

MEMORANDUM

To: Miami-Dade Value Adjustment Board Special Magistrates
From: Miami-Dade Value Adjustment Board Legal Counsel-Rafael Millares
Date: April 29, 2021
Subject: 10% Cap Resets

INTRODUCTION

The Miami-Dade County Property Appraiser's Office ("PAO") recently cited two Miami-Dade County Circuit Court cases at VAB hearings.¹ Two taxpayer representatives and the PAO have asked me to opine on these cases and some related issues.² Both sides submitted well-written briefs expressing their opposing viewpoints. I have reviewed both sides' arguments in detail and have conducted independent research.³ My findings are detailed below to provide some guidance and in order to ensure compliance with Florida law.⁴

BACKGROUND

Pursuant to the Florida Constitution and section 193.1555 of the Florida Statutes, certain types of residential and nonresidential real property in Florida are entitled to a 10% Assessment Limitation. The 10% Assessment Limitation caps/limits yearly increases in certain property's assessed value to 10%. The statute states, "[b]eginning in the year following the year the property becomes eligible for assessment pursuant to this section, the property shall be reassessed annually on January 1. Any change resulting from such reassessment may not exceed 10% of the assessed value of the property for the prior year." § 193.1555(3), F.S.

Florida law is clear that the accumulated 10% assessment limitation must be reset/removed when the ownership of the property changes:

(5) Except as provided in this subsection, property assessed under this section shall be assessed at just value as of January 1 of the year following a qualifying improvement or change of ownership or control. § 193.1555(5), F.S.

¹ *Pedro J. Garcia v. Midtown Rentals, LLC*, Case No. 20-15271 CA 32 (Fla. Cir. Ct. Nov. 14, 2020), judicial order attached as Exhibit A; and *Pedro J. Garcia v 1020 LLC*, 20-15287 CA 02 (Fla. Cir. Ct. Sep. 10, 2020), judicial order attached as Exhibit B.

² "The Board attorney shall review and respond to written complaints alleging noncompliance with the law by the Board, special magistrates, Board clerk, and the parties. See Rule 12D-9.009(1)(f), F.A.C." Module two of the DOR's 2020 VAB Training Manual.

³ "The board legal counsel is not an advocate for either party in a value adjustment board proceeding, but instead ensures that the proceedings are fair and consistent with the law." Module two of the DOR's 2020 VAB Training Manual

⁴ It is a VAB attorney's responsibility to "advise the board on all aspects of the value adjustment board review process to ensure that all actions taken by the board and its appointees meet the requirements of law." Rule 12D-9.009 F.A.C.

§ 193.1555(5)(b), F.S. defines “change of ownership” as:

(b) A change of ownership or control means any sale, foreclosure, transfer of legal title or beneficial title in equity to any person, or the cumulative transfer of control or of more than 50 percent of the ownership of the legal entity that owned the property when it was most recently assessed at just value, except as provided in this subsection.

There are three limited circumstances in which a change of control of the property does not trigger a reset/removal of the 10% Assessment Limitation.

There is no “change of ownership” if:

- (a) The transfer of title is to correct an error.
- (b) The transfer is between legal and equitable title. [emphasis added]
- (c) For a publicly traded company, the cumulative transfer of more than 50 percent of the ownership of the entity that owns the property occurs through the buying and selling of shares of the company on a public exchange. This exception does not apply to a transfer made through a merger with or acquisition by another company, including acquisition by acquiring outstanding shares of the company. § 193.1555(5)(b), F.S.⁵

FINDINGS

- 1) Florida Statute Section 193.1555(5)(b) means exactly what it says. In summary; the 10% cap resets if a change of ownership or control occurs, save three exceptions.⁶
- 2) Of those three exceptions, number two is the one most frequently at issue in a VAB context. Number two reads as follows, “the transfer is between legal and equitable title.” 193.1555(5)(b)(2) F.S.
- 3) The 10% cap should typically not reset when there is a transfer from an individual to a living trust as long as the individual retains equitable interest/title in the property; and the same applies vice-a-versa.⁷
- 4) The cap should typically reset when ownership is transferred from equitable title to equitable title.⁸

⁵ This section loosely quotes from the Stipulated Order Granting Final Summary Judgment in *Pedro J. Garcia v. Midtown Rentals, LLC*, Case No. 20-15271 CA 32 (Fla. Cir. Ct. Nov. 14, 2020).

