

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT  
IN AND FOR SARASOTA COUNTY, FLORIDA

DAVID P. LEAP and KATHRYN A. LEAP,

Plaintiffs,

v.

CASE NO.: 2017 CA 003702 NC

BILL FURST, as Sarasota County Property  
Appraiser,

Defendant.

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AMENDED COMPLAINT

Plaintiffs, **DAVID P. LEAP** (“David Leap”) and **KATHRYN A. LEAP** (“Kathryn Leap”) (collectively the “Leaps” or “Plaintiffs”) sues **BILL FURST**, as Sarasota County Property Appraiser (the “Property Appraiser”) and **LEON M. BIEGALSKI**, as Executive Director of the Florida Department of Revenue (the “Director of the Department of Revenue”), and as grounds states as follows:

Parties and Venue

1. Plaintiffs are residents of Sarasota County, Florida.
2. The Property Appraiser is the elected property appraiser in and for Sarasota County, Florida, and is sued in his official capacity.
3. The Director of the Department of Revenue is sued in his official capacity and pursuant to § 194.181(5), Fla. Stat.
4. The property at issue is located at 8750 Midnight Pass Rd., Apt 102C, Sarasota, in Sarasota County, Florida (the “Sarasota Property”).
5. On July 6, 2017, the Property Appraiser filed a Notice of Tax Lien for Exemptions and Assessment Limitations (“Tax Lien”). *A copy of the tax lien is attached as Exhibit “1”.*

6. Venue is therefore appropriate in Sarasota County, Florida.

**COUNT I – DECLARATORY JUDGMENT**

7. Plaintiffs reallege and incorporate paragraphs 1 through 6 as though fully set forth herein.

8. This is a count for declaratory relief pursuant to § 86.011, *et seq.*, Fla. Stat. (2017) against the Property Appraiser.

9. The Leaps have owned their Sarasota Property since 1998.

10. Since that time, Kathryn Leap has been a permanent resident of the state of Florida, and has maintained the Sarasota Property as her homestead<sup>1</sup>.

11. While David Leap also considers the Sarasota Property to be his true, fixed, and permanent home, he also maintains a residence in Huntington, West Virginia (“West Virginia Property”).

12. The West Virginia Property most recently belonged to David Leap’s mother, who Mr. Leap cared for exclusively until she passed away in 2014.

13. Additionally, David Leap operates a business in West Virginia which requires his presence in West Virginia at times throughout any given year.

14. The Leap’s homestead exemption on their Sarasota Property continued unbroken until July 6, 2017, when the Property Appraiser conducted an audit on the Leaps’ homestead exemption and determined the Leaps’ were receiving or claiming the benefit of an exemption or credit based upon permanent residency in West Virginia.

15. As a result of this audit, the Property Appraiser determined that the Leaps were improperly benefiting from the homestead exemption for tax years 2012 through 2016.

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<sup>1</sup> As its defined by § 196.031(5), Fla. Stat.

16. However, since establishing residency in Florida in 1998, and at all times relevant, the Leaps have considered Sarasota to be their home.

17. Because Sarasota was and is the Leaps true, fixed and permanent home, the Leaps have never applied for a tax credit in West Virginia where permanent residency is required for the basis of the granting of the tax credit.

18. In fact, while the tax credit received on the Leaps' West Virginia Property is titled "homestead exemption," it does not base a homeowner's entitlement to the homestead exemption on "permanent residency," as defined by § 196.031(5), Fla. Stat.

19. Instead, in order to qualify for West Virginia's homestead exemption, the homestead<sup>2</sup> must be used and occupied by the owner:

"exclusively for residential purposes, when such owner is sixty-five years of age or older or is certified as being permanently and totally disabled provided the owner has been or will be a resident of the state of West Virginia for the two consecutive calendar years preceding the tax year to which the homestead exemption relates..."

W.Va.Code, § 11-6B-3 (emphasis added).

20. Unlike Florida, for purposes of the West Virginia homestead statute, "resident of this state" means only an individual who is domiciled in the state for more than six months of the calendar year. *See* W.Va.Code, § 11-6B-2(10).

21. As a result of David Leap's business, Mr. Leap spends at least six months of every calendar year in West Virginia, uses his West Virginia Property solely for residential purposes, and is sixty-five years of age or older. Accordingly, he is qualified to receive the West Virginia homestead tax credit.

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<sup>2</sup> W.Va.Code, § 11-6B-2 defines "Homestead" as "a single family residential house, including a mobile home or manufactured or modular homes, and the land surrounding such structure; or a mobile or manufactured or modular home regardless of whether the land upon which such mobile or manufactures or modular home is situated is owned or leased.

