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Theodore Klein

would very definitely be public protection; for the public would thereafter be assured of competent legal representation in the various areas of the law. Protection of the legal profession by its very nature is protection of the public.

In light of this decision it may be assumed that the Florida Bar Association will take further steps to prohibit existing infringements.

NATHANIEL E. GOZANSKY

ASSESSMENT—REQUIREMENT OF FULL CASH VALUE AND ITS JUDICIAL INTERPRETATION

A corporate property owner filed suit to enjoin the tax collector of Palm Beach County from collecting taxes against its real property, alleging that the assessment was illegal on the ground that similar properties in the county were assessed at a much lower valuation. The corporation did not allege that its property was assessed in excess of its full cash value. The trial court denied the county's motion to dismiss for failure to state a cause of action. On appeal, *held*, reversed: since the adoption of the homestead exemption, the practice of assessing property has conformed with the statutory requirement of full cash value, and a taxpayer who fails to allege a valuation in excess of full cash value has not stated a cause of action. *Sproul v. Royal Palm Yacht & Country Club, Inc.*, 143 So.2d 900 (Fla. 2d Dist. 1962).

Although the legislature has imposed the requirement of assessment at full cash value,[1] for a number of years after the passage of the statute it was nevertheless held to be common knowledge that assessments were far below the statutory mandate.[2] These assessments, however, were upheld on the ground that the purpose of the statute was to create uniformity and equality of burden[3] pursuant to the constitutional requirement.[4] Consequently, if all property was assessed at fifty per cent of its full cash value, a nominal infraction of the statute was not a ground for a court of equity to grant relief.[5] This result accorded with the general

1. FLA. STAT. § 193.11 (1961). "The county assessor of taxes shall assess all property at its full cash value."

2. Henderson v. Leatherman, 120 Fla. 496, 507, 163 So. 310, 314 (1935): "[I]t is a matter of common knowledge that lands nowhere in this state are assessed for state and county purposes at more than 50 per cent of their cash value." Camp Phosphate Co. v. Allen, 77 Fla. 341, 81 So. 503 (1919).

3. In Camp Phosphate Co. v. Allen, 77 Fla. 341, 351, 81 So. 503, 507 (1919), the court stated: "[W]hile it involves a nominal departure from the letter of the law, [it] does injury to no one, and secures the uniformity of tax burden which was the sole end of the Constitution."

4. FLA. CONST. art. IX, § 1 requires the legislature to provide for a "uniform and equal rate of taxation . . . [and to] secure a just valuation of all property, both real and personal . . . ."

5. "[A]s it is a matter of common knowledge that the several assessors of this State . . .

rule that despite statutory requirements of full cash value, it made no difference what basis of valuation was used to serve the end of equal taxation—so long as it was applied to all alike.[6] It followed that a remedy was available to a taxpayer whose property, although not assessed on a basis of more than full cash value, was discriminated against by comparative undervaluation of property of the same class belonging to other taxpayers.[7] This remedy consisted in lowering the aggrieved party's property assessment to the level of valuation of comparable property.[8]

After the enactment of the homestead exemption,[9] inequality could exist as a result of systematic variance from valuation at full cash value.[10] It was held that systematic under-assessment, even though uniform, *favored* the homestead exemption holders;[11] and it was advanced conversely, that systematic over-assessment discriminated *against* the homestead holders.[12] Consequently, since the homestead exemption went into effect, the courts have stated that assessment must be at full cash value in accordance with the statute.[13] By logical sequence, relief has been

have invariably adopted a percentage of the real value as a basis for assessment, we hold that, if such assessment be uniform and equal, such infraction does not afford grounds for a court of equity to declare such assessment void." Camp Phosphate Co. v. Allen, 77 Fla. 341, 351-52, 81 So. 503, 507 (1919).

6. *E.g.*, Green v. Louisville & Interurban R.R., 244 U.S. 499, 515-16 (1917):

> It is equally plain that it makes no difference what basis of valuation—that is, what percentage of full valuation—may be adopted, *provided it be applied to all alike* . . . . Therefore, the principal if not the sole reason for adopting "fair cash value" as the standard for valuations, is as a convenient means to an end—the end being equal taxation . . . . It follows that the duty to assess at full value cannot be supreme in all cases, but must yield when necessary to avoid defeating its own purpose.

