

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

RAUL MEJIA, and VIRGINIA LOPEZ

Plaintiffs,

vs.

**CASE NO.: 2018-012371-CA
DIVISION:**

**PEDRO LOPEZ, as Property Appraiser of
Miami Dade County Florida; LEON M.
BIEGALSKI, as Executive Director of
Florida Department of Revenue; MARCUS
SAIZ DE LA MORA, as Tax Collector of
Miami Dade County, Florida**

Defendants.

COMPLAINT FOR DECLARATORY RELIEF

COMES NOW Plaintiffs, RAUL MEJIA (hereinafter, MEJIA) and VIRGINIA LOPEZ (hereinafter, LOPEZ), as Joint Tenant with Rights of survivorship, (hereinafter, "PLAINTIFFS") and sues Defendants, PEDRO LOPEZ, as Property Appraiser of Miami Dade County Florida, (hereinafter "Appraiser"); LEON M. BIEGALSKI, as Executive Director of Florida Department of Revenue, (hereinafter, "DOR"); and MARCUS SAIZ DE LA MORA, as Tax Collector of Miami Dade County, Florida (hereinafter, "Collector"); the Collector, DOR, and Appraiser are hereinafter jointly referred to as Defendants, and allege:

NATURE OF THE CASE

1. This is an action for a declaratory judgment and to challenge the removal and refusal to reinstate of a homestead and Senior Citizen exemptions (hereinafter, "Exemptions") and imposition of retroactive tax liens on property in Miami-Dade County, Florida.

PARTIES

2. Plaintiffs, MEJIA and LOPEZ, at all times relevant, are the owners of certain real

property located at 201 178th Drive, unit 531, Sunny Isles, Florida 33160-2875, and identified as Parcel No. 31-2211-039-1220 ("Subject Property"), which was classified and assessed as owner-occupied residential property in tax year 2005 through 2016.

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

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

5. Defendant, LEON M. BIEGALSKI, is sued herein in his official capacity and is a necessarily party to the action pursuant to section 194.181(5), Florida Statutes.

JURISDICTION

6. This Court has jurisdiction pursuant to Chapter 194, Florida Statutes, article V, sections 5 and 20 of the Florida Constitution, and section 86.011, Florida Statutes.

VENUE

7. Venue is appropriate in this Court pursuant to Fla. Stat. Sections 47.011, and 47.021.

GENERAL ALLEGATIONS

8. Plaintiffs jointly owned the Subject Property from 2005 through and including the present which consisted of a single residential or family unit and made it their permanent residence.

9. Except for tax year 2013, from 2005 through and including tax year 2017, the Plaintiffs have occupied and used the Subject Property predominantly or exclusively as their homestead.

10. The Plaintiffs applied for and received a homestead exemption on the subject in 2005 which was automatically renewed through 2012; however, on or about August 29, 2013, MEJIA visited the Property Appraiser's office and informed them that the property

was rented from April 2012 to April 2013 and sought to renew and reapply for the exemption to commence tax year 2014.

11. While at the property appraiser's office, MEJIA was informed that he may be eligible for a Senior Citizen Exemption. The agent assisted MEJIA with completing the forms. MEJIA had no intent to seek an exemption for 2013, however, the Agent completed the form as a late application for exemption. This was error.

12. On December 5, 2016, the Appraiser made a determination that the Plaintiffs "were not entitled to the Homestead Exemption" on the Subject Property and issued a Notice of Intent to Lien the subject property for tax years 2011 through 2015. See **Exhibits A attached hereto**

13. Upon the Plaintiffs contest of the determination and Notice of Intent to Lien for tax years 2011 through 2015, the Appraiser reversed its position with respect to tax years 2011 and 2012, but maintained their position with respect to tax years 2013 through 2015. See **Exhibit C attached hereto**

14. Again, on July 3, 2017, the Appraiser made a determination that the Subject Property and Plaintiffs "were not entitled to the Homestead Exemption" and issued a Notice of Intent to Lien the subject property for tax years 2016. See **Exhibits B and D attached hereto**

15. On information from the Appraiser, the specific basis for the removal of the exemptions for years 2013 through 2016 is as follows:

- a. For tax year 2013 the Appraiser states that based on a rental contract produced by the Plaintiff to the Appraiser, the property was not being used as a homestead.
- b. For tax years 2014 through 2016 the Appraiser states that the Plaintiffs failed to reapply for the exemptions which was removed in 2013; however, the DR-453

forms supplied by the Property Appraiser states that the exemptions were being denied and the retroactive tax levied as a result of "Rental of Homestead."

