

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR
LEE COUNTY, FLORIDA CIVIL ACTION

CHRISTOPHER SENK,

Plaintiff,

v.

CASE NO.: 20-CA- _____

BILL FURST, as Sarasota County
Property Appraiser, and JIM ZINGALE,
as Executive Director of the Florida
Department of Revenue,

Defendants.

COMPLAINT

Plaintiff, CHRISTOPHER SENK, acting by and through his undersigned attorneys, sues Defendants, BILL FURST, as Sarasota County Property Appraiser, and JIM ZINGALE, as Executive Director of the Florida Department of Revenue (“Director”), and in furtherance of this action avers as follows:

Jurisdiction, Parties and Venue

1. This is an action seeking declaratory relief pursuant to §§ 86.011, 86.021 and 194.18, *Florida Statutes*, and to quiet title to real estate pursuant to § 65.021, *Florida Statutes*, wherein the Circuit Court has original jurisdiction.

2. Plaintiff, CHRISTOPHER SENK (“Fr. Senk”) is the legal and beneficial owner of the real property located at 14667 Abaco Lakes Drive, Fort Myers, FL 33908.

3. Defendant BILL FURST is the duly elected Property Appraiser for Sarasota County, Florida (“Property Appraiser”) and is being sued in his official capacity pursuant to § 194.181 *Florida Statutes*.

4. JIM ZINGALE, is the duly appointed Executive Director of the Florida Department

of Revenue (“Director”) and is being sued in his official capacity pursuant to § 194.181 *Florida Statutes*.

5. Venue is proper in Lee County, Florida because the tax lien at issue in this action is recorded in Lee County, Florida and encumbers the title to real property owned located in Lee County, Florida.

Background Allegations

6. On or about June 2, 2000, Fr. Senk purchased the real property located at 554 Bluebell Road, Venice, Florida 34293 (“Venice Home”).

7. From the date of its purchase, the Venice Property was Fr. Senk’s sole and exclusive domicile and permanent residence until its sale on September 4, 2019.

8. Other than his Venice Home, Fr. Senk neither owned or leased any other real property between June 2, 2000 and September 4, 2019. Additionally, at no time did Fr. Senk ever rent his Venice Home.

9. Between June 2, 2000 and September 4, 2019, Fr. Senk’s Venice Home housed most of his personal possessions, furniture and valuables.

10. Between June 2, 2000 and September 4, 2019, all bills for utility services and telephone services were sent to the Venice Home and were timely paid by Fr. Senk. In addition, during those years significant improvements were made to the home at Fr. Senk’s expense, significantly increasing the value of the home.

11. Between June 2, 2000 and September 4, 2019, Fr. Senk bound and paid for Homeowner’s insurance and Flood Insurance for his Venice Home.

12. On all federal tax returns Fr. Senk filed for the years 2010 to 2018 he listed the Venice Home as his domicile and his employer at all times identified his Venice Home as his residence.

13. Beginning in 2001, and in every year thereafter through 2018, the ad valorem tax imposed on the Venice Home was afforded a homestead tax exemption.

14. From 2001 to 2019, Fr. Senk subscribed to and paid a membership fee to the South Venice Civic Association.

15. Beginning in January 1998, Fr. Senk has been employed by the Diocese of Venice as a Roman Catholic Priest. From approximately April of 2003 until March 2020, Fr. Senk served the Diocese of Venice as the Pastor of St. Isabel Catholic Church located at 3559 Sanibel Captiva Road, Sanibel Island, Florida.

16. With occasional exceptions, during the time that he served as the Pastor of St. Isabel Catholic Church, from 2003 until March of 2020, Fr. Senk would sleep in the rectory for St. Isabel Catholic Church from Tuesday through Saturday, but would return to his Venice Home late Sunday afternoon through Tuesday morning. Fr. Senk would return to Sanibel on Tuesday in order to be there for the 8:30 Mass on Wednesday morning.

17. Beginning in October of 2016, and until the home was sold in 2019, Fr. Senk slept in his own bed in his Venice Home seven days a week.