⁶ “When the statute is clear and unambiguous, courts will not look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent.” *Borden v. East-European Ins. Co.*, 921 So. 2d 587, 595 (Fla. 2006) citing *Daniels v. Fla. Dep't of Health*, 898 So.2d 61, 64 (Fla. 2005).

⁷ The word “between” seems to allow this exception to flow in both directions, as per its plain meaning. If the legislature had wanted to limit the direction of flow, presumably, they would have used uni-directional language. But they did not.

⁸ If the legislature had wanted to create an exception for this scenario, they would have said so explicitly

- 5) The cap should typically reset when ownership is transferred from one corporate entity to another, even if both entities have the same individual shareholder[s], managing entity etc.⁹
- 6) The cap should typically reset when an individual transfers ownership from himself to a corporate entity or vice a versa.¹⁰
- 7) The cases of *State ex rel v. Palmer – Florida Corp. v. Green*, 88 So. 2d 493 (1956), *Florida Department of Revenue v. DeMaria*, 338 So. 2d 838 (Fla. 1976) and *Crescent Miami Center, LLC v. Florida Dept. of Revenue*, 903 So. 2d 913 (2005) do not apply here for two reasons: (a) These cases all deal with doc stamps, not cap resets, and (b) the cases pre-date Florida Statute Section 193.1555. The Florida legislature was presumably aware of these cases when they passed Florida Statute Section 193.1555. Yet the Legislature chose to create a different statutory scheme that treats 10% cap property tax situations differently than doc stamp situations.
- 8) VAB Special Magistrates should be aware of both recent circuit court cases because they are persuasive.¹¹ However, these cases are not binding.¹²

CONCLUSION

We all strive for clarity and uniformity, but this memorandum cannot possibly guide attorney Special Magistrates in a comprehensive way regarding this topic. There are too many potential cap reset scenarios/permutations for me to discuss here. Attorney Special Magistrates are expected to perform their own case-by-case analysis and legal research when contemplating cap reset cases.¹³ If Special Magistrates require assistance regarding a particular case, they are encouraged to contact the VAB attorney.

as they do in section 193.155(3)(a)(1)(b) F.S., “the transfer is between legal and equitable title or equitable and equitable title...” [emphasis added].

⁹ “A member of a limited liability company has no interest in any specific limited liability company property”. §605.0110 (4), F.S.

¹⁰ The relationship between a shareholder and a corporation is different than the one between a trustee and a beneficiary. See *DeJesus v. A.M.J.R.K.*, 43 Fla. L. Weekly D331a (2nd DCA 2018) and *Callava v. Feinberg*, 864 So.2d 429 (Fla. 3rd DCA 2003). Florida law holds that neither a trust nor a corporate entity are “natural persons.” However, an individual beneficiary of a trust may hold an equitable interest in trust-owned property, while an individual shareholder of a corporation does not typically hold an equitable interest in corporate-entity-owned property.

¹¹ See Exhibits “A” & “B”.

¹² *State of Florida v. Bamber*, 592 So 2d 1129 (1991).

¹³ Page 4, Module two, of the DOR’s 2020 VAB Training Manual.

EXHIBIT A

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2020-015271-CA-01

SECTION: CA32

JUDGE: Mark Blumstein

Pedro J Garcia

Plaintiff(s)

vs.