22. That being said, however, the Leaps' receipt of the West Virginia homestead tax credit is not inconsistent with the Florida homestead tax credit, as permanent residency is not a basis for the granting of the West Virginia homestead credit.

23. Further, the Leaps did not apply to receive the West Virginia homestead credit.

24. It is well established that, even where a person is absent from their homestead property for reasons of livelihood for extended periods of time, such absence will not create an abandonment of homestead as long as there remains an intent to return.

25. As a result of the audit and the tax lien filed on behalf of the Property Appraiser, the Leaps are in doubt as to their rights regarding the homestead status of the Sarasota Property.

26. Accordingly, there is a bone fide, actual, present and practical need for a declaration.

27. The declaration will remedy a present, ascertained or ascertainable state of facts or present controversy as to a state of facts.

28. Some power, privilege or right of the Leaps are dependent upon the facts or the law applicable to the facts.

29. There are persons who have an actual, present, adverse and antagonistic interest in the subject matter, either in fact or law.

30. The antagonistic and adverse interests are all before the Court by proper process.

31. The Leaps have paid the taxes which they believe in good faith are owed pursuant to Section 194.171(3) and (4), Fla. Stat.

32. Additionally, the Leaps have performed all conditions precedent which are required to be performed in establishing their right to bring this action. Specifically, this action is filed within the time period prescribed in §194.171(2), Fla. Stat.

WHEREFORE, Plaintiffs, DAVID P. LEAP and KATHRYN A. LEAP, respectfully request this Court declare that:

- 1) the Sarasota Property was and is their homestead;
- 2) no abandonment of the homestead occurred;
- 3) reinstate Plaintiffs' homestead exemption and limitation on assessments under Save Our Homes on the Sarasota Property retroactively to 2012;
- 3) Notice of Tax Lien is of no force and effect; and
- 4) enter an award of costs and such other relief as the Court deems appropriate.

**COUNT II – QUIET TITLE**

33. Plaintiffs reallege and incorporate paragraphs 1 through 6, and 9 through 23, as though fully set forth herein.

34. This is a count to quiet title to certain real property located in Sarasota County, Florida, filed pursuant to § 65.021, Fla. Stat against the Property Appraiser.

35. The Leaps have legal or beneficial and equitable title to the real property located at 8750 Midnight Pass Rd., Apt 102C, Sarasota, in Sarasota County, Florida (“Sarasota Property”), and more fully described as follows:

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36. The Leaps' title to the Sarasota Property is derived from the Warranty Deed from James Ellis to David P. Leap and Kathryn Anne Leap, as recorded in Official Records Instrument # 1998069945, of the Public Records of Sarasota County, Florida.

37. A cloud on title to the Sarasota Property exists by virtue of the July 6, 2017 Notice of Tax Lien for Exemptions and Assessment Limitations (“Tax Lien”) filed by the Property Appraiser. *A copy of the tax lien is attached as Exhibit “1”.*

38. The Tax Lien, and the resulting cloud on title to the Sarasota Property, is invalid.

WHEREFORE, Plaintiffs, DAVID P. LEAP and KATHRYN A. LEAP, respectfully request this Court enter judgment against the Property Appraiser declaring the Tax Lien null and void, quieting title to the Sarasota Property, and for any such further relief as this Court deems just.

### COUNT III – DECLARATORY JUDGMENT

39. Plaintiffs reallege and incorporate paragraphs 1 through 6, and 9 through 23, as though fully set forth herein.

40. This is a count for declaratory relief pursuant to § 86.011, et seq., Fla. Stat. as to the constitutionality of, and as applied to, Plaintiffs of § 196.031(5), Fla. Stat., enacted by Chapter 2001-204, Laws of Florida 2001, effective January 1, 2002, and § 196.161(1)(b), Fla. Stat., enacted by Chapter 2002-18, Laws of Florida 2002, effective January 1, 2003 against the Property Appraiser and the Director of the Department of Revenue.

41. Section 196.031(5), Fla. Stat., and § 196.161(1)(b), Fla. Stat., are unconstitutional on their face, and as applied, as they impair a substantial and fundamental property right afforded by the Florida Constitution in Art. X § 4 to a person who holds legal or beneficial and equitable title to real property in this state, without substantive and procedural due process of law.

42. Section 196.031(5), Fla. Stat., states in part:

A person who is receiving or claiming the benefit of an ad valorem tax exemption or a tax credit in another state where permanent residency is required as a basis for the granting of that ad valorem tax exemption or tax credit is not entitled to the homestead exemption provided by this section.

