



IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA

LEONARD J. ACCARDO and  
LYNN M. ACCARDO, et al.,

Appellants,

vs.

DCA NO: 1D10-4072

GREGORY S. BROWN, Property Appraiser  
for Santa Rosa County, Florida, and STAN C.  
NICHOLS,  
Tax Collector for Santa Rosa County, Florida,

Appellees.

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**APPELLANTS' MOTION FOR REHEARING AND/OR CLARIFICATION**

Appellants, LEONARD J. ACCARDO AND LYNN M. ACCARDO et al., pursuant to Fla. R. App. P. 9.330, move for rehearing and/or clarification of the opinion filed in this matter on April 21, 2011, and show:

**I. GROUND FOR REHEARING MOTION:**

The Court overlooked or misapprehended the following points of law or fact:

A. The Court Misapplied the *Robbins Case*.

The Supreme Court has declared on a number of occasions that, with an ordinary lease, the lessee is nothing more than a tenant, and “has no equitable interest in the property.” e.g., *Leon County Educ. Facils. Auth. v. Hartsfield*, 698 So. 2d 526, 530 (Fla. 1997). This Court’s citation to the case of *Robbins v. Mt. Sinai Medical Center, Inc.*, 748 So. 2d 349 (Fla. 3d DCA 1999), at pp. 7-8, is curious because *Robbins*, citing the *Leon County* case, specifically held that “Florida courts have only granted a lessee equitable ownership of leased property when that lessee retained an option to purchase the leased property for *nominal value*.” 748 So. 2d at 351

(emphasis is original). This Court’s opinion recognized that Appellants have no such option, and, under the terms of the original grant, no such option can ever be available.

This Court’s opinion is “irreconcilable” with the *Robbins* case (*Aravena v. Miami-Dade County*, 928 So. 2d 1163, 1167 (Fla. 2006)), and there is express and direct conflict with the Third District opinion.

The Court which has certified this matter to be an issue of great importance also should certify this conflict under the authority of Fla. R. App. P. 9.030(a)(2)(A)(vi).

B. In Announcing a New Form of Ownership, “Equitable Owners for Ad Valorem Taxation Purposes,” the Court Misapplied the Tests of Equitable Ownership.

On page 6 of its opinion, the Court recites the factors derived from *Ward v. Brown*, 919 So. 2d 462 (Fla. 1st DCA 2005), *rev. den.*, 923 So. 2d 1165 (Fla. 2006), but fails to observe that most of these factors are present in virtually every lease.

Moreover, several of these factors are incompatible with ownership and full control of the property. The duty to maintain and insure the property is not an indication of ownership because a property owner can elect to maintain or not to maintain the property and purchase of insurance is at the owner’s sole discretion.

The leases have other terms incompatible with ownership, including restrictions on removal of improvements and, of course, the payment of rent in an amount set by the government.

C. The Opinion Fails to Address Important Questions That Arise From Its Determination That the Appellants Must Pay Ad Valorem Taxes on the Improvements and, for the First Time, on Land Owned by a Government.

The opinion held that the improvements and land within plaintiffs’ leaseholds are subject to local ad valorem taxes, but did not address the trial court’s ruling that the “Tax Collector has the right to sell tax certificates on these equitably owned interests of the Plaintiffs.” (Trial

Court's Judgment, p. 6). As Appellants pointed out in their briefs, this is not a minor detail but an issue that goes to the heart of the analysis. If there is to be a new form of ownership for purposes of ad valorem taxation, the other details of tax administration must be addressed.

Despite the fact that the Santa Rosa County Tax Collector has sold tax certificates and requested tax deeds to be issued under Chapter 197, Florida Statutes, to collect unpaid taxes on governmentally owned vacant land, this opinion fails to address the dilemma that, under settled Florida law, the Tax Collector has no lien to enforce and no right to issue tax certificates or tax deeds for collection of taxes levied against property whose legal owner is a governmental entity, such as Escambia County. Examples of a tax certificate and tax deed issued on one parcel are set out in the attached Appendix. The attached deed does not list Escambia County, Florida, as the legal titleholder of record, nor does it reflect that anything other than fee simple title is being conveyed by it. It is by no means clear how one could convey, under the tax deed statute, an "ownership" that is deemed for tax purposes only. See, §197.552, Fla. Stat. (with some limitations not applicable here, "no right, interest, restriction or other covenant shall survive the issuance of a tax deed...").

Section 196.199(8)(a), Florida Statutes, provides that taxes levied on such property "shall not become a lien on . . . the property itself but shall constitute a debt due," and the only means for recovering such debts shall be "by legal action or by the issuance of tax executions that shall become liens upon any other property in any county of this state of the taxpayer who owes said tax." Similarly, Section 197.432(9), Florida Statutes, provides:

A certificate may not be sold on, nor is any lien created in, property owned by any governmental unit the property of which has become subject to taxation due to lease of the property to a nongovernmental lessee. The delinquent taxes shall be enforced and collected in the manner provided in §196.199(8).

