

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT  
IN AND FOR SARASOTA COUNTY, FLORIDA

CONSTANCE PERSICO BURCAR,  
as Trustee of the William B. Persico  
Revocable Trust, and as attorney-in-fact  
for William B. Persico pursuant to DPA  
dated October 31, 2011,

Plaintiff,

v.

CASE NO.: 2016 CA 005497 NC

BILL FURST, as Property Appraiser  
of Sarasota County, Florida,  
BARBARA FORD COATES, as Tax  
Collector of Sarasota County, Florida, and  
LEON M. BIEGALSKI, as Executive Director  
of the Florida Department of Revenue,

Defendants.

**COMPLAINT FOR DECLARATORY RELIEF  
AND FOR A REFUND OF TAXES PAID**

Plaintiff, CONSTANCE PERSICO BURCAR, as Trustee of the William B. Persico  
Revocable Trust, and as attorney-in-fact for William B. Persico pursuant to DPA  
dated October 31, 2011, sues Defendants, BILL FURST, as Property Appraiser of Sarasota  
County, Florida ("Appraiser"), BARBARA FORD-COATS, as Tax Collector of Sarasota  
County, Florida ("Collector"), and LEON M. BIEGALSKI, as Executive Director of the Florida  
Department of Revenue, and alleges:

1. This is an action for a declaratory judgment and to challenge the removal of a  
homestead exemption on property in Sarasota County, Florida, and for the refund of back taxes,  
penalties and interest, and pursuant to §197.182 Fla. Stat., Article V, sections 5 and 20 of the  
Florida Constitution, and §86.011, Fla. Stat.

2. Plaintiff, as trustee, is the owner of certain real property located at, Florida and identified as 603 Mourning Dove Drive, Sarasota, Florida, identified by Parcel No. 2018030026 ["Subject Property"]. She is the daughter of the former holder of legal title and the current holder of equitable title, William B. Persico.

3. Appraiser is sued herein in his official capacity and is a necessary party to the action pursuant to §194.181(2), Fla. Stat.

4. Collector is sued herein in her official capacity and is a necessary party to the action pursuant to §194.181(3), Fla. Stat.

5. On or about July 11, 1991, William B. Persico and Sylvia S. Persico purchased the Subject Property.

6. William B. Persico and Sylvia S. Persico filed with Property Appraiser an application for homestead exemption for the tax year 1992, which was granted.

7. From 1992 until her death in 2011, Sylvia S. Persico resided in the subject property in the subject property as her permanent residence.

8. From 1992 until the present, William B. Persico has resided in the subject property as his permanent residence.

9. On or about October 13, 2015, William B. Persico (by Constance E. Persico Burcar as his attorney-in-fact) conveyed the property to Plaintiff, as Trustee. William B. Persico remains the beneficial owner of the property.

10. Since prior to January 1, 1992, and continuously to the present, William B. Persico has been a permanent resident of Sarasota County, Florida, as that term is defined in §§196.012(16) and (17), Fla. Stat.

11. Since prior to January 1, 1992, and continuously to the present, the Subject Property has been and is the place where William B. Persico has his true, fixed, and permanent home and principal establishment to which, whenever absent, he had the present of returning.

12. Property Appraiser, and his predecessors, has recognized the status of William B. Persico as a permanent resident of Sarasota County by granting William B. Persico a homestead exemption on the subject property for the years 1992 to 2015.

13. Each year from 1992 through 2015, William B. Persico made automatic renewal application for homestead exemption on the Subject Property to Property Appraiser.

14. Each year from 1992 through 2015, the Property Appraiser granted the homestead exemption.

15. In granting the homestead exemption for the years 1992 through 2015, the Property Appraiser necessarily determined:

- a. The William B. Persico was a permanent resident of the State of Florida as the term is defined in §§ 196.012(16) and (17) Fla. Stat.
- b. William B. Persico had the legal or equitable title to the real estate; and
- c. That William B. Persico maintained thereon the permanent residence of the Owner, or another legal or naturally dependent upon the Owner.

16. None of the factors governing determination of William B. Persico's permanent residence as set forth in §196.015 Fla. Stat. such as the location where William B. Persico was registered to vote, William B. Persico's holding a Florida driver's license, changed from a date prior to 1995 through the present.

17. William B. Persico has not claimed more than one homestead exemption in the State of Florida for the years 1992 through 2015.

18. No member of a family of which William B. Persico is a part has claimed more than one homestead in the State of Florida for the years 1992 through 2015.

