

IN THE CIRCUIT COURT OF THE 1<sup>ST</sup> JUDICIAL CIRCUIT  
IN AND FOR ESCAMBIA COUNTY, FLORIDA

L. ANTON REBALKO and  
RUTH EVANS-REBALKO,

CASE NO 2024 CA 001484

Plaintiffs,

vs.

CHRIS JONES, Former Property  
Appraiser for Escambia County,  
Florida, Florida, SCOTT  
LUNSFORD, Tax Collector for  
Escambia County, JIM ZINGALE,  
Executive Director of the Florida  
Department of Revenue, and GARY  
'BUBBA' PETERS, Property  
Appraiser for Escambia County,  
Florida

Defendants.

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**SECOND AMENDED COMPLAINT**

Plaintiffs, L. ANTON REBALKO and RUTH EVANS-REBALKO (hereinafter "Plaintiffs") hereby sue former Property Appraiser CHRIS JONES, (hereinafter, "Jones") in his official capacity as the former property appraiser for Escambia County, SCOTT LUNSFORD ("hereinafter Lunsford") in his official capacity as the tax collector for Escambia County, JIM ZINGALE, (hereinafter "Zingale") in his official capacity as the Executive Director of the Florida Department of Revenue, and GARY 'BUBBA' PETERS (hereinafter "Peters") in his official capacity as the property Appraiser for Escambia County by alleging:

### **GENERAL ALLEGATIONS COMMON TO ALL COUNTS**

1. Jurisdiction is based upon Chapter 194, Florida Statutes and specifically Section 194.171(1) Florida Statutes, Section 196.151 Florida Statutes and Article V, Sections 5 and 20 of the Florida Constitution.

2. Plaintiffs who are husband and wife, permanently reside at 1752 Ensenada Seis, Pensacola Beach, Florida in Escambia County under the terms and conditions of a finite 99-year government lease attached hereto as Composite Exhibit 'A'.

3. This property is further identified as Folio No. 17-0241-0000.

4. Jones Peters are sued in their official capacity. Both are necessary parties to Plaintiffs' action. Jones was charged with the duty to follow the laws applicable to his official acts and job functions in his assessment of Plaintiffs' 2024 ad valorem taxes and Peters is currently responsible for following the laws applicable to his official acts and job functions as Jones' successor.

5. Lunsford is sued in his official capacity. He too is a necessary party to Plaintiffs' action.

6. Jim Zingale is sued as a nominal party in his official capacity as Executive Director of the Florida Department of Revenue.

7. Both Lunsford and Zingale are charged with the duty to follow the laws applicable to their official acts and job functions.

8. As a matter of law all Defendants have been required to deal with the taxpayer Plaintiffs in good faith and with fairness, which

necessarily includes their adherence to all material administrative rules, general laws, and judicial authority.

9. Plaintiffs have complied with all condition precedents required to bring this suit. This includes Plaintiffs' good faith payment in full of their 2024 ad valorem tax bill.

### **ALLEGATIONS COMMON TO ALL COUNTS**

10. The real property leased by Plaintiffs was initially owned by the United States Government and thereafter conveyed to Escambia County. This conveyance was made on the condition that the property be perpetually owned by Escambia County. This condition precludes the County from outright conveying or disposing of the property, although the County has the limited right to lease parcels so long as the leasehold estates are in the public interest. The Federal Government's conveyance expressly prohibits any portion of the land conveyed to be privately owned.

11. Plaintiffs are the remote assignees of an original master land lease entered into between Escambia County, through its agency Santa Rosa Island Authority, and James and Dorothy Keltner on September 18, 1969. See Composite Exhibit 'A'.

12. Plaintiffs' leasehold interest is for a residential purpose and requires periodic rent payments though out the entire term of the lease. The lease's term is for less than 100 years, and Plaintiffs otherwise meet all other criteria under Section 196.199, Florida Statutes. Plaintiffs have no ability to become fee simple owners of the property and the lease terms and conditions do not allow

Plaintiffs to automatically renew their lease in perpetuity. The lease does not provide for an option to purchase, there is no federal agency involved with any mortgage financing of Plaintiffs' property, and the property is not financed, acquired, or maintained utilizing in whole or in part funds acquired through the issuance of bonds pursuant to Chapter 159 of the laws of Florida.

