

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CIVIL DIVISION

F.T., LLC, a Florida limited
liability company,

Plaintiff,

Case No.: 17-007125-CI

vs.

Division:

MIKE TWITTY, as Property Appraiser;
CHARLES W. THOMAS, as Tax Collector
and LEON BIEGALSKI as Executive Director
of the Florida Department of Revenue,

Defendants.

COMPLAINT

Plaintiff, F.T., LLC, a Florida limited liability company, sues Defendants, MIKE TWITTY, as Property Appraiser ("Appraiser"), CHARLES W. THOMAS, as Tax Collector ("Collector"), and LEON BIEGALSKI ("Biegalski"), as the Executive Director of the Florida Department of Revenue, and alleges:

Allegations Common to all Counts

1. Plaintiff is a Florida limited liability company, authorized to do business in the state of Florida.

2. Appraiser is sued herein in his official capacity and is a necessary party to the action pursuant to section 194.181(2), Florida Statutes.

3. Collector is sued herein in his official capacity and is a necessary party to the action pursuant to section 194.181(3), Florida Statutes.

4. Defendant Biegalski is sued in his official capacity as Executive Director of the Florida Department of Revenue and is a necessary party to this action pursuant to section 194.181(5), Florida Statutes.

5. The real property forming the subject of this action is located in Pinellas County, Florida, and is hereinafter referred to as the "Subject Property". Plaintiff has legal title to the Subject Property.

6. Plaintiff has paid the taxes which have been assessed for the Subject Property in full, pursuant to section 194.171(3) and (4), Florida Statutes. Copies of the receipts are attached hereto as Plaintiff's Composite Exhibit "A".

7. Plaintiff has performed all conditions precedent which are required to be performed by Plaintiff in establishing its right to bring this action and to the relief requested. Specifically, and without limitation, this action has been filed within the time period prescribed by section 194.171(2), Florida Statutes.

8. Appraiser identified the Subject Property and established its just and assessed values for 2017 as follows:

<u>Parcel No.</u>	<u>Just Value</u>	<u>Assessed Value</u>
36/30/15/00000/410/0100	\$39,160	\$39,170
36/30/15/00000/410/0300	\$38,007	\$38,007
36/30/15/00000/420/0100	\$90,396	\$90,396
36/30/15/00000/420/0200	\$541,257	\$541,257
36/30/15/00000/430/0800	\$262,897	\$262,897
36/30/15/00000/430/1200	\$3,425	\$3,425

<u>Parcel No.</u>	<u>Just Value</u>	<u>Assessed Value</u>
36/30/15/00000/440/0100	\$20,914	\$20,914
36/30/15/00000/440/0200	\$342,848	\$342,848
36/30/15/00000/440/0300	\$750,016	\$750,016
36/30/15/00000/440/0400	\$34,136	\$34,136
36/30/15/00000/440/0500	\$20,131	\$20,131

Count I

9. This is an action for declaratory and ancillary relief concerning an ad valorem real estate tax assessment for the tax year 2017. Jurisdiction is predicated upon Chapter 86, Florida Statutes and section 194.171, Florida Statutes.

10. Plaintiff re-alleges and incorporates paragraphs 1-8 as if fully set forth herein.

11. Beginning in 1971 with the Andover building, condominiums were constructed on property located at 8141-54th Avenue North, St. Petersburg, Florida. In 1972, construction started on eight additional buildings to be known as "Five Towns"; construction was completed in 1976. The "Terrace Park" project, consisting of 26 buildings, began construction in 1977. When the buildings were completed, the names of the development were combined to form "Five Towns/Terrace Park". The combined project includes 1,701 individual residential condominium parcels and 31 separate condominium associations. A schematic of Five Towns/Terrace Park showing the building locations off of 54th Avenue North is attached hereto as composite Exhibit "B".

12. The Subject Property consists of the recreational amenities located within the Five Towns / Terrace Park condominium development, including clubhouses, tennis courts, swimming pools and shuffleboard courts.

13. Condominium property includes rights appurtenant to lands subject to condominium ownership, which are intended for use in connection with the condominium, whether or not they are contiguous to the condominium. §718.103(13), *Fla. Stat.*

14. Among the various individual condominiums comprising Five Towns/Terrace Park is the "Kenilworth", known legally as Terrace Park of Five Towns, No. 17, a condominium. A copy of the Declaration of Condominium is attached hereto as Exhibit "C" (the "Kenilworth Declaration").

