

SUPREME COURT  
STATE OF FLORIDA

**FILED**  
SID J. WHITE  
DEC 24 1986  
CLERK SUPREME COURT  
By \_\_\_\_\_  
Deputy Clerk

ROBERT DAY, Osceola County Tax  
Appraiser; and RANDY MILLER, Executive  
Director of the Department of Revenue  
of the State of Florida,

Appellants,

vs.

CASE NO. 69,519

HIGH POINT CONDOMINIUM RESORTS, LTD.;  
HIGH POINT WORLD RESORT CONDOMINIUM  
ASSOCIATION, INC.; and ROBERT H.  
HARRISS, JR., individually and  
ROBERT H. HARRISS, JR., for Class  
Action Representation of the Class  
of Persons Herein Described,

Appellees.

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REPLY BRIEF OF AMICUS CURIAE,  
FLORIDA TAX COLLECTORS ASSOCIATION

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I. THE RIGHT TO OWN OR ALIENATE PROPERTY IS NOT AFFECTED BY SECTION 192.037, FLORIDA STATUTES, AND THE STATUTE IS CONSTITUTIONAL ACCORDING TO A RATIONAL BASIS ANALYSIS.

Appellees argue that section 192.037, Florida Statutes, creates a classification, that the classification is discriminatory, and that the fundamental rights of Appellees as members of that class to own, alienate, or protect their property are affected by the statute. (Appellees' Brief at pp.6 ). Appellees then conclude that under a strict scrutiny analysis, the statute fails to pass constitutional muster. This argument is without merit for several reasons.

First, section 192.037 does not create any unconstitutional classification. All this statute does is treat time share owners like all other multiple owners of interests in real property. Just as one of two or more co-owners may end up paying all of the taxes on a single parcel of real property, so time share owners are paying through one person who has the duty to obtain payment from all co-owners. Thus, the idea that this statute creates a different or unconstitutional class of property owners is not correct. In fact, the statute attempts to treat time share owners like all other joint owners.

Second, section 192.037 does not affect the rights to own, alienate, or protect real property. It is an administrative statute and the only interests affected are the interests in being separately listed on the tax rolls and receiving an individualized or personalized tax bill. These are not constitutional rights.

Third, even assuming section 192.037 could somehow be construed as affecting a right to protect real property, the provisions of sections 192.037(4), (9) and chapters 194 and 197 provide ample safeguards to allow time share owners to protect their real property interests. Time share owners are provided the right to individually contest their assessments and to receive notice of the application for a tax deed. Thus, time share owners are given the same statutory rights to protect their property as all other property owners are given.

Fourth, the primary case on which Appellees rely, Kass v. Lewis, 104 So. 2d 572 (Fla. 1958), is inapposite to the instant action. This case does not hold that the rights to own and to protect property are fundamental rights warranting strict scrutiny of any statutes affecting those rights. Kass involved a challenge to a comprehensive statute concerning the platting of lands in certain counties. This court found the statute unconstitutional on several grounds but utilized a rational basis test and never held that the rights to own, alienate, and protect real property were fundamental rights warranting strict scrutiny of a statute which affects those rights.

Fifth, the method established by the statute for collecting ad valorem taxes is not substantially different from or less protective than the method established statutorily for other joint property owners. Thus, there is no discrimination against fee time share owners by the enactment and application of section 192.037.

In summary, Appellees' argument as to the fundamental nature of the rights affected by section 192.037 and the use of the strict scrutiny test is erroneous. More importantly, Appellants' position that the statute is constitutional has been upheld by the court in Spanish River Resort Corp. v. Walker, \_\_\_ So. 2d \_\_\_, 11 FLW 2420 (Fla. 4th DCA Nov. 19, 1986); Oyster Pointe Resort Condominium Association, Inc. v. Nolte, \_\_\_ So. 2d \_\_\_, 11 FLW 2435 (Fla. 4th DCA Nov. 19, 1986); Driftwood Management Company, Inc. v. Nolte, \_\_\_ So. 2d \_\_\_, 11 FLW 2436 (Fla. 4th DCA Nov. 19, 1986).

II. NO SEPARATE CLASSIFICATION OF REAL PROPERTY IS ESTABLISHED BY SECTION 192.037, FOR PURPOSES OF CREATING AN EXCEPTION TO "JUST VALUATION" AS THE BASIS FOR ASSESSING AD VALOREM TAXES ON TIME SHARE INTERESTS.

Appellees, in their Motion to Dismiss or Affirm, argue that section 192.037 is violative of Article VII, sec. 4, Fla. Const. (1968).<sup>1</sup> They argue that the legislature is prohibited from creating any classifications of real property for purposes of ad valorem taxation, except those classifications set forth in Article VII, section 4. There are several problems with this argument.

Article VII, section 4 states:

By general law, regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation, provided:

(a) Agricultural land or land used exclusively for non-commercial recreation purposes may be classified by general law and assessed solely on the basis of character or use.