13. The Santa Rosa Island Authority or SRIA is a special district that was created by the Laws of Florida in 1947. The SRIA has plenary authority in the handling and administration of Pensacola Beach government leases.

14. Throughout the years, Plaintiffs' master lease form was used by the SRIA in over 400 Pensacola Beach government lease transactions.

15. Both the offices of the Escambia County Property Appraiser and Tax Collector were parties in that circuit court lawsuit known as 1108 Ariola v. Jones, et al, Circuit Court Case No. 2004 CA 002290 wherein a final summary judgement was entered finding that no 99-year Pensacola Beach government master leaseholds before it automatically renewed. Plaintiffs' exact 99-year master leasehold type or form was included within those considered by the court. This circuit court case was appealed to the First District and later further appealed to the Supreme Court. Neither court of appeal disturbed the lower tribunal's finding that none of the subject master leases before it automatically renewed.

## **COUNT I**

### **DECLARATORY RELIEF ACTION SEEKING A JUDICIAL DETERMINATION THAT PLAINTIFFS' LEASED LAND IS EXEMPT FROM ALL AD VALOREM TAXES ASSESSED AND BILLED IN 2024**

Plaintiffs re-allege Paragraphs 1 through 15 as if fully set forth herein and further allege:

16. This is an action for declaratory relief pursuant to Chapter 86 Florida Statutes and is filed for the specific purpose of declaring a tax assessment invalid pursuant to Section 68.01, Florida Statutes.

17. Plaintiffs' leased land is wholly owned by Escambia County and is therefore not subject to ad valorem taxes. Plaintiffs' 99-year government lease does not automatically renew. The lease may otherwise renew providing, (1) the parties successfully negotiate a renewal lease rental price, (2) the Plaintiffs timely notify their lessor in writing of an intent to renew, (3) the Plaintiffs fully cooperate in the administrative renewal process, and (4) Plaintiffs' lessor ultimately approves their lease renewal by favorable vote of the Santa Rosa Island Authority Board of Directors. If any one of these condition precedents are not satisfied, Plaintiffs' finite lease agreement cannot renew, which finds their leased land and all improvements thereon reverting to Escambia County. As a matter of binding legislative authority as well as established case law authority the above enumerated conditions, whether considered individually or jointly, render their leased land immune from ad valorem assessment. This notwithstanding, the Property Appraiser has

unlawfully imposed full ad valorem taxes against upon the land portion of Plaintiffs' leasehold interest.

18. Furthermore, a four corner's reading of Plaintiffs' lease, reveals a clear intent that the lease does not automatically renew, as the lease requires the lessee to timely notify the lessor of an intent to renew rather than an intent to cancel the renewal of the lease.

19. Other contract language and provisions indicative of a contract that is not intended to automatically renew are:

- Lease Paragraph (1): "... to hold the said premises unto the lessee for and during the full term of the ninety-nine (99) years . . . or until sooner terminated as herein provided."
- Lease Paragraph (2): "Notwithstanding any provision hereof, this instrument is a conveyance of a leasehold interest for a term of [99 years] years only and is subject to sooner termination for breach; this instrument does not constitute a conveyance of the fee-simple title to the property, nor is it the intent of the parties hereto to convey a fee-simple title to the lessee, and both parties recognize that is beyond the power of the Santa Rosa Island Authority to convey such a title to county property."
- Lease Paragraph (4) provides that title to all *permanent* improvements erected upon the premises vests in the County subject only to the *terms of years of the lease*; (i.e. 99 years). The paragraph goes on to state that in the event the lessee does not start or complete the improvement in compliance with the landlord's directive *the term of the lease ends in the same manner and*

*with the same effect as if that were the expiration of the original term of this lease.*

- Lease Paragraph (10) makes clear that the lessee can possess the premises “for the term aforesaid” (99-years).
- Lease Paragraph (11) provides that in the event of a breach of the lease the lessor has the right to retake both land and land improvements, “and this lease shall be at an end in the same manner and with the same effect as if the original term of the lease had expired.”
- Lease Paragraph (12): “Upon the expiration or sooner termination of this lease lessee shall be allowed a period of fifteen (15) days in which to remove all of his personal property . . . and lessee shall surrender possession of the land and improvements in as good state and conditions as reasonable use and wear will permit.”

