

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR
MIAMI DADE COUNTY, FLORIDA**

RODOBALDO DUARTES,

Plaintiffs,

v.

Case No.

**PEDRO GARCIA in his capacity as
MIAMI-DADE COUNTY PROPERTY APPRAISER,
MARCUS SAIZ DE LA MORA, in his capacity as MIAMI-DADE
COUNTY TAX COLLECTOR, and
LEON M. BIEGALSKI, in his capacity as Executive Director
of the FLORIDA DEPARTMENT OF REVENUE
Defendants.**

COMPLAINT

Plaintiff, RODOBALDO DUARTES, (“Mr. Duarte” or “Plaintiff”), pursuant to Chapters 86, 194, and 196, Florida Statutes (“F.S.”), sue Defendants, Pedro Garcia, in his capacity as Miami-Dade County Property Appraiser, (“Property Appraiser”), Marcus Saiz de la Mora, in his capacity as the Miami-Dade 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 allege the following:

PARTIES

1. Plaintiff owned certain real property located at 429 S.W. 23rd Road, Miami, FL 33129 (“Subject Property”), which served as his primary residence during the entire period at issue. For this proceeding, Plaintiff’s mailing address is that of the undersigned counsel.

2. The Property Appraiser is an agency of Miami-Dade County, Florida, charged with the responsibility of assessing the property located in Miami-Dade County and administering the

County ad valorem tax laws. The Property Appraiser's address for this proceeding is 111 NW 1st Street, Suite 710, Miami, FL 33128-1903.

3. The Tax Collector is sued herein in his 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 Miami-Dade County, Florida, pursuant to section 194.171, F.S.

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

FACTS

8. Mr. Duarte purchased the Subject Property on September 20, 1996.

9. Mr. Duarte thereafter filed an application with the Defendant Property Appraiser for entitlement to Florida's homestead tax exemption on the Subject Property.

10. Defendant Property Appraiser approved the application, and the homestead tax exemption was deemed effective as of 1997.

11. The Subject Property has served as Mr. Duarte's primary and legal residence during all relevant times herein. Notably, Mr. Duarte driver's license, automobile registration, voter registration, and federal income tax returns all listed the Subject Property as his address.

12. For the period from 2007 through 2008, Mr. Duarte worked at a job that required frequent travel. During this period, Plaintiff allowed a family member to live at the Subject Property.

13. However, any time Mr. Duarte was away from the Subject Property, he had the intent to return. In this regard, after returning from in 2008, Mr. Duarte resumed living at the Subject Property. There was no lease, oral or written, on the Subject Property during this time.

14. Shortly thereafter, Mr. Duarte married Sara Bleich, and they continued to reside at the Subject Property.

15. Towards the end of 2011, Mr. Duarte and Ms. Bleich no longer had an intact marriage and became estranged. After separating, Ms. Bleich moved to Maryland, residing at 1609 Bolton St., Baltimore, Maryland (“Maryland property”).

16. Plaintiff did not move to the Maryland property, and continued to reside at the Subject Property. Plaintiff never received the benefit of a homestead or tax credit on the Maryland property. Additionally, at this time, Mr. Duarte and Ms. Bleich maintained separate bank accounts and filed separate tax returns.

B. Value Adjustment Board Hearings

17. On January 6, 2013, Defendant Property Appraiser removed Mr. Duarte’s homestead tax exemption on the Subject Property for tax year 2013. The basis for the removal was that Mr. Duarte was allegedly benefitting from a dual exemption with Ms. Bleich at the Maryland property.

18. Additionally, on April 3, 2014, the Property Appraiser filed a Notice of Tax Lien for Homestead Exemption, retroactively removing the homestead exemption for tax years 2010 through 2012. A copy of the Tax Lien is attached hereto as Exhibit A.

