

IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT IN AND FOR PALM
BEACH COUNTY, FLORIDA

CASE NO. 2020-CA-004685-XXXX-MB

DOROTHY JACKS, as Property Appraiser for
Palm Beach County, Florida,

Plaintiff/Counter-Defendants,

vs.

MARRIOTT RESORT HOSPITALITY
CORP., a South Carolina corporation, and
OCEANA PALMS CONDOMINIUM
ASSOCIATION, INC., a Florida corporation,

Defendants/Counter-Plaintiffs.

MARRIOTT RESORT HOSPITALITY
CORP., a South Carolina corporation, and
OCEANA PALMS CONDOMINIUM
ASSOCIATION, INC., a Florida corporation,

Defendants/Counter-Plaintiffs

vs.

DOROTHY JACKS, as the Property Appraiser
of Palm Beach County, Florida; ANNE M.
GANNON, as the Tax Collector of Palm Beach
County, Florida; and JIM ZINGALE, as the
Executive Director of the Florida Department of
Revenue,

Plaintiff/Counter-Defendants,

**DEFENDANTS' ANSWER, AFFIRMATIVE DEFENSE, AND COUNTERCLAIM TO
AMENDED COMPLAINT TO RE-ESTABLISH PROPERTY ASSESSMENT**

COMES NOW Defendants, MARRIOTT RESORT HOSPITALITY CORP., and
OCEANA PALMS CONDOMINIUM ASSOCIATION, INC. (collectively "Defendants" or

“Counter-Plaintiffs”), by and through their undersigned attorneys, and hereby files their Answer, Affirmative Defense, and Counterclaim to the Amended Complaint to Re-Establish Property Assessment and states as follows:

1. Admitted that Sections 194.036(1)(a) and (b), *Florida Statutes*, speak for themselves. Admitted that the Palm Beach County Value Adjustment Board (“VAB”) directed Plaintiff, DOROTHY JACKS, to reduce the assessment for the subject property for the 2019 tax year.

2. Admitted that Section 193.122(3), *Florida Statutes*, speaks for itself. Further admitted that the Plaintiff filed her Complaint within the time provided for by Section 193.122(3).

3. Admitted that Sections 194.171(1), 194.036(1)(a) and (b), *Florida Statutes*, speak for themselves. Further admitted that this Court has jurisdiction of the immediate action.

4. Admitted.

5. Admitted.

6. Admitted.

7. Admitted.

8. Admitted.

9. Denied. The Special Magistrate’s initial recommendation to grant the petition was sent back to the Special Magistrate by the VAB on March 9, 2020, resulting in a revised Special Magistrate’s recommendation dated March 13, 2020, which was subsequently adopted by the VAB on March 31, 2020, thereby reducing the assessment for the subject property for the 2019 tax year.

10. Defendants are without knowledge of the allegations contained in paragraph 10 of the Amended Complaint and therefore deny same and demand strict proof thereof.

11. Admitted that the VAB final decision resulted in a lowering of the subject property's assessment for 2019. Defendants are without knowledge of the remaining allegations contained in Paragraph 11 of the Amended Complaint and therefore deny same and demand strict proof thereof.

12. Denied that the VAB's decision to in lowering the assessment was in violation of law. Admitted that section 194.036(1)(b), *Florida Statutes*, speaks for itself.

AFFIRMATIVE DEFENSES

1. Plaintiff failed to properly consider the criteria in Sections 192.037 and 193.011, *Florida Statutes*, when originally determining the assessment of the subject property at issue in this Amended Complaint. As a result, Defendants had to go through the time and expense of the VAB process, culminating in both the Special Magistrate and the VAB granting the reduction in the assessment of the subject property to Defendants.