20. Additionally, the SRIA has imposed upon its lessees a protracted, and highly conditional administrative lease renewal protocol that is the antithesis of a lease that seamlessly and automatically renews.

21. Moreover, Plaintiffs’ lease does not renew at all because the lease’s renewal provision provided under Paragraph 16 of their lease is defectively worded by failing to provide a decipherable rent amount upon renewal. Without this critical contract term, the lease’s renewal provision is unenforceable. Due to this renewal term failure the SRIA

and Plaintiffs have opted to negotiate the Paragraph 16 rent price term. See Exhibit 'B' attached hereto. Accordingly, as a matter of binding First District case law the act of negotiating precludes a finding that the lease automatically renews.

22. In addition, Plaintiffs lease renews on "like" terms rather than *identical* terms. This does not assure the automatic renewal of Plaintiffs' lease as contracting parties with opposing interests invariably view proposed like or similar terms from disparate perspectives.

23. Finally, Plaintiffs' lease sets forth a veritable laundry list of nonwaivable conditions that must be satisfied as a condition of renewal which is analyzed and reviewed by the SRIA; a factor that further precludes their lease from automatically renewing.

24. Without an automatically renewing lease, Plaintiffs hold a nonperpetual finite 99-year lease. Under Florida law there is no such notion as temporary equitable ownership.

25. Because a perpetual lease is the talisman for equitable ownership, without a perpetual lease, the Plaintiffs bear all the property burdens during the term of the lease while at the end of the lease all property benefits revert to the government. Thus, there are no valid property benefits and burdens to balance, as is the case with perpetual leases for the purpose of determining equitable ownership.



26. Because Plaintiffs are neither the legal nor equitable owners of their 99-year government leased land, the land's value cannot be ad valorem assessed or taxed.

27. Defendants' prior and ongoing acts of ad valorem assessing and taxing Plaintiffs' land is unlawful and void *ab initio*.

28. Defendants' acts, as above alleged leave Plaintiffs in doubt as to their rights and liabilities and therefore they seek to have their doubts resolved through this lawsuit.

WHEREFORE, Plaintiffs respectfully asks this Honorable Court to enter a final order in Plaintiffs favor by declaring that:

- a. Plaintiffs cannot be ad valorem assessed and taxed for the underlying land portion of their property as their lease does not automatically renew.
- b. Plaintiffs cannot be regarded as the equitable owners of their leased land.
- c. The Property Appraiser's current ad valorem assessment is improper, unlawful, and void.
- d. The Tax Collector's act of levying and collecting ad valorem taxes that includes the underlying land value is likewise improper, unlawful, and void.
- e. All improper taxes and related charges collected from Plaintiffs are lawfully required to be refunded on a forthwith basis with the highest interest allowed by law.

Plaintiffs further pray for an award of taxable costs against all appropriate defendants and for such other and further relief as the Court deems equitable and just under the circumstances.

**COUNT II**  
**INJUNCTIVE RELIEF ACTION SEEKING TO ENJOIN THE**  
**DEFENDANTS FROM THE 2024 ASSESSMENT AND**  
**COLLECTION OF ALL AD VALOREM ATTRIBUTABLE TO**  
**PLAINTIFFS' UNDERLYING LEASED LAND AS WELL AS FUTURE**  
**ASSESSMENTS**

Plaintiffs re-allege Paragraphs 1 through 27 as if fully set forth herein and further allege:

29. This is an action for injunctive relief.

30. The Property Appraiser has unlawfully ad valorem assessed Plaintiffs' leasehold interest based upon the value of Plaintiffs' underlying land.

31. Based on this certification the Tax Collector has issued and will continue to issue tax bills to Plaintiffs based upon this unlawful assessment.

32. Unless the Property Appraiser is restrained and enjoined from ad valorem assessing the underlying land value of Plaintiffs' leasehold and the Tax Collector is restrained and enjoined from collecting said ad valorem taxes Plaintiffs will suffer and continue to suffer irreparable harm for which they have no adequate remedy at law.

