

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA
CIVIL DIVISION

SHIRLEY D. SMITH,

CASE NO.:

Plaintiff,

DIVISION:

v.

RICK SINGH, as the Property Appraiser of
Orange County, Florida; SCOTT
RANDOLPH, as the Tax Collector of
Orange County, Florida; and LEON M.
BIEGALSKI, as the Executive Director of
the Florida Department of Revenue,

Defendants.

COMPLAINT

Plaintiff, SHIRLEY D. SMITH ("Plaintiff"), hereby files this Complaint against Defendants, RICK SINGH, as the Property Appraiser of Orange County, Florida ("Appraiser"), SCOTT RANDOLPH, as the Tax Collector of Orange County, Florida ("Collector"), and LEON M. BIEGALSKI, as the Executive Director of the Florida Department of Revenue ("Director"), and alleges:

1. This is an action for a declaratory judgment and to challenge the removal of a homestead exemption on property in Orange County, Florida and the imposition of a tax lien.
2. This Court has jurisdiction pursuant to Chapter 194, Florida Statutes, Article V, Sections 5 and 20 of the Florida Constitution, and Section 86.011, Florida Statutes.
3. Plaintiff is the owner of certain real property located at 21 W. Crest Avenue in Winter Garden, Florida 34787 and identified as Parcel No. 14-22-27-9392-02-370 ("Subject Property"), which is classified and assessed as single family class III owner-occupied residential property.
4. Appraiser is sued herein in his official capacity and is a necessary party to the action pursuant to Section 194.181(2), Florida Statutes.
5. Collector is sued herein in his official capacity and is a necessary party to the action pursuant to Section 194.181(3), Florida Statutes.
6. Director is sued herein in his official capacity and is a necessary party to the action pursuant to Section 194.181(5), Florida Statutes.

7. From 1979 to the present date, Plaintiff owned the Subject Property and maintained it as her permanent residence.

Count I

(Reinstatement of 2013 through 2016 Homestead Exemptions & Refund of Tax Lien)

8. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 7 of this Complaint as though fully set forth herein.

9. Plaintiff applied for and received a homestead exemption on the Subject Property in the 1980 tax year. She continued to receive the homestead exemption on the Subject Property through the 2016 tax year.

10. On August 11, 2017, Appraiser signed a tax lien, which was recorded against the Subject Property on September 14, 2017 ("Tax Lien"). A copy of the Tax Lien is attached hereto and made a part hereof as **Exhibit "A"**.

11. The Tax Lien states that Plaintiff was not legally entitled to receive the homestead exemptions for the years 2013 through 2016 because "OWNER IS NOT A PERMANENT RESIDENT".

12. Plaintiff did not receive any notice of intent to file lien or any other notice that the homestead exemption on the Subject Property would be retroactively removed for the 2013 through 2016 tax years, although Plaintiff does not dispute that such notices may have been sent. Plaintiff retains her right to object to the validity of any such notices because Plaintiff anticipates that such notices did not meet the specificity requirements of Sections 196.193(5) and 196.151, Florida Statutes, especially in light of the reason given in the Tax Lien.

13. Thus, any such notice(s) are invalid and ineffective to remove the homestead exemption for the Subject Property.

14. Here, Plaintiff did not become aware of the retroactive removal of the homestead exemption for the 2013 through 2016 tax years until November 29, 2017, which is when Plaintiff's daughter, Kimberlee Rose, attempted to pay the taxes on the Subject Property, and the clerk at the Tax Collector's office notified Ms. Rose that a Notice of Tax Lien had been recorded against the Subject Property. Prior to this date, Plaintiff did not know that Appraiser had any intent to retroactively remove her homestead exemption on the Subject Property.

15. The very next day, on November 30, 2017, Plaintiff caused the Tax Lien to be paid in full, even though she disputes that this amount is due and owing. A copy of the receipt for payment of the Tax Lien is attached hereto and made a part hereof as **Exhibit "B"**.

16. Section 196.161, Florida Statutes, allows the property appraiser to file a tax lien against property of a taxpayer who was granted a homestead exemption to which he was not entitled for any year or years within the prior ten (10) years.

17. However, Plaintiff was and is entitled to the homestead exemption on the Subject Property for the 2013 through the 2016 tax years, pursuant to Article VII, Section 6 of the Florida Constitution and Section 196.031, Florida Statutes, which provide for the exemption of homesteads to a person who, on January 1, has the legal title to real property and who in good faith makes the property his or her permanent residence.

18. Pursuant to Section 196.012(17), Florida Statutes, "permanent residence" is defined as "that place where a person has his or her true, fixed, and permanent home and principal establishment to which, whenever absent, he or she has the intention of returning. A person may have only one permanent residence at a time..."