43. Upon determination by the Property Appraiser that a person is “receiving or claiming the benefit of an ad valorem tax exemption or a tax credit in another state where

permanent residency is required as a basis for the granting of that ad valorem tax exemption or tax credit,” § 196.161(1)(b), Fla. Stat., states that for the prior 10 years, it shall:

...be the duty of the property appraiser making such determination to serve upon the owner a notice of intent to record in the public records of the county a notice of tax lien against any property owned by that person in the county, and such property shall be identified in the notice of tax lien. Such property which is situated in this state shall be subject to the taxes exempted thereby, plus a penalty of 50 percent of the unpaid taxes for each year and 15 percent interest per annum.

44. The application of § 196.031(5), Fla. Stat., and § 196.161(1)(b), Fla. Stat., requires the Property Appraiser, an administrative body, to make factual determinations which profoundly effect a fundamental constitutional right.

45. These factual determinations made by the Property Appraiser in its application of § 196.031(5), Fla. Stat., and § 196.161(1)(b), Fla. Stat., denies a permanent resident of Florida their right to procedural due process by the elimination of their homestead exemption, the imposition of fines, and recordation of a tax lien on their property, without first allowing for an opportunity to abate, or at a minimum, dispute the alleged violation of § 196.031(5), Fla. Stat.

46. Additionally, the Property Appraiser has failed to provide the Plaintiffs with substantive and procedural due process by imposing a penalty on the Plaintiffs without affording them the opportunity to abate or remedy the alleged violation.

47. Accordingly, there is a bone fide, actual, present and practical need for a declaration.

48. The declaration will remedy a present, ascertained or ascertainable state of facts or present controversy as to a state of facts.

49. Some power, privilege or right of the Plaintiff is dependent upon the facts or the law applicable to the facts.

50. There are persons who have an actual, present, adverse and antagonistic interest in the subject matter, either in fact or law.

51. The antagonistic and adverse interests are all before the Court by proper process.

52. WHEREFORE, Plaintiffs, DAVID P. LEAP and KATHRYN A. LEAP, respectfully requests this Court declare that:

- 1) §196.031(5), Fla. Stat., and § 196.161(1)(b), Fla. Stat., are unconstitutional and unconstitutional as applied to Plaintiffs;
- 2) the Property Appraiser failed to provide Plaintiffs with due process in imposing penalties on Plaintiffs without giving them the opportunity to abate or remedy the claimed violation;
- 3) reinstate Plaintiff's homestead exemption and limitation on assessments under Save Our Homes on the Sarasota Property retroactively to 1998;
- 4) the Notice of Tax Lien is of no force and effect; and
- 5) enter an award of costs and such other relief as the Court deems appropriate.

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been electronically filed with the Clerk of the Court of Sarasota County, Florida, using the Florida Courts E-Filing Portal which will send an electronic notice to **J. GEOFFREY PFLUGNER, ESQ.**, Icard, Merrill, Cullis, Timm, Furen & Ginsburg, P.A., 2033 Main Street, Suite 500, Sarasota, FL 34236, at [jpflugner@icardmerrill.com](mailto:jpflugner@icardmerrill.com), [jlessinger@icardmerrill.com](mailto:jlessinger@icardmerrill.com), [kmcilvenny@icardmerrill.com](mailto:kmcilvenny@icardmerrill.com), [mlelinho@icardmerrill.com](mailto:mlelinho@icardmerrill.com), [dmartin@icardmerrill.com](mailto:dmartin@icardmerrill.com), and Office of Attorney General, State of Florida, The Capitol PL-01, Tallahassee, FL 32399-1050 at [oag.civil.eserve@myfloridalegal.com](mailto:oag.civil.eserve@myfloridalegal.com) on this 12<sup>th</sup> day of July, 2018.



**BENTLEY & BRUNING, P.A.**



MORGAN R. BENTLEY, ESQ.

[mbentley@bentleyandbruning.com](mailto:mbentley@bentleyandbruning.com)

Florida Bar No. 0962287

**AMANDA R. KISON, ESQ.**

[akison@bentleyandbruning.com](mailto:akison@bentleyandbruning.com)

Florida Bar No. 096151

783 South Orange Avenue, 3<sup>rd</sup> floor

Sarasota, Florida 34236

Telephone: (941) 556-9030

Facsimile: (941) 312-5316

Secondary: [vengel@bentleyandbruning.com](mailto:vengel@bentleyandbruning.com)

[jbradley@bentleyandbruning.com](mailto:jbradley@bentleyandbruning.com)

Attorneys for Plaintiffs