

IN THE SUPREME COURT OF FLORIDA

CASE NO. 68,995

FRANKLIN B. BYSTROM, Property  
Appraiser of Dade County,  
Florida, STEVEN SMITH, Acting  
Tax Collector of Dade County,  
Florida, P. RANDY MILLER,  
Executive Director of the  
Florida Department of Revenue,

Petitioners,

vs.

MANUEL DIAZ,

Respondent.

**FILED**  
SID J. WHITE

JUL 10 1996

CLERK, SUPREME COURT

By \_\_\_\_\_  
Deputy Clerk

ON REVIEW FROM THE DISTRICT COURT  
OF APPEAL OF FLORIDA, THIRD DISTRICT

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PETITIONERS' BRIEF ON JURISDICTION  
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ROBERT A. GINSBURG  
Dade County Attorney  
Metro-Dade Center  
Suite 2810  
111 N.W. 1st Street  
Miami, Florida 33128-1993  
(305) 375-5151

By

Eric K. Gressman  
Assistant County Attorney

and

Daniel A. Weiss  
Assistant County Attorney

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PRELIMINARY STATEMENT

This brief on jurisdiction is filed on behalf of Petitioners, Franklin B. Bystrom, Property Appraiser of Dade County, Florida, Steven Smith, Acting Tax Collector of Dade County, and P. Randy Miller, Executive Director of the Florida Department of Revenue. References to the Record shall be cited as R. \_\_\_\_\_. The Appendix is attached hereto and shall be cited as A. \_\_\_\_\_.

STATEMENT OF THE CASE AND OF THE FACTS

The facts material to this proceeding are not in dispute. See the trial court's "Findings of Undisputed Fact" contained in its Order of Dismissal. R. 35-38, attached hereto, at A. 1.

The Plaintiff-taxpayer, Manuel Diaz, filed the action below on September 7, 1983. R. 1-3. By his complaint, Diaz sought to overturn the finding of the Dade County Property Appraiser in the first instance, and the Dade County Property Appraisal Adjustment Board on review, that the subject property was not used for bona fide commercial agricultural purposes on the January 1, 1982 assessment date. Id.

In 1983, the year after the subject assessment, the subject property was classified by the Property Appraiser as agricultural and assessed at a value substantially below market value, based exclusively on its agricultural use. The taxpayer ignored the minimal \$1,009.01 tax bill on the 40-acre property and this sum consequently became delinquent by operation of law on April 1, 1984. R. 11-12.

Based upon the taxpayer's failure to make any payment with respect to the 1983 taxes prior to delinquency, the defendant

taxing authorities filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction, alleging violation of §194.171(5) and (6), Florida Statutes (1983). The delinquent 1983 taxes were eventually paid on May 30, 1984. R. 13-14. After this payment, the motion to dismiss was heard. The trial court denied the motion, but found:

The taxes on the subject property for 1983, the year after the challenged assessment, became delinquent on April 1, 1984. The 1983 taxes and penalties owing on the subject property were paid on May 30, 1984.

R. 15-16 ¶5. The Plaintiff-taxpayer (not the Defendant taxing authorities), called up for hearing before a successor trial judge the Motion to Dismiss for Lack of Subject Matter Jurisdiction. See preamble to Order of Dismissal. R. 35.

Upon consideration, the successor judge adopted as "Findings of Undisputed Fact" precisely the same findings made by her predecessor on the same record. Cf. R. 35-36 ¶¶1-4 with R. 15-16 ¶¶1-5; A. 1. The trial court concluded that, on the undisputed facts, §194.171(5) and (6), Florida Statutes (1983), mandated dismissal of the Plaintiff's complaint and the cause for lack of subject matter jurisdiction. The Third District reversed, holding that the admitted jurisdictional defect was cured by payment of taxes months after they became delinquent. Diaz v. Bystrom, 487 So.2d 1112 (Fla. 3d DCA 1986). The Third District specifically held that its ruling disagreed with that of Clark v. Cook, 481 So.2d 929 (Fla. 4th DCA 1985).