See also Cummings v. National Bank, 101 U.S. 153 (1879); Taylor v. Louisville & N.R.R., 88 Fed. 350 (6th Cir. 1898).

7. Cumberland Coal Co. v. Board of Revision of Tax Assessments, 284 U.S. 23 (1931); Sioux City Bridge Co. v. Dakota County, 260 U.S. 441 (1923); Cromwell v. Hillsborough Twp., 149 F.2d 617 (3d Cir. 1945).

8. *Ibid.*

9. FLA. CONST. art. X, § 7:

> Every person who has the legal title or beneficial title in equity to real property in this State and who resides thereon and in good faith makes the same his or her permanent home . . . shall be entitled to an exemption from all taxation . . . up to the assessed valuation of Five Thousand Dollars on the said home . . . for the year 1939 and thereafter.

10. For an analysis of discrimination by over or under-assessment see Ericksen & Hodges, *Assessment and Collection of Ad Valorem Property Taxes*, 13 U. Fla. L. Rev. 455, 460-62 (1960). In Schleman v. Connecticut Gen. Life Ins. Co., 151 Fla. 96, 100-01, 9 So.2d 197, 199 (1942), the court said:

> [T]he ratio between contribution and tax burden of the owner of a homestead could not be maintained in circumstances where there has been an overvaluation because the exemption . . . is fixed therefore if a homestead were assessed at three times its cash value the exemption could not be tripled and the owner of the homestead would pay much more proportionately than in the case of assessment according to the standard prescribed by the legislature. [*Sic.*]

11. Schleman v. Connecticut Gen. Life Ins. Co., 151 Fla. 96, 9 So.2d 197 (1942).

12. *Ibid.* (dictum); Crosby & Miller, *Our Legal Chameleon, The Florida Homestead Exemption: V*, 2 U. Fla. L. Rev. 346, 380-84 (1949).

13. "Subsequent to the adoption of Art. X, Sec. 7, the practice of assessing property has been in conformity with the statute, that is at one hundred per cent of its true cash

denied to taxpayers who have alleged that their properties were assessed at or below full cash value while similar property was assessed at a comparatively lower figure.[14] To lower the assessment would be a violation of the statute.[15] The remedy for such a situation was held to be a writ of mandamus directing the assessor to raise the under-assessed properties to full cash value.[16] However, in order for the writ to lie, the relator must demonstrate a clear showing of arbitrary discrimination and abuse of discretion by the assessor.[17] This is not easily done.[18]

In the instant case, the court cited *Cosen Inv. Co. v. Overstreet* (involving property in Dade County) as the latest pronouncement of controlling law on the issue of full cash value.[19] Despite the fact that the *Cosen* court stated that property in Dade County was being assessed at full cash value, the circuit court judges of Dade County have refused to recognize this as realistic. After an admission by the Tax Assessor of Dade County that property was being assessed at "approximately forty-seven percent,"[20] the circuit court allowed relief to a taxpayer who had

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value." Cosen Inv. Co. v. Overstreet, 154 Fla. 416, 417, 17 So. 2d 788 (1944); Sproul v. Royal Palm Yacht & Country Club, Inc., 143 So.2d 900 (Fla. 2d Dist. 1962). In both of these cases the court pointed out that the logic of the *Camp Phosphate* case was no longer applicable.

14. Cosen Inv. Co. v. Overstreet, 154 Fla. 416, 17 So.2d 788 (1944); Sproul v. Royal Palm Yacht & Country Club, Inc., 143 So.2d 900 (Fla. 2d Dist. 1962).

15. Cosen Inv. Co. v. Overstreet, 154 Fla. 416, 417, 17 So.2d 788 (1944): "To grant appellant's request would require us to order a constitutional, official act contrary to the statute . . . ."