19. William B. Persico has not claimed more than one homestead exemption on a residential unit in the State of Florida for the years 1992 through 2015.

20. On or about July 1, 2011, William B. and Sylvia S. Persico closed on the purchase of property in Shorewood, Illinois. As part of the closing they executed a "PTAX-203 Illinois Real Estate Transfer Declaration", on which an "X" was placed, indicating that the property would be used as the buyer's principal residence.

21. Plaintiff is unaware whether her father, William B. Persico, filled out the form or whether the form was filled out by the closing agent. He has since been diagnosed with dementia and does not have the capacity to state one way or the other.

22. William B. Persico also executed a "PTAX-324 Application for Senior Citizen Homestead Exemption." Plaintiff is unaware who filled out the form for her father to sign.

23. Neither William B. Persico nor Sylvia S. Persico resided at the Illinois property as their principal residence.

24. Subsequent to the 2011 purchase, the Chief County Illinois Assessment Officer granted a general homestead and senior citizen exemption for the Illinois property.

25. On or about August 1, 2016, Property Appraiser sent to Plaintiff a "Notice of Intent to File Tax Lien" stating that an audit was conducted and it was determined that William B. Persico was receiving an exemption based on permanent residence in another state. Property Appraiser advised that the exemption was being removed for 2011 through 2015 and that back taxes, penalties and interest were owed. Property Appraiser demanded the payment of

\$212,812.04 under threat of the recordation of a lien and further interest. A copy of the Notice is attached hereto as Exhibit "A."

26. Prior to January 1, 2003, the effective date of Chapter 2002-18, Laws of Florida (2002) amending §196.161, Fla. Stat., the Property Appraiser was not permitted to retroactively deny a claim for exemption granted in a previous year and seek additional taxes.

27. Upon learning that the Chief County Assessment Officer had granted the exemptions for the Illinois property, Plaintiff contacted the office. In response, The Assessment Officer removed the exemptions on the Illinois property retroactively to 2011 and Plaintiff repaid all back taxes owed as a result of the removal of the exemptions.

28. Despite the retroactive removal of the Illinois exemptions, however, Property Appraiser refused to reinstate the Florida Homestead Exemption.

29. On or about August 31, 2016, Plaintiff paid the Sarasota County Tax Collector the sum of \$212,812.04.

30. All conditions precedent to maintaining this action have occurred, or have otherwise be waived or excused.

**COUNT I**  
**UNCONSTITUTIONALITY OF §§ 196.031(5) AND 196.161(1)(b)**  
**FLA. STAT. AND AS APPLIED TO PLAINTIFF**

31. Plaintiff realleges the allegations of paragraphs 1 through 30 which are reincorporated herein by reference.

32. This is an action for declaratory relief as to the constitutionality and constitutionality as applied to Plaintiff of §196.031(5), Fla. Stat. enacted by Chap. 2001-204, Laws of Florida 2001, effective January 1, 2002, and §196.161(1)(b), Fla. Stat., enacted by Chap. 2002-18, Fla. Stat. effective January 2, 2003.

33. The Property Appraiser relied upon these statutes as the basis for his actions in denying Plaintiff a homestead exemption for the years 2011 through 2015.

34. Plaintiff is in doubt as to her rights, status, or other equitable or legal relations as are effected by the Florida Constitution, Statutes, or any regulation made under any statutory authority, and accordingly seeks to have determined any question of construction or validity arising under such statute, regulation, and obtain a declaration of rights, status, or other equitable or legal relations thereunder. There is a *bona fide*, actual, present and practical need for the declaration; the declaration deals with the present, ascertained, or ascertainable state of facts or present controversy as to the state of facts; some immunity, power, privilege or right of Plaintiff is dependent upon the facts or law applicable to the facts; there is some person or persons who have, or reasonably may have, an actual present, adverse and antagonistic interest in the subject matter, either in fact or law; the antagonistic and adverse interest are all before the Court by proper process and the relief sought is not merely the giving of legal advice by the courts or to answer the questions from curiosity.

35. The relief Plaintiff seeks is a declaration that §§196.031(5), and 196.161(1) (b) Fla. Stat., do not apply to Plaintiff, and that should the Court find they do, they conflict with the Florida Constitution; that Plaintiff is entitled to Homestead Exemption and the protection of the "Save our Homes" provision of the Florida Constitution for the years 2011 to 2015, and a declaration that §§196.031(5) and 196.161(1) (b), Fla. Stat. are violative of the Florida Constitution.

