

LAW OFFICES OF CHARLES F. ATWOOD III

13380 S.W. 131st STREET, SUITE 119
MIAMI, FLORIDA 33186-5857
MAILING ADDRESS: P.O. BOX 166108, MIAMI, FL 33116-6108
E-MAIL: UMLAW72@AOL.COM

CHARLES F. ATWOOD III

TELEPHONE
(305)373-8995

TELEFAX
(305)371-3055

DAISY MARTINEZ,

Plaintiff,

vs.

PROPERTY APPRAISER FOR MIAMI-DADE
COUNTY, FLORIDA; TAX COLLECTOR FOR
MIAMI-DADE COUNTY, FLORIDA; AND
EXECUTIVE DIRECTOR OF THE DEPARTMENT
OF REVENUE, STATE OF FLORIDA,

Defendants.

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT OF FLORIDA,
IN AND FOR MIAMI-DADE COUNTY

CASE NO: 13-09027 CA-01 (06)

CIRCUIT CIVIL DIVISION

FOURTH AMENDED COMPLAINT FOR RETURN
OF PROPERTY TAXES PAID

Plaintiff, DAISY MARTINEZ, by and through her undersigned Counsel,
files this her Fourth Amended Complaint in the above matter for Return of
Property Taxes Paid therein and, as grounds therefor, would respectfully show
unto this Court, as follows:

1. Due to circumstances, as described below, this action has been
reduced to one requesting return of property taxes paid erroneously by Plain-
tiff's mortgage holder, in the amount of \$57,031,41, to Miami-Dade County,
Florida.

2. At all times material hereto, Plaintiff, DAISY MARTINEZ, was and
is a resident of Miami-Dade County, Florida and is otherwise sui juris.

3. The Executive Director of the State of Florida, Department of
Revenue, is an indispensable party Defendant, pursuant to Section 194.181(5)
Florida Statutes.

4. The property in question has a street address of "19601 East St.
Andrews Drive, Miami, Miami-Dade County, Florida 33015" and is legally described
as:

LOT 3, Block 1, of COUNTRY CLUB OF MIAMI ESTATES
SECTION ONE, according to the Plat thereof, as
recorded in Plat Book 75, at Page 6, of the
Public Records of Miami-Dade County, Florida

with a Tax Folio Number of "30-2002-001-0030".

5. Plaintiff's former husband, JORGE MARTINEZ, purchased the subject
property in his own name and without joinder of the Plaintiff, from a fore-
closibg bank, on April 18, 2000. A copy of the Warranty Deed is attached
hereto, as Plaintiff's Exhibit "A".

6. Plaintiff's former husband, JORGE MARTINEZ, continued to retain

LAW OFFICES OF CHARLES F. ATWOOD III

13380 S.W. 131st STREET, SUITE 119

MIAMI, FLORIDA 33186-5857

MAILING ADDRESS: P.O. BOX 166108, MIAMI, FL 33116-6108

E-MAIL: UMLAW72@AOL.COM

CHARLES F. ATWOOD III

TELEFAX

(305)371-3055

TELEPHONE

(305)373-8995

title to the property until a mediated Settlement Agreement, in anticipation of a divorce, was executed January 22, 2009, which made the Plaintiff the beneficial owner of the property. The actual Deed transferring the property from the former husband to the Plaintiff was executed December 10, 2011 and referenced the mediated Settlement Agreement. A copy of the Deed is attached, as Plaintiff's Exhibit "B". Shortly after the purchase of the property by JORGE MARTINEZ, both parties took up residence at said property, where, post-divorce, the Plaintiff, DAISY MARTINEZ, has resided to the exclusion of all other residents, with short exceptions for vacations and the divorce between the parties; however, at all times, Plaintiff intended the property to be her sole, permanent residence.

7. Former husband, JORGE MARTINEZ, continued to reside on the property until the time he vacated same in late 207 or early 2008, as a result of the divorce action, filed by JORGE MARTINEZ. Plaintiff has continued to reside on the property up to and including the date of this Fourth Amended Complaint.

