

JUAN FRANCISCO LOPEZ AND
MERCEDES ESPERANZA LOPEZ,

Plaintiffs,

vs.

The Property Appraiser of Miami-
Dade County Florida in the
person of PEDRO GARCIA (“GARCIA”);
The Tax Collector of Miami-Dade
Florida in the person of MARCUS SAIZ
DE LA MORA (“DE LA MORA”) and
The Executive Director of the
Department of Revenue Florida in the
person of LEON N. BIEGALSKI
(“BIEGALSKI”),

Defendants.

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN
AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.:

COMPLAINT

Plaintiff Taxpayers, JUAN FRANCISCO LOPEZ and MERCEDES ESPERANZA LOPEZ (“LOPEZ”), by and through the undersigned attorney, file this Complaint against the above named Defendants and allege:

1. Plaintiff, JUAN FRANCISCO LOPEZ, is a resident of Miami-Dade County, Florida and is otherwise sui juris.
2. Plaintiff, MERCEDES ESPERANZA LOPEZ, is a resident of Miami-Dade County, Florida and is otherwise sui juris.

3. Defendant, the Property Appraiser of Miami-Dade County, Florida, in the person of PEDRO J. GARCIA (“Garcia”) is named pursuant to §194.181(3), Florida Statutes.
4. The Defendant, MARCUS SAIZ DE LA MORA, as Tax Collector of Miami-Dade County, Florida, is named pursuant to §194.181(3), Florida Statutes.
5. The Defendant, LEON M. BIEGALSKI, as Executive Director of the Florida Department of Revenue, is the official of the state government responsible for overall supervision of the assessment and collection of ad valorem taxes. The Defendant, LEON M. BIEGALSKI, as Executive Director of the Florida Department of Revenue, is joined herein pursuant to §194.181(5), Florida Statutes, because the tax assessments that are the subject of this suit are being contested on the grounds, inter alia, that they are contrary to the laws and Constitution of the State of Florida.
6. This action is brought pursuant to §194.171 of the Florida Statutes.
7. Jurisdiction and venue are placed in this Court by §194.171 of the Florida Statutes.
8. This action is filed pursuant to §§194.036(2) and 194.171 of the Florida Statutes, to contest the validity of the 2016 real property tax assessment of the subject property.
9. This action is timely brought pursuant to §194.171(2) of the Florida Statutes.
10. Pursuant to §194.171(3) of the Florida Statutes, plaintiff has made its good faith payment. A receipt evidencing the payment, in full, of the 2016 property tax on the subject property is attached as Exhibit “A,” as prescribed by §194.171(3) of the Florida Statutes.
11. All conditions precedent to bringing this action contesting the Miami-Dade County Property Appraiser’s 2016 assessment of the subject property have been performed, waived, or otherwise excused and Plaintiff is entitled to de novo review of the assessment in accordance with §194.036 of the Florida Statutes.
12. Defendant, Garcia, as Miami-Dade County Property Appraiser, assessed the subject property located at 570 NW 123 Avenue, Miami, FL 33182, further identified by Folio Number: 30-4901-001-0230 as of January 1, 2016 at a Market Value of \$1,048,794. The Property’s 2016 Market Value was appealed to the Miami-Dade County Value Adjustment Board under Petition No. 16-11867, resulting in a reduction of the January 1, 2016 Market Value to \$978,200.
13. Defendant, Garcia’s 2016 ad valorem tax assessment of the subject property exceeds the constitutional and statutory standards of just valuation adopted by the State of Florida; in particular, Garcia’s assessment violates Article VII, Section IV of the Florida Constitution

and therefore is illegal and void.

14. Defendant Garcia did not observe the essential requirements of law in determining the just valuation of the Subject Property and, as such, the assessment is unjust, unequal and in excess of just valuation for the following reasons:

a. In assessing the Subject Property, said Defendant has failed substantially to comply with the requirements of §193.011 of the Florida Statutes.

Specifically,

1. The present cash value of the property, which is the amount a willing purchaser would pay a willing seller, exclusive of reasonable fees and costs of purchase, in cash or the immediate equivalent thereof in a transaction at arm's length;
2. Defendant has failed to take into consideration a historic preservation ordinance which substantially affects highest and best use of the property;
3. The location of said property;
4. The age and condition of said property, in that the subject property is need of substantial repairs and is undergoing necessary upgrades to its sprinkler and alarm systems which affect market value;
5. The income from the subject property does not support the market value, as determined by the Defendant, Property Appraiser; and
6. The net proceeds of sale of the property, as received by the seller, after deduction of all of the usual and reasonable fees and costs of the sale.

b. In assessing the Subject Property, said Defendant has systematically and intentionally assessed the Subject Property substantially higher than comparable properties of the same class and quality of all or substantially all other property within the County, thereby placing the greater tax burden on Plaintiff's property than that borne by other taxpayers in contravention of the principles of equality, uniformity and just valuation of all property, as required by the Florida Constitution and the decisional laws of the State of Florida.

- c. In assessing the Subject Property, said Defendant has deviated from accepted appraisal methods and valuation techniques, and said assessment constitutes a departure from essential requirements of the law thereby rendering said assessment illegal and void.
- d. In assessing the Subject Property, Defendant Garcia failed to inspect the property as required by §193.023(2).
- e. Defendant has assessed the Subject Property at a ratio to just value in excess of the ratio to just value to which all, or substantially all, like properties in Miami-Dade County, Florida were assessed. By doing so, Defendant has arbitrarily and systematically singled out and discriminated against Plaintiff (and the Subject Property) as compared to all, or substantially all, other ad valorem taxpayers of Miami-Dade County, Florida, in violation of Plaintiff's right to equal protection under the laws of Section I of the Fourteenth Amendment of the Constitution of the United States, and Article I of Section 2 of the Constitution of the State of Florida.

15. In assessing the Subject Property, Defendant Garcia has deprived Plaintiff of equal protection under the law as guaranteed by the provisions of Article I, Declaration of Rights, Section 2 of the Florida Constitution, and Article I, Declaration of Rights, Section 9 of the United States Constitution.

16. Defendant Garcia's assessment was illegal and void as he had no authority to make the assessment he made.

WHEREFORE, Plaintiff respectfully requests:

1. That this Court take jurisdiction of the subject matter and the parties to this cause;
2. That this Court declare the tax assessments determined herein by the defendant, Garcia, for the year 2016 to be null and void;

3. That this Court enter an order declaring the just valuation of the Subject Property, assessing a tax thereon and directing a refund of the taxes paid by the Plaintiffs which are based on that portion of said Defendant's assessment found to be in excess of just valuation together with interest thereon and direct such further adjustment between the parties as may be necessary in connection therewith;
4. That this Court enter a decree setting aside the 2016 tax assessment;
5. That this Court declare that the subject property was over-assessed as a matter of law;
6. That this Court assess costs against defendant pursuant to §194.192 of the Florida Statutes and award plaintiff its reasonable attorney's fees;
7. That this Court grant Plaintiff any further relief it deems just and equitable.

DESIGNATION OF EMAIL ADDRESSES

Pursuant to Florida Rule of Judicial Administration 2.516, undersigned counsel hereby designates his primary and secondary email addresses for purposes of email service as follows:

Primary email address: mmontero@taxabatementinc.com

Secondary email address: m_montero@bellsouth.net

DATED this 18th day of July, 2017.

Respectfully Submitted,

/s/ Michael C. Montero
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