36. The notice from Property Appraiser stated that a lien would be filed for additional taxes, penalties and interest relative to 2011-2015 Homestead because: "You, or your spouse, were receiving or claiming the benefit of an exemption or credit based upon permanent residence

in another state or County in Florida at the time you first applied for your homestead exemption in Florida, or subsequent to the time you first applied for your homestead exemption in Sarasota County, Florida.”

37. The Property Appraiser's actions were based on § 196.031(5), Fla. Stat. as amended effective January 1, 2002 and § 196.161 (1) (b), as amended effective January 1, 2003, and misapplication of Art. VII, § 6(b), Const. Fla. 1968.

38. Section 196.031(5), Fla. Stat., provides in material part:

A person who is receiving or claiming the benefit of an ad valorem tax exemption or a tax credit in another state where permanent residency is required as a basis for the granting of that ad valorem tax exemption or tax credit is not entitled to the homestead exemption provided by this section.

39. Section 196.161(1) (b), Fla. Stat., provides:

In addition, upon determination by the property appraiser that for any year or years within the prior 10 years a person who was not entitled to a homestead exemption was granted a homestead exemption from ad valorem taxes, it shall be the duty of the property appraiser making such determination to serve upon the owner a notice of intent to record in the public records of the county a notice of tax lien against any property owned by that person in the county, and such property shall be identified in the notice of tax lien. Such property which is situated in this state shall be subject to the taxes exempted thereby, plus a penalty of 50 percent of the unpaid taxes for each year and 15 percent interest per annum. However, if a homestead exemption is improperly granted as a result of a clerical mistake or an omission by the property appraiser, the person improperly receiving the exemption shall not be assessed penalty and interest. Before any such lien may be filed, the owner so notified must be given 30 days to pay the taxes, penalties, and interest.

40. Article VII, Section 6 of the Const. Fla. provides in part:

(a) Every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner, shall be exempt from taxation thereon, except assessments for special

benefits, up to the assessed valuation of five thousand dollars, upon establishment of right thereto in the manner prescribed by law....

(b) Not more than one exemption shall be allowed any individual or family unit or with respect to any residential unit. No exemption shall exceed the value of the real estate assessable to the owner or, in case of ownership through stock or membership in a corporation, the value of the proportion which the interest in the corporation bears to the assessed value of the property.

41. The words, "upon establishment of right thereto in the manner prescribed by law" in Art. VII, subsection (6)(a) refer only to the procedural requirements of filing for Homestead Exemption.<sup>1</sup>

42. The Legislature may not engraft substantive requirements for entitlement to Homestead Exemption not provided for in Art. VII, § (6)(a), Const. Fla.1968.<sup>2</sup>

43. Section 196.031(5), Fla. Stat., engrafts substantive requirements onto entitlement to Homestead Exemption not provided for in Art. VII, Subsection (6)(a), Const. Fla.1968.

44. The word "exempt" used in Art. VII, Subsection (6) (a) refers only to a Florida Homestead Exemption.

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<sup>1</sup> *Zingale v. Powell*, 885 So. 2d 277 (Fla. 2004), *Horne v. Marham*, 288 So. 2d 196 (Fla. 1973) (The "manner prescribed by law" means filing a timely application.)

<sup>2</sup> *Sparkman v. State ex rel. Scott*, 58 So.2d 431 (Fla. 1952) (Declared unconstitutional and struck a statute which required an applicant for Homestead Exemption to have been a Florida resident for at least one year prior to making application.); *Osterndorf v. Turner*, 426 So.2d 539 (Fla. 1982) (Declared unconstitutional and struck a statute which limited the additional \$25,000 Homestead Exemption to homeowners who have been permanent residents of Florida for five continuous years prior to claiming the exemption. The additional exemption is available to all Florida residents. The Court noted that *Sparkman, supra*, found unconstitutional "an unlawful attempt by the Legislature to alter, contract, or enlarge Section 7, Article X, by legislative enactment, contrary to the express pronouncements of this court that 'Express or implied provisions of the Constitution cannot be altered, contracted or enlarged by legislative enactments.'" *Id.* at 432.)



45. The word "exemption" used in Art. VII, subsection (6) (b) refers only to a Florida Homestead Exemption.

46. The one-exemption-per-family-unit provision of Art. VII, subsection (6)(b) refers only to two Florida Homestead Exemptions.

