

Filing # 81409898 E-Filed 11/29/2018 03:38:11 PM

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CIVIL DIVISION

1100 CLEVELAND LLC,
a foreign limited liability company,

Plaintiff,

vs.

Case No.:

MIKE TWITTY, as Property Appraiser;
CHARLES W. THOMAS, as Tax Collector
and LEON M. BIEGALSKI as Executive
Director of the Florida Department of Revenue,

Defendants.

COMPLAINT

Plaintiff, 1100 CLEVELAND LLC (“Plaintiff”), a foreign limited liability company, sues Defendants, MIKE TWITTY as Property Appraiser (“Appraiser”), CHARLES W. THOMAS as Tax Collector (“Collector”) and LEON M. BIEGALSKI (“Biegalski”), as Executive Director of the Florida Department of Revenue, and alleges:

PARTIES, JURISDICTION, AND VENUE

1. This is an action to contest ad valorem tax assessments for the tax year 2018 and a claim for damages brought pursuant 42 U.S.C. § 1983 *et seq.*
2. Plaintiff is an Illinois limited liability company authorized to transact business in Florida.
3. Appraiser is sued herein in his official capacity as is a necessary party to the 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. Biegalski is sued 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. Plaintiff is the owner of certain real property located in Pinellas County, Florida, identified as Account No. R160424 hereinafter referred to as the "Subject Property".

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

8. Venue is proper in Pinellas County as the Subject Property is located in Pinellas County.

FACTS ON WHICH THE PLAINTIFF RELIES

9. The Subject Property has a street address of 1100 Cleveland Street in Clearwater, Florida.

10. Improvements located on the Subject Property are comprised of an incomplete one hundred fifty six thousand, two hundred and eighty eight (156,288) square foot structure that is fifteen (15) stories in height (the "Property Improvements").

11. On April 27, 2015, the City of Clearwater issued a Notice of Unsafe Building declaring the Property Improvements "unsafe" and to be "creating a nuisance" requiring "abatement, repair or demolition" (the "Demolition Notice"), a copy of which is attached hereto as **Exhibit A**.

12. The Demolition Notice, incorporating an inspection report, enumerated the following 11 "Life Safety and imminent dangers" rendering the building unsafe, and ordered Clearwater Espacio Development LLC ("Espacio"), the then-owner of the Subject Property, to demolish the Property Improvements:

- (a) No water supply to structure.
- (b) Unusable, inoperable standpipe.
- (c) Unprotected elevator openings from the top to the ground floor creating a fall hazard.
- (d) Unfinished stairs in the upper floors.
- (e) Non-compliant stair to roof which are made of wood creating Life Safety hazard and any person getting access to roof [sic].
- (f) Elevator shaft pits filled with water creating drowning hazard.
- (g) Open electrical junction boxes with protruding, uncapped wires that are live, powered by 460 volt transformer.
- (h) Cell tower UPS system and air conditioner systems on roof that create fire hazard, that are unprotected by required fire suppression system.
- (i) Combustible refuse and storage all over site.
- (j) Site has become home site for residentially challenged.
- (k) The site remains unsecure allowing people into the site.

13. Espacio appealed the Demolition Notice, which was denied by the City of Clearwater Building/Flood Board of Adjustment of Appeals on June 2, 2015, a copy of the Order of denial being attached hereto as **Exhibit B**.

14. Espacio filed a Petition for Writ of Certiorari and Complaint for Relief under 42 U.S.C. Section 1983, the U.S. Constitution, and the Florida Constitution, which case was styled *Clearwater Espacio Development, LLC v. City of Clearwater*, Case No. 8:15-cv-01761-JDW-AEP, Middle District of Florida (the "Federal Lawsuit").

15. In order to resolve the issues pending in the Federal Lawsuit and address the concerns in the Demolition Notice, the City of Clearwater, Espacio, and Plaintiff entered into a Forbearance Stipulation and Agreement (the “Demolition Forbearance Agreement”), a copy of which is attached hereto as **Exhibit C**.

16. The Demolition Forbearance Agreement contemplated Plaintiff’s purchase of the Subject Property and subsequent steps to remediate the issues raised in the Demolition Notice in order to save the Property Improvements from Condemnation.

17. Plaintiff purchased the Subject Property from Espacio on December 19, 2016, a copy of the Warranty Deed is attached hereto as **Exhibit D**.

18. At the time of Plaintiff’s purchase, the Subject Property was involved in additional code enforcement proceedings with the City of Clearwater. On December 21, 2016, Plaintiff, Espacio, and the City of Clearwater entered into a Stipulation and Agreement (“Code Agreement”) related to those proceedings, again contemplating that Plaintiff would cure the code violations. A copy of the Code Agreement is attached hereto as **Exhibit E**.

19. The Plaintiff and City of Clearwater have extended both the Demolition Forbearance Agreement and the Code Agreement such that both remain in place.

20. Since purchasing the Subject Property, Plaintiff has begun and continues to perform under the terms of the Demolition Forbearance Agreement and Code Agreement; however the Property Improvements remained incomplete as of January 1, 2018.

21. As of January 1, 2018, the Property Improvements were not substantially complete.

22. As of January 1, 2018, the Property Improvements were unoccupied.

23. As of January 1, 2018, the Property Improvements were incapable of being used for the purpose for which they are being constructed.

24. As of January 1, 2018, there were no self-sufficient units or portions of the Property Improvements which were substantially complete.

