

IN THE PALM BEACH *CIRCUIT* COURT
IN AND FOR PALM BEACH COUNTY, FLORIDA

WING HO
KAREN YEH HO
Plaintiff,

v.

PROPERTY APPRAISER
FOR PALM BEACH COUNTY, FLORIDA,
TAX COLLECTOR
FOR PALM BEACH COUNTY, FLORIDA,
DEPARTMENT OF REVENUE
FOR THE STATE OF FLORIDA,
Defendants.

CASE NO. 502016CA010488XXXXMB
CIVIL DIVISION "AF"

SECOND AMENDED COMPLAINT

1. This is a civil action filed by the Plaintiffs, Wing Ho and Karen Yeh Ho against Defendant, Property Appraiser for Palm Beach County, Florida, Tax Collector for Palm Beach County, Florida, and Department of Revenue, ~~for~~ the State of Florida, for violation of Plaintiffs' homestead right and unfair assessment of property tax.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action because it is brought under Florida Statutes §193.155, §193.1554, §196.011.
3. This Court has subject matter jurisdiction over this action because it is brought under Florida Administrative Code 12D-9.025FAC.
4. This action for damages is about and between \$10,000 to \$15,000 exclusive of costs, and attorney's fee.

5. Venue is proper as the Plaintiffs reside in Palm Beach County.
6. Venue is proper as the property tax dispute is on the property located in Palm Beach County and the Defendant is the Property Appraiser of Palm Beach County.

STATEMENT OF FACTS

7. The Plaintiffs own and homestead the property 9174 Chianti Court, Boynton Beach, FL 33472 since 1993. The purchase price was \$192,700.
8. The Plaintiff have not sold the house or changed title on the house.
9. The Plaintiffs' property tax is substantially higher than the houses of the same model in the community according to the data from the Palm Beach Property Appraiser and Palm Beach Tax Collector website.
10. Plaintiffs copied the blueprint from a house in the neighborhood located at 5793 Descartes Circle, Boynton Beach, FL 33472 to build their house.
11. The 5793 Descartes Circle property enjoys lower tax year after year than the Plaintiffs' property despite the almost identical structure.
12. The property tax of Plaintiffs' property is about \$2,400 higher than that of the 5793 Descartes Circle property in 2015.
13. The property tax of Plaintiffs' property is about \$3,000 higher than that of the 9191 Chianti Court property in 2015. The 9191 Chianti Court house was purchased in 2006 for \$485,000 and is the same model and in the same development as the Plaintiffs' property.
14. The property tax of Plaintiffs' property is about \$2,000 higher than that of the 9224 Picot Court property in 2015. The 9224 Picot Court house was purchased in 2007 for

\$440,000 and is the same model and in the same development as the Plaintiffs' property.

15. The Plaintiffs filed a petition to correct the unfair property tax assessment on or about September 12, 2015 to Palm Beach Property Appraiser. Petition number 2015-04877 was issued.
16. The Plaintiffs submitted their support evidence on October 19, 2015 for the November 4, 2015 hearing.
17. Petition hearing was held on November 4, 2015 and was rescheduled to December 2, 2015 due to the late arrival of evidence on or about October 29, 2015 to Defendants from the Palm Beach Property Appraiser.
18. On November 4 hearing, the Counsel to the Value Adjustment Board indicated that the Plaintiffs could provide rebuttal information that is not part of the original submission to rebut the Property Appraiser's evidence subsequent to the Plaintiffs' original submission.
19. On December 2, 2015 hearing, the Magistrate refused to admit Plaintiffs' rebuttal evidence on recent sales price of properties in the neighborhood similar to those used in Palm Beach Property Appraiser's evidence.
20. The Magistrate based his refusal solely on Property Appraiser's refusal to consider the evidence, violating 12D-9.025(1) & (2)(c)FAC.
21. The Petition resulted in no reduction of the Just Value and no lowering of the property tax for the property.
22. The Plaintiff is harmed by the higher and unfair property tax assessment through the years of ownership of the property up to now in the tens of thousand of dollars than

the homesteaded properties with houses of the same model in the same community.

Comparison tax assessment with addition properties was summarized in exhibit C.

23. The Palm Beach Property Appraiser website indicates the homestead of the Plaintiff was taken away for tax year 2014, causing the substantially higher property tax.

24. The receipt for a good faith payment of the property tax according to 194.171(3) is shown in exhibit A. The remaining of the assessment under protest was paid from escrow by the Plaintiffs' bank at the time (exhibit B).

COUNT I – UNLAWFUL TAKING AWAY OF HOMESTEAD RIGHT

25. Plaintiffs reallege and restate the foregoing jurisdictional and factual allegations in paragraphs 1 through 24.

26. The homestead exemption was unlawfully taken away from the Plaintiff violating Florida Statutes §196.011(9)(a) and §196.011(10).

