

IN THE CIRCUIT COURT OF THE 18TH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY, FLORIDA

CASE NO.

ROBERT CARTY,

Plaintiff,

v.

DANA BLICKLEY, in her official capacity as
Property Appraiser of Brevard County,
Florida, LISA CULLEN, in her official capacity as Tax
Collector of Brevard County,
LEON BIEGALSKI, in his official capacity as
Executive Director of the Florida Department of Revenue,

Defendants.

COMPLAINT

Plaintiff, ROBERT CARTY (“Plaintiff”), by and through his undersigned counsel hereby files this Complaint against Defendants, DANA BLICKLEY, in her official capacity as Property Appraiser for Brevard County, Florida (“Appraiser”), LISA CULLEN, in her official capacity as Tax Collector of Brevard County (“Collector”), and LEON BIEGALSKI, in his official capacity as Executive Director of the Florida Department of Revenue (“Biegalski”), on grounds which state as follows:

GENERAL ALLEGATIONS

1. This is an action relating to a property appraiser’s finding that Plaintiff is not entitled to a First Responder’s Exemption under section 196.102, Chapter Florida Statutes, over which the Circuit Court has jurisdiction pursuant to sections 194.171 and 86.011, Florida Statutes.
2. Plaintiff is an individual over the age of 18, who resides in Brevard County, Florida, and is otherwise *sui juris*.
3. Appraiser is sued herein in her official capacity and is a necessary party to the action pursuant to section 194.181(2), Florida Statutes.
4. Collector is sued herein in her official capacity and is a necessary party to the action pursuant to 194.181(3), Florida Statutes.
5. Biegalski is sued herein 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.

6. The real property that is the subject matter of this action is owned by Plaintiff and is located at 141 Miami Avenue, Indialantic, FL 32903 (the "Subject Property"), and is more particularly described as follows:

THE EAST HALF OF LOT 9, AND ALL OF LOTS 10 AND 11, BLOCK 98, INDIALANTIC-BY-THE-SEA SECTION D, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 3, PAGE 93, PUBLIC RECORDS OF BREVARD CONTY, FLORIDA.

7. Plaintiff has paid the taxes on the Subject Property, which have been assessed in full, pursuant to section 194.171(3) and (4), Florida Statutes. A copy of the receipt is attached hereto as Plaintiff's Exhibit "A."
8. Plaintiff has performed all conditions precedent which are required to be performed by Plaintiff in establishing his right to bring this action. Specifically, this action has been filed within the time period prescribed by section 194.171(2), Florida Statutes.
9. Venue is proper in Brevard County, Florida because the Subject Property is based in Brevard County, Florida and Appraiser resides and holds office in Brevard County, Florida.
10. At all times material herein, Plaintiff used the Subject Property as a homestead.
11. Plaintiff has a total and permanent disability as a result of an injury or injuries sustained in the line of duty while serving as a first responder (firefighter) with the Brevard County Fire Rescue.
12. In connection with the injuries that Plaintiff sustained while serving as a firefighter with the Brevard County Fire Rescue, Plaintiff pursued and ultimately settled a worker's compensation claim with Brevard County.
13. During the worker's compensation case and through the settlement, Brevard County denied liability for Plaintiff's injuries.
14. Plaintiff completed an Original Application for Homestead and Related Tax Exemptions and submitted said application to Appraiser.
15. Appraiser failed to comply with section 196.102, Florida Statutes and improperly denied Plaintiff a property tax exemption.
16. Specifically, Appraiser denied the property tax exemption based on the assertion that Plaintiff did not produce the "Employer Certification" from Brevard County to establish that Brevard County believed that Plaintiff has a total and permanent disability as a result of an injury or injuries sustained in the line of duty while serving as a first responder (firefighter) with the Brevard County Fire Rescue. Appraiser refused to consider other evidence that Plaintiff has a total and permanent disability as a result of an injury or injuries sustained in the line of duty while serving as a first responder in Florida.

17. Pursuant to sections 194.036(2) Florida Statutes, a Plaintiff may bring an action before this Court to contest a "tax assessment" regarding denial of immunity, and, alternatively, denial of an exemption.

COUNT I

THE SUBJECT PROPERTY IS EXEMPT FROM TAXATION

18. Appraiser realleges and incorporates the allegations in paragraphs 1-17 above.
19. The Subject Property is exempt from taxation under the applicable provisions of the Florida Constitution and Chapter 196, Florida Statutes.
20. Appraiser's determination that the Subject Property is not exempt from taxation is arbitrary and capricious and contrary to Florida law.
21. Appraiser's determination that the Subject Property is not exempt from taxation departs from the essential requirements of the law.
22. Appraiser's determination is in error and that error is material and prejudicial to Plaintiff.