The Third District denied the taxing authorities' motion for rehearing on June 2, 1986. On July 2, 1986, Petitioners filed a Notice to Invoke Discretionary Jurisdiction which cited

as grounds that the instant decision expressly and directly conflicts with a decision of another district court on the same question of law and expressly affects a class of constitutional officers, namely county tax collectors.

SUMMARY OF ARGUMENT

The Third District Court of Appeal in the instant decision, Diaz v. Bystrom, 487 So.2d 1112, 1113 (Fla. 3d DCA 1986), cited Clark v. Cook, 481 So.2d 929 (Fla. 4th DCA 1985), as a case which disagreed with the Third District's holding. The Third District held that violations of the jurisdictional requirements of §194.171, Florida Statutes, such as delinquencies in payment of undisputed prior or subsequent years' taxes, can be cured by post-delinquency payment. In express and direct conflict, Clark v. Cook held that such violations of §194.171, Florida Statutes, can not be cured and causes of action challenging assessments are legally dead where the jurisdictional requirements of §194.171, Florida Statutes are violated. Thus, this Honorable Court has jurisdiction over this matter, as a result of the express and direct conflict between Diaz and Clark v. Cook. 487 So.2d at 1113.

The instant decision also expressly affects a class of constitutional officers. Florida courts have uniformly held that county tax collectors and property appraisers belong to a class of constitutional officers. Article VIII, §1(d), Florida Constitution (1980). The case at bar, if left undisturbed, will eviscerate the ability of county tax collectors to collect prompt payment of millions of dollars in undisputed taxes from

litigants who contest assessments imposed by any of the 67 counties in this state.

This Honorable Court should exercise its discretion to rectify the Third District's grave departure from the plain language and intent of the Legislature and to restore the legislatively mandated enforcement mechanism designed to enable county tax collectors to collect substantial undisputed taxes budgeted for vital public services.

QUESTIONS PRESENTED

I.

DOES THIS HONORABLE COURT HAVE CONFLICT JURISDICTION WHEN THE THIRD DISTRICT COURT OF APPEAL CITES DISAGREEMENT WITH CLARK v. COOK, 481 So.2d 929 (Fla. 4th DCA 1985), IN HOLDING THAT VIOLATIONS OF THE JURISDICTIONAL REQUIREMENTS OF §194.171, FLORIDA STATUTES, ARE CURABLE?

II.

DOES THE INSTANT DECISION EXPRESSLY AFFECT CONSTITUTIONAL OFFICERS, SUCH AS COUNTY TAX COLLECTORS, WHO, BECAUSE OF THIS DECISION, CAN NO LONGER ENSURE PROMPT PAYMENT OF MILLIONS OF DOLLARS IN UNDISPUTED TAXES?

ARGUMENT

I.

THE INSTANT DECISION EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION IN CLARK v. COOK, 481 So.2d 929 (Fla. 4th DCA 1985).

It is irrefutable that this Honorable Court has conflict jurisdiction. The district court of appeal, in finding that violations of §194.171(3) and (5), Florida Statutes, are curable, held that

Defendants contend that the statute is straightforward and unequivocal in its requirement that taxes due for subsequent years be paid timely in order to continue a

challenge to an earlier year's assessment, relying on Clark v. Cook, 481 So.2d 929 (Fla. 4th DCA 1985). In Clark a cause of action was declared "legally dead" for lack of jurisdiction and not capable of revival, where the taxpayer failed to pay at least the amount of the tax which in good faith was owing before it became delinquent. To the extent that Clark held that the jurisdictional defect was not curable, we disagree.

Diaz v. Bystrom, 487 So.2d 1112, 1113 (Fla. 3d DCA 1984) (a copy of which is included in the Appendix of this brief). The relevant statute reviewed in the case at bar and Clark v. Cook is the same:

194.171 Circuit court to have original jurisdiction in tax cases.--

(1) The circuit courts have original jurisdiction at law of all matters relating to property taxation. Venue is in the county where the property is located.

