

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

FEFA'S CAFÉ LLC, a Florida limited
liability company, and YDALBERTO
CAMACHO, an individual,

CASE NUMBER:

DIVISION:

Petitioners

-v-

FLORIDA DEPARTMENT OF REVENUE,

Respondent

**PETITION FOR DECLARATORY
JUDGMENT AND OTHER RELIEF**

COME NOW the Petitioners, FEFA'S CAFÉ LLC, a Florida limited liability company, and YDALBERTO CAMACHO, an individual, by and through the undersigned attorney, and file this Petition for Declaratory Judgment and Other Relief against the Respondent, FLORIDA DEPARTMENT OF REVENUE, and as grounds thereof allege as follows:

I. JURISDICTION

1. This Court has jurisdiction of this matter pursuant to the provision of Section 213.67, Florida Statutes, and other established authority.

II. THE PARTIES

2. The Petitioners, FEFA'S CAFÉ, is a Florida limited liability corporation doing business in Hillsborough County, Florida, with the President being YDALBERTO CAMACHO, a resident of Hillsborough County, Florida, at all times material herein. Hereinafter the Petitioners will be referred to as the "Petitioners," "FEFA'S" or "CAMACHO," as appropriate.
3. The Respondent, FLORIDA DEPARTMENT OF REVENUE, hereinafter will be

referred to as "Respondent" or the "DEPARTMENT."

4. FEFA'S is a restaurant business that serves a largely Hispanic clientele and specializes in Cuban cuisine.

III. GENERAL FACTUAL ALLEGATIONS

5. Several years ago FEFA'S purchased a point of sale (POS) system from Cash Register Sales, LLC. Part of the contractual obligation of Cash Register Sales was that the system was to be programmed to include all sales tax calculations under DEPARTMENT guidelines.
6. FEFA'S was later advised by the DEPARTMENT that it had not been paying sales tax for take out orders. As previously noted, Cash Register Sales handled the programming of the sales tax for their POS devices.
7. The DEPARTMENT alleged that the Petitioners owed sixty-three thousand, two hundred and fifty-three dollars and seventy-three cents (\$63,253.73) in uncollected taxes and interest.
8. After an audit by the DEPARTMENT, the DEPARTMENT made a proposal to FEFA'S and an unrepresented CAMACHO. CAMACHO believed this offer to settle included only a cash sum settlement.
9. After delivery of the sum CAMACHO believed the issue was resolved and accepted the findings of the DEPARTMENT despite questions. Later, CAMACHO realized he was responsible for far more than what was discussed.
10. CAMACHO began paying on the continuing demand but called and visited the DEPARTMENT in a continuing effort to resolve the mistake of fact. Eventually CAMACHO was forced to retain counsel.

11. For over a year FEFA'S, through counsel, alleged that there was a mistake in fact and attempted to obtain the documents supporting the tax delinquency from the DEPARTMENT.
12. The records sought were to include, but not limited to, the basis of the principal and interest calculation; the reason for the audit; the findings of the investigation; and, the authority to support the original demand.
13. FEFA'S efforts, through counsel, began in January 2017 and included certified mail, facsimiles and emails. On January 19, 2017, counsel for the Petitioners contacted the DEPARTMENT. The correspondence provided as follows:

"As you aware we are personal counsel to Ydalberto Camacho and Fefa's Café. After reviewing this matter it appears there has been an apparent misunderstanding of fact. Please provide our office all documents supporting the Department of Revenue claim, including principal and interest calculated, the reason for audit, the findings of your investigation and the authority to support the original demand. Thanks."

14. There was no response to the communication. On February 17, 2017, counsel followed up with an email which provided as follows:

"I am following up on this. We need to get the DOR's position on this. Thank you."

15. There was no response to the communication. On June 6, 2017, counsel for the Petitioners again attempted to obtain the necessary records. The request provided as follows:

"As you are well aware of I am personal counsel to Ydalberto Camacho and Fefa's Café. I have sent you previous correspondence on January 19, 2017, and February 17, 2017. I have not yet received a response. Attached is the executed power of attorney. Please

contact me to discuss. Thanks.”

16. There was no response to the communication. On July 20, 2017, counsel once again attempted to contact the DEPARTMENT. The request provided as follows:

“Again we have not received a reply to our multiple communications. Please give us a call. Thanks.”