Midtown Rentals LLC et al

Defendant(s)

_____ /

STIPULATED ORDER GRANTING FINAL SUMMARY JUDGMENT

THIS CAUSE came before the Court on the motion of Plaintiff PEDRO J. GARCIA, as Property Appraiser of Miami-Dade County, Florida for final summary judgment, and the stipulation of the parties. The Court having reviewed the record and being otherwise fully advised in the premises, finds as follows:

UNDISPUTED FACTS

The facts and procedural history of this case are undisputed. On or about January 22, 2015, Boojum Tree, LLC acquired the Subject Property from Realty Investments and Rentals LLC via a special warranty deed recorded at Official Records Book 29496, page 0139 of the public records of Miami-Dade County, Florida.

On or about October 10, 2018, Boojum Tree, LLC transferred legal title to the Subject Property to Midtown Rentals, LLC, via a quit-claim deed recorded at Official Records Book 31175, page 3653 of the public records of Miami-Dade County, Florida.

At the time of the conveyance of the real property and as of today, Edgar Mariani is the sole member of both Boojum Tree, LLC and Midtown Rentals, LLC. There are no other members of either limited liability company.

Prior to the conveyance of the Subject Property to Midtown Rentals, LLC, Boojum Tree, LLC was entitled to a tax benefit that limits the increase in a property's assessed value to 10% ("10% Assessment Limitation").

Following the Subject Property's change in ownership in tax year 2018 from Boojum Tree, LLC to Midtown Rentals, LLC, the Property Appraiser removed the 10% Assessment Limitation on the Subject Property.

Midtown Rentals, LLC filed a petition with the VAB, contesting Property Appraiser's removal of the 10% Assessment Limitation for tax year 2019.

On or about March 31, 2020, the petition was heard under VAB Agenda No. 19-22471, and the VAB Special Magistrate recommended that the 10% Assessment Limitation be restored for tax year 2019.

The VAB adopted the recommendations of the Special Magistrate. For tax year 2019, the Subject Property continued to receive the 10% Assessment Limitation.

LEGAL ANALYSIS

Summary judgment in the Property Appraiser's favor is appropriate. Pursuant to the Florida Constitution and section 193.1555 of the Florida Statutes, certain types of residential and nonresidential real property in Florida are entitled to the 10% Assessment Limitation. The 10% Assessment Limitation limits increases in a property's assessed value to 10% by stating that: "[b]eginning in the year following the year the property becomes eligible for assessment pursuant to this section, the property shall be reassessed annually on January 1. Any change resulting from such reassessment may not exceed 10 percent of the assessed value of the property for the prior year." § 193.1555(3), Fla. Stat.

Florida law is clear that the accumulated 10% assessment limitation must be removed when the ownership of the property changes:

(5) Except as provided in this subsection, property assessed under this section shall be assessed at just value as of January 1 of the year following a qualifying improvement or change of ownership or control.

§ 193.1555(5), Fla. Stat.

Section 193.1555(5)(b) defines “change of ownership” as:

(b) A change of ownership or control means any sale, foreclosure, transfer of legal title or beneficial title in equity to any person, or the cumulative transfer of control or of more than 50 percent of the ownership of the legal entity that owned the property when it was most recently assessed at just value, except as provided in this subsection.

§ 193.1555(5)(b), Fla. Stat.

Here, legal title to the Subject Property transferred on October 10, 2018, Boojum Tree, LLC transferred legal title to the Subject Property to Midtown Rentals, LLC, via a quit-claim deed recorded at Official Records Book 31175, page 3653 of the public records of Miami-Dade County, Florida. See Exhibit B, attached hereto.

Accordingly, on January 1, 2019 (“January 1 of the year following . . . change of ownership”) the property was required to be assessed at just value.

It is true that Edgar Mariani is the sole member of both the grantor Boojum Tree, LLC and the new owner Midtown Rentals, LLC. His status as sole member of both limited liability companies does not, however, change the fact that legal title in the Subject Property changed.