COUNTERCLAIM

COMES NOW the Counter-Plaintiffs, MARRIOTT RESORT HOSPITALITY CORP., and OCEANA PALMS CONDOMINIUM ASSOCIATION, INC. and sues the Counter-Defendants, DOROTHY JACKS, as the Property Appraiser of Palm Beach County, Florida; ANNE M. GANNON, as the Tax Collector of Palm Beach County, Florida; and JIM ZINGALE, as the Executive Director of the Florida Department of Revenue, and, as their cause of action, would state as follows:

1. Counter-Plaintiffs have been sued by Plaintiff/Counter-Defendant Property Appraiser herein.

2. A true and authentic copy of Plaintiff/Counter-Defendant's Amended Complaint is attached hereto as Exhibit "A."

3. The Counter-Plaintiffs, MARRIOTT RESORT HOSPITALITY CORP., and OCEANA PALMS CONDOMINIUM ASSOCIATION, INC. (hereinafter "Counter-Plaintiffs"), owns real property located in Palm Beach County, Florida, consisting of a timeshare resort known as Marriott's Oceana Palms, the valuation of which property for ad valorem tax purposes is the subject matter of this action.

4. The parcel is more fully described in the records of the Property Appraiser and Tax Collector under the following Parcel Identification Number ("the subject property"): 56-43-42-26-15-001-1000.

5. The Counter-Defendant, DOROTHY JACKS, is the Property Appraiser of Palm Beach County, Florida (hereinafter the "Property Appraiser"), and is sued herein in her official capacity, and not individually.

6. The Counter-Defendant, ANNE M. GANNON, is the Tax Collector of Palm Beach County, Florida (hereinafter the "Tax Collector"), and is sued herein in her official capacity, and not individually.

7. The Counter-Defendant, JIM ZINGALE, is the Executive Director of the Florida Department of Revenue (hereinafter the "DOR"), and is sued herein in his official capacity, and not individually.

8. This is a compulsory counterclaim pursuant to Rule 1.170(a), Florida Rules of Civil Procedure.

9. This Court has jurisdiction of this matter pursuant to Section 194.171(1) of the Florida Statutes.

10. Venue for this action lies in Palm Beach County, Florida pursuant to Section 194.171(1) of the Florida Statutes.

11. Counter-Plaintiffs are now, and were on January 1, 2019, responsible for the property taxes on the subject property located in Palm Beach County, the legal description of which is contained in the Property Appraiser's records as listed in Paragraph 2 above.

12. This action has been timely filed, and all conditions precedent to the filing of this suit have been satisfied.

13. This is an action by Counter-Plaintiff contesting the legality and validity of the 2019 ad valorem assessment (market value and assessed value) on the aforesaid tax parcel.

14. At all times material to this cause of action, the Property Appraiser was responsible for properly assessing the value of Counter-Plaintiffs' parcel in accordance with Florida law.

15. The Tax Collector has the statutory duty to collect the taxes resulting from the assessment of the subject property. The Tax Collector is joined as a nominal party counter-defendant for the purpose of providing timely notice of this action and to provide this Court with jurisdiction over the Tax Collector to direct a refund of taxes paid upon granting of the relief requested herein.

16. The DOR is joined as a party counter-defendant pursuant to Section 194.181 of the Florida Statutes.

17. The real property for which Counter-Plaintiffs are responsible for property taxes is subject to assessment by the Property Appraiser for ad valorem tax purposes. Section 192.001(12) of the Florida Statutes defines "real property" to mean "land, buildings, fixtures, and all other improvements to land."

18. As of the filing of this action, the market value and assessed value assigned to the subject property for 2019, as determined by the Value Adjustment Board in its final decision on March 31, 2020, are both \$90,100,000.

19. The Property Appraiser's original determination of the market value and assessed value assigned to the subject property for 2019, and the valuation that the Property Appraiser is requesting this Court to re-assign, are both \$123,825,684.