17. There was no response to the communication. On August 31, 2017, the Petitioners’ effort continued with the following letter:

“On August 19, 2017, a notice of default of stipulation agreement was sent from your office to our client, Fefa’s Café, LLC. This is most interesting in that we have previously tried to contact you about this very obligation for months and sent power of attorneys, emails, faxes and never received a response. The original amount of the agreement appeared unconscionable and all we wanted was to see if there was an explanation that would justify it.

I would appreciate now that you have defaulted Fefa’s if you would reach out to us since we are the lawyers and have been by virtue of the records in your possession since the inception of this matter. I look forward to hearing from you. If there are further proceedings please serve our office directly with notice, as we are counsel of record. Thank you.”

18. There was no response to the communication. On September 19, 2017, counsel again attempted to contact the DEPARTMENT. The request, this time to Candee Berry, provided as follows:

“I am enclosing previous correspondence sent on January 19, 2017; February 17, 2017, June 6, 2017; July 20, 2017; and, August 31, 2017. On September 1, 2017, Dorothy Carter called our office upset and rather than direct us to the representative that is handling the file or forwarding the multiple attempts to communicate with the agency to the appropriate person, she merely requested that we not send her any more correspondence. She stated she cannot help.

Perhaps you can. Please give me a call. Thanks.”

19. There was no response to the communication. After repeated efforts and communication, on December 1, 2017, the DEPARTMENT issued a tax warrant against FEFA’S. On December 6, 2017, counsel for FEFA’S attempted to remedy the situation and wrote the DEPARTMENT. The correspondence provided as follows:

“I called and left a voicemail for you today. You returned my call and advised Michelle you would not speak with me until you received a power of attorney. A power of attorney was sent to your office many moons ago. I am enclosing previous correspondence sent on January 19, 2017; February 17, 2017, June 6, 2017; July 20, 2017; and, August 31, 2017. On September 1, 2017, Dorothy Carter called our office upset and rather than direct us to the representative that is handling the file or forwarding the multiple attempts to communicate with the agency to the appropriate person, she merely requested that we not send her any more correspondence. She stated she cannot help. On September 19, 2017, I sent a letter to the attention of Candee Berry and copied the Florida Department of Revenue and received no response. On December 4, 2017, we were notified by our client of a December 1, 2017, tax warrant. We have attempted to contact this office for almost a full year now. Please call me to discuss.”
20. There was no response to the communication. On January 29, 2018, FEFA’S Wells Fargo bank accounts were frozen pursuant to a Notice to Freeze. See attached Exhibit “1,” made a part hereof. This was followed by a Notice of Intent to Levy the Wells Fargo bank account of FEFA’S which was issued on February 7, 2018. See attached Exhibit “2,” made a part hereof.
21. The actions of the DEPARTMENT are inequitable, violate public policy and there is no adequate remedy at law to resolve the conflict.

**IV. COUNT I
DECLARATORY JUDGMENT**

22. The allegations of paragraphs one (1) through twenty-one (21) are incorporated herein.
23. There is a present ascertainable state of facts which creates a controversy. The request for a declaratory judgment is for the determination of the legality of the DEPARTMENT'S tax warrant and the subsequent validity of the levy of the Petitioner's bank accounts. This effort is not merely for the purpose of obtaining legal advice.

WHEREFORE the Petitioners respectfully request this Honorable Court to determine the legality of the DEPARTMENT'S entry of a tax warrant and the subsequent levy of the Petitioners' bank accounts.

**V. COUNT II
INJUNCTIVE RELIEF**

24. The allegations of paragraphs one (1) through twenty-one (21) are incorporated herein.
25. Unless and until it is enjoined and restrained by order of this Honorable Court, the Respondent's conduct is causing, and will continue to cause, irreparable injury to the Petitioners to include the loss of revenue; loss of interest; loss of the ability to use its capital in order to conduct business; and, the inability to satisfy daily business obligations.
26. The Petitioners have no adequate remedy at law for the damages currently being suffered and for the reasons indicated in the paragraphs above seek injunctive relief.
27. The injury that is being caused to Petitioners by the DEPARTMENT'S actions require a proper damage-and-injury award.
28. The Petitioners have employed counsel to represent them in this litigation, and have

agreed to pay counsel a reasonable fee for any and all such services. The Petitioners are entitled to attorney's fees and the costs of this action.

WHEREFORE the Petitioners respectfully request the entry of an order invalidating the tax warrant and enjoining the DEPARTMENT from the continued attack on the Petitioners' bank accounts, as well as attorneys fees and the costs of this action.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by service of process to the Respondent, FLORIDA DEPARTMENT OF REVENUE.

Respectfully Submitted



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