There are only three limited circumstances in which a change of control of the property does not trigger the removal of the 10% Assessment Limitation. None of which include consideration of a company’s membership, and none of which apply to this case:

There is no change of ownership if:

1. The transfer of title is to correct an error.

2. The transfer is between legal and equitable title.

3. For a publicly traded company, the cumulative transfer of more than 50 percent of the ownership of the entity that owns the property occurs through the buying and selling of shares of the company on a public exchange. This exception does not apply to a transfer made through a merger with or acquisition by another company, including acquisition by acquiring outstanding shares of the company.

§ 193.1555(5)(b), Fla. Stat.

Here, it is undisputed that the change of ownership that occurred on November 21, 2018 from Boojum Tree, LLC to Midtown Rentals, LLC was not to correct an error nor was it a transfer between legal and equitable title. Further, it is undisputed that neither the grantee nor the grantor are publicly traded companies. Accordingly, none of these limited exceptions to the removal of the 10% Assessment Limitation apply despite the fact that Edgar Mariani is the sole member of both LLC's, and the VAB's decision allowing the new owner Midtown Rentals, LLC to continue to benefit from the prior owner's assessment limitation violates Florida law and must be reversed.

CONCLUSION

For the reasons stated above, it is hereby **ORDERED AND ADJUDGED**:

1. Property Appraiser's Motion for Summary Judgment is GRANTED and final summary judgment is hereby entered in his favor.
2. The just and assessed values for the Subject Property shall be returned to their preliminary values for tax year 2019.
3. The Miami-Dade County Tax Collector is authorized and directed to submit to the taxpayers of each folio a revised bill for deficiencies in taxes based on the just valuation set forth in paragraph 1 of this Judgment plus interest, if applicable, at the rate of twelve percent (12%) per annum from April 1 of the year following the tax assessment year here involved or from the first day of the month following the issuance of the VAB refund, whichever is later, to the date of this Judgment. Additionally, the Tax Collector is authorized and directed to submit to the taxpayers a revised bill for any deficiency in interest

based on the just valuation set forth in paragraph 1 of this Judgment for interest previously refunded to the taxpayers pursuant to §194.014(2) of the Florida Statutes. Said taxes and interest shall become delinquent and bear interest at the rate of eighteen percent (18%) per annum if unpaid at the expiration of thirty (30) days from the date of issuance of the revised tax bill in accordance with this judgment and at such time the Tax Collector shall be authorized to enforce the collection of such taxes as delinquent taxes as provided by law, without further order of this Court. In the alternative, if there exists an excess of taxes and interest paid as a result of the just value of the subject property set forth above, the Miami-Dade County Tax Collector is authorized and directed to issue a refund of such excess taxes and interest to the taxpayers.

4. This is a Final Judgment as to all parties, each party to bear its own costs and attorney's fees.
5. Any temporary restraining order or injunction previously entered in this cause enjoining the collection of taxes, or any lis pendens recorded in conjunction herewith is hereby dissolved and no longer in effect without further order of the Court.
6. The payment of the additional taxes or issuance of the refund based upon the just value as mandated above shall operate as a Satisfaction of this Final Judgment without further order of this Court.

DONE and ORDERED in Chambers at Miami-Dade County, Florida on this 14th day of November, 2020.

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Hon. Mark Blumstein

CIRCUIT COURT JUDGE

Electronically Signed

Final Order as to All Parties SRS #: 12 (Other)

THE COURT DISMISSES THIS CASE AGAINST ANY PARTY NOT LISTED IN THIS FINAL ORDER OR PREVIOUS ORDER(S). THIS CASE IS CLOSED AS TO ALL PARTIES.

EXHIBIT B

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2020-015287-CA-01

SECTION: CA02

JUDGE: Alan Fine

Pedro J Garcia

Plaintiff(s)

vs.