16. State *ex rel.* Kent Corp. v. Board of County Comm'rs, 160 Fla. 900, 37 So.2d 252 (1948); State *ex rel.* Dofnos Corp. v. Lehman, 100 Fla. 1401, 131 So. 333 (1930).

17. State *ex rel.* Kent Corp. v. Board of County Comm'rs, 160 Fla. 900, 37 So.2d 252 (1948); Florida Land Co. v. Graham, 97 Fla. 476, 121 So. 462 (1929); City of Tampa v. Palmer, 89 Fla. 514, 528, 105 So. 115, 120 (1925):

> [T]he law accords to the tax assessor a wide discretion in the valuation of property for purposes of taxation, which will not in general be controlled by the courts in the absence of a clear and positive showing of fraud or of an illegal act or omission to act or an abuse of that discretion amounting to fraud.

18. State *ex rel.* Kent Corp. v. Board of County Comm'rs, 160 Fla. 900, 37 So.2d 252 (1948). The court was reluctant to disturb what it called the discretion of the assessor, despite the facts that: (1) the relator claimed properties were assessed at less than 25% of their actual cash value, and (2) the assessor admitted that properties had sold for considerably more than their assessed value.

The court's reasoning, *Id.* at 903, 37 So.2d at 253, was as follows:

> He [the assessor] has, no doubt, witnessed times when purchasers would seldom buy at the assessed value and in recent years owners would seldom sell at the assessed value. Between these wide ranges in prices the assessor must strike a value of full, actual cash value to conform to the statute. This case presents a conflict between the relator and assessor in not only the actual value but the means employed in arriving at it.
>
> We are unable to say that the assessor acted arbitrarily, capriciously or discriminatorily and, therefore, the judgment is not erroneous.

19. 154 Fla. 416, 17 So.2d 288 (1944).

20. Deposition taken of Thomas A. O'Connor, then Tax Assessor of Dade County, found in the record of Dupont Plaza, Inc. v. Dade County, No. 61C-9495, 11th Judicial Cir., July 13, 1962:

> Q. Was it not generally understood, Mr. O'Connor, that you did use forty-seven per cent as a basis and a ratio?

not alleged an assessment at more than full cash value;[21] and in the case of *Montmartre v. McNayr*,[22] the circuit court rendered the opinion that any assessment above 47.27 per cent was discriminatory, and must be lowered to that figure.[23] Subsequently, after a political dispute which ended in an overwhelming rejection of reassessment by the voters of Dade County,[24] the county manager expressed his desire to equalize all taxes at a rate of fifty per cent.[25]

Even though the above described circuit court findings preceded the decision in the instant case, it is obvious that property assessments did

A. Yes. I think I would have to agree that was pretty much the accepted thinking, especially from the state reports.

Q. You have received from the state reports of the analysis of Dade County's assessment indicating forty-seven per cent, have you not?

A. Approximately forty-seven per cent; yes, sir. I think it is a fraction higher than that; yes, a very small fraction higher than that.

21. Complaint for Plaintiff, Dupont Plaza, Inc. v. Dade County, No. 61C-9495, 11th Judicial Cir., July 13, 1962:

> The plaintiff's property is assessed by said tax assessor for the year 1960 at a value many times higher *in proportion to its actual full cash value* than the valuation placed by him on property generally in the County of the same class. (Emphasis added.)

22. 61C-8599, 11th Judicial Cir., February 15, 1962.

23. In Montmartre, Inc. v. McNayr, 61C-8599, 11th Judicial Cir., February 15, 1962, the court stated:

> It has been made to appear to the complete satisfaction of the Court that the sum total valuation of all property subject to ad valorem taxes appearing on the 1961 tax roll is 47.27% of the sum total of its full cash value and the court so finds.

The court's ostensible hesitancy to find that *individual* properties are assessed at a valuation of 47.27% is negated by the court's own statement that any assessment over that percentage must be lowered to the county average.

