

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

GAURI GANESH LLC,

Case Number: 2021-CA-005802-O

Plaintiff,

vs.

AMY MERCADO as Property Appraiser of
Orange County, Florida, and
SCOTT RANDOLPH as Tax Collector of
Orange County, Florida, and
JIM ZINGALE as Executive Director of the
Florida Department of Revenue,

Defendants.

FIRST AMENDED COMPLAINT

Plaintiff, GAURI GANESH, LLC, a Florida limited liability company ("Plaintiff"), sue Defendants, AMY MERCADO, Property Appraiser of Orange County, Florida (the "Property Appraiser"); SCOTT RANDOLPH, Tax Collector for Orange County, Florida (the "Tax Collector"); and JIM ZINGALE, Executive Director of the Florida Department of Revenue (the "Executive Director") (the Property Appraiser, Tax Collector and Executive Director are collectively referred to herein as "Defendants") and allege:

PARTIES

1. Plaintiff is the owner of real property located in Orange County, Florida, which is described and designated Orange County Parcel Number 18-23-29-5401-04-050 (the "Property").
2. Appraiser, Amy Mercado, is sued herein in her official capacity and is a necessary party to this action pursuant to § 194.181(2), Florida Statutes.
3. Collector, Scott Randolph, is sued herein in his official capacity and is a necessary party to this actin pursuant to § 194.181(3), Florida Statutes.

4. Director, Jim Zingale, is sued herein in this official capacity as Executive Director of the Florida Department of Revenue and is a necessary party to this action pursuant to § 194.181(5), Florida Statutes.

VENUE and JURISDICTION

5. This is an action to contest a tax assessment and for refund of excessive taxes paid. This Court has jurisdiction pursuant to § 194.171(1), Florida Statutes.
6. The Property is located within Orlando, Orange County, Florida, that is within this Court's jurisdictional boundaries.

BACKGROUND

7. This is an action to contest an ad valorem assessment for the tax year 2020.
8. The Property Appraiser, the Tax Collector and the Executive Director are each necessary parties to this suit pursuant to § 194.181, Florida Statutes.
9. Appraiser assessed Plaintiff ad valorem taxes at \$189,024.28. Property record card is attached and incorporated hereto as Exhibit "A".
10. Plaintiff timely filed a petition with the Value Adjustment Board (VAB). A copy of the petition is attached and incorporated hereto as Exhibit "B".
11. On or about April 7, 2021, the Magistrate issued a decision in favor of the Defendants, but urged Petitioner to file this appeal so as to clarify the ambiguity or disparity of treatment caused by the statute. A copy of the Magistrate's decision is attached and incorporated hereto as Exhibit "C".
12. On or about April 16, 2021, the VAB issued a final decision. A copy of the VAB final decision is attached and incorporated hereto as Exhibit "D".

13. Pursuant to § 194.171, Florida Statutes Plaintiff has paid a good faith estimate of taxes which the Defendants believe to be due and owing. A copy of the receipt is attached and incorporated hereto as Exhibit "E".
14. Plaintiff has performed all conditions precedent which are required to be performed by Plaintiff in establishing his right to bring this action.
15. As required by § 194.171, Florida Statutes, this action has been timely filed within sixty (60) days from the date of decision by the Value Adjustment Board was certified.

COUNT I – Transfer Issues

16. Plaintiff readopt and reallege paragraphs 1-15 above as if fully set forth herein.
17. This is an action for the correction of erroneous adjustment of the cap assessment against the Property for the tax year 2020, and for the refund to Plaintiffs of excessive a taxes paid for that year.
18. The Property lost its cap rate when Plaintiff performed a book transfer via quit claim deed to clean up its organizational structure. A copy of the deed is attached and incorporated hereto as Exhibit "F".
19. The cap rate change resulted in an increase of tax from \$144,787.95 to \$189,024.28.
20. The cap rate change was improper.
21. The Property Appraiser's assessments of the Property for 2020 grossly exceeds the just value thereof in contravention of Article VII, Section 4, of the Florida Constitution and § 193, Florida Statutes.
22. Defendants have failed to properly interpret and/or apply § 193.1555, Florida Statute.
23. Defendants have failed to equally apply the statute to Plaintiff as it does to other ad valorem tax payers.

24. The Property Appraiser's assessment and modification of Plaintiff's cap rate are not supported by any reasonable hypothesis of value consistent therewith.
25. The Property was transferred from Plaintiff to Plaintiff, the only difference was a name change. The ownership, management, responsibility, beneficial interest, all remain completely unchanged. A copy of corporate hierarchy, Article of Organization, State of Florida Business Registration, and Annual Report are attached and incorporated hereto as composite Exhibit "G".
26. There was no change of ownership or control that would trigger application under F.S. §193.1555(5)(b), specifically Plaintiff and Caravan Hotel Properties LLC are not persons.
27. There was no change of ownership or control that would trigger application under F.S. §193.1555(5)(b), specifically there was not a change of owners of more than 50% of the ownership. The transfer that occurred was merely a book transfer in and between itself. Grantor and Grantee are not just related entities, the parent is same, the property remains owned and controlled by the identical person, beneficial ownership of the Property has not changed.
28. There was no change of the ownership if transfer of title is between legal and equitable title and therefore F.S. § 193.1555 should not have triggered action by the Defendants.
29. All conditions precedent to the bringing of this action have been performed, excused or waived.

WHEREFORE, Plaintiff demands that this Court enter an order setting aside the assessment of the Property and the Cap Rate, establish the proper Cap Rate for the Property in accordance with the Constitution of the State of Florida and section 193, Florida Statutes, direct the Collector to cancel the original bills and issue a new tax bill in said reassessed amount with the correct Cap rate and to refund any over payment, and finally to award Plaintiff

its cost incurred in bringing this action pursuant to section 194.192, Florida Statutes, and award such other relief as may be just or proper.

COUNT II – Assessment Issues

30. Plaintiff readopt and reallege paragraphs 1-15, 21 above as if fully set forth herein.

31. The assessment of ad valorem taxes by Defendants does not represent the just value of the Property because the appraisal includes the value of certain intangible property in the assessment in violation of Article VII, section 1(a) of the Florida Constitution. As such, the appraisal exceeds the market value and therefore violates Article VII, Section 4 of the Florida Constitution.

WHEREFORE, Plaintiff demands that this Court enter an order setting aside the assessment of the Property as excessive, establish the proper just and assessed value for the Property in accordance with the Constitution of the State of Florida and section 193.011, Florida Statutes, direct the Collector to cancel the original bills and issue a new tax bill in said reassessed amount, and finally to award Plaintiff its cost incurred in bringing this action pursuant to section 194.192, Florida Statutes, and award such other relief as may be just or proper.

ATLAS Law Group PLLC

Dated: September 1, 2021

/s/ Eric Frommer

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