

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA
CIVIL DIVISION

HE ORLANDO HOTEL, LLC, a foreign
limited liability company,

Plaintiff,

Case No.: 2021-CA-006113-0

Division:

vs.

AMY MERCADO, as Property Appraiser;
SCOTT RANDOLPH, as Tax Collector and
JIM ZINGALE as Executive Director of the
Florida Department of Revenue,

Defendants.

COMPLAINT

Plaintiff, HE ORLANDO HOTEL, LLC, a foreign limited liability company, sues Defendant, AMY MERCADO as Property Appraiser ("Appraiser"), SCOTT RANDOLPH as Tax Collector ("Collector"), and JIM ZINGALE ("Zingale"), as Executive Director of the Florida Department of Revenue, and alleges:

Allegations Common to All Counts

1. This is an action to contest an ad valorem tax assessment for the tax year 2020 and this Court has jurisdiction pursuant to Chapter 194, Florida Statutes, and article V, sections 5 and 20 of the Florida Constitution.
2. Plaintiff is a Delaware limited liability company.
3. Appraiser is sued herein in her official capacity and 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. Defendant Zingale 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 owns the real property which is the subject of this action, identified by Appraiser as Parcel No. **01-24-28-7160-01001** and Account No. **0137695-3**, located in Orange County, Florida and is hereinafter referred to as the "Subject Property."

7. Plaintiff is the successor by merger to HE-CA Orlando, LLC, a foreign limited liability company; HC-SJ Orlando, LLC, a foreign limited liability company; FP Orlando, LLC n/k/a FP Land Orlando, LLC, a foreign limited liability company; HT Orlando, LLC, a foreign limited liability company and HC-FW Orlando, LLC, a foreign limited liability company, entities holding legal title to the Subject Property.

8. Plaintiff, pursuant to section 194.171(3)(4), Florida Statutes, has made a partial payment of taxes in an amount that is not less than what it believes in good faith is lawfully due and owing. A copy of the receipt is attached hereto as Plaintiff's Exhibit "A."

9. Plaintiff has performed all conditions precedent which is 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.

Count I

10. Plaintiff re-alleges and incorporates Paragraphs 1 - 9 as if set forth fully hereinbelow.

11. Appraiser estimated the just and assessed value of the Subject Property for ad valorem purposes in the amount of \$389,183,784 (hereinafter, the "assessment").

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

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

14. In addition, Appraiser has included the value of intangibles in his assessment, contrary to the prohibition contained in Article VII, section 9(a) 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 assessment of the Subject Property in accordance with the Constitution of the State of Florida and section 193.011, Florida Statutes; direct the Collector to cancel the original bill and issue a new tax bill in said reassessed amount; 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

15. Plaintiff re-alleges and incorporates Paragraphs 1-9 as if set forth fully hereinbelow.

16. Plaintiff's predecessors acquired ownership of the subject property by virtue of an Internal Revenue Code section 1031 exchange transaction (the "1031 Exchange").

17. Legal title to the Subject Property transferred on October 1, 2013 in a transaction by and between UST Hotel Joint Venture, LTD, as grantor, and Peabody Exchange, LLC ("Peabody"), as grantee. Peabody was the exchange accommodation taxpayer for purpose of the 1031 Exchange. Although Peabody acquired legal title on that date, equitable title was held by Plaintiff's predecessors as of October 1, 2013.

18. Once the 1031 Exchange was fully completed, Peabody conveyed proportionate interests in the Subject Property to Plaintiff's predecessors as tenants in common by special warranty deeds dated March 13, 2014.

19. Appraiser established the assessed value of the subject property for tax year 2013 in the amount of \$161,155,999.

20. Section 193.1555(3), Florida Statutes, limits the annual increase in the assessed value on nonresidential real property to no more than ten percent (10%) of the assessed value for the property in the prior tax year.

21. Subsection (5) of the statute allows property appraisers to reassess property at just value in the year following a change of ownership.

22. For tax year 2014, Appraiser reassessed the Subject Property in the amount of \$191,959,797 based upon the October 1, 2013 acquisition by Peabody, the exchange accommodation taxpayer.

23. Relying on the March 13, 2014 conveyances by and between Peabody and the Plaintiff's predecessors, Appraiser assessed the Subject Property for tax year 2015 in an amount that exceeded the 2014 assessed value by more than ten percent.

24. Section 193.1555(5)(d)(2), Florida Statutes, provides that there is no change of ownership within the meaning of the statute when the transfer in question is "between legal and equitable title."

25. The March 13, 2014 transfer by Peabody to the Plaintiff's predecessors was a transfer between legal and equitable title in accordance with the 1031 Exchange.

26. The Subject Property's assessed value for tax year 2015 should not have exceeded \$211,155,777, which is ten percent greater than the 2014 assessed value.

27. The Subject Property's assessed value for tax year 2016 should not have exceeded \$232,271,355, which is ten percent greater than what the 2015 assessed value should have been.

28. The Subject Property's assessed value for tax year 2017 should not have exceeded \$255,498,490, which is ten percent greater than what the 2016 assessed value should have been.

29. The Subject Property's assessed value for tax year 2018 should not have exceeded \$281,048,340, which is ten percent greater than what the 2017 assessed value should have been.

30. The Subject Property's assessed value for tax year 2019 should not have exceeded \$309,153,174, which is ten percent greater than what the 2018 assessed value should have been.

31. The Subject Property's assessed value for tax year 2020 should not have exceeded \$340,068,491, which is ten percent greater than what the 2019 assessed value should have been.

32. Appraiser's 2020 assessed value of the Subject Property in the amount of \$389,183,784 is contrary to the limitations set forth in Section 193.1555(3), Florida Statutes, and is therefore invalid.

WHEREFORE, Plaintiff demands that this Court take jurisdiction over this cause and the parties hereto; enter an order declaring that the assessed value for the Subject Property violates section 193.1555(3), Florida Statutes, establish the proper assessed value for the Subject Property in accordance with the Constitution of the State of Florida and section 193.1555(3), Florida Statutes; direct the Collector to cancel the original bill and issue a new tax bill reflecting the revised assessed value amount; 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.



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