15. The Kenilworth Declaration provides, in paragraph 3 (j), that:

Condominium property means and includes the lands that are subjected to condominium ownership, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the condominium.

16. Section 718.106(2), Florida Statutes, provides that appurtenances provided by the declaration of condominium pass with each unit to a purchaser.

17. Paragraph 27 of the Kenilworth Declaration provides, as an appurtenance to each individual unit, the rights afforded by that certain Service and Maintenance Agreement, attached to the Declaration as an exhibit, as though each owner was an actual party thereto.

18. The Service and Maintenance Agreement, in turn, provides in Article II, paragraph (k) for "...a recreational area to be used by the condominium unit owners for recreational and social purposes..." Further, that "[t]he recreation area shall consist of the following facilities: shuffleboard courts, swimming pools, recreational hall, billiard room, sauna baths, steam rooms and meeting rooms. Kitchen facilities are located within the recreational hall."

19. Once the Kenilworth Declaration was recorded, a description of each condominium parcel by designated number included all authorized appurtenances, whether separately described or not. § 718.109, *Fla. Stat.*

20. The declarations of condominium for the other 31 associations similarly provide for the Subject Property as an appurtenance through service and maintenance agreements like those created for the Kenilworth.

21. The Subject Property constitutes part of the condominium property because it is an appurtenance intended for use in connection with the condominium.

22. Consequently, the Subject Property is equitable owned by the various Five Towns / Terrace Park condominium associations and / or condominium parcel owners, notwithstanding legal title in Plaintiff.

23. Section 718.120(1), Florida Statutes, provides as follows:

Ad valorem taxes, benefit taxes, and special assessments by taxing authorities shall be assessed against the condominium parcels **and not upon the condominium property as a whole.** (e.s.)

Each condominium parcel shall be separately assessed for ad valorem taxes and special assessments as a single parcel.

24. Pursuant to the statute, the value of condominium property is to be prorated by the property appraiser and included in the assessments of the condominium parcels within Five Towns / Terrace Park.

25. Appraiser's separate assessment of the Subject Property contravenes section 718.120(1), Florida Statutes, which proscribes separate assessments made against the condominium property as a whole.

26. Notwithstanding the requirements of the statute, Appraiser has separately assessed the Subject Property at market value.

27. Plaintiff is in doubt concerning the validity of Appraiser's separate assessment of the Subject Property, and is entitled to have that doubt removed by the Court.

28. There exists a present, real and bona fide controversy between Plaintiff and Appraiser over the separate assessment of the Subject Property for ad valorem tax purposes in 2015.

WHEREFORE, Plaintiff demands that this Court take jurisdiction over this cause and the parties hereto, enter an order setting aside the assessments on the Subject Property for tax year 2017; and further, that this Court enter an order directing Collector to cancel the original bills; and, finally, to award Plaintiff its costs incurred in bringing this action pursuant to section 194.192, Florida Statutes, and award such other general relief as may be just and equitable.

Count II

29. This is an action to contest an ad valorem real estate tax assessment for the tax year 2017. Jurisdiction is predicated upon 194.171, Florida Statutes.

30. Plaintiff re-alleges and incorporates paragraphs 1-8 and 25 as if fully set forth herein.

31. The prices paid for the individual units within the Five Towns / Terrace Park condominiums reflect the value of the Subject Property and the unit owners' appurtenant rights to use the Subject Property.


32. For 2017 Appraiser has assessed the unencumbered fee simple interest in the Subject Property at full market value.

33. Notwithstanding, Appraiser has made no corresponding set off adjustments to the assessments of the condominium units within the Five Towns / Terrace Park condominiums to compensate for the assessment of the Subject Property at market value.

34. The effect of Appraiser's actions has been to impermissibly assess the Subject Property to Plaintiff a second time, contrary to Florida law. *See, Department of Revenue v. Morganwoods Greentree, Inc.*, 341 So. 2d 756 (Fla. 1976).

WHEREFORE, Plaintiff demands that this Court take jurisdiction over this cause and the parties hereto, enter an order setting aside the assessments on the Subject Property, direct Appraiser to re-assess the property for 2017 by reducing the value in proportion to the value exported to the units within the condominiums; and further, that this Court enter an order directing Collector to cancel the original bills and issue

new bills in the re-assessed amounts and, finally, to award Plaintiff its costs incurred in bringing this action pursuant to section 194.192, Florida Statutes, and award such other general relief as may be just and equitable.



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