

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

ESTER KHANIMOVA

Plaintiffs,

v.

Case No.

**PEDRO GARCIA in his capacity as
MIAMI-DADE COUNTY PROPERTY APPRAISER,
MARCUS SAIZ DE LA MORA, in her capacity as MIAMI-DADE
COUNTY TAX COLLECTOR,
LEON M. BIEGALSKI, in his capacity as Executive Director
of the FLORIDA DEPARTMENT OF REVENUE,**

Defendants.

COMPLAINT

Plaintiff, ESTER KHANIMOVA, ("Ms. Khanimova" or "Plaintiff"), pursuant to Chapter 86, 194, 196, and 215, Florida Statutes ("F.S."), sue Defendants, Pedro Garcia, in his capacity as Miami-Dade County Property Appraiser, ("Property Appraiser"), Marcus Saiz de la Mora, in his capacity as the Miami-Dade County Tax Collector ("Tax Collector"), and Leon M. Biegalski, in his capacity as Executive Director of the Florida Department of Revenue ("Department of Revenue"), and allege the following:

PARTIES

1. Plaintiff owns certain real property located at 19000 North Bay Road, Sunny Isles, FL 33160 ("Subject Property"), Folio 31-2202-008-0740, which served as her primary residence during the entire period at issue. For purposes of this proceeding, Plaintiff's mailing address is that of the undersigned counsel.

2. The Property Appraiser is an agency of Miami-Dade County, Florida, charged with the responsibility of assessing the property located in Miami-Dade County and administering the County ad valorem tax laws. The Defendant's address for purpose of this proceeding is 111 NW 1st Street, Suite 710, Miami, FL 33128-1903.

3. The Tax Collector is sued herein in his official capacity and is a necessary party to the action pursuant to section 194.181, F.S.

4. The Executive Director of the Department of Revenue is sued herein in his official capacity and is a necessary party to the action pursuant to section 194.181, F.S.

VENUE AND JURISDICTION

5. This Court has jurisdiction of this action pursuant to Sections 68.01, 194.171, and 86.011, F.S., and Article V, Section 20(c)(3), Florida Constitution.

6. Venue is proper in Miami-Dade County, Florida, pursuant to section 194.171, F.S.

7. Plaintiff is uncertain of her rights and duties under chapter 193, 194, and 196 F.S., and seek judicial determination thereof. Without such a declaration, Plaintiffs will be deprived of their homestead exemption which they are due.

FACTS

8. Plaintiff is the legal owner of the Subject Property and entitled to homestead protection under Florida law.

9. In 2002, the Plaintiff purchased the Subject Property. At the time of purchase, title to the Subject Property was put in both Plaintiff's name, and the name of Mr. Victor Rosenberg. Further, title has remained in Plaintiff's names since the date of purchase.

10. On or around December 16, 2003, Mr. Rosenberg, unfamiliar with Florida homestead law, applied for homestead on behalf of Ms. Khanimova at the Office of the Miami-Dade Property Appraiser.

11. Every year thereafter, the Property Appraiser sent renewal of this homestead exemption addressed to both Mr. Rosenberg and Ms. Khanimova.

12. Plaintiff has lived at the Subject Property and it has served as her primary residence since the homestead application was filed in 2003.

13. Specifically, Ms. Khanimova's driver's license, automobile registration, voter registration, and federal income tax returns all listed the Subject Property as her address.

14. In or around May 1, 2017, the Property Appraiser sent Plaintiff a Notice of Tax Lien for Homestead Exemption ("Tax Lien") relating to the Subject Property. The Tax Lien alleged that Mr. Rosenberg and Ms. Khanimova were improperly benefiting from the Florida homestead exemption. The Tax Lien further notified Plaintiffs that the homestead exemption on the Subject Property would be retroactively removed for the 2007 through 2016 tax years, resulting in a significant, assessment that included penalties and interest. A copy of the Tax Lien is attached hereto as Exhibit A.

15. Plaintiff has not paid the Tax Lien and is challenging the amount of tax, as well as the total amount of penalties and interest associated with the Tax Lien.

