

**IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT, IN AND FOR
SARASOTA COUNTY, FLORIDA**

MICHELE GUFFANTI,

Plaintiff,

v.

Case No.

**WILLIAM FURST in his capacity as
SARASOTA COUNTY PROPERTY APPRAISER,
BARBARA FORD-COATES, in her capacity as SARASOTA
COUNTY TAX COLLECTOR,
LEON M. BIEGALSKI, in his capacity as Executive Director
of the FLORIDA DEPARTMENT OF REVENUE,**

Defendants.

COMPLAINT

Plaintiff, MICHELE GUFFANTI (“Ms.Guffanti” or “Plaintiff”), pursuant to Chapter 86, 194, 196, and 215, Florida Statutes (“F.S.”), sues Defendants, William Furst, in his capacity as Sarasota County Property Appraiser, (“Property Appraiser” or “Defendant”), Barbara Ford-Coates, in her capacity as the Sarasota County Tax Collector (“Tax Collector”), and Leon M. Biegalski, in his capacity as Executive Director of the Florida Department of Revenue (“Department of Revenue”), and alleges the following:

PARTIES

1. Plaintiff, is an individual who resides at certain real property located at 7230 Bounty Drive, Sarasota, Florida (“Subject Property”), which serves as her primary residence. For purposes of this proceeding, Plaintiff’s address is that of the undersigned counsel.

2. Defendant Property Appraiser is an agency of Sarasota County, Florida, charged with the responsibility of assessing the property located in Sarasota County and administering the County ad valorem tax laws, including those dealing with property tax homestead exemption as provided in Chapter 196, F.S. The Defendant's address for the purpose of this proceeding is the 2001 Adams Lane, Sarasota, FL 34237.

3. The Tax Collector is sued herein in her official capacity and is a necessary party to the action pursuant to section 194.181, F.S.

4. The Executive Director of the Department of Revenue is sued herein in his official capacity and is a necessary party to the action pursuant to section 194.181, F.S.

VENUE AND JURISDICTION

5. This Court has jurisdiction of this action pursuant to Sections 68.01, 194.171, and 86.011, F.S., and Article V, Section 20(c)(3), Florida Constitution.

6. Venue is proper in Sarasota County, Florida, pursuant to section 194.171, F.S.

7. Plaintiff is uncertain of her rights and duties under chapter 193, 194, and 196 F.S., and seeks judicial determination thereof. Without such a declaration, Plaintiff will be deprived of her homestead exemption which she is due.

FACTS

8. In 2003, Ms. Guffanti purchased the Subject Property, and it has served as her primary residence since 2003.

9. The Subject Property is titled in the name of Michele Guffanti, TTE. Ms. Guffanti, an individual, is the beneficial owner of the Subject Property. Beneficial property owners are entitled to homestead protection under Florida law.

10. In 2003, Ms. Guffanti, under penalty of perjury, applied for and received a homestead exemption on the Subject Property. She continued to receive the homestead exemption through the 2015 tax year. Additionally, since at least 2003, Ms. Guffanti's driver's license and voter registration card have both been issued by the State of Florida, and the utilities at the Subject Property are in her name.

11. Ms. Guffanti also owns a home in Los Angeles, California, that does not serve as her primary residence.

12. Similar to Florida's homestead tax credit, California allows for an owner occupancy credit for an individual's residence. An owner occupancy credit was applied to her California property.

13. Ms. Guffanti never applied for, or was aware of, any residency based credit on the home in California. Therefore, the credit was applied in error and has since been removed by the property appraiser's office of Los Angeles County, California.

14. On or around May 2, 2016, Plaintiff received a Notice of Intent to File Tax Lien ("Lien Notice"), issued by the Defendant Property Appraiser relating to the Subject Property. The Lien Notice alleged that Plaintiff was improperly benefitting from the Florida homestead exemption because she was receiving the residency based credit on the California property. The Lien Notice further notified Plaintiff that the homestead exemption on the Subject Property would be retroactively removed for the 2006 through 2015 tax years, resulting in a retroactive assessment in the amount of \$17,081.60, inclusive of interests and penalties. A copy of the Lien Notice is attached hereto as Exhibit A and incorporated herein.