(b) Pursuant to general law tangible personal property held for sale as stock in trade and livestock may be valued for taxation at a specified percentage of its value, may be classified for tax purposes, or may be exempted from taxation.

(emphasis added).

Prior to the 1968 constitutional revision, the legislature was permitted to tax different classes of property on different bases as long as the classifications were reasonable. Fla. Const.

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<sup>1</sup> This argument was incorporated by reference into Appellees' Answer Brief, Argument III at p. 27. As to the propriety of raising this issue in the Motion to Dismiss or Affirm, FTCA adopts the arguments in the Department of Revenue's Response to the Motion.

Art. IX, §1 (1885). However, upon the enactment of the 1968 revisions, the legislature was prohibited from taxing any property on any basis other than just valuation, except for the four classes of property specified in Article VII, section 4.

Appellees rely exclusively on Interlachen Lakes Estates, Inc. v. Snyder, 304 So. 2d 433 (Fla. 1974), app'l after remand sub. nom., Interlachen Lakes Estates, Inc. v. Brooks, 341 So. 2d 993 (Fla. 1977), to support their argument that section 192.037 violates Article VII, section 4. Interlachen Lakes involved a challenge to a statute which had required a tax assessor to assess platted lands unsold as lots to be valued on the same basis as unplatted acreage until at least 60% of the lots had been individually sold. §195.062(1), Fla. Stat. In striking this statute, as violative of Article VII, section 4, this Court found that the legislature had created a class of property to be assessed on a basis different from just valuation. Id. at 435. Taxation of a platted lot as unplatted acreage was not taxation of the lot based on its just value. Id. at 434-435.

In the instant case, nothing in section 192.037 requires a tax assessor to tax time share property interests on any basis other than just valuation. Appellees would have this Court hold section 192.037 unconstitutional merely because the statute provides an administrative mechanism for collecting taxes due on time share property interests. Appellees misconstrue Article VII, section 4.

The Florida constitution does not prohibit the legislature from providing tax assessors and collectors with the authority to carry out their constitutional duties in an efficient manner. It only prohibits the use by the legislature of classifications to vary the just valuation basis for ad valorem taxation.

Section 192.037 merely provides tax collectors and assessors with the administrative mechanism to levy and collect taxes on time share property interests. This statute is not even remotely similar to the statute at issue in Interlachen Lakes which clearly deviated from the just valuation standard.

More importantly, this constitutional issue was not raised by Appellees in their complaint in the trial court (R. at pp. 1-19) or in their brief to the District Court of Appeal, Fifth District. This issue is being raised by Appellees for the first time in this Court. There is no suggestion by Appellees, nor could there reasonably be such an assertion, that this issue constitutes a question of fundamental error. Absent an argument that the issue is one of fundamental error, Appellees may not raise this constitutional issue for the first time in this Court. Sandford v. Rubin, 237 So. 2d 134 (Fla. 1970); Bethesda Radiology Associates, P.A. v. Yaffee, 437 So. 2d 189 (Fla. 4th DCA 1983).

In summary, the legislature may create whatever classifications it deems necessary to the smooth and efficient administration of the tax assessment and collection processes so long as the legislation does not deviate from the just valuation standard. Merely because the legislature sought to provide tax assessors and

collectors with a mechanism for dealing with time share property interests does not render the statute unconstitutional as deviating from the just valuation standard.

## CONCLUSION

Appellees erroneously apply a strict scrutiny analysis to argue that section 192.037 is unconstitutional. The statute is constitutional according to a rational basis analysis and has recently been upheld by the Fourth District Court of Appeal in Spanish River, Oyster Point and Driftwood Management. An important point, ignored by Appellees, is that time share ownership is akin to other types of joint tenancies in real property. Section 192.037 merely creates an administrative mechanism for dealing with the assessment and collection of taxes, similar to that used for other joint tenancies.

Further, Section 192.037 neither requires nor allows an exception to the just valuation standard in the assessment of real property. After one weeds through all of the adjectives used by Appellees to describe the assessments complained of, adjectives which appear designed to detract from the real issue at hand, Appellees' sole rationale for their challenge is that the assessments are higher than those on whole unit condominiums, and therefore, the statute must be unconstitutional. The statute merely recognizes the property appraiser's duty to consider the value of the entire "bundle of rights" of all of the time share interests in arriving at an assessment. Indeed, if the statute permitted the approach desired by the Appellees and allowed an assessment which ignored the nature of time share ownership, it would be unconstitutional. The statute merely recognizes the constitutional requirement of just valuation.

The summary final judgment entered by the trial court should be reinstated.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing instrument has been furnished by U. S. Mail this 24th day of December, 1986, to: BENJAMIN T. SHUMAN, ESQ., 611 North Pine Hills Road, Orlando, FL 32808; J. TERRELL WILLIAMS, ESQ., Assistant Attorney General, Tax Section, The Capitol, Tallahassee, FL 32399-1050; STEPHEN MILES, ESQ., 2727 13th Street, St. Cloud, FL 32769; and LARRY E. LEVY, ESQ., Post Office Box 82, Tallahassee, FL 32301.



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