\* \* \*

(3) Before a taxpayer may bring an action to contest a tax assessment, he shall pay to the collector not less than the amount of the tax which he admits in good faith to be owing. The collector shall issue a receipt for the payment, and the taxpayer shall file the receipt with his complaint.

(4) Payment of a tax shall not be deemed an admission that the tax was due and shall not prejudice the right of a taxpayer to bring a timely action as provided in subsection (2) to challenge such tax and seek a refund.

(5) No action to contest a tax assessment may be maintained, and any such action shall be dismissed, unless all taxes on the property assessed in years after the action is brought, which the taxpayer in good faith admits to be owing, are paid before they become delinquent.

(6) The requirements of subsections (2), (3), and (5) are jurisdictional. No court shall have jurisdiction in such cases until

after the requirements of both subsections (2) and (3) have been met. A court shall lose jurisdiction of a case when the taxpayer has failed to comply with the requirements of subsection (5).

In Clark v. Cook, the taxpayer was delinquent in paying the amount of taxes he admitted in good faith to be due and thereby violated §194.171(3), Florida Statutes. After filing the action in Clark v. Cook on January 15, 1985, the property owner did tender the good faith amount on January 30, 1985. Under §194.171(6), Florida Statutes, the Fourth District found that the property owner's delinquency rendered the cause of action legally dead. Clark v. Cook, supra, at 931.

Confronting similar facts, the Third District herein found the property owner's cause of action was not legally dead. Like the property owner in Clark v. Cook, Diaz was delinquent in complying with the jurisdictional good faith payment requirements of §194.171, Florida Statutes. Diaz failed to pay any 1983 property taxes until nearly two months after these taxes became delinquent. R. 15-16 ¶5. Diaz thus undeniably violated §194.171(5), Florida Statutes. Section 194.171(6), Florida Statutes, states that both subsection (3), violated in Clark v. Cook, and subsection (5), violated in Diaz, are "jurisdictional." Subsection (6) provides that failure to comply with either subsection (5) or (3) deprives the circuit court of jurisdiction. Despite the identity of facts, issues, and law, the two district courts came to opposite and conflicting decisions. Clark v. Cook found that violation of the statute rendered the action legally dead and therefore such a violation was not curable. Disagreeing with Clark v. Cook, the

district court herein found that violation of the jurisdictional prerequisites was curable and therefore Diaz's cause of action was not legally dead. The Third District in Diaz made no attempt to reconcile its decision with Clark v. Cook. Indeed, the district court herein explicitly stated it disagreed with Clark v. Cook. The two decisions are irreconcilable and this Honorable Court therefore has conflict jurisdiction.

Petitioner P. Randy Miller, as Executive Director of the Florida Department of Revenue, is responsible for establishing uniform statewide standards governing property assessment and tax collection. Section 195.002, Florida Statutes. With the conflict between Clark v. Cook and Diaz unresolved, the Department of Revenue will be hard-pressed to maintain statewide uniformity regarding collection of delinquent taxes in litigation. This Honorable Court should therefore exercise its discretion by accepting jurisdiction.

## II.

THE INSTANT DECISION EXPRESSLY AFFECTS A CLASS OF CONSTITUTIONAL OFFICERS, BECAUSE IT SERIOUSLY IMPAIRS COUNTY TAX COLLECTORS' ABILITY TO COLLECT UNDISPUTED TAXES.

Florida courts have uniformly recognized that county tax collectors and property appraisers are constitutional officers pursuant to article VIII, §1(d), Florida Constitution. See, e.g., Bystrom v. Whitman, 488 So.2d 520 (Fla. 1986); Straughn v. Tuck, 354 So.2d 368, 371 (Fla. 1977); District School Board of Lee County v. Askew, 278 So.2d 272, 276 (Fla. 1973); Chatlos v. Overstreet, 124 So.2d 1 (Fla. 1960); Dorsett v. Overstreet, 154 Fla. 566, 18 So.2d 759 (1944);