16. The Plaintiffs do not contest the removal of the exemptions as it relates to tax year 2013 and as such has paid the Retroactive Tax; however, the Plaintiffs maintain that the levy of interest and penalties for tax year 2013 is not supported by law and the facts. See **Exhibit E attached hereto**

17. On or about August 29, 2013 when MEJIA visited the Appraiser's office and applied for Senior Citizenship Exemptions pursuant to Fla. Stat. 196.075 in addition to notifying the Property Appraiser of the loss of 2013 exemption and seeking to apply for the 2014 homestead exemption. This Senior Citizen Exemption application was an initial application which necessarily accompanied and required that the Subject Property be declared the homestead.

18. The property appraiser granted retroactive benefits to the Senior Citizenship Exemption application for tax year 2013 and future years although MEJIA informed them of the loss of Homestead for 2013 and sought only 2014 forward.

19. As at April 17, 2013, the subject property was no longer under contract for rental and was being used as the Plaintiffs' homestead which entitled them to exemptions for tax years 2014 through present.

20. The application for senior citizenship exemption on August 29, 2013, although late for tax year 2013, was timely received for tax year 2014.

21. The Plaintiffs own no other property on which to claim or receive a homestead exemption or Senior Citizen Exemption in the state of Florida or any other state.

22. The Plaintiffs have provided the Defendants with all documents to establish that the subject property is their homestead, yet the Appraiser maintains the same position that the subject property is being rented and that the taxpayers have failed to provide statutory

evidence that the Subject Property is their permanent address. This position of the Property Appraiser is unsupported by the facts and law.

23. An actual case and controversy exists between the parties that may be adjudicated by this Court.

24. The Defendants have taken affirmative action against Plaintiffs by placing a lien against their property.

25. Plaintiffs have a reasonable apprehension that it will suffer irreparable injury if the Defendants does to release the lien against their property because interest continues to accrue and the property is in jeopardy of eventual say by the defendants to satisfy the liens.

26. The Defendants demanded that Plaintiffs pay the Liens (including interest and penalties) resulting from the removal of Exemptions, to which Exemptions the Plaintiffs are entitled.

27. Plaintiffs have a real and reasonable apprehension that if they should fail to pay the Lien they will be penalized by the Defendants and their Subject Property would be taken and used to satisfy said Lien.

28. The Declarations sought herein is necessary and appropriate under the circumstances in order that Plaintiffs may ascertain Exemptions to which they are entitled and the correct amount of recapture tax, penalties and interest, if any, permissible by law.

29. Pursuant to Fla. Stat. § 86.011 this Court has jurisdiction to declare the existence or nonexistence of any fact upon which the existence or nonexistence of an immunity, power, privilege, or right does or may depend, whether such immunity, power, privilege, or right now exists or will arise in the future.

30. Pursuant to Fla. Stat. § 86.051 allows the Court to render a declaratory judgment by way of anticipation with respect "to any act not yet done or any event which has not yet happened."

31. Pursuant to Fla. Stat. § 86.111 also permits “a speedy hearing of an action for declaratory judgment” and the Court “may advance it on the calendar.”

32. Pursuant to Fla. Stat. § 86.101 provides that this Court has jurisdiction to address the instant matter to settle and to afford relief from insecurity and uncertainty with respect to rights, status, and other equitable or legal relations.

33. The failure to stop the Defendant’s past and present course of conduct as set forth herein would be to endorse an injustice and loss of the plaintiff’s property, and monies paid under protest so as to establish standing for this action.