1020 LLC et al

Defendant(s)

ORDER GRANTING FINAL SUMMARY JUDGMENT

THIS CAUSE came before the Court on the motion of Plaintiff PEDRO J. GARCIA, as Property Appraiser of Miami-Dade County, Florida, for final summary judgment. A hearing was held on September 10, 2020. The Court having reviewed the record and being otherwise fully advised in the premises, finds as follows:

UNDISPUTED FACTS

The facts and procedural history of this case are undisputed. On or about January 31, 2007, Kirk Lazarus and Gordon Lazarus, as grantees, acquired the Subject Property from Richard A. Lazarus and Kirk Lazarus, as grantors, via a quit claim deed recorded at Official Records Book 25490, page 2773 of the public records of Miami-Dade County, Florida.

On or about November 21, 2018, Kirk Lazarus and Gordon Lazarus transferred legal title to the Subject Property to 1020 LLC, via a quit-claim deed recorded at Official Records Book 31262, pages 2624-2627 of the public records of Miami-Dade County, Florida.

At the time of the conveyance of the real property and as of today, Kirk Lazarus is the Manager of 1020 LLC and Gordon Lazarus is the Vice President of 1020 LLC. Additionally, Kirk Lazarus and Gordon Lazarus were and are the sole members of 1020 LLC.

Prior to the conveyance of the Subject Property to 1020 LLC, Kirk Lazarus and Gordon Lazarus were entitled to a tax benefit that limits the increase in a property's assessed value to 10% ("10% Assessment Limitation").

Following the Subject Property's change in ownership in tax year 2018 from Kirk Lazarus and Gordon Lazarus to 1020 LLC, the Property Appraiser removed the 10% Assessment Limitation on the Subject Property.

1020 LLC filed a petition with the VAB, contesting Property Appraiser's removal of the 10% Assessment Limitation for tax year 2019.

On or about March 4, 2020, the petition was heard under VAB Agenda No. 19-22461, and the VAB Special Magistrate recommended that the 10% Assessment Limitation be restored for tax year 2019.

The VAB adopted the recommendations of the Special Magistrate. For tax year 2019, the Subject Property continued to receive the 10% Assessment Limitation.

LEGAL ANALYSIS

Summary judgment in the Property Appraiser's favor is appropriate. Pursuant to the Florida Constitution and section 193.1555 of the Florida Statutes, certain types of residential and nonresidential real property in Florida are entitled to the 10% Assessment Limitation. The 10% Assessment Limitation limits increases in a property's assessed value to 10% by stating that: "[b]eginning in the year following the year the property becomes eligible for assessment pursuant to this section, the property shall be reassessed annually on January 1. Any change resulting from such reassessment may not exceed 10 percent of the assessed value of the property for the prior year." § 193.1555(3), Fla. Stat.

Florida law is clear that the accumulated 10% assessment limitation must be removed when the ownership of the property changes:

(5) Except as provided in this subsection, property assessed under this section shall be assessed at just value as of January 1 of the year following a qualifying improvement or change of ownership or control.

§ 193.1555(5), Fla. Stat.

Section 195.1555(5)(b) defines "change of ownership" as:

(b) A change of ownership or control means any sale, foreclosure, transfer of legal title or beneficial title in equity to any person, or the cumulative transfer of control of or more than 50 percent of the ownership of the legal entity that owned the property when it was most recently assessed at just value, except as provided in this subsection.

§ 193.1555(5)(b), Fla. Stat.

Here, legal title to the Subject Property transferred on November 21, 2018, from Kirk Lazarus and Gordon

Lazarus to 1020 LLC. Accordingly, on January 1, 2019 ("January 1 of the year following . . . change of ownership") the property was required to be assessed at just value.

Kirk Lazarus and Gordon Lazarus were both the grantors of the Subject Property and, both at the time of the conveyance and currently, the sole members of the grantee 1020 LLC. This fact does not, however, negate the fact that there was a change of ownership because legal title in the Subject Property changed.