WHEREFORE Plaintiffs respectfully ask this Honorable Court to enter judgment enjoining the Property Appraiser from ad valorem assessing the underlying land value of Plaintiffs' leasehold interest and a judgment enjoining the Tax Collector from pursuing the levying and collection of ad valorem property taxes based upon such an assessment. Plaintiffs further pray for an award of taxable costs against all appropriate defendants and for such other and further relief as the Court deems equitable and just under the circumstances.

**COUNT III**  
**DECLARATORY RELIEF ACTION SEEKING A JUDICIAL**  
**DETERMINATION THAT PLAINTIFFS' LEASEHOLD**  
**IMPROVEMENTS ARE EXEMPT FROM AD VALOREM TAXATION**  
**FROM ALL AD VALOREM TAXES ASSESSED AND BILLED IN**  
**2024**

Plaintiffs re-allege Paragraphs 1 through 27 as if fully set forth herein and further allege:

33. This is an action for declaratory relief pursuant to Chapter 86 Florida Statutes and is filed for the specific purpose of declaring a tax assessment invalid pursuant to Section 68.01, Florida Statutes.

34. The useful life of Plaintiffs' property improvements will outlast their current nonperpetual 99-year lease term.

35. Because the lifespan of Plaintiffs' property improvements extends beyond their lease term and their lease term is not

automatically renewable, their current lease does not capture the entire useful life of their property improvements. This anomaly precludes Defendants from assessing and collecting ad valorem taxes upon Plaintiffs' property improvements.

36. Accordingly, Plaintiffs verily believe that any ad valorem tax assessment and tax collection involving their property improvements is unlawful and void *ab initio*. Accordingly, no such taxes should be assessed and collected against their property improvements.

37. Defendants' acts, as above alleged leave Plaintiffs in doubt as to their rights and liabilities and therefore they seek to have their doubts resolved through this lawsuit.

WHEREFORE, Plaintiffs respectfully asks this Honorable Court to enter a final order in Plaintiffs favor by declaring that:

- a. Plaintiffs' property improvements cannot be ad valorem assessed and taxed as the sustainability of their property improvements will extend beyond their nonperpetual and fixed 99-year lease term.
- b. The Property Appraiser's current ad valorem assessment that includes Plaintiffs' property improvements is improper, unlawful, and void.
- c. The Tax Collector's act of assessing, levying, and collecting ad valorem taxes based upon valuation of Plaintiffs' improvements is likewise improper, unlawful, and void.
- d. Defendants are legally obligated to fully refund all unlawfully

collected taxes and related charges and further pay Plaintiffs interest upon all such sums previously collect at the highest interest rate allowed by law.

- e. Such other and further relief as this Honorable Court deems equitable and just under the circumstances.

Plaintiffs further pray for an award of taxable costs against all appropriate defendants and for such other and further relief as the Court deems equitable and just under the circumstances.

**COUNT IV**  
**INJUNCTIVE RELIEF ACTION SEEKING TO ENJOIN THE**  
**DEFENDANTS FROM THE 2024 ASSESSMENT AND**  
**COLLECTION OF ALL AD VALOREM ATTRIBUTABLE TO**  
**PLAINTIFFS' LEASEHOLD IMPROVEMENTS, AS WELL AS**  
**FUTURE ASSESSMENTS**

Plaintiffs re-allege Paragraphs 1 through 27 and Paragraphs 35 and 36 as if fully set forth herein and further allege:

38. This is an action for injunctive relief.

39. The Property Appraiser has unlawfully ad valorem assessed Plaintiffs' leasehold improvements.

40. Based on this certification the Tax Collector has issued and will continue to issue tax bills to Plaintiffs based upon this unlawful assessment.

41. Unless the Property Appraiser is restrained and enjoined from ad valorem assessing the value of Plaintiffs' leasehold improvements and the Tax Collector is restrained and enjoined from collecting said ad valorem taxes Plaintiffs will suffer and continue to

suffer irreparable harm for which they have no adequate remedy at law.

WHEREFORE Plaintiffs respectfully ask this Honorable Court to enter judgment enjoining the Property Appraiser from ad valorem assessing the value of Plaintiffs' leasehold improvements and enjoining the Tax Collector from pursuing the levying and collection of ad valorem property taxes based upon such an assessment. Plaintiffs further pray for an award of taxable costs against all appropriate defendants and for such other and further relief as the Court deems equitable and just under the circumstances.

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