34. Prior to instituting this action, the Plaintiffs:

- a. Paid under protest the entire recapture tax levy with interest and penalties for tax year 2013; See **Exhibit E attached hereto**
- b. Paid under protest the amount of the recapture tax for tax years 2014 through 2016 as good faith payment which exceeds the amount the recapture tax when the exemptions are reinstated and/or the amount of interest and penalties are removed; See **Exhibit F attached hereto**
- c. Paid the 2017 tax bill under protest. See **Exhibit G attached hereto**

35. All conditions precedent to filing this suit have been met.

**COUNT I – REMOVAL OF TAX LIEN
(As to Tax Years 2014 through 2016)**

36. Plaintiffs reassert and reaffirms the allegations of paragraphs 1 through 35 as if fully set forth herein, and further states:

37. On December 5, 2016 and July 3, 2017, the Appraiser sent the Plaintiffs a Notice of Intent to File Lien (hereinafter “Lien Notices”) notifying them that the homestead and senior citizenship exemptions on the Subject Property would be retroactively removed for the 2011-2015 and 2016 tax years respectively. Copies of the Liens are attached hereto as

Exhibits A through D, H and I.

38. The Lien Notices stated that the reason for the removal of the Exemptions was due to rental of the homestead. See **Exhibit A at 2, and Exhibit B at 2**

39. Consistent with the Lien Notices, the Appraiser and Collector recorded the tax liens against the Subject Property.

40. Section 196.161, Florida Statutes allows the Property Appraiser to file a tax lien against property of a taxpayer who was granted Exemption to which they were not entitled for any year or years within the prior 10 years, to recapture said taxes, and to assess penalties thereon.

41. Under section 196.061 and consistent with section 196.193(3),(4), Florida Statutes, "In order for there to be entitlement to a homestead tax exemption, an individual must show ownership of the home, residence therein, and the making of such residence as the permanent home in good faith." See AGO 2008-13, *2008 Fla. AG LEXIS 14*.

42. The Plaintiffs have resided in the subject property as their permanent home since April 17, 2013.

43. The Plaintiffs applied for exemption in August 2013 with sufficient time to obtain the exemptions for tax years 2014 and subsequent years, thus the Plaintiffs were entitled to the Exemption on the Subject Property in the 2014 through 2016 tax years, pursuant to article VII, section 6 of the Florida Constitution and section 196.031, Florida Statutes. Thus, the Property Appraiser's retroactive removal of the homestead exemption and imposition of a tax lien was unlawful.

44. The Subject Property was being used as the Plaintiff's permanent residence for tax years 2014 through 2016, thus it is contrary to law to deny the Plaintiff's the Exemptions and to levy retroactive tax thereon.

WHEREFORE, Plaintiffs request that this Court enter an order reinstating the

2014 through 2016 homestead and senior citizen exemptions on the subject property; cancelling the tax lien; order the refund of all overpayments, awarding Plaintiffs their costs incurred in bringing this action pursuant to section 194.192, Florida, and any other remedy the court deems just and proper.

**COUNT II – Removal of Tax Lien Interest and Penalties
(As to Tax Years 2014-2016)**

45. Plaintiffs reassert and reaffirms the allegations of paragraphs 1 through 35 as if fully set forth herein, and further states:

46. On December 5, 2016 and July 3, 2017, the Appraiser sent the Plaintiffs a Notice of Intent to File Lien (hereinafter “Lien Notices”) notifying them that the homestead and senior citizenship exemptions on the Subject Property would be retroactively removed for the 2011-2015 and 2016 tax years respectively. Copies of the Liens are attached hereto as **Exhibits A through D, H and I.**

47. Section 196.161, Florida Statutes allows the Property Appraiser to file a tax lien against property of a taxpayer who was granted Exemption to which they were not entitled for any year or years within the prior 10 years, to recapture said taxes, and to assess penalties and interest thereon.