19. Plaintiff has owned the Subject Property continuously, without interruption, since 1979 and has maintained the Subject Property as her permanent residence (as such term is defined in Section 196.012(17), Florida Statutes) since she acquired the Subject Property back in 1979. Although Plaintiff has been absent from the Subject Property from time to time due to reasons beyond her control (i.e., her illnesses and damages to the Subject Property requiring major repairs and expenses), the Subject Property is Plaintiff's true, fixed, and permanent home and principal establishment to which, when absent, Plaintiff has always had, and continues to have, the intention of returning.

20. Thus, Plaintiff was and is entitled to the homestead exemption on the Subject Property for the tax years 2013 through 2016, and Appraiser's retroactive removal of the homestead exemption and imposition of a tax lien on the Subject Property was unlawful.

21. Nevertheless, Plaintiff paid the Tax Lien in full, pursuant to Section 194.171(3) & (4), even though she does not admit that this amount is due and owing.

22. Plaintiff has performed all conditions precedent which are required to be performed by Plaintiff in establishing her right to bring this action.

23. Specifically, this action has been filed within the time period prescribed by Section 194.171(2), Florida Statutes. Appraiser certified the tax rolls of Orange County, Florida on October 16, 2017.

24. Plaintiff has retained the undersigned law firm to represent her in this action and is required to pay a reasonable fee for its services.

WHEREFORE, Plaintiff respectfully requests that this Court take jurisdiction of this cause and of the parties to this action; enter an order declaring that Plaintiff is entitled to the homestead exemption on the Subject Property for the 2013 through 2016 tax years; reinstating the 2013 through 2016 homestead exemptions on the Subject Property; awarding a refund of the amounts paid to release and satisfy the Tax Lien; awarding Plaintiff her costs incurred in bringing this action pursuant to Section 194.192, Florida Statutes, plus interest, reasonable attorneys' fees and costs, and for such further relief as this Court may deem just and equitable.

Count II

(Reinstatement of 2017 Homestead Exemption)

25. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 7, 9 through 11, 18, and 19 of this Complaint as though fully set forth herein.

26. The homestead exemption on the Subject Property has been denied for the 2017 tax year.

27. However, Plaintiff did not receive any written notices of the denial of the homestead exemption on the Subject Property for the 2017 tax year as required under Florida law. Plaintiff retains her right to object to the validity of any such notices because Plaintiff anticipates that such notices did not meet the specificity requirements of Sections 196.193(5) and 196.151, Florida Statutes, especially in light of the reason given in the Tax Lien.

28. Thus, any such notice(s) are invalid and ineffective to remove the homestead exemption for the Subject Property.

29. Here, Plaintiff did not become aware of the denial of the homestead exemption for the 2017 tax year until November 29, 2017, which is when Plaintiff's daughter, Kimberlee Rose, attempted to pay the taxes on the Subject Property, and the clerk at the Tax Collector's office notified Ms. Rose that a Notice of Tax Lien had been recorded against the Subject Property. Prior to this date, Plaintiff did not know that Appraiser had any intent to deny and remove her homestead exemption on the Subject Property.

30. The next day, on November 30, 2017, Plaintiff paid the 2017 taxes on the Subject Property in full, pursuant to Section 194.171(3) and (4), Florida Statutes, even though she disputes that this amount is due and owing. A copy of the receipt for payment of the 2017 taxes is attached hereto and made a part hereof as **Exhibit "C"**.

31. Plaintiff is entitled to the homestead exemption on the Subject Property for the 2017 tax year pursuant to Article VII, Section 6 of the Florida Constitution and Section 196.031, Florida Statutes, which provide for the exemption of homesteads to a person who, on January 1, has the legal title to real property and who in good faith makes the property his or her permanent residence.

32. Appraiser's denial and removal of the homestead exemption on the Subject Property was unlawful.

33. Plaintiff has performed all conditions precedent which are required to be performed by Plaintiff in establishing her right to bring this action.

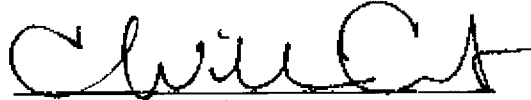
34. Specifically, this action has been filed within the time period prescribed by Section 194.171(2), Florida Statutes. Appraiser certified the tax rolls of Orange County, Florida on October 16, 2017.

35. Plaintiff has retained the undersigned law firm to represent her in this action and is required to pay a reasonable fee for its services.

WHEREFORE, Plaintiff respectfully requests that this Court enter an order declaring that Plaintiff is entitled to the homestead exemption on the Subject Property for the 2017 tax year; reinstating the 2017 homestead exemption on the Subject Property; ordering Collector to issue tax bills that reflect the 2017 homestead exemption and to refund any overpayments; awarding Plaintiff her costs incurred in bringing this action pursuant to Section 194.192, Florida Statutes, plus interest, reasonable attorneys' fees and costs, and for such further relief as this Court may deem just and equitable.

Dated December 14, 2017.

Respectfully submitted,



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