19. Mr. Duarte challenged the homestead removal through a Value Adjustment Board (“VAB”) hearing. On February 17, 2015, the VAB special magistrate determined that Mr. Duarte was entitled to the homestead tax exemption on the Subject Property, thereby overruling the Property Appraiser’s determination. The special magistrate factually found that Mr. Duarte no longer had an intact marriage, and that the Subject Property had always been his primary residence.

20. The Property Appraiser did not appeal the ruling, and the homestead tax exemption carried over to tax years 2014 and 2015. Additionally, the Property Appraiser recorded a satisfaction of its lien for tax years 2010 through 2012. A copy of the satisfaction is attached hereto as Exhibit B.

21. In 2016, Mr. Duarte began construction of improvements to the Subject Property. As a result, the homestead tax exemption on the Subject Property was removed for tax year 2016.

22. Mr. Duarte again challenged the removal through a VAB hearing, and, again the special magistrate determined that Mr. Duarte was entitled to his homestead tax exemption on the Subject Property.

23. The Appraiser failed to appeal this ruling as well.

C. Most Recent Tax Lien

24. Not satisfied with the VAB rulings, and despite not appealing those rulings, the Property Appraiser continued to investigate Mr. Duarte with the goal to remove his homestead tax exemption on the Subject Property.

25. On or around January 5, 2018, the Property Appraiser sent Plaintiff a Notice of Intent to Lien in the amount of \$120,463.04 relating to the Subject Property. A copy of the Notice of Intent to Lien is attached hereto as Exhibit C.

26. On or around February 6, 2018, the Property Appraiser filed the lien (hereinafter, "Tax Lien"). Although the same information was available to the Property Appraiser as at the time of the VAB hearings, the Property Appraiser alleged that for years 2007 to 2011, Mr. Duarte was not entitled to the homestead tax exemption due to rental of the Subject Property; and alleged that for years 2013 to 2016, Mr. Duarte was not entitled to the homestead tax exemption due to receiving a tax exemption/tax credit on the Maryland property.

27. The Tax Lien further notified Mr. Duarte that the homestead tax exemption on the Subject Property would be retroactively removed for the 2007 through 2011, and 2013 through 2016 tax years, resulting in a significant assessment that included penalties and interest. A copy of Tax Lien is attached hereto as Exhibit D.

28. Plaintiff has not paid the Tax Lien and is challenging the entirety of tax, penalties, and interest associated with the Tax Lien.

29. Plaintiff has retained the services of the undersigned to represent him in this action and is obligated to pay his attorney a reasonable fee for their services.

30. All conditions precedent to the filing of this action have been performed, waived, or otherwise satisfied.

LEGAL AUTHORITY

31. 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."

32. Although rental of all or substantially all of a dwelling typically constitutes abandonment of a homestead, Mr. Duarte never rented the property, as there was no formal lease agreement, oral or written, and he was not compensated for his family staying at the property.

33. Additionally, an appeal of a VAB decision by a property appraiser:

shall be filed prior to extension of the tax roll under subsection (2) or, if the roll was extended pursuant to s. 197.323, within 30 days of recertification under subsection (3). The roll may be certified by the property appraiser prior to an appeal being filed pursuant to s. 194.036(1)(c), but such appeal shall be filed within 20 days after receipt of the decision of the department relative to further judicial proceedings.

COUNT I
DECLARATORY RELIEF FOR ALL YEARS

34. Plaintiff realleges and incorporates by reference the allegation of paragraphs 1 through 33 as if fully set forth herein, and further alleges as follows:

35. Mr. Duarte had two prior VAB hearings regarding his homestead tax exemption status on the Subject Property.

36. At each hearing, the special magistrate ruled that Mr. Duarte was entitled to his homestead tax exemption.

37. Additionally, at each hearing, the Property Appraiser had the opportunity to raise the issues set forth in its Tax Lien. Because the Property Appraiser failed to timely appeal either VAB decision, it has waived its right and is barred from retroactively removing Mr. Duarte's homestead tax exemption for the years at issue.

