



FCIAAO 2009 Spring Conference Legal Update

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IX. Question & Answer Session



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2009 Spring Conference
Legal Update

I. EFFECT OF RENTAL OF HOMESTEAD

Haddock v. Carmody (Jan. 21, 2009)

FACTS: Property Appraiser removed taxpayers' homestead exemption based on s. 196.061, which provides that the rental of an entire dwelling constitutes the abandonment of the dwelling as a homestead.

ISSUES: Whether s. 196.061 is constitutional, and whether it applies even if the taxpayer stores their belongings in two locked closets.

TRIAL COURT: Section 196.061 is unconstitutional because it conflicts with the taxpayers' constitutional right to a homestead exemption. Also, because the taxpayer stored their belongings in two locked closets, the entire dwelling was not rented.

1st DCA HOLDING: Section 196.061 is valid, as the legislature may establish the procedures for claiming a homestead exemption. Also, the trial court's interpretation of "entire dwelling" was overly literal and would produce an absurd result.

II. TAXATION OF COMPUTER SOFTWARE

Nikolits v. Verizon Wireless Personal Communications, L.P. (Apr. 15, 2009)

FACTS: Verizon operates a mobile switching center, which contains the Autoplex 1000, a network of computers which runs, among other things, Wireless Services Software. The software allows Verizon to provide customers with the ability to make a cell phone call, send text messages, etc. The Property Appraiser taxed the software, claiming that it was not exempt "computer software" under s. 192.001(19).

TRIAL COURT: The software constituted non-embedded “computer software” that is exempt under s. 192.001(19).

4th DCA HOLDING: Affirmed trial court’s findings, and expressed agreement with the 5th DCA’s prior decision in *Gilreath v. General Electric Co.* that computer software is intangible property, and is only taxable by the state.

III. EFFECT OF FAILURE TO FILE RECEIPT FOR PAYMENT OF TAXES

Shank v. Havill (Feb. 20, 2009)

FACTS: Taxpayers sent Tax Collector a partial payment, and filed a lawsuit to challenge their tax assessment, but did not attach a receipt. The Tax Collector later returned their check, explaining that their office does not accept partial payments. The trial court dismissed the lawsuit for lack of jurisdiction because the taxpayers had not attached a receipt as is required under s. 194.171.

ISSUE: If taxes were paid (or attempted to be paid), but no receipt is attached to the Complaint, must the lawsuit be dismissed for lack of jurisdiction?

5th DCA HOLDING: The court aligned itself with the 2nd DCA, which had previously held that failure to attach a receipt is not a jurisdictional defect if the taxes were actually paid.

ON A RELATED NOTE . . .

What if the taxpayer pays the taxes, and attaches the receipt from the Tax Collector, but their check bounces? *See Magnolia Apartments v. Crapo* (final order of dismissal not attached, but available on request).

REMINDER . . .

For all cases in litigation, the Property Appraisers or their attorneys should verify the plaintiffs’ payment of each year’s taxes as they come due. Taxes are due April 1st of each year. If 2008 taxes are delinquent, prior years’ cases should be dismissed.

IV. ATTORNEY GENERAL OPINIONS

A. Public Records (AG0 2008-29)

Question: Is the Property Appraiser required to provide a list of the names of individuals whose home addresses are exempt from public records disclosure?

Answer: Yes, if such a list is maintained by the Property Appraiser. The exemption to the Public Records Act only applies to the persons' home addresses, telephone numbers, and photographs, not their names.

B. Land Trusts (AGO 2008-44)

Question: Following the amendment of s. 689.071, which provided that conveyances to a trustee shall be deemed to vest both legal and equitable title and full rights of ownership in the trustee, would either the trustee or the beneficiary of a land trust have a sufficient possessory interest to support a homestead exemption?

Answer: Yes, as to trustee or a trustee/beneficiary. However, a beneficiary that is not also the trustee would only be entitled to an exemption if their possessory interest was based on an instrument granting them a beneficial interest for life.

C. Exemption for Habitat for Humanity (AGO 2008-52)

Question: Are vacant lots owned by Habitat for Humanity and held for either resale or use as future building sites exempt under either the affordable housing exemption or the charitable purpose exemption?

Answer: The affordable housing exemption does not apply to vacant land. While Habitat's activities serve a charitable purpose, it is unclear how vacant land held by Habitat would qualify for a charitable purpose exemption, but that is a factual determination to be made by the Property Appraiser, not the Attorney General.

Comments on Habitat Vacant Land Issue:

1. The AG noted that, while the legislature had passed a statute providing that vacant property is used for religious purposes if affirmative steps have been taken to prepare the property for use as a house of public worship, no such language was added to the charitable purpose exemption statute, and failed legislative attempts to do so are not indicative of proper statutory construction.

2. *See also Habitat for Humanity v. Todora* (final order of dismissal and summary judgment for property appraiser) – not attached, but available on request.

V. OHIO BUILD TO SUIT/SALE-LEASEBACK CASES

A. *Rhodes v. Hamilton County Board of Revision (Apr. 2008)*

FACTS: Property Appraiser assessed building at price paid by owner, who then leased the property to Walgreens to use as a drug store. The owner appealed.