16. Plaintiff has satisfied all other conditions precedent prior to filing of this Complaint.

COUNT I
Declaratory Relief

17. Plaintiff realleges and incorporates by reference the allegation of paragraphs 1 through 16 as if fully set forth herein, and further alleges as follows:

18. Section 196.031, F.S., codified the Florida homestead exemption under article VII, section 6 of the Florida Constitution and provides that a homestead property tax exemption exists for “[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.”

19. Section 196.031(5) F.S. further identifies that “[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.

20. Section 196.012(17) identifies that “Permanent residence” means a “place where a person has his or her true, fixed, and permanent home and principal establishment to which, whenever absent, he or she has the intention of returning.”

21. The factual determination of whether a residence is a “permanent residence” is a finding of fact for the property appraiser based on the factors identified in Section 196.015(1)-(9), F.S.

22. As set forth above, the Subject Property was Plaintiff’s primary residence, and her home, since the residence became her homestead in 2003 and continuing through the present.

23. In support of this, from 2004 and continuing through present, Ms. Khanimova’s driver’s license, voter registration card, federal tax returns and bank statements all list the Subject Property as her address. The foregoing evidences Plaintiff’s intent to make the Subject Property her permanent residence, entitling her to right to Florida homestead protection for the years at issue, and on a prospective basis.

24. Plaintiff was therefore entitled to the homestead exemption on the Subject Property, pursuant to article VII, section 6 of the Florida Constitution and section 196.031, F.S. As a result,

the Property Appraiser's removal of the homestead exemption for those years and imposition of Tax Lien was unlawful.

COUNT II
Removal of Lien

25. Plaintiff realleges and incorporates by reference the allegation of paragraphs 1 through 16 as if fully set forth herein, and further alleges as follows:

26. Article VII, section 1, Florida Constitution, states that "[n]o tax shall be levied except in pursuance of law."

27. Further, Section 196.031, F.S., codified the Florida homestead exemption under article VII, section 6 of the Florida Constitution and provides that a homestead property tax exemption exists for "[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."

28. In the instant case, Plaintiff was not receiving the benefit of a residency based ad valorem tax exemption elsewhere, and the house was her permanent residence. Further, during the years at issue, Plaintiff had all the common indicia of being a permanent resident of Florida, entitled to homestead.

29. Plaintiff requests the Tax Lien be removed for all years, as the homestead was removed due to error of the Property Appraiser.

COUNT III
Removal of Penalties and Interest

30. Plaintiffs realleges and incorporates by reference the allegations of paragraphs 1 through 16 as if fully set forth herein, and further alleges as follows:

31. Section 192.0105 F.S. is the Taxpayer's Rights provisions as applicable to ad valorem tax, and provides that taxpayers are to be afforded the right to waiver of penalties, and reduction of interest, when taxpayer can show good cause.

32. Plaintiff maintained the Subject Property as her primary residence and homestead for all relevant tax years. Therefore, the Tax Lien and retroactive assessment relating to those years is improper and does not warrant penalties and interest.

WHEREFORE, Plaintiff respectfully requests this Court grant the following relief:

A. Enter a judicial determination that Plaintiff was a resident of Miami-Dade County entitled to homestead on the Subject Property for tax years 2007 through 2017;

B. Enter a judicial determination reinstating Plaintiff's homestead on the Subject Property for the tax years 2007 through 2017;

C. Enter a judicial determination that the tax, penalties, and interest associated with tax years 2007 through 2016 were in error;

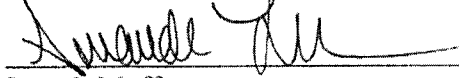
D. Enter a judicial determination that the lien resulting from the disallowed homestead was invalid for tax years 2007 through 2016, with penalties and interest being removed for all years at issue;

E. Award Plaintiff their costs in bringing this action pursuant to section 194.192, F.S.;

F. Provide such other relief as the Court deems appropriate.

Respectfully submitted.

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A handwritten signature in black ink, appearing to read "Amanda Levine", written over a horizontal line.

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