25. For the 2018 tax roll, Appraiser estimated the Subject Property's just and assessed values for ad valorem purposes as follows:

<u>Account No.</u>	<u>Just Value</u>	<u>Assessed Value</u>
R160424	\$3,337,059	\$3,337,059

hereinafter, the ("Assessment"), as reflected on the Property Record Card attached hereto as **Exhibit F**.

26. Of the Subject Property, the Appraiser assessed land value was \$1,129,450. See Exhibit F. As such, the incomplete improvements were valued and taxed at \$2,207,609 when they should have had no value placed upon them.

27. Plaintiff has paid in full the taxes which have been assessed, pursuant to section 194.171(3) and (4), Florida Statutes. A copy of the receipt is attached as **Exhibit G**.

28. Plaintiff previously contacted Appraiser's office to clarify the valuation and was informed that ordinarily incomplete improvements would have no value attributed to them, but that the Appraiser's office made a conscious decision years ago to treat the Subject Property differently and to assign a value to obviously incomplete improvements.

29. Plaintiff, through counsel, has requested that Appraiser correct the valuation of the Subject Property and adjust the assessment accordingly. The Appraiser has refused to do so.

COUNT I
ASSESSMENT CONTEST PURSUANT TO CHAPTER 194, FLORIDA STATUTES

30. Plaintiff incorporates by reference paragraphs 1 through 29 above as if set forth herein verbatim.

31. Plaintiff has performed all conditions precedent which are required to be performed by Plaintiff in establishing its right to bring this action. Specifically, this action has been filed within the time period prescribed by section 194.171(2) Florida Statutes.

32. Appraiser failed to comply with section 193.011, Florida Statutes, and professionally accepted appraisal practices in assessing the Subject Property.

33. Without limitation, Appraiser failed to comply with section 192.042(1), Florida Statutes, in assessing the Subject Property because the improvements to the Subject Property were not substantially complete as of January 1, 2018, and said improvements should have no value placed thereon as they could not be used for the purpose for which they were constructed.

34. The Assessment does not represent the just value of the Subject Property as of the lien date because it exceeds the market value and therefore violate article VII, section 4 of the Florida Constitution.

WHEREFORE, Plaintiff demands that this Court take jurisdiction over this cause and the parties hereto; enter an order setting aside the assessment on the Subject Property as excessive; establish the proper just and assessed value for the Subject Property in accordance with the Constitution of the State of Florida and sections 193.011 and 192.042(1), Florida Statutes; direct the Collector to cancel the original bill, issue a new tax bill in said reassessed amount and refund Plaintiff its overpayment; and finally, to award Plaintiff its costs incurred in bringing this action pursuant to section 194.192, Florida Statutes, and award such other general relief as may be just and equitable.

COUNT II
CLAIM UNDER 42 U.S.C. SECTION 1983 *et. seq.*
Based Upon Appraiser's Violation of Plaintiff's Equal Protection Rights Under the
Fourteenth Amendment to the United States Constitution

35. Plaintiff incorporates by reference paragraphs 1 through 29 above as if set forth herein verbatim.

36. Plaintiff seeks damages against Appraiser pursuant to 42 U.S.C. § 1983 *et. seq.* (“§ 1983”), for the Appraiser’s violation of its equal protection rights.

37. Section 1983 exists to remedy instances when an act or omission done under the color of law deprives a person of a right, privilege or immunity secured by the U.S. Constitution or laws of the United States.

38. Plaintiff is a “person” to whom §1983 applies.

39. Appraiser’s attribution of value to the Property Improvements when they were not substantially complete deprived Plaintiff of rights and privileges secured by the Fourteenth Amendment to the United States Constitution. Specifically, Plaintiff’s right to be treated equally under the law.

40. Appraiser has consistently assessed other properties on which improvements are not substantially complete by attributing no value to the incomplete improvements, which is in compliance with Florida law.

41. For reasons unknown to Plaintiff, Appraiser singled out the Subject Property and Plaintiff by making an affirmative decision to attribute value to the Property Improvements notwithstanding their obvious state of disrepair, incompleteness, and complete uninhabitability.

42. The Appraiser intentionally targeted Plaintiff in an irrational and arbitrary manner when compared to how the Appraiser has applied and enforced its valuation and assessment methodologies and treated similarly situated property owners.

43. There is no rational or reasonable basis for the Appraiser's different treatment of Plaintiff as compared to other similarly situated property owners.

44. These circumstances establish that the Appraiser has violated Plaintiff's right to equal protection as provided for under the Fourteenth Amendments to the United States Constitution.

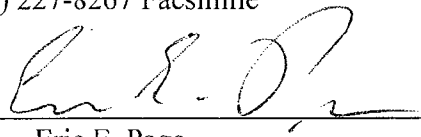
45. The Appraiser has caused Plaintiff damages recoverable under §1983. In order to preserve its causes of action, Plaintiff was required to and has overpaid the full assessment amount for the year 2018.

46. Additionally, Plaintiff has been required to retain the services of counsel to prosecute this action. Under 42 U.S.C. § 1988 *et. seq.*, the Appraiser is liable for the attorneys' fees Plaintiff has and will incur.

WHEREFORE, Plaintiff respectfully requests this Court enter a judgment against Appraiser under 42 U.S.C. § 1983 for Plaintiff's monetary damages incurred given the Appraiser's unconstitutional actions, to include an award of Plaintiff's attorneys' fees, costs, and expenses, with interest at the highest rate allowed by law, and for such further and additional relief as is deemed just and proper.

Dated: November 29, 2018.

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