48. Under section 196.061 and consistent with Fla. Stat. § 196.193(3),(4), “In order for there to be entitlement to a homestead tax exemption, an individual must show ownership of the home, residence therein, and the making of such residence as the permanent home in good faith. See AGO 2008-13, *2008 Fla. AG LEXIS 14.*”

49. The Subject Property was not being rented in tax years 2014 through 2016 and the plaintiffs resided therein as their permanent and primary residence.

50. In discussions with the Appraiser, the Appraiser’s position is that the Plaintiffs failed to apply for their Exemptions for the tax years subsequent to the 2013 tax year of the

removal of the exemption; however, the notices indicate that the exemptions were removed due to rental of the homestead. The Appraiser's position is that the Plaintiffs failed to reapply for their exemptions and is thus subject to a lien for penalties.

51. Even assuming arguendo that the Plaintiffs did not timely apply or failed to apply for Exemptions on the Subject Property for tax years 2014 through 2016, a position the plaintiffs dispute, there is no basis for the assessment of penalties in tax years 2014 through 2016 because the Plaintiffs were entitled to the exemption as a matter of law. Absent wrongdoing in obtaining an exemption, there is no basis in law to assess penalties and interest. Moreover, notwithstanding mere entitlement, the Plaintiffs did apply for the exemption in time for the 2014 tax year.

52. Since the Property was not being rented, the Plaintiffs were entitled to the Exemptions under Fla. Stat. §§ 196.161(b) and 196.011 because the property was not being used for a non-exempt purpose and the plaintiffs did not defraud the Defendants to obtain a benefit to which they were otherwise entitled.

53. Even if the Plaintiffs had failed to apply for Exemptions for tax years 2014, which they did not, the Plaintiffs were entitled to the exemptions, thus the recapture of a tax for failure to apply for Exemptions which the property appraiser granted is not a basis under Fla. Stat. § 196.161(1)(b) to assess penalties and interest. Had the Plaintiffs simply failed to apply for the Exemptions to which they are entitled, they would simply not be granted the exemptions, but no penalty or interest under Fla. Stat. § 196.161 can be levied for failure to make an application because there is no basis to establish a lack of entitlement.

54. The Plaintiffs were permanent residents of the state of Florida and resided in the Subject Property in tax years 2014 through 2016, as such there is no wrongdoing to denying them of entitlement to the homestead exemption, thus there can be no interest or penalty assessed under Fla. Stat. § 196.161.

55. For interest and penalties to be assessed on a recapture tax pursuant to Fla. Stat. § 196.161, the Property owners must first be determined to be “a person who was not entitled to a homestead exemption [and] was granted a homestead exemption from ad valorem taxes.”

56. The triggering event for the levy of interest and penalties under Fla. Stat. § 196.161(1)(b) is a lack of entitlement; not whether an application for said exemptions to which the Plaintiffs are otherwise entitled, was filed. Thus, even assuming *arguendo* that the Plaintiffs had not applied for the exemptions after 2013, which is not the case, the plaintiffs were entitled to the exemptions because the use of the property dictated the “entitlement.”

57. Entitlement under the statute is a matter of actual entitlement to claim the exemption. See *Mitchell v. Higgs*, 61 So. 3d 1152, 1155 (Fla. 3rd DCA 2011) (“The legislature has imposed a series of requirements for eligibility for the homestead tax exemption and a mechanism for recovering the tax savings (plus interest and a penalty) realized by a property owner not actually entitled to claim the exemption.”)

58. For the penalties to be levied, the Plaintiffs would necessarily have had to receive the homestead exemption unlawfully. See also, Fla. Stat. § 196.161(3) (Such lien when filed shall attach to any property which is identified in the notice of lien and is owned by the person who illegally or improperly received the homestead exemption.)

59. With respect to 2014 through 2016, where there is no rental of the homestead property, the levy of penalty is contrary to law because the Plaintiffs did not obtain the homestead exemption illegally.

60. Moreover, and consistent with the foregoing, Fla. Stat. § 196.161(1)(b) provides, “if a homestead exemption is improperly granted as a result of a clerical mistake or an omission by the property appraiser, the person improperly receiving the exemption shall

not be assessed penalty and interest.”