Milros-Sans Souci, Inc. v. Dade County, 296 So.2d 545 (Fla. 3d DCA 1974), cert. denied, 310 So.2d 744 (Fla. 1975). The instant decision seriously impairs the statutory mandate which assists tax collectors in collecting taxes from litigants prior to delinquency. The Fourth District's application of the affirmative jurisdictional mandate of §194.171, Florida Statutes, in Clark v. Cook provides a potent enforcement mechanism to ensure prompt payment of taxes that a property owner by his own admission has no grounds for disputing. The instant decision eviscerates that enforcement mechanism by allowing maintenance of a property owner's challenge suit even if he is delinquent in paying undisputed taxes. Thus, Diaz removes a powerful tool in the tax collectors' (and therefore the taxing jurisdictions') arsenal. The Florida Legislature specifically intended by including subsections (5) and (6) in §194.171, Florida Statutes, that tax collectors should be entitled to require prompt payment of unchallenged taxes prior to delinquency. The instant decision expressly and directly affects the ability of county tax collectors, a class of constitutional officers, to ensure prompt payment of taxes. The provisions of §194.171 are crucial as an enforcement mechanism, because no other penalty has been prescribed by the Legislature to encourage intransigent litigants to pay prior to delinquency taxes admitted by the litigants themselves to be due and owing.

This Honorable Court should exercise its discretion by accepting jurisdiction, because the instant case is "one which does more than simply modify or construe or add to the case law." Spradley v. State, 293 So.2d 697, 701 (Fla. 1974). It

constitutes a serious departure from the law, eviscerating the plain language and intent of §194.171, Florida Statutes (1985). The Diaz decision rewrites §194.171 implying the presence of a curative provision not even so much as suggested by the plain language of the statute. Cf. §607.357(6), Florida Statutes (1985) ("Any corporation failing to file the annual report required by this section shall not be permitted to maintain or defend any action in any court of this state until such report is filed and all taxes due under this chapter are paid. . . .") (emphasis supplied). In Diaz, the Third District invades the exclusive preserve of the Legislature, effectively rewriting the statute, in violation of the separation of powers clause, article II, §3, Florida Constitution. However, "[i]t is apodictic that courts are not free to add words to a statute to steer it to a meaning that its plain wording does not supply." Aurora Group, Ltd. v. Department of Revenue, 487 So.2d 1132, 1134 (Fla. 3d DCA 1986).

Moreover, the instant decision seriously impairs tax collectors' ability to ensure prompt payment of millions of dollars in undisputed taxes. Consequently, review of this case on the merits is necessary to ensure "orderly and timely receipt of essential revenues," Fredericks v. Blake, 382 So.2d 368, 371 (Fla. 3d DCA 1980), and to avoid "undue restraint . . . on the ability of local government to finance its activities in a timely and orderly fashion." Section 193.1145(1), Florida Statutes.

CONCLUSION

This Honorable Court undeniably has jurisdiction of the cause. Article V, §3(b)3, Florida Constitution (1980); Fla.R.App.P. 9.030(a)(2)(A)(iii) and (iv). The Court should exercise its discretion by reviewing the cause on its merits to resolve the irreconcilable conflict between the Third and Fourth Districts which leaves the State Department of Revenue and county tax collectors and property appraisers statewide in a quandary concerning the jurisdictional statutory requirements governing tax assessment litigation.

Respectfully submitted,

ROBERT A. GINSBURG  
Dade County Attorney  
Metro-Dade Center  
Suite 2810  
111 N.W. 1st Street  
Miami, Florida 33128-1993  
(305) 375-5151

By: *Eric K. Gressman*  
Eric K. Gressman  
Assistant County Attorney

and  
*for* *Eric K. Gressman*  
Daniel A. Weiss  
Assistant County Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing and its Appendix was mailed this 14th day of July, 1986, to: EMILIA DIAZ-FOX, ESQ., 200 S.E. First Street, Suite 424, Miami, Florida 33131.

*Eric K. Gressman*  
Assistant County Attorney