15. The Property Appraiser thereafter recorded a tax lien against the Subject Property. A copy of the Notice of Tax Lien is attached hereto as Exhibit B and incorporated herein.

16. Plaintiff paid the tax lien and now seeks a refund of monies paid and relief determining her entitled to homestead on the Subject Property from 2006 through the present.

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

COUNT I
Declaratory Relief

18. Plaintiff realleges and incorporates by reference the allegation of paragraphs 1 through 17 and further alleges as follows:

19. Section 196.031, F.S., codified the Florida homestead exemption under article VII, section 6 of the Florida Constitution and provides that a homestead property tax exemption exists for “[a] person who, on January 1, has the legal title or beneficial title in equity to real property in this state and who in good faith makes the property his or her permanent residence.”

20. Section 196.031(5) F.S. further identifies that “[a] person who is receiving or claiming the benefit of an ad valorem tax exemption or a tax credit in another state where permanent residency is required as a basis for the granting of that ad valorem tax exemption or tax credit is not entitled to the homestead exemption provided by this section.

21. Section 196.012(17) identifies that “Permanent residence” means a “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.”

22. The factual determination of whether the home was a “permanent residence” is a finding of fact for the property appraiser based on the factors identified in Section 196.015(1)-(9), F.S..

23. As set forth above, the Subject Property was Plaintiff's primary residence since she homesteaded the residence in 2003.

24. Plaintiff applied for and received homestead exempt status on the Subject Property in 2003 and had the intent to make it her permanent residence.

25. Further, since at least 2003, Plaintiff's Driver License, voter registration card, Federal Tax Returns and bank statements all list the Subject Property as her address. Additionally, Plaintiff's utility bills list Plaintiff as payor. The foregoing evidences Plaintiff's intent to make the Subject Property her permanent residence and right to Florida homestead protection.

26. The residency based credit on Plaintiff's property in California was in error. This error has since been corrected, the credit has been reversed, and as such, she has not received any residency based credit for any tax years at issue.

27. Plaintiff was therefore entitled to the homestead exemption on the Subject Property in the 2006 through 2015 tax years and continuing thereafter, pursuant to article VII, section 6 of the Florida Constitution and section 196.031, F.S. As a result, the Property Appraiser's removal of the homestead exemption and imposition of a tax lien was unlawful.

COUNT II
Removal of Lien

28. Plaintiff realleges and incorporates by reference the allegation of paragraphs 1 through 17 and further alleges as follows:

29. Article VII, section 1, Florida Constitution, states that "[n]o tax shall be levied except in pursuance of law."

30. Further, Section 196.031, F.S., codified the Florida homestead exemption under article VII, section 6 of the Florida Constitution and provides that a homestead property tax

exemption exists for “[a] person who, on January 1, has the legal title or beneficial title in equity to real property in this state and who in good faith makes the property his or her permanent residence.”

31. In the instant case, Plaintiff is not receiving the benefit of a residency based ad valorem tax exemption elsewhere, and is the beneficial owner of the Subject Property. Plaintiff has all the common indicia of being a permanent resident of Florida, entitled to homestead.

32. The Defendant has exceeded the scope of Florida law, and violated Plaintiff’s rights to a homestead as enumerated in the Florida constitution.

33. Plaintiff requests removal of the tax lien on the Subject Property, attached hereto as Exhibit B.

WHEREFORE, Plaintiff respectfully requests this Court grant the following relief:

A. Enter a judicial determination that Plaintiff was a resident of Sarasota County entitled to homestead on the Subject Property for tax years 2006 through the present;

B. Enter a judicial determination reinstating Plaintiff’s homestead on the Subject Property for the tax years 2006 through the present;

C. Enter a judicial determination that lien resulting from the disallowed homestead was invalid, and remove the lien from the Subject Property.

D. Award Plaintiff its costs in bringing this action pursuant to section 194.192, F.S.;

E. Provide such other relief as the Court deems appropriate.

Respectfully submitted,

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