61. Consistent with Fla. Stat. § 196.161(1)(b), Fla. Stat. Fla. Stat. § 196.161(3) requires that an improper receipt of a homestead exemption would also result in a lien for the recapture tax, however, the improper receipt of the homestead is as defined in Fla. Stat. § 196.161(1)(b).

62. The Plaintiffs were actually entitled to claim the exemptions and in fact took steps to claim exemptions in August 2013 in time for the 2014 tax year.

63. Even assuming *arguendo* that the plaintiffs failed to apply for the exemption, the levy of penalties for tax year 2014 through 2016 amounts to a punishment against the Plaintiffs for failure to claim a right, because no other likewise situated taxpayer who failed to apply for exemptions to which they are entitled would be charged a penalty. The “claw-back” is limited to the assessment of the property at 100% market value.

64. Since the Plaintiffs came to the property appraiser on August 29, 2013 to apply for the exemptions in time for tax year 2014, there can be no Penalty and Interest including for tax years 2013 through 2016 because it is at best an oversight by the Appraiser. See *Fla. Stat. 196.161(b)* (“if a homestead exemption is improperly granted as a result of a clerical mistake or an omission by the property appraiser, the person improperly receiving the exemption shall not be assessed penalty and interest.”)

WHEREFORE, Plaintiffs demand that this Court enter an order cancelling the application of penalties and interest accruing from the date the tax is due to the date of the Liens for tax years 2013 through 2016 regardless of whether the Exemptions are reinstated; order the refund of all overpayments; awarding Plaintiffs their costs incurred in bringing this action pursuant to section 194.192, Florida; and a declaration that the Plaintiffs are the prevailing party; and any other remedy the court deems just and proper..

**COUNT III – Removal of 2016 Recapture Tax, Interest and Penalties and
Overassessment for Tax Year 2017**

65. Plaintiffs reassert and reaffirms the allegations of paragraphs 1 through 35 and as if fully set forth herein, and further states:

66. Section 196.161, Florida Statutes allows the Property Appraiser to file a tax lien against property of a taxpayer who was granted Exemption to which they were not entitled for any year or years within the prior 10 years, to recapture said taxes, and to assess penalties and interest thereon.

67. Section 193.1554(3), Florida Statutes provides, “Beginning in the year following the year the non-homestead residential property becomes eligible for assessment pursuant to this section, the property shall be reassessed annually on January 1. Any change resulting from such reassessment may not exceed ten (10) percent of the assessed value of the property for the prior year.

68. Assuming arguendo that the Defendants are correct that the Plaintiffs were not entitled to homestead on the subject property for tax years 2014 through 2016, a position which the Plaintiffs disputes and herein contests, the Defendants have not complied with Fla. Stat. 193.1554(3) in determining the amount of the recapture tax for tax year 2016 because the Property Appraiser’s 2016 assessed value of a purported non-homestead residential property exceed the statutory maximum permissible under Fla. Stat. 193.1554(3). This violation of Fla. Stat. § 193.1554(3) permeated and continued into the assessed value for tax year 2017 because the 2016 assessed value was also used in 2017.

69. The Plaintiffs held an informal meeting with the property appraiser and apprised the PA’s office that it’s assessed value for 2016 violated Florida law. The Property Appraiser has refused to correct the issue, thus the overassessment in tax year 2017 is the direct consequence of said refusal to comply with Fla. Stat. 193.1554(3) in tax year 2016.

WHEREFORE, Plaintiffs demand that this Court enter an order cancelling the Lien for tax year 2016, the accrual of interest and the application of penalties regardless of whether the Exemptions are reinstated; order the refund of all overpayments; awarding Plaintiffs their costs incurred in bringing this action pursuant to section 194.192, Florida; and a declaration that the Plaintiffs are the prevailing party; and any other remedy the court deems just and proper.

Respectfully submitted this 17th day of April, 2018,

André Gibson, Chartered

/s/ André A. Gibson

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