This Court has acknowledged that these statutes control. “[T]he Legislature has established an exclusive procedure for collection of taxes levied on all private leaseholds of governmentally owned real property.” *State Dep’t of Rev. v. Gibbs*, 342 So. 2d 562, 565 (Fla. 1st DCA 1977). Likewise, the Supreme Court of Florida verified that these statutes literally mean what they say: “Section 196.199(8)(a) prohibits any taxes on a leasehold by a nongovernmental lessee from becoming a lien on the governmental property itself. Instead, these taxes ‘constitute a debt due and shall be recoverable by legal action or by the issuance of tax executions that shall become liens upon any other property in any county of this state of the taxpayer who owes said tax.’ ” *Cason v. Fla. Dep’t of Mgmt. Servs.*, 944 So. 2d 306, 314 (Fla. 2006).

This opinion must be reconciled with statutory directives regarding the collection of taxes on private leaseholds of governmentally owned land and the affirmations of those requirements by this Court and the Florida Supreme Court to avoid confusion and inconsistency.

## **II. GROUNDS FOR CLARIFICATION MOTION:**

The following points of law and fact are in need of clarification:

### **A. The Opinion Fails to Distinguish Between the Very Different Types of Leases That Are Involved in This Case.**

It appears that the Court, by its comments at page 8, intended to declare that having “an option to renew their leases for additional ninety-nine-year terms” was necessary before lessees could be declared the equitable owners of the real property for ad valorem tax purposes. As stated in the opinion, a majority of Appellants would fall within that category. Some of the Appellants, who have either *no renewal provision*, or whose renewal option is for a shorter term (e.g., 40 years), should be excluded from the Court’s ruling of taxability.

B. The Opinion Does Not Provide Guidance for the Assessment of This New Type of Ownership.

Important questions arise about how this novel creature, “equitable ownership for property taxation,” is to be administered.

One of these questions is the effect on the “Save Our Home” amendment regarding those plaintiffs who, as leaseholders, have the right to claim the homestead tax exemption. Article VII, Section 6, Constitution of Florida. This is a matter of considerable consequence. Because Save Our Homes sets the assessed value as of the date of purchase and limits the increase in assessed value thereafter, it is important for the citizen to know how this extraordinary new “ownership” is to be treated.

To put this question in focus, we can look at a leaseholder who leased vacant land from Santa Rosa County and later built a residence on the lot. The lessee took on obligations that are never obligations of an owner -- to insure the property, maintain it, and pay rent. The lessee agreed not to remove improvements from the property. There was never a payment for the land and the leaseholder could never get title. What was the date of purchase? What was paid for the land?

A companion problem arises when the leasehold is of vacant land with no improvements, which is the situation with a number of leases involved in this case. When was the property acquired? What price was paid? No assessment-to-sales ratio study is possible because there has never been a sale.

Of course, the Court is not obligated to answer these questions but, if it fails to clarify, there is almost certain to be substantial litigation.

C. The Court Did Not Address the Constitutional Issue, Leaving Confusion in the Law.

By affirming the trial court's opinion without addressing the constitutionality of the statute or the standing of the taxing authorities to challenge the law, the Court essentially took away the basis for the trial court's decision, a decision reached by disregarding the legislative determination of the way that the property should be taxed.

The taxing statute, Section 196.199(2)(b), requires the leasehold interests of plaintiffs to be taxed **only** as intangible personal property. The statute declares that improvements, if owned by the lessee, are subject to local ad valorem taxes. There is no similar legislative directive regarding ad valorem taxation of land if a court deems the lessee to be equitable owner. The trial court declared Section 196.199(2)(b) (and the companion intangible tax provision, §199.023(1)(d) (2005)) to be unconstitutional, because its decision that plaintiffs could be taxed as if they were owners – instead of as lessees – directly contradicts the clear legislative mandate to tax the leasehold interest *only* as intangible personal property.

This Court's decision to affirm the ruling below that lessees have an ownership interest in the land that is subject to ad valorem taxation must likewise deal with the existing statute. If it does not, then this Court will have imposed double taxation upon the plaintiffs: first, an intangible tax payable to the State (because they lease government-owned land), and second, ad valorem local taxes payable to the Tax Collector (because they have been deemed "equitable owners [of the land] for ad valorem taxation purposes"). The statute's clear intent to make the leasehold subject *only* to intangible tax cannot co-exist with this Court's intent to tax it some other way.

It would appear that the trial court recognized the dilemma and resolved it by approving the constitutionality arguments, thus removing the statutory impediment to ad valorem taxation. This Court's affirmance would seem to leave that ruling in place. It is, of course, Appellants' position that the Tax Collector has no standing to make the arguments and that the challenge to constitutionality must fail.

**RULE 9.330 CERTIFICATE**

Because this motion seeks an opinion on issues not addressed in the Court's opinion, this certificate is included: I express a belief, based upon a reasoned and studied professional judgment, that a written opinion will provide a legitimate basis for Supreme Court review because the issues relating to (1) the constitutionality of the statutes in question and (2) the issuance of tax deeds, are resolved only by affirming the trial court, and these issues are not addressed in the opinion. The Tax Collector's lack of standing to challenge the statutes is explicitly addressed in court opinions in conflict with the outcome in this case. The propriety of tax deeds on government property is explicitly addressed by both statute and court opinions in conflict with the outcome in this case. If an opinion is written, these conflicts will be apparent.

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been furnished to Elliott Messer and Thomas M. Findley, of Messer, Caparello & Self, P.A., 2618 Centennial Place, Tallahassee, FL 32308 and Roy V. Andrews, of Lindsay, Andrews & Leonard, P.A., PO Box 586, Milton, FL, 32572 by electronic court mail this 5th day of May, 2011.

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