47. Property Appraiser's position is that the word "exemption" in subsection (b) means any exemption anywhere in the world held by a member of a family unit owning Florida real estate and claiming a Florida Homestead Exemption.

48. Under Property Appraiser's interpretation of the Constitution, even though it cannot levy a property tax on Florida property, the State of Illinois could grant a property tax "exemption" to a Florida residential unit, since the word "exemption" in Article VII, section 6(b) means a tax exemption granted by any jurisdiction anywhere.

49. The Florida Constitution does not preclude a Florida permanent resident from receiving a Florida Homestead Exemption because he claims tax benefits available to residents of another state.

50. Upon information and belief, prior to January 1, 2002, Property Appraiser granted Homestead Exemption even to persons who claimed a residency-based exemption in another state, so long as those persons demonstrated that they were in fact permanent residents of Florida.

51. This position is well supported by the case law; see *Wells v. Vallier*, 773 So.2d 1197 (Fla. 2d DCA 2000)<sup>3</sup> That is, if a Florida resident were improperly claiming an out-of-state exemption, this was the other state's problem – not Florida's.<sup>4</sup>

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<sup>3</sup> "While the fact that a property owner receives a residency-based property tax credit in another state may be a factor considered in determining whether Florida is their permanent residence, that fact alone is not conclusive on the issue. In this case, appellant argues no other basis for

52. The application of §§ 196.031(5) and 196.161(1) (b), Fla. Stat., as interpreted by Property Appraiser, deprives Plaintiff of important rights guaranteed by the Florida Constitution.

53. Section 196.031(5), Fla. Stat. creates an unconstitutional irrebuttable presumption that a person who applies for or receives the benefit of a residency based exemption in another State is not a permanent resident of the State of Florida.

WHEREFORE, Plaintiff prays that this Honorable Court declare the rights of the parties, declare that Property Appraiser's actions in relying on §§196.031(5) and 196.161(1) (b) to justify his actions in retroactively denying Plaintiff's Homestead Exemption, that said subsections are unconstitutional and unconstitutional facially or as applied to Plaintiff, reinstate the Homestead exemption on the Subject Property retroactively to 2011 and reinstate the limitation on assessments under Save Our Homes, for a refund of the monies paid, and for such other and further relief as shall be meet and just in the premises.

#### COUNT II 2015 HOMESTEAD EXEMPTION

54. Plaintiff re-alleges and incorporates by reference paragraphs 1-11 of this Complaint as though fully set forth herein.

55. Plaintiff has paid the 2015 taxes on the Subject Property in full, pursuant to §194.171(3)(4), Fla. Stat. A copy of the receipt is attached hereto as Plaintiff's Exhibit "B."

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not considering appellees permanent residents of Pasco County, Florida. Appellant maintains this argument in spite of the overwhelming evidence showing that appellees were permanent residents of Pasco County, Florida, and had been for sixteen years. It is clear from this record that appellees are permanent residents of Pasco County, Florida, and have complied with the requirements for receiving a homestead tax exemption in this state." *Id.*

<sup>4</sup> The Court in *Endsley v. Broward County*, 189 S. 3d 938 (Fla. 4<sup>th</sup> DCA) recognized that the *Wells* case was superseded by §196.031(5).

56. Plaintiff has performed all conditions precedent which are required to be performed by Plaintiff in establishing her right to bring this action.

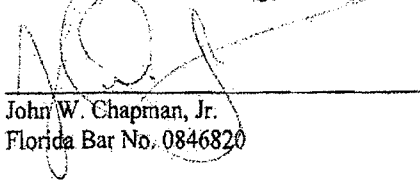
57. The notice of denial of the 2015 homestead exemption for the Subject Property was not sent until August 1, 2016, well after July 1, 2015, and did not meet the specificity requirements of § 196.193(5), Fla. Stat. Thus, the notice was invalid and ineffective to remove the 2010 homestead exemption.

58. Moreover, William B. Persico was entitled to the homestead exemption on the Subject Property in 2015, pursuant to article VII, § 6 of the Florida Constitution and § 196.031, Fla. Stat., and thus the Property Appraiser's denial of the homestead exemption was unlawful.

WHEREFORE, Plaintiff demands that this Court enter an order reinstating the 2015 homestead exemption on the Subject Property for 2015, ordering the Collector to cancel the original tax bill, issue new tax bills that reflect the 2015 homestead exemption, and to refund any overpayments; awarding Plaintiff her costs incurred in bringing this action pursuant to § 194.192, Fla. Stat.; and awarding such other general relief as may be just and equitable.

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