18. While it is the case that at some point in and around 2007 Fr. Senk caused the address on his driver's license to reflect the address of St. Isabel Catholic Church, this was done for a reason having nothing whatsoever to do with any intention to change his permanent residence. The reason for the change owes to the fact that in 2004 St. Isabel Catholic Church was destroyed by Hurricane Charley on August 13th. In the aftermath of Hurricane Charley, Fr. Senk found it difficult to gain access to Sanibel Island to attend to the damage to St. Isabel Catholic Church. At this time, and for several weeks thereafter and in the subsequent hurricanes, the authorities were restricting access to only those who had a Sanibel address on their driver's license or who could demonstrate they owned

property on the Island. In order to make certain he would be able to get onto the Island to attend to his parish during future emergencies, Fr. Senk changed the address on his driver's license. This address change was never intended in any way to denote an intention to relinquish or abandon his Venice Home as his permanent address and domicile.

19. It is also the case that that at some point in and around 2007 Fr. Senk changed the address on his voter registration card to reflect his work address. Again, this address change was in no way intended to denote an intention to relinquish or abandon his Venice Home as his permanent residence. As the one who was required to stay on Sanibel Island from Tuesday to Sunday almost every week between 2003 to November of 2016, practical necessity dictated his decision to use the address for his place of employment on his voter registration card.

20. In November of 2019, Fr. Senk purchased the real property located at 14667 Abaco Lakes Drive, Fort Myers, FL 33908 ("Fort Myers Home"). Since its acquisition, the Fort Myers Home has been Fr. Senk's domicile and permanent residence.

21. Thereafter, in early January of 2020, Fr. Senk received a Notice of Intent to File Tax Lien from the Property Appraiser. In this Notice, the Property Appraiser advises Fr. Senk that the Property Appraiser conducted an audit on the homestead exemption claim on his Venice Home and that as a result of the audit, a determination was made that Fr. Senk has been improperly benefitting from a homestead exemption for the tax years 2010 to 2018. Additionally, the Property Appraiser advised that its investigation revealed that Fr. Senk has not resided at his Venice Home since at least January 1, 2010 and that this "information is corroborated by information provided by to {sic} the property appraiser of Lee County." A true copy of this Notice is appended hereto as **Exhibit A**.

22. After receiving the Notice of Intent to File Tax Lien, Fr. Senk called the Sarasota Property Appraiser's Office on Monday of the following week and spoke with Katherine Reardon.

As Fr. Senk tried to explain his situation, Ms. Reardon, who manifested a level of hostility that took him aback, seemed completely uninterested in his explanation. When Fr. Senk asked how it was that the Property Appraiser was coming after him, Ms. Reardon told Fr. Senk that their investigation was the result of an “anonymous call.” Ms. Reardon repeatedly informed Fr. Senk that his ignorance of the law was no excuse. Fr. Senk was never told that a response had to be done in writing.

23. Despite the fact that Fr. Senk did in fact respond to Notice of Intent to File Tax Lien, the Property Appraiser sent Fr. Senk a Notice of Filed Tax Lien in which it claimed that Fr. Senk had provided no timely response to the Notice of Intent to File Tax Lien. A true copy of this Notice is appended hereto as **Exhibit B**.

24. As indicated in the Notice of Filed Tax Lien, the Property Appraiser did in fact record a Tax Lien in the official records of Lee County, Florida on February 12, 2020 as Instrument No. 20200000037624. A true copy of this recorded Tax Lien is appended hereto as **Exhibit C**.

25. All conditions precedent to the maintenance of this action have occurred, have been performed or have been waived.

COUNT I
(Declaratory Relief)

26. Paragraphs 1 through 25 are incorporated by reference as if fully set forth herein.

27. The parties have a *bona fide* actual, present and practical need for a declaration of the parties’ rights with respect to, *inter alia*, Fr. Senk’s entitlement to have the homestead tax exemption reinstated for the Venice Home and to have the Tax Lien discharged.