24. In State *ex rel.* Glynn v. McNayr, 133 So.2d 312 (Fla. 1961), the court reviewed the incidents leading up to its decision. A team of appraisers was hired pursuant to § 9.03 of the Dade County Charter which provided for reassessment of all real and tangible personal property in the county. When the new tax roll was released on February 15, 1961, a "storm of objections" followed, apparently resulting from the fact that the new valuation was a little over double the old property valuations. On May 16, 1961 County Manager McNayr reduced all the valuations by a flat 20%. This suit was instituted on July 12, 1961, in the form of a mandamus proceeding requiring the county manager to file a tax roll based upon the reappraisal. Appellants cited the *Cosen* case, in that any practice other than assessment at full cash value would be discriminatory against non-homestead holders. During the pendency of this action, the Board of County Commissioners, voted to hold a special election at which the electors of Dade County would be given the opportunity to repeal § 9.03 of the Charter (which provided for reassessment).

The court stated: "We judicially know . . . that the cited provisions of the charter were eliminated therefrom by a vote of 115,026 to 11,927." The court discussed the finding of the lower court that the new tax roll was "totally unfair and inequitable and, therefore, illegal." Since the remedy sought here was mandamus (whose function is to *compel* a legal right, and not to *establish* one) the court stated that it could not grant such a writ since no clear legal duty had been established; in addition, the court stated that it was in no way passing upon the validity of the new tax roll, since such a determination would have to wait for an appropriate attack.

25. The day after the election, McNayr's proposal was stated in the Miami Herald, Aug. 16, 1961, p. 1A, col. 8 (city ed.) this way:

> McNayr will ask the commission . . . [to] prepare an error-free re-assessment roll and then peg the valuations for tax purposes at 50% of full value . . . [and] raise assessments to full value—gradually and in a manner "carefully geared to local economic conditions."

not automatically rise to full cash value as a result of either the *Sproul* or *Cosen* judicial determinations. Whatever the reason, be it political expediency or administrative difficulty, the fact remains that assessments, at least in Dade County, are still far below the statutory requirement of full cash value. The *Sproul* and *Cosen* courts refused to accept the fact that all property was being assessed at a figure below full cash value. Owners who alleged discrimination in assessment were brushed aside by the non sequitur statement that assessments were now being made at full cash value.[26] If the courts repeat the hollow statements of the *Sproul* and *Cosen* cases, they will allow discrimination to continue. On the other hand, to lower an assessment which is not above full cash value to the actual level of valuation would be a violation of the statute. The hiatus of this dichotomy can be reconciled by assessing all property at its full cash value in accordance with the statutory requirement. The court announced this remedy in *State ex rel. Kent Corp. v. Board of County Comm'rs*.[27] The reluctance of the *Kent* court to order compliance with the strict wording of the statute, because of an inability to show that assessments were in fact below full cash value, should be sufficiently negated on the basis of the statements of the circuit court judges and the administrative officers of the county.

THEODORE KLEIN

ACCRETION—A NEW SLANT

The parties in this action to quiet title were owners of adjacent tracts of land, separated by a channel, on the Gulf of Mexico. Over a period of years, the plaintiff's land increased in size, growing out into the Gulf over sovereign land,[1] until it extended in front of, but did not touch, the land of the defendant, almost completely blocking him from the Gulf (see map). *Held*: Accretions belong to the land to which they are joined, regardless of the fact that they also extend in front of other lands. *Ford v. Turner,* 142 So.2d 335 (Fla. 2d Dist. 1962).

The law concerning accretions has been considered settled for a long time.[2] An accretion is usually defined as the natural addition of soil, sand, and sediment to land adjacent to water, so gradual that no one can perceive how much is added at any one time.[3] In most cases, the formations belong to the owner of the land against which they form.[4]

26. See note 12 *supra* and accompanying text.
27. 160 Fla. 900, 37 So.2d 252 (1948).

1. See FLA. STAT. § 253.12 (1961).
2. See, *e.g.*, INSTITUTES 2.1.20.
3. BOYER, FLORIDA REAL ESTATE TRANSACTIONS, § 13.07(3) (1961).
4. Paxson v. Collins, 100 So.2d 672 (Fla. 3d Dist. 1958); Mexico Beach Corp. v. St. Joe Paper Co., 97 So.2d 708 (Fla. 1st Dist. 1957).