38. As a result, Mr. Duarte disputes disallowance of the homestead exemption on the Subject Property, and imposition of the Tax Lien for tax years 2007 through 2011, and 2013 through 2016.

39. Issuance of a declaratory judgment as to the legal rights of the parties will contribute to an efficient resolution of this dispute.

WHEREFORE, Plaintiff respectfully requests that this Court enter a judicial determination that the Property Appraiser is barred from retroactively removing Plaintiff's homestead tax exemption for tax years 2007 through 2011 and 2013 through 2016; that the Tax Lien is invalid; award Plaintiff his costs in bringing this action pursuant to section 194.192, F.S.; and for such further relief as this Court deems just and proper.

COUNT II
DECLARATORY RELIEF FOR 2007 THROUGH 2009

40. Plaintiff realleges and incorporates by reference the allegation of paragraphs 1 through 33 as if fully set forth herein, and further alleges as follows:

41. The Subject Property was Mr. Duarte's primary and legal residence beginning in 1997, when the Property Appraiser approved his homestead tax exemption.

42. For tax years 2007 through 2009, traveled extensively for work, and allowed family to stay at the property. There was no lease, oral or written.

43. Because Mr. Duarte was still living at the property and had the intent to return, the Property Appraiser's disallowance of the homestead tax exemption for those years, based on rental of the Subject Property, is improper.

44. As a result, Mr. Duarte disputes disallowance of the homestead exemption on the Subject Property, and imposition of the Tax Lien for tax years 2007 through 2009.

45. Issuance of a declaratory judgment as to the legal rights of the parties will contribute to an efficient resolution of this dispute.

WHEREFORE, Plaintiff respectfully requests that this Court enter a judicial determination that the Property Appraiser's retroactive removal of Plaintiff's homestead tax exemption for tax years 2007 through 2009 is unlawful; that the Tax Lien is invalid; award Plaintiff his costs in

bringing this action pursuant to section 194.192, F.S.; and for such further relief as this Court deems just and proper.

COUNT III
EQUITABLE ESTOPPEL FOR 2010 THROUGH 2011

46. Plaintiff realleges and incorporates by reference the allegation of paragraphs 1 through 33 as if fully set forth herein, and further alleges as follows:

47. The Property Appraiser represented, through the satisfaction of lien, that any issues relating to Mr. Duarte's homestead tax exemption for tax years 2010 and 2011, had been resolved.

48. The representation made by the Property Appraiser was to material facts, and are contrary to the position now taken by the Property Appraiser.

49. Mr. Duarte relied on those representations, and has now suffered detriment by the Property Appraiser's change in position and imposition of the Tax Lien.

50. As a result, the Property Appraiser should be estopped from asserting its inconsistent position relating to tax years 2010 through 2011.

WHEREFORE, Plaintiff respectfully requests that this Court enter a judicial determination that the Property Appraiser is equitably estopped from retroactively removing Plaintiff's homestead tax exemption for tax years 2010 through 2011; that the Tax Lien is invalid; award Plaintiff his costs in bringing this action pursuant to section 194.192, F.S.; and for such further relief as this Court deems just and proper.

COUNT IV
DECLARATORY RELIEF FOR 2010 THROUGH 2011

51. Plaintiff realleges and incorporates by reference the allegation of paragraphs 1 through 33 as if fully set forth herein, and further alleges as follows:

52. The Subject Property was Mr. Duarte's primary and legal residence beginning in 1997, when the Property Appraiser approved his homestead tax exemption.

53. For tax years 2010 through 2011, Mr. Duarte continued to reside at the Subject Property, and it was his primary and legal residence during that time.

54. Because the Subject Property served as Mr. Duarte's primary and legal residence, the Property Appraiser's disallowance of the homestead tax exemption for those years, based on rental of the Subject Property, is improper.

