

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

RICHARD MILLER and BARBARA MILLER,

Case No.: 05-2020-CA-15280-XXXX-XX

Plaintiffs,

v.

DANA BLICKLEY, as Property Appraiser of
Brevard County, Florida; LISA CULLEN, as
Tax Collector of Brevard County, Florida;
and JIM ZINGALE, as Executive Director of
the Florida Department of Revenue,

Defendants.

COMPLAINT

Plaintiffs, RICHARD MILLER and BARBARA MILLER (collectively, "the MILLERS"), by and through their undersigned attorneys, hereby sue Defendants, DANA BLICKLEY, as Property Appraiser of Brevard County, Florida ("BLICKLEY"); LISA CULLEN, as Tax Collector of Brevard County, Florida ("CULLEN"); and JIM ZINGALE, as Executive Director of the Florida Department of Revenue ("ZINGALE"), and allege as follows:

GENERAL ALLEGATIONS

1. Plaintiff, RICHARD MILLER, is a resident of Brevard County, Florida.
2. Plaintiff, BARBARA MILLER, is a resident of Brevard County, Florida.
3. Defendant, BLICKLEY, is the duly qualified, elected, and acting Property Appraiser of Brevard County, Florida, and is named as a Defendant pursuant to section 194.181, Florida Statutes (2019).
4. Defendant, CULLEN, is the duly qualified, elected, and acting Tax Collector of Brevard County, Florida, and is named as a Defendant pursuant to section 194.181, Florida Statutes (2019).

5. Defendant, ZINGALE, is the duly qualified and acting Executive Director of the Florida Department of Revenue, and is named as a Defendant pursuant to section 194.181, Florida Statutes (2019).

6. Jurisdiction and venue are proper in that one or more Defendant is a resident of Brevard County, the causes of action alleged herein accrued in Brevard County, and the property that is the subject matter of this litigation is located in Brevard County, Florida.

7. This is an action challenging the revocation of the homestead tax exemption and the assessment of a tax lien for back taxes by Defendant, BLICKLEY, as the Brevard County Property Appraiser, pursuant to section 194.171, *et seq.*, Florida Statutes (2019).

8. At all pertinent times, Plaintiffs, the MILLERS, husband and wife, owned and still own the following described real property:

Lot 25, PALM BAY POINT, according to the plat thereof, as recorded in Plat Book 10, Page 64, of the Public Records of Brevard County, Florida

Parcel ID Number 2837247525

The street address for the above-described property is 1531 Anglers Drive NE, Palm Bay, Brevard County, Florida 32905 ("the subject property"). A copy of the General Warranty Deed indicating the MILLERS' ownership is attached as Exhibit "A" and is incorporated herein by reference.

9. The subject property is the MILLERS' homestead for purposes of Article VII, Section 6 of the Florida Constitution and section 196.031, Florida Statutes (2019).

10. The MILLERS purchased the subject property on or about October 2, 2008, as shown by Exhibit "A."

11. The MILLERS have permanently resided on the subject property as that term is defined by section 196.015, Florida Statutes (2019).

12. The MILLERS applied for, qualified for, and received a homestead exemption for the subject property, which they continued to receive through at least the 2018 tax year.

13. In October 2016, the subject property was severely damaged by Hurricane Matthew.
14. As a result of the damage sustained, the MILLERS were forced to temporarily vacate the subject property so that they could begin the repair process.
15. Unfortunately, before repairs could be completed, Hurricane Irma caused substantial additional damage to the subject property in September 2017.
16. Based upon repair estimates to repair their home, including severe mold remediation, the MILLERS opted to engage the services of design professionals for reconstruction of the home.
17. In January 2019, the MILLERS notified the Brevard County Property Appraiser's office of their intent to remove and replace their home located on the subject property.
18. The MILLERS' communication triggered the Brevard County Property Appraiser's office to investigate the subject property.
19. The Brevard County Property Appraiser's office erroneously concluded that the MILLERS abandoned their homestead property and established permanent residency elsewhere.
20. As a result, the Brevard County Property Appraiser's office removed the MILLERS' 2019 homestead exemption on the subject property, unqualified the subject property for the homestead exemption for tax years 2016 through 2018; and liened the subject property for tax years 2016 through 2018.
21. The MILLERS, however, dispute that they abandoned the subject property and maintain that they have always intended to return to the subject property once the repairs and reconstruction have been completed.
22. On or about June 11, 2019, Defendant, BLICKLEY, as the Brevard County Property Appraiser, sent the MILLERS a notice of intent to file a tax lien for unpaid taxes, a copy of which is attached hereto and incorporated herein as Exhibit "B."

23. On July 29, 2019, Defendant, BLICKLEY, as the Brevard County Property Appraiser, filed in the office of the Clerk of the Circuit Court of Brevard County, Florida, a tax lien for the sum of \$6,024.49, excluding penalties and interest, as recorded in Official Records Book 8499, Page 925, of the Public Records of Brevard County, Florida ("the tax lien"), a copy of which is attached hereto and incorporated herein as Exhibit "C."

24. Pursuant to section 194.171(3), Florida Statutes, and prior to filing this lawsuit, the MILLERS attempted to pay the undisputed amount of tax which they in good faith believe to be due on the subject property for 2019. The payment was rejected and the tax collector expressly stated it could not accept partial payment. A copy of that correspondence is attached as Exhibit "D" and is incorporated herein by reference. the MILLERS have already paid the undisputed amounts for all prior years at issue.

25. Plaintiffs, the MILLERS, are interested parties in that they are the owners of the subject property described in Exhibit "C."

26. Upon information and belief, Defendants, BLICKLEY and CULLEN, have not commenced any action to enforce the tax lien.

27. The tax lien is not enforceable because the assessment and the exemption status assigned to the subject property are contrary to Florida law, including the State Constitution.

28. All conditions precedent to maintaining this action have been met, been excused, been waived, or have otherwise occurred.

29. Plaintiffs, the MILLERS, have engaged the services of the undersigned attorney and is obliged to pay him a reasonable fee for said services.

WHEREFORE, Plaintiffs, the MILLERS, demand judgment declaring the tax lien imposed by Defendants, BLICKLEY, CULLEN, and ZINGALE, to be invalid; vacating and canceling the tax lien of record; directing Defendants to refund to Plaintiffs any sums paid for satisfaction of the tax

lien, with interest; awarding Plaintiffs costs and attorneys' fees; and granting such other and further relief as this Court deems just and proper.

Dated: February 5th, 2020.

FRESE, WHITEHEAD & ANDERSON, P.A.

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