WHEREFORE, the Plaintiffs demand judgment to restore homestead in year 2014 and other years that was taken and to recalculate correct assessed value, taxable value, and property tax for each year including the year in which the mistake occurred in pursuant to Florida Statutes §193.155(1) and §193.155(9)(a); for money damages in the form of overpayment of property tax as a result; together with such other and further relief as the Court may deem reasonable and just under the circumstances.

COUNT II – UNLAWFUL DERIVATION OF ASSESSED VALUE WITHOUT

APPLICATION OF PROPER CAPS

27. Plaintiffs reallege and restate the foregoing jurisdictional and factual allegations in paragraphs 1 through 24.

28. The increase in assessed values of the property of year 2010, 2013, 2014, and 2015 compared to the prior year is above the percentage change in the Consumer Price Index for All Urban Consumers, U.S. City Average.
29. The increase in assessed values of the property of year 2013, 2014, and 2015 compared to the prior year are above 10 percent.
30. The assessed value of the property was not capped violating Florida Statutes §193.155(1) resulting in substantially higher property tax.
31. Although this is a homestead property, even the assessed value of a non-homestead property should be capped at 10% per Florida Statute §193.155(4)(3).

WHEREFORE, the Plaintiffs demand judgment to recalculate correct assessed value, taxable value, and property tax for each year including the year in which the mistake occurred in pursuant to Florida Statutes §193.155(1), and §193.155(9)(a); for money damages in the form of overpayment of property tax as a result; together with such other and further relief as the Court may deem reasonable and just under the circumstances.

COUNT III – IMPROPER PROPERTY JUST VALUE APPRAISAL

32. Plaintiffs reallege and restate the foregoing jurisdictional and factual allegations in paragraphs 1 through 24.
33. Defendant failed to admit proper evidence that determines Just Value of the property in pursuant to 12D-9.025(1) & (2)(c)FAC resulting in substantially higher property tax.
34. Defendant failed to consider proper evidence that determines Just Value of the property in pursuant to 12D-9.025(1) & (2)(c)FAC resulting in substantially higher property tax.

35. Defendant failed to consider properties that are closely resemble Plaintiffs' property to arrive at the Just Value of the property resulting in substantially higher property tax.

36. Plaintiffs have Chinese last name. Whereas all other properties mentioned as comparison do not have owners with Chinese last names. The Plaintiffs are discriminated against for a fair assessment of Just Value of their homestead property because of their race and national origin.

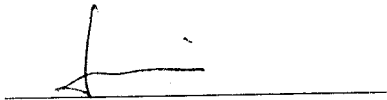
WHEREFORE, the Plaintiffs demand judgment to reappraise just value of the property based on the just values of properties resemble that of Plaintiffs' and recalculate correct assessed value, taxable value, and property tax for each year including the year in which the mistake occurred in pursuant to Florida Statutes §193.155(1), and §193.155(9)(a); for money damages in the form of overpayment of property tax as a result; together with such other and further relief as the Court may deem reasonable and just under the circumstances.

JURY TRIAL DEMAND

Plaintiff demands a trial by jury of all issues so triable as of right. See *Omega v. Deutsche Bank Trust Co.*, 920 F. Supp. 2d 1298 (S.D. Fla. 2013). This action was originally brought against Palm Beach Property Appraiser only (see original complaint filed on 12/14/2015; D.E.6). Palm Beach Tax Collector was then brought in as defendant with the Palm Beach Property Appraiser's insistence (see Motion to Dismiss filed on 12/23/2015; D.E.10). Palm Beach Tax Collector was added as defendant (see First Amended Complaint filed on 5/25/2016; D.E.16). Florida Department of Revenue is now brought in as defendant with the Palm Beach Property

Appraiser's insistence (see Motion to Dismiss filed on 6/9/2016; D.E.18 and court order on 2/16/2017; D.E.40). Florida Department of Revenue is now added as defendant in this amendment. While Palm Beach Property Appraiser is controlling tax assessment, the Palm Beach Tax Collector and Florida Department of Revenue is controlling collection and refund. Florida Supreme Court's opinion is controlling in this matter on the right for jury trial. In *Department of Revenue v. Printing House*, 644 So. 2d 499 (Fla. 1994), Florida Supreme Court states, "After the tax was collected, the taxpayer had a common law action, against the collector, challenging liability for the tax. *Id* at 1317. Such actions involved jury trials. *Id* at 1319-20. ***It is equally clear that a taxpayer who pays the assessment under protest and seeks a refund is entitled to have a jury decide the issue." Plaintiffs of this action paid the assessment under protest (§24) and is clearly seeking a refund (in the WHEREFORE clauses for the 3 counts in the complaint). Since the tax collector and the department of revenue are named the parties, Plaintiffs have the right and demand for a jury trial.

Signed this 20th day of March, 2017.



Wing Ho Pro Se

9174 Chianti Court,

Boynton, Beach, FL 33472



Karen C. Yeh Ho Pro Se