55. As a result, Mr. Duarte disputes disallowance of the homestead tax exemption on the Subject Property, and imposition of the Tax Lien for tax years 2010 through 2011.

56. Issuance of a declaratory judgment as to the legal rights of the parties will contribute to an efficient resolution of this dispute.

WHEREFORE, Plaintiff respectfully requests that this Court enter a judicial determination that the Property Appraiser's retroactive removal of Plaintiff's homestead tax exemption for tax years 2010 through 2011 is unlawful; that the Tax Lien is invalid; award Plaintiff his costs in bringing this action pursuant to section 194.192, F.S.; and for such further relief as this Court deems just and proper.

COUNT V
DECLARATORY RELIEF FOR 2013 THROUGH 2016

57. Plaintiff realleges and incorporates by reference the allegation of paragraphs 1 through 33 as if fully set forth herein, and further alleges as follows:

58. The Subject Property was Mr. Duarte's primary and legal residence beginning in 1997, when the Property Appraiser approved his homestead tax exemption.

59. For tax years 2013 through 2016, Mr. Duarte continued to reside at the Subject Property, and it was his primary and legal residence during that time. Plaintiff never received the

benefit of a homestead or tax credit on the Maryland property, and was estranged from Ms. Bleich during this time.

60. Because the Subject Property served as Mr. Duarte's primary and legal residence, the Property Appraiser's disallowance of the homestead tax exemption for those years, based on receiving a tax exemption/tax credit on the Maryland property, is improper.

61. As a result, Mr. Duarte disputes disallowance of the homestead tax exemption on the Subject Property, and imposition of the Tax Lien for tax years 2013 through 2016.

62. Issuance of a declaratory judgment as to the legal rights of the parties will contribute to an efficient resolution of this dispute.

WHEREFORE, Plaintiff respectfully requests that this Court enter a judicial determination that the Property Appraiser's retroactive removal of Plaintiff's homestead tax exemption for tax years 2013 through 2016 is unlawful; that the Tax Lien is invalid; award Plaintiff his costs in bringing this action pursuant to section 194.192, F.S.; and for such further relief as this Court deems just and proper.

COUNT VI
REMOVAL OF TAX LIEN

63. Plaintiff realleges and incorporates by reference the allegation of paragraphs 1 through 33 as if fully set forth herein, and further alleges as follows:

64. Mr. Duarte was entitled to this homestead tax exemption on the Subject Property for the years at issue.

65. The Property Appraiser's retroactive removal of the homestead tax exemption and imposition of the Tax Lien is unlawful.

66. Therefore, Mr. Duarte requests the Tax Lien be removed for all years.

WHEREFORE, Plaintiff respectfully requests that this Court enter a judicial determination that the Tax Lien is invalid and that it be removed for all years at issue; award Plaintiff his costs in bringing this action pursuant to section 194.192, F.S.; and for such further relief as this Court deems just and proper.

COUNT VII
REMOVAL OF PENALTIES AND INTEREST

67. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1 through 33 as if fully set forth herein, and further alleges as follows:

68. Section 192.0105 F.S. is the Taxpayer's Rights provisions as applicable to ad valorem tax, and provides that taxpayers are to be afforded the right to waiver of penalties, and reduction of interest, when taxpayer can show good cause.

69. Mr. Duarte was entitled to this homestead tax exemption on the Subject Property for the years at issue.

70. Additionally, the Property Appraiser's retroactive removal of the homestead tax exemption and imposition of the Tax Lien is unlawful.

71. Therefore, the Tax Lien and retroactive assessment relating to those years is improper and does not warrant penalties and interest.

WHEREFORE, Plaintiff respectfully requests that this Court enter a judicial determination that the penalties and interest associated with the Tax Lien are unlawful and that they be removed for all years at issue; award Plaintiff his costs in bringing this action pursuant to section 194.192, F.S.; and for such further relief as this Court deems just and proper.

Respectfully submitted,

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