

IN THE CIRCUIT COURT OF THE
FIRST JUDICIAL CIRCUIT IN AND FOR
OKALOOSA COUNTY, FLORIDA

CASE NO.: 2019-CA-000473 F

DIVISION:

GULF COAST SOLAR CENTER I, LLC,
a Florida Limited Liability Company

Plaintiff,

vs.

MACK BUSBEE CFA, as the Okaloosa County
Property Appraiser, State of Florida, BEN ANDERSON,
as the Okaloosa County Tax Collector, and LEON M.
BIEGALSKI, as the Executive Director of the
Florida Department of Revenue

Defendants.

COMPLAINT

Plaintiff, Gulf Coast Solar Center I, LLC ("Gulf Coast"), by and through its undersigned attorneys, brings this action against defendants, Mack Busbee as Property Appraiser for Okaloosa County, Florida, Ben Anderson, as the Okaloosa County Tax Collector, and Leon M. Biegalski as the Executive Director of the Florida Department of Revenue, and allege as follows:

The Parties

1. Gulf Coast is a Florida Limited Liability Company authorized to do business in the State of Florida and is sued herein in his official capacity, and not in individual.
2. Defendant, Mack Busbee ("Busbee"), is the property appraiser for Okaloosa County Florida, and is sued in his official capacity, and not individually.

3. Defendant, Ben Anderson, is the Okaloosa County Tax Collector and is sued herein in his official capacity, and not individually. The tax collector has the statutory duty to collect the taxes resulting from the assessments of the subject properties. The Tax Collector is joined as a nominal party defendant for the purpose of providing timely notice of the action.

4. Leon M. Biegalskin is the Executive Director of the Florida Department of Revenue and is joined as a nominal defendant to provide notice of this action.

Nature of the Action

5. This is an action by Gulf Coast challenging the assessment of taxes against tangible personal property (solar panels and related hardware and equipment) installed and maintained by Gulf Coast on land leased at Eglin Air Force base in Okaloosa County, Florida.

Jurisdiction and Venue

6. This court has original jurisdiction of this matter pursuant to, without limitation, section 194.036(2)(3) Fla., Stat., and section 194.171, Fla. Stat.

7. Pursuant to section 194.171(1), Fla. Stat., venue is in the county where the property is located. In this case the solar panels and equipment being assessed as tangible personal property by Busbee are located in Okaloosa County, Florida. Accordingly, the Okaloosa County Circuit Court has original jurisdiction over this matter.

Preconditions to Filing this Action

8. Pursuant to Section 194.171(2), Fla. Stat., no action shall be brought to contest a tax assessment after sixty days from the date a decision is rendered concerning such assessment by the value adjustment board or within 60 days of the assessment being contested is certified for collection under section 193.122(2), Fla. Stat. The Okaloosa County value adjustment board rendered its decision on December 12, 2018 (**Exhibit "A"**).

9. Gulf Coast's action contesting the validity of Busbee's assessment is timely pursuant to the provisions of section 194.171(2), Fla. Stat.

10. Pursuant to Section 194.171(3), Fla. Stat., before an action to contest a tax assessment may be brought, the taxpayer shall pay to the collector not less than the amount of the taxes which the taxpayer admits in good faith to be owing. Gulf Coast, in good faith, does not admit that any taxes are due and owing in this case because Gulf Coast maintains that its property is immune from taxation.

11. Pursuant to Section 194.171(3), Fla. Stat., all procedures for the collections of taxes prior to final disposition of this action are suspended since Gulf Coast maintains that no taxes are due and owing because the property alleged to be subject to the tax is immune from taxation.

12. The subject tax assessment is the initial tax assessment against the subject property and no other taxes are due and owing on the property nor have any additional taxes been assessed. Accordingly, this action complies with the requirements of Section 194.171(5), Fla. Stat., requiring all taxes on the property assessed in years after the action is brought, which the taxpayer in good faith admits to be owing, be paid, is not applicable and/or Gulf Coast has complied therewith.

Allegations and Legal Issues Common to all Counts

13. This action is brought pursuant to the provisions of Section 194.036(2)(3), Fla. Stat., and Section 194.171, Fla. Stat.

14. On June 15, 2016, Gulf Coast subleased 240 acres of land located at Eglin Air Force Base, Okaloosa County, Florida from Gulf Power Company, which had entered into a

ground lease agreement with the United States of America by and through the Secretary of the Air Force on November 24, 2015.

15. Pursuant to the terms of the sublease agreement between Gulf Power Company and Gulf Coast, Gulf Coast and Gulf Power Company had entered into an Energy Purchase Agreement dated as of October 30, 2014, whereby Gulf Coast agreed to construct and operate a solar energy generation, storage and distribution facility on the leased premises (Eglin Solar Panel Array)

16. Gulf Coast is a special purpose project entity for an energy project created and controlled by Coronal Energy, LLC. Gulf Coast was incorporated for the specific purpose of constructing, maintaining and operating the energy project on the above referenced land.

17. Prior to Gulf Coast entering into the sublease agreement with Gulf Power Company, Coronal Development Services, a subsidiary of Cononal Energy, LLC had obtained a letter dated February 23, 2015 from Mr. Pete Smith, the then Okaloosa County Property Appraiser, advising Coronal Development Services that the Okaloosa County Property Appraiser's office had reviewed the appropriate land records regarding the location of the solar panel arrays and equipment within the 240 acres herein above referenced and within the confines of Elgin Air Force Base in Okaloosa County, and had deemed the property as nontaxable given its location within a 1951 Deed of Cession. Accordingly, the then Okaloosa County Property Appraiser concluded that the solar panel array and equipment are tax exempt from tangible personal property tax (**Exhibit "B"**).