28. Fr. Senk contends that: (a) the Venice Home was his permanent residence and homestead between 2010 and 2018; (b) that at no time between 2010 and 2018 did Fr. Senk abandon the Venice Home as his permanent residence; and (c) that the homestead tax exemption for the Venice Home must be reinstated and the Tax Lien discharged because the Venice Home was Fr. Senk’s

permanent residence and homestead between 2010 and 2018.

29. Conversely, the Property Appraiser contends that Fr. Senk improperly benefitted from a homestead exemption for the tax years 2010 to 2018 because Fr. Senk did not reside at his Venice Home from January 1, 2010 through 2018.

30. The legal rights and obligations of Fr. Senk are materially impacted by the Property Appraiser's decision to rescind the homestead tax exemption for the Venice Home for the years 2010 through 2018 and the Property Appraiser's recording of a Tax Lien in Lee County, Florida.

31. Based upon the Property Appraiser's decision to rescind the homestead tax exemption for the Venice Home for the years 2010 through 2018 and to record a Tax Lien in Lee County, an actual and present controversy concerning: (a) whether the Venice Home was Fr. Senk's permanent residence during the years beginning in 2010 up to and including 2018; (b) whether Fr. Senk ever abandoned the Venice Home as his permanent residence at any time between 2010 and 2018; (c) whether the tax exemption for the Venice Home should be reinstated for any of the years between 2010 through 2018, and (d) whether the Tax Lien should be discharged.

32. Fr. Senk has no adequate remedy at law since his Fort Myers Home is encumbered by the Property Appraiser's Tax Lien.

33. The parties have present, adverse and antagonistic interests, in both fact and law.

34. All parties having an interest in this dispute are before this Court by proper process.

WHEREFORE, Fr. Senk respectfully requests that the Court enter a final judgment declares that the Venice House was Fr. Senk's homestead from 2010 to 2018, directs the Property Appraiser to reinstate the homestead tax exemption on the Venice Home for the years 2010 to 2018, declares the Tax Lien to be of no legal force or effect, and which provides such further supplemental relief as the Court deems proper upon the filing of the appropriate Motion under § 86.061, *Florida Statutes*.

COUNT II
(Quiet Title)

35. Paragraphs 1 through 25 are incorporated by reference as if fully set forth herein.

36. Fr. Senk holds the legal, beneficial and equitable title to his Fort Myers Home as more fully identified in the following legal description:

Condominium Unit 44, Phase 56, VILLAS II AT LUCAYA, A CONDOMINIUM, together with an undivided interest in the common element, according to the Declaration of Condominium thereof recorded in Instrument No. 2017000230693, as amended from time to time, of the Public Records of Lee County, Florida.

37. A cloud on the title to the Fort Myers Home exists by virtue of the Tax Lien the Property Appraiser recorded in the official records of Lee County, Florida on February 12, 2020 as Instrument No. 20200000037624.

38. The Tax Lien, and the resulting cloud on the title the Fort Myers Home, is invalid because it is predicated on the Property Appraiser's unlawful decision to deny Fr. Senk's Venice Home the benefit of a homestead tax exemption for the years 2010 to 2018.

WHEREFORE, Fr. Senk respectfully requests that this Honorable Court enter a final judgment against the Property Appraiser quieting title to Fr. Senk's Fort Myers Home by declaring the Tax Lien null and void and providing such further relief as the Court deems proper.

DESIGNATION OF EMAIL ADDRESSES

Pursuant to Florida Rule of Judicial Administration 2.516, counsel for Plaintiff designates the following E-Mail addresses for service of pleadings and documents in the instant action:

Primary E-mail: richard@filegal.com
Secondary E-mail: fiassistant@filegal.com

Respectfully submitted,
CHRISTOPHER SENK
By his attorneys,

/s/ Richard J. Inglis _____
Richard J. Inglis, FBN 618020

FREIDIN & INGLIS, P.A.
2245 McGregor Boulevard
Fort Myers, FL 33901
Tel: (239) 337-1918
Primary email: Richard@FILegal.com
Second email: FIAssistant@FILegal.com