investigation and research, and thus the use of preliminary tax roll information, to

¹ As Judge Cole suggested in the trial court below, "additional steps could have included... reviewing of the preliminary or final 2000 tax assessment roll..."

provide notice to property owners is in direct conflict with the very specific procedures and delineation of roles provided by the Florida legislature in chapter 197, Florida Statutes.

Further, allowing the tax collector, and hence the clerk, to gain access to and utilize preliminary tax roll information is not only contrary to the procedures clearly established and contemplated by Florida law, it would place a new and unnecessary burden on Florida's property appraisers. Particularly, each property appraiser would be required to keep a current tax roll throughout the year, despite the current statutory requirement that tax rolls be compiled and certified only once annually. Thus, such a requirement would place an unwarranted and unnecessary burden on Florida's property appraisers as it would result in an unnecessarily increased workload and costs as well as reduced efficiency. Requiring such a consequence would be impractical where Florida law has clearly established that reliance on the last certified tax roll is justified and adequate.

Lastly, Petitioner's argument that Jones v. Flowers, 547 U.S. 220 (2006) supports the assertion that the tax collector and clerk should be subject to notice requirements beyond those required by sections 197.502 and 197.522, Florida Statutes, is without merit and is founded upon a misunderstanding of Jones. In reality, Jones was a challenge to the constitutionality of the Arkansas statutory scheme for the

collection of delinquent property taxes wherein notice via certified letter was the only required method of notice. However, in Florida, notice via certified letter is not the only required method of notice as section 197.522(2)(a), Florida Statutes, provides for the posting of a copy of the notice in a conspicuous place at the legal titleholder's last known address. Accordingly, as the Supreme Court themselves recognized in Jones, it is inapplicable to states such as Florida which already have additional measures for notice built into their statutory scheme. Accordingly, in light of the foregoing, the outcome in Jones is inapplicable and should not govern the outcome herein.

CONCLUSION

Despite the clear roles, procedures, and requirements, established in chapter 197, Florida Statutes, Petitioner advocates for a position which is in direct conflict therewith. In light of the express notice provisions provided by chapter 197, Florida Statutes, and the potential implications of Petitioner's position for Florida's property appraisers set forth herein, this Court should uphold the decision below.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to the following addresses on this ____ day of July, 2010:

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the font requirements of Rule 9.210(a), Florida Rules of Appellate Procedure, have been complied with in this Brief and the size and style of type used in this brief is Times New Roman 14 point.

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