There are only three limited circumstances in which a change of control of the property does not trigger the removal of the 10% Assessment Limitation. None of which include consideration of a company's membership, and none of which apply to this case:

There is no change of ownership if:

1. The transfer of title is to correct an error.
2. The transfer is between legal and equitable title.
3. For a publicly traded company, the cumulative transfer of more than 50 percent of the ownership of the entity that owns the property occurs through the buying and selling of shares of the company on a public exchange. This exception does not apply to a transfer made through a merger with or acquisition by another company, including acquisition by acquiring outstanding shares of the company.

§ 193.1555(5)(b), Fla. Stat.

Here, it is undisputed that the change of ownership that occurred on November 21, 2018 from Kirk Lazarus and Gordon Lazarus to 1020 LLC was not to correct an error. Further, despite the fact that Kirk and Gordon Lazarus are the sole members of 1020 LLC, the conveyance was not a transfer between legal and equitable title. See, e.g., § 605.0110, Fla. Stat. ("A member of a limited liability company has no interest in any specific limited liability company property."). Further, it is undisputed that neither the grantee nor the grantor are publicly traded companies. Accordingly, none of these limited exceptions to the removal of the 10% Assessment Limitation apply despite the fact that Kirk and Gordon Lazarus are the sole members of the LLC, and the VAB's decision allowing the new owner 1020 LLC to continue to benefit from the prior owner's assessment limitation violates Florida law and must be reversed.

CONCLUSION

For the reasons stated above, it is ORDERED AND ADJUDGED:

1. Property Appraiser's Motion for Final Summary Judgment is GRANTED and final summary judgment is hereby entered in his favor.
2. The just and assessed values for the Subject Property shall be returned to their preliminary values for Tax Year 2019.

3. The Miami-Dade County Tax Collector is authorized and directed to submit to the taxpayers of each folio a revised bill for deficiencies in taxes based on the just valuation set forth in paragraph 1 of this Judgment plus interest, if applicable, at the rate of twelve percent (12%) per annum from April 1 of the year following the tax assessment year here involved or from the first day of the month following the issuance of the VAB refund, whichever is later, to the date of this Judgment. Additionally, the Tax Collector is authorized and directed to submit to the taxpayers a revised bill for any deficiency in interest based on the just valuation set forth in paragraph 1 of this Judgment for interest previously refunded to the taxpayers pursuant to §194.014(2) of the Florida Statutes. Said taxes and interest shall become delinquent and bear interest at the rate of eighteen percent (18%) per annum if unpaid at the expiration of thirty (30) days from the date of issuance of the revised tax bill in accordance with this judgment and at such time the Tax Collector shall be authorized to enforce the collection of such taxes as delinquent taxes as provided by law, without further order of this Court. In the alternative, if there exists an excess of taxes and interest paid as a result of the just value of the subject property set forth above, the Miami-Dade County Tax Collector is authorized and directed to issue a refund of such excess taxes and interest to the taxpayers.
4. This is a Final Judgment as to all parties, each party to bear its own costs and attorney's fees.
5. Any temporary restraining order or injunction previously entered in this cause enjoining the collection of taxes, or any lis pendens recorded in conjunction herewith is hereby dissolved and no longer in effect without further order of the Court.
6. The payment of the additional taxes or issuance of the refund based upon the just value as mandated above shall operate as a Satisfaction of this Final Judgment without further order of this Court.

DONE and ORDERED in Chambers at Miami-Dade County, Florida on this 10th day of September, 2020.

2020-015287-CA-01 09-10-2020 11:27 AM


2020-015287-CA-01 09-10-2020 11:27 AM

Hon. Alan Fine

CIRCUIT COURT JUDGE

Electronically Signed

Final Order as to All Parties SRS #. 12 (Other)

THE COURT DISMISSES THIS CASE AGAINST ANY PARTY NOT LISTED IN THIS FINAL ORDER OR PREVIOUS ORDER(S). THIS CASE IS CLOSED AS TO ALL PARTIES.