WHEREFORE, for the reasons set forth above, Plaintiff prays that this Court:

- a. Take jurisdiction of the parties and the subject matter of this action.
- b. Enter an Order declaring that the Subject Property is owned and used as a homestead by Plaintiff, who has a total and permanent disability as a result of an injury or injuries sustained in the line of duty while serving as a first responder and is exempt from ad valorem taxation for the tax year 2017 and throughout the period of time that Plaintiff owns the Subject Property.
- c. Enter an Order declaring that the assessment of the Subject Property is invalid and a nullity.
- d. Enter an Order enjoining the assessment and collection of future taxes on the Subject Property throughout the period of time that Plaintiff owns the Subject Property.
- e. Enter an Order awarding Plaintiff costs in this action.
- f. Grant any and all other relief as is just, proper or equitable.

COUNT II

DECLARATORY JUDGMENT PURSUANT TO CHAPTER 86 OF THE FLORIDA STATUTES

23. Plaintiff realleges and incorporates the allegations in paragraphs 1 through 16 above.

24. Under Chapter 86, Florida Statutes, this Court has jurisdiction to declare (among other things) rights, status and other equitable or legal relations as well as the existence or nonexistence of any immunity, power, privilege, or right; or the existence or non-existence 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.
25. Plaintiff seeks a Declaration as to the existence of any immunity, power, privilege or right of Plaintiff as to taxation on the Subject Property as to the Florida Constitution and Chapter 196, Florida Statutes and applicable laws and whether such immunity, power, privilege or right now exists or will arise in the future. Such a Declaration is necessary and appropriate under the circumstances.
26. All conditions precedent to this action have been performed, occurred, or otherwise been waived.

WHEREFORE, for the reasons set forth above, Plaintiff prays that this Court:

- a. Take jurisdiction of the parties and the subject matter of this action.
- b. Enter an Order declaring the rights, status and other equitable or legal relations as to taxation on the Subject Property.
- c. Enter an Order declaring that the Subject Property is exempt from taxation for the 2017 tax year and throughout the period of time that Plaintiff owns the subject property.
- d. Enter an Order declaring that the assessment of the Subject Property by Appraiser is a nullity.
- e. Enter an Order awarding Plaintiff costs in this action.
- f. Grant any and all other relief as is just, proper or equitable.

COUNT III

THE DENIAL OF THE TAX EXEMPTION IS UNCONSTITUTIONAL AND VIOLATES EQUAL PROTECTION OF THE LAWS GUARANTEED PLAINTIFF UNDER THE FLORIDA CONSTITUTION

27. Plaintiff realleges and incorporates the allegations in paragraphs 1 through 14 above.
28. The denial of the tax exemption for the Subject Property by Appraiser is unconstitutional because it results in an interpretation of Section 196.102, Florida Statutes that impermissibly alters Article 7, Section 6(f)(3) of the Florida Constitution.
29. The denial of the tax exemption for the Subject Property by Appraiser violates the equal protection of the laws guaranteed to all persons by Article I, Section 2 of the Florida Constitution.

30. More specifically, Appraiser's denial of the tax exemption for the Subject Property by Appraiser effectively treats first responders who pursue worker's compensation claims (and who are permanently disabled from injuries they receive in the line of duty while working as first responders) differently than first responders who do not pursue worker's compensation claims (and who are permanently disabled from injuries they receive in the line of duty while working as first responders).

WHEREFORE, for the reasons set forth above, Plaintiff prays that this Court:

- a. Take jurisdiction of the parties and the subject matter of this action.
- b. Enter an Order declaring that the denial of the tax exemption for the Subject Property is unconstitutional.
- c. Enter an Order declaring that the denial of the tax exemption for the Subject Property violates equal protection of the laws guaranteed to Plaintiff under the Florida Constitution.
- d. Enter an Order declaring that the Subject Property is exempt from taxation.
- e. Enter an Order enjoining the assessment and collection of future taxes on the Subject Property throughout the period of time that Plaintiff owns the Subject Property.
- f. Enter an Order declaring that the assessment of the Subject Property by Appraiser is invalid and a nullity.
- g. Enter an Order awarding Plaintiff costs in this action.
- h. Grant any and all other relief as is just, proper or equitable.

Respectfully submitted,

/s/Andrew B. Pickett

Andrew B. Pickett

Florida Bar No. 64043

ANDREW PICKETT LAW, PLLC

927 East New Haven Avenue, Suite 201

Melbourne, FL 32901

andrew@andrewpickettlaw.com

321-503-4014 (phone)

321-445-5860 (fax)

Attorney for Plaintiff