

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

GENERAL JURISDICTION DIVISION

CASE NO.:

RUBEN J. FERNANDEZ,

Plaintiff(s),

vs.

MIAMI-DADE COUNTY PROPERTY
APPRAISER, MIAMI-DADE COUNTY TAX
COLLECTOR and FLORIDA DEPARTMENT
OF REVENUE

Defendant(s).

COMPLAINT

COMES NOW the Plaintiff, RUBEN J. FERNANDEZ ("Fernandez"), sue Defendants MIAMI-DADE COUNTY PROPERTY APPRAISER ("Appraiser"), MIAMI-DADE COUNTY TAX COLLECTOR ("Collector") and FLORIDA DEPARTMENT OF REVENUE ("Department"), and allege:

1. This is an action to contest the denial of homestead exemption for tax years 2012 through 2022 and reassessment of the same.
2. Jurisdiction is predicated upon Chapter 194, Florida Statutes, and Article V, sections 5 and 20 of the Florida Constitution.
3. Plaintiff is a resident of Miami-Dade County, Florida.
4. Appraiser is sued herein in his official capacity and is a necessary party to the action pursuant to section 194.181(2), Florida Statutes.
5. Collector is sued herein in his official capacity and is a necessary party to the action pursuant to section 194.181(3), Florida Statutes.
6. Florida Department of Revenue and is a necessary party to this action pursuant to section

194.181(5), Florida Statutes.

7. All condition precedent to the filing of this action have been satisfied or have been waived.

RELEVANT FACTS

8. The residential real property which is the subject of this action, hereinafter referred to as the "Subject Property," is located at 9620 S.W. 182nd Street, Palmetto Bay, Florida 33157, and identified by Appraiser as Folio No. 3350330080190.

9. On or about July 26, 1994, Fernandez acquired the Subject Property by Quit Claim dated July 26, 1994 and recorded July 28, 1994 in Official Records Book 1647 at Page 3839 of Miami-Dade County, Florida and attached as Exhibit A.

10. On January 10, 2007, Fernandez joined his then spouse, Joanie Fernandez on title to the Subject Property by Quit Claim dated January 10, 2007 and recorded February 27, 2007 in Official Records Book 25400 at Page 4322 of Miami-Dade County, Florida and attached as Exhibit B.

11. Since acquiring the Subject Property on July 26, 1994 through the present, continuously and without interruption, the Subject Property has been Fernandez's primary residence and his homestead property.

12. Section 196.031(1)(a) titled Exemption of homesteads., states, in relevant parts:

A person who, on January 1, has the legal title or beneficial title in equity to real property in this state and who in good faith makes the property his or her permanent residence or the permanent residence of another or others legally or naturally dependent upon him or her, is entitled to an exemption from all taxation, except for assessments for special benefits, up to the assessed valuation of \$25,000 on the residence and contiguous real property, as defined in s.6, Art. VIII of the State Constitution.

FORECLOSURE LAWSUIT

13. On August 16, 2009, Nationstar Mortgage, LLC, initiated a foreclosure action in *Nationstar Mortgage v. Fernandez* Case No.: 2009-060777 CA 01 ("Foreclosure Case").

14. Fernandez prevailed in the Foreclosure Case as the Final Judgment was only as to Joanie Fernandez, then his ex-wife, and did not affect Fernandez' ownership interest in the Subject Property. See Final Judgment of Foreclosure is attached as Exhibit C.

15. The Final Judgment of Foreclosure specifically excluded Fernandez and therefore his ownership interest in the Subject Property was unaffected by the Final Judgment of Foreclosure and was not foreclosed by the sale.

16. On January 19, 2012, the Clerk of Court's held a foreclosure sale of Joanie Fernandez'

interest in the Subject Property but not that of Fernandez.

17. The Mortgagee, Nationstar Mortgage, LLC, was the successful bidder and took title the Subject Property, subject to the interest of Fernandez whose interest in the Subject Property was not foreclosed.

18. On February 3, 2012, the Clerk issued a Certificate of Title in favor of Nationstar Mortgage, LLC., which was subject to the interest of Fernandez which was not foreclosed.

DENIAL OF HOMESTEAD BASE YEAR REINSTATED

19. For the tax years 2013 through 2019 Fernandez sought homestead status of the Subject Property but was denied.

20. At all times material since acquiring the Subject Property in July 26, 1994, the Subject Property has been Fernandez' primary residence entitling Fernandez to homestead exemption for those tax years.

21. On August 22, 2022, Miami-Dade County Senior Staff Attorney, Matthew Albrecht, Esq., provided Fernandez with an explanation of Fernandez' denial of homestead status for years 2013 through 2020 and stated:

"Although Ruben Fernandez may not been included in the judgement of foreclosure (and therefore may not have been personally liable from a monetary standpoint should the foreclosure sale proceeds be less than the amount owed of the mortgage), the CTI recorded at 27993-2783 applied to the property as a whole and resulted in legal title of the entire property to vest in favor of "Nationstar Mortgage, LLC."

22. The decision to deny Fernandez homestead status was in legal error since Fernandez interest in the Subject Property was not affected by the final judgment, the foreclosure sale or the Certificate of Title.

23. For tax year 2013 - 2019, Fernandez was entitled to have the Subject Property classified as his homestead property for ad valorem tax purposes, for Amendment 10 "Save Our Homes" and for Portability., including having his homestead base year of 2012 reinstated.

24. But for Appraiser's denial of Fernandez's homestead exemption for tax year 2013-2019, Fernandez was entitled to reduced tax assessment value on the Subject Property.

25. There is a bona fide, actual, present practical need for a declaration as to Fernandez's right to the reinstatement of his homestead rights in the Subject Property as of base year 2013, and recalculation thereafter, and Fernandez is in doubt as to their rights and obligations with respect to same.

26. The declaration sought deals with an actual and present controversy as to the resulting assessment of the Subject Property for 2013 through the present and future tax years.

27. The homestead exemption rights and privileges of Fernandez is dependent upon the tax assessment to the Subject Property.

28. The Defendants have an actual, present, adverse and antagonistic interest with respect to the homestead right and tax assessment value, and the adverse interests of the parties are all before the Court by proper process.

29. The relief sought is not merely the giving of legal advice by the Court or the answer to questions propounded from curiosity.

30. Fernandez request a speedy hearing in this action in accordance with section 86.111, Florida Statutes.

WHEREFORE, Plaintiff, RUBEN J. FERNANDEZ, demands that this Court take jurisdiction over this cause and the parties hereto; declare that the Plaintiff maintained the Subject Property as his primary residence and entitled to homestead exemption thereon from 2013 to the present; enter an order setting aside the assessments on the Subject Property; establish the proper reassessment to the Subject Property pursuant to section 193.155, Florida Statutes; direct Appraiser to reassess the Subject Property for years 2013 through 2023 based on a reinstated Homestead base year of 2013 at the correct classified use value including Amendment 10; and further; that this Court enter an order directing Collector to cancel the original bills and issue new tax bills in said reassessed amounts; and finally, to award Plaintiff's costs incurred in bringing this action pursuant to section 194.192, Florida Statutes, and award such other general relief as may be just and equitable.

• Dated this 5th day of January 2023.

SORDO & ASSOCIATES, P.A.

3006 Aviation Avenue

Suite 2A

Coconut Grove, Florida 33133

Tel. 305.859.8107

Fax 305.859.8108

e-mail: csordo@sordolaw.com

By: CRS /s/

Cesar R. Sordo, Esq.

Florida Bar No. 947946