

IN THE CIRCUIT COURT OF THE 11th  
JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

ROSS KESTIN, an individual, and  
ALEXANDRA KESTIN, an individual;

GENERAL JURISDICTION DIVISION

Plaintiffs,

CASE NO. 18-004491-CA-01

vs.

FLORIDA DEPARTMENT OF REVENUE,

Defendant.

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**COMPLAINT TO CONTEST ASSESSMENT**

Plaintiffs, Ross Kestin and Alexandra Kestin (collectively, the “Kestins”), pursuant to Section 72,011, Florida Statutes, sue the Florida Department of Revenue (the “Department”), and allege as follows:

1. The Kestins are individuals residing in Miami-Dade County, Florida and are otherwise *sui juris*.

2. The Department is an agency established under the laws of the State of Florida and is charged with the responsibility for the administration and enforcements of Florida state tax laws, including those dealing with taxes on deed and other instruments relating to real property or interests in real property.

3. This is an action brought pursuant to Section 72.011(1)(a), Florida Statutes, to contest the legality of the assessment of documentary stamp taxes claimed by the Department to be due on the transaction referenced below.

4. Venue is proper pursuant to Section 72.011(4)(a), Florida Statutes, because the Kestins reside in Miami-Dade County and the Property (as defined below) is located in Miami-Dade County.

5. On or about July 10, 2015, Nanabella, LLC, a Florida limited liability company (the

“Company”), purchased the residential property located at 6180 SW 112<sup>th</sup> Street, Miami, Florida 33156 (the “Property”) with a purchase money mortgage in the amount of \$1,500,000 (the “Mortgage”).

6. At all relevant times, the Company was wholly owned by the Kestins as tenants by the entireties.

7. Six months later, in order to obtain homestead protections, Kestin recorded a quit claim deed (the “QCD”) transferring title in the Property from the Company to the Kestins. A copy of the QCD is attached hereto as Exhibit A.

8. Before transferring title, a call was placed to the Department’s help line and the Kestins were informed that no documentary stamp tax would be due on the QCD.

9. The Kestins paid nominal documentary stamp taxes on the QCD at the time of recording.

10. At the time of the QCD, there was an outstanding principal balance on the Mortgage of \$1,489,883.05.

11. On January 9, 2017, the Department issued a letter and Notice of Intent to Conduct a Limited Scope Audit or Self-Audit (the “Notice”) to the Kestins relating to documentary stamp taxes due on the QCD.

12. On February 6, 2017, the Kestins responded to the Notice by (i) requesting an informal conference with a tax auditor at the Department, (ii) paying “under protest and with a full reservation of rights” the \$9,631.88 in documentary stamp taxes on the QCD that the Department contends was due so as to stop the running of interest (the “Tax”), and (iii) demanding a full refund of the Tax. A copy of Kestin’s response to the Notice is attached hereto as Exhibit B.

13. On February 22, 2017, the Department issued a Notice of Proposed Assessment

acknowledging receipt of payment of the Tax and considering it paid in full (the “NOPA”).

14. On March 7, 2017, the Kestins timely responded to the NOPA by (i) requesting an informal protest and (ii) again demanding a full refund of the Tax. A copy of the response to the NOPA is attached hereto as Exhibit C.

15. On September 12, 2017, the Department issued its Notice of Decision, a copy of which is attached hereto as Exhibit D. The Department’s position was that because the Mortgage was outstanding at the time of the QCD, documentary stamp taxes were due on that transfer based on the outstanding principal balance on the Mortgage.

16. The Kestins timely petitioned the Department for reconsideration of its Notice of Decision (*see* Exhibit E) and, on December 15, 2017, the Department denied the Kestins’ petition for reconsideration and sustained the assessment of the Tax (*see* Exhibit F).

17. The Kestins are entitled to a refund of the Tax based on the authority of *Dept. of Revenue v. Pinellas VP, LLC*, 3 So. 3d 361 (Fla. 2d DCA 2009) and *Crescent Miami Center v. Fla. Dep. of Revenue*, 903 So. 2d 913 (Fla. 2005).

18. All conditions precedent to maintaining this action have been performed, have been waived or have otherwise been excused, including all applicable requirements contained in Section 72.011, Florida Statutes.

**WHEREFORE**, the Kestins request this Court (i) declare that the Tax was not due on the QCD, (ii) declare that they are entitled to a refund of the Tax plus statutory interest and (iii) grant any and all other relief this Court deems just and proper.

**NOTICE OF DESIGNATION OF E-MAIL ADDRESSES**

Plaintiffs, Ross Kestin and Alexandra Kestin, pursuant to Florida Rule of Judicial Administration 2.516(b)(1), hereby designates the following e-mail addresses for service of

pleadings: [brian@goodkindandflorio.com](mailto:brian@goodkindandflorio.com) and [kenneth@goodkindandflorio.com](mailto:kenneth@goodkindandflorio.com).

Dated: February 12, 2018.

**GOODKIND & FLORIO, P.A.**

/s/ Kenneth R. Florio

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