20. This original assessment, as well as the revised assessment, exceeds the just and fair market values of the subject property, is unlawful, invalid, and/or is not within the range of reasonable assessments because:

- (a) Section 192.037 of the Florida Statutes was not properly or lawfully considered by the Property Appraiser;
- (b) Section 193.011 of the Florida Statutes was not properly or lawfully considered by the Property Appraiser;
- (c) The Property Appraiser has unlawfully, systematically, and intentionally substituted her own assessment policy instead of following the mandates of Sections 192.037 and 193.011 of the Florida Statutes and the Florida Constitution with regard to valuing real property for ad valorem tax purposes;
- (d) The assessment is discriminatory in that the assessment is at a higher valuation than other taxable property of like class, nature, character, use, and condition located in Palm Beach County, Florida;

- (e) The assessment is arbitrarily based on valuation practices which are different from the valuation practices generally applied to comparable property within the same class and within Palm Beach County, Florida;
- (f) The assessment includes the value of certain intangible property, in violation of Article VII, Section 1(a) of the Florida Constitution; and/or
- (g) The method of assessment used by the Property Appraiser was unrealistic, unjust, excessive, arbitrary, and is in violation of the general laws of the State of Florida cited above and Article I, Section 4 and Article VII of the Florida Constitution, and violates the valuation methods and practices set forth in the Uniform Standards of Professional Appraisal Practice (USPAP).

21. As a result of the foregoing over-valuation, the 2019 market value and assessed value greatly exceeds the just value of the subject property, and the ad valorem taxes resulting therefrom substantially exceed the taxes which would have been levied on the subject property had it been properly assessed.

22. Counter-Plaintiffs have paid the taxes due on the subject property for 2019, less the 4% discount for early payment in November, but payment of these taxes is not an admission that the tax was due and does not prejudice the right to bring this action. Verification of payment of the taxes to the Tax Collector on this parcel is attached hereto as Exhibit "B" and incorporated herein by this reference.

23. Counter-Plaintiffs have received a refund check for overpayment of 2019 taxes, pursuant to the determination of the VAB, but receipt of these refunds is not an admission that the valuation is correct and does not prejudice the right to bring this action. Counter-Plaintiffs will keep these refund amounts in escrow pending the outcome of this action.

24. Counter-Plaintiffs have complied with all conditions precedent to the filing of this action.

WHEREFORE, the Counter-Plaintiffs, MARRIOTT RESORT HOSPITALITY CORP., and OCEANA PALMS CONDOMINIUM ASSOCIATION, INC., respectfully pray for the Court to render a judgment decreeing (a) that the assessed value and market value of the subject property for 2019 exceeds just value and/or the subject property was unlawfully, unequally, and/or invalidly over-assessed for 2019; (b) that the Court establish and declare the lawful amount of the 2019 assessed value and market value or, in the alternative, that the Court remand this assessment to the Property Appraiser with instructions to comply with the provisions of the Florida Statutes and the Florida Constitution; (c) that the 2019 assessment and the resulting taxes be set aside to the extent the same exceeds the just or fair market value of the subject property; and (d) that the judgment further decree that Counter-Plaintiffs, MARRIOTT RESORT HOSPITALITY CORP., and OCEANA PALMS CONDOMINIUM ASSOCIATION, INC., are entitled to a refund of taxes paid to the extent that the amount previously paid exceeds the amount of taxes which would be owed on a corrected assessment, and such tax refund shall be promptly paid by the Tax Collector within thirty (30) days of entry of a Final Judgment by this Court, along with any statutory interest. Further, Counter-Plaintiffs, MARRIOTT RESORT HOSPITALITY CORP., and OCEANA PALMS CONDOMINIUM ASSOCIATION, INC.,

would request that it be granted such other and further relief as the Court may deem just and proper, as well as the costs of this action.

LOWNDES, DROSDICK, DOSTER, KANTOR &
REED, P.A.

/s/ S. Brendan Lynch

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was electronically filed and served via ePortal to JAY R. JACKNIN, ESQUIRE, and NEIL B. JAGOLINZER, ESQUIRE, c/o Property Appraiser's Office, Governmental Center – Fifth Floor, 301 North Olive Avenue, West Palm Beach, Florida 33401 (neil@jnjlw.net; and ttlewis@pbcgov.org), and served on additional Counter-Defendants via process server this 26th day of May, 2020.

/s/ S. Brendan Lynch

S. Brendan Lynch

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