18. Gulf Coast relied upon the letter from Pete Smith, determining that the solar panel array project was exempt from tangible personal property tax, in making its decision to enter into the sublease with Gulf Power Company and develop the solar project.

COUNT I

IMMUNITY FROM TAXATION

19. Gulf Coast alleges and incorporates herein by reference the allegations in paragraphs 1 through 18 as if fully set forth herein.

20. By deed dated January 12, 1951, the State of Florida, based upon an application in writing being made by the United States of American to then Governor Fuller Warren, ceded to the United States of American exclusive jurisdiction over lands that are now within Eglin Air Force Base in Okaloosa County, Florida. (**Exhibit "C"**). The land ceded in the 1951 deed, was comprised of 17, 925 acres in Okaloosa County, Florida that is part of Eglin Air Force Base. The solar panel array and equipment constructed, maintained and operated by Gulf Coast is located within the 17,925 acres transferred by Governor Warren. (**Exhibit "B"**) Okaloosa County Property Appraiser Pete Smith had determined that the solar panel array and equipment constructed and maintained at Eglin Air Force Base was within the land ceded to the United States of America by Governor Fuller Warren via the 1951 Deed of Cession. (**Exhibit "B"**)

21. By Governor Fuller Warren ceding exclusive jurisdiction over this 240 areas of land to the United States Government, and the U.S. Government accepting exclusive jurisdiction over the land, a recognized Federal Enclave was created over which the federal government has acquired exclusive jurisdiction. Once the federal government exercises exclusive jurisdiction over a territory, only federal law will govern. By letter dated January 22, 1951, the federal government accepted exclusive jurisdiction over the subject land. (**Exhibit "D"**) The source of The Federal Enclave doctrine is Article 1, Section 8, Clause 17 of the United States Constitution, which provides in pertinent part that: "Congress shall have power....to exercise exclusive legislation in all Cases whatsoever over such District(s)as made by Cession of particular

States....become the Seat of the government of the United States, and to exercise like authority over all Places purchased by the Consent of the Legislature of the State in which the Same should be, for the construction of Forts, Magazines Arsenal, Dock-yards and other needful Buildings."

22. The federal enclave doctrine was recognized by the United States Supreme Court in *Humble Pipe Line Co. vs. W.E. Waggoner, et al.*, 376 U.S. 369, 84 S. Ct. 857 11 L.Ed. 2d 782(1964). In *Humble*, the court ruled that even if the United States Government had not purchased the land from the state, but the federal government still exerted exclusive jurisdiction over the land, the federal enclave doctrine was applicable. (**Exhibit "E"**)

23. In *Humble Pipe Line Co. vs. Waggoner, supra*, the United States Supreme Court recognized that the federal enclave doctrine applied even if the land had not been purchased by the United States government and, as a result thereof, the ad valorem taxes that were attempting to be assessed by Louisiana on property owned by the federal government and leased to a private entity and situated within the land ceded to the federal government could not be taxed by the State of Louisiana, even though the land in question had not been purchased by the federal government from Louisiana.

24. Accordingly, the Gulf Coast tangible personal property located on the leased property within Eglin Air Force Base, which is a federal enclave, cannot be taxed by the State of Florida and the Okaloosa County Property Appraiser.

WHEREFORE, Gulf Coast respectfully requests this court enter a judgment for Gulf Coast declaring that the property where the Gulf Coast solar panels and equipment are located are within a federal enclave and the tangible personal property located thereon is not subject to assessment by the Okaloosa County Property Appraiser, Mack Busbee, and that the decision of

Busbee to assess the solar energy project, be vacated. Gulf Coast further request that the court award any further relief that the court deems just and proper.

COUNT II

ESTOPPEL

25. Gulf Coast realleges and incorporates herein paragraphs 1-16, as if fully set forth herein.

26. In determining whether to sub-lease the 240 acres at Eglin Air Force Base from Gulf Power Company, Gulf Coast relied upon the February 23, 2015 letter from Okaloosa County Property Appraiser Pete Smith which determined that the solar panels to be constructed, maintained and operated by Gulf Coast were not be subject to taxation. (**Exhibit "B"**) This decision was important in the making of the determination by Gulf Coast that developing, constructing and operating the solar energy project was economically viable.

27. Gulf Coast made the determination that entering into the 37 year lease and developing, constructing and operating the Gulf Coast Project was viable based upon the representation by Okaloosa County Property Appraiser Pete Smith that the solar panels and equipment would not be taxable based upon the 1951 Deed of Cession. Gulf Coast has reasonably relied upon this representation which, if Busbee is permitted to disregard and reverse, will be to the great detriment of Gulf Coast. But for the assurance and representation of the Property Appraiser, Gulf Coast would not have entered into the sublease with Gulf Power Company and developed the Gulf Coast solar project on the terms that it did.

WHEREFORE, Gulf Coast, in the alternative, respectfully requests a judgment declaring that the Okaloosa Property Appraiser is estopped from assessing tangible personal property taxes

on the solar panels and equipment constructed, maintained and operated by Gulf Coast at Eglin
Air Force Base.

DATED this 8th day of February, 2019

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