ISSUE: Was the sale price a good indicator of value, where the owner claimed that the price it paid was above-market due to a favorable long-term lease with the very credit-worthy Walgreens?

Note: In the later *AEI* case, the court indicated that the owner in this case had acquired the property from the entity that had originally built the property and leased it to Walgreens.

OHIO SUPREME COURT HOLDING: Sales price was a good indicator of value because it was an arms-length transaction between two typically-motivated market participants. No business value was included because the owner is not operating the drug store, and the sale price did not indicator value in use, since the sale price represented the exchange value.

B. *AEI Net Lease Income & Growth Fund v. Erie Cty Bd of Rev. (Oct. 2009)*

FACTS: Taxpayer purchased the property, which was used as an Applebee's restaurant, in a sale-leaseback transaction. The seller demanded a price that met its cash need, but in return agreed to pay rent high enough to allow the purchaser to justify the higher purchase price. The Property Appraiser assessed the property based on that sale price.

ISSUE: Whether the holding in *Rhodes* would also apply to the sale price paid by the entity that originally enters into the sale-leaseback arrangement (not just subsequent purchasers).

OHIO SUPREME COURT HOLDING: The fact that the rent rose in accordance with the amount of cash financing required does not mean that the sale was not an arms-length transaction. Also, the taxpayer did not establish that this was a true financing arrangement, where the rent paid included repayment for financing, or that either the rent or sale price included any type of finance charge separate from the value of the realty.

VI. STATUS OF SIGNIFICANT PENDING CASES

- A. *Sprint v. Wilkinson*: Property Appraiser filed exceptions to Magistrate Judge's adverse recommended order. Waiting for decision from trial court.
- B. *In re Winn Dixie Stores, Inc.*: Post trial memoranda due June 8th. Decision expected within a few months after that.

VII. HELPFUL TRIAL COURT ORDERS

- A. "Fractured" Condominiums/Failed Conversions:
Poornima & Avinash Charitable, Etc. v. Gilreath

FACTS: Taxpayer acquired condo units in bulk transaction, supposedly for rental use. They were never offered for sale. Property Appraiser assessed them using sales comparison approach, rather than income approach. Taxpayer argued that they should be assessed like rental property.

TRIAL COURT: "It would be . . . erroneous for the Property Appraiser to assess a condominium property as if it were one rental apartment property prior to termination of the declaration of condominium." Appellate court affirmed without opinion.

- B. Continued Applicability of *Higgs v. Good* Decision:
St. Augustine Resorts, Inc. v. Outland Order on Motion in Limine

FACTS: Taxpayer failed to provide its income and expense data, and argued that *Higgs v. Good* was an isolated case that should not be followed, that nothing in the Florida Evidence Code supports exclusion of their income data, and that it should be allowed in because a property tax case is *de novo*.

TRIAL COURT: Where there is no case on point in the trial court's district, the trial court is bound to follow decisions of other district courts of appeal, and thus the court followed *Higgs v. Good*.

- C. Definition of "Family Unit" for Homestead Purposes:
Coolidge v. Todora

FACTS: Wife owned a unit in the same condominium building as her husband's unit. They separated years ago, but maintained a cordial business relationship and occasionally socialized. At one point, they filed for divorce, but later decided not to proceed with it. The Property Appraiser removed the wife's homestead exemption and imposed a lien, based on the constitutional limitation of one homestead exemption per family unit.

TRIAL COURT: In a prior order denying summary judgment, the trial court declined to find that married couple automatically constitutes a “family unit.” However, after trial, the court ruled in favor of the Property Appraiser and found that a married couple would only be entitled to separate homestead exemptions if they could show that they were proceeding with divorce and had established separate residences, or where the facts showed that they had ended their relationship and were not a “family unit.” This case was not appealed.

D. No Automatic Right to Depose Property Appraiser:

Miromar Lakes v. Wilkinson (Protective Order not attached, but available on request).

FACTS: Taxpayer wanted to depose Property Appraiser, who had no direct knowledge of the facts of the case.

TRIAL COURT: Protective order was appropriate under “apex” doctrine, where Property Appraiser was not directly involved and taxpayer had not attempted to depose the employees who had personal knowledge of the case.

E. Dealing with Out-of-Control *Pro Se* Litigants

i. *Busse v Lee County Property Appraiser et al.*

1. Federal court granted Property Appraiser’s Motion for Rule 11 Sanctions and prohibited *pro se* plaintiff from filing any further pleadings unless signed by an attorney or approved by the magistrate judge.
2. The bad news: The court did not prohibit the litigant from filing additional cases, which resulted in the litigant filing multiple successive cases against a slew of government officials, their attorneys, and most of the judges in the Middle District and the Eleventh Circuit Court of Appeals. ☹

- ii. *Busse v. Judge Lazzara*: Federal court judge (who was a defendant in the case) dismissed vexatious *pro se* plaintiff’s (5th?) case for being purely frivolous.

VIII. OTHER ISSUES

A. Section 57.105 Fees

B. “Shotgun” cases by lenders on multiple foreclosed properties

C. Due Process challenges

IX. QUESTION & ANSWER SESSION