8. On or about November 1, 2012, the Miami-Dade Office of the Property Appraiser advised the Plaintiff of its intent to lien the property and, in response thereto, undersigned Counsel forwarded a letter to the Division, requesting clarification, to which there was never a response or explanation and to which Miami-Dade County, Florida, on December 14, 2012, filed a lien on Plaintiff's property. A copy of said documentation is attached hereto, as Plaintiff's Composite Exhibit "C".

9. The Office of the Property Appraiser has refused to divulge the specific information and investigation that led them to conclude that Plaintiff was not the legal resident of the property for the dates in question and was not the owner of the property prior to the settlement with her former husband. The only indication given on the "Notice of Lien" by the Office of the Property Appraiser was that the property was "rented", without specification as to dates or duration. Subsequent Discovery determined that the person to whom the property was supposedly "rented" was "DELIA MOREJON", the mother of the Plaintiff, to whom said property had never been rented and who never lived at said property until after the dates listed on the "Notice of Lien". (Plaintiff's Exhibit "D")

10. Plaintiff, individually and with her then husband, JORGE

LAW OFFICES OF CHARLES F. ATWOOD III

13380 S.W. 131st STREET, SUITE 119

MIAMI, FLORIDA 33186-5857

MAILING ADDRESS: P.O. BOX 166108, MIAMI, FL 33116-6108

E-MAIL: UMLAW72@AOL.COM

CHARLES F. ATWOOD III

TELEPHONE
(305)373-8995

TELEFAX
(305)371-3055

MARTINEZ, have lived on the property continuously from its date of acquisition until present.

11. The Tax Collector of Miami-Dade County, Florida is made a party to this action pursuant to the requirements of Chapter 184.181(3), Florida Statutes.

12. On or immediately before August 1, 2014, Plaintiff's mortgage holder and/or its servicing agent, OCWEN FINANCIAL, paid to the Defendant/ Miami-Dade Tax Collector, the sum of \$57,931.41 in satisfaction of the lien, for which monies Plaintiff is being billed. Copies of the tax history of the file and tax receipts, showing payment of the lien amount, are attached as Plaintiff's Composite Exhibit "E".

13. Defendant/Miami-Dade Tax Appraiser has refused to divulge any of the information, which, purportedly, led said Property Appraiser to conclude that the Plaintiff was not in residence at said property for the years indicated on the Tax Lien. Most importantly, the Defendant, Miami-Dade Tax Appraiser has failed and/or refused to produce a copy of the "lease" in effect during the tax years 2002-2009 or to identify the person or persons to whom the property was "leased"; by whom the "leasing" occurred; percentage of the house purportedly "leased"; and the amount of the "rental" payment.

14. Plaintiff is contesting the entire amount of the Tax Lien; therefore, there remain no taxes due, other than the current year's ad valorem property taxes.

15. Plaintiff has no specific recollection as to whether or not it was her or her then husband, or both, who executed an application for a homestead exemption on the property in 1001, or earlier; however, since Plaintiff was either the legal or beneficial owner of the property, any application signed by her was one strictly as agent or representative of JORGE MARTINEZ, her former husband, who legally owned the property at that time.

16. Plaintiff's mortgage company and/or loan servicing agent paid the aforementioned Property Tax Lien under the mistaken theory that it was valid and enforceable; however, by requiring the payment of same be made by Plaintiff herein, Plaintiff now has standing to contest the payment of the aforementioned Lien.

WHEREFORE, Plaintiff, DAISY MARTINEZ, sues and demands judgment against the Defendants in the amount of \$57,931.41, together with interest at

the rate charged by the Defendants herein August 1, 2014, the taxable costs of this action and for such other and further relief as this Court may deem appropriate and proper.

I HEREBY CERTIFY that a true copy of the above was mailed this 19 day of April, 2017 to: MICHAEL J. MASTRUCCI, Esquire, Assistant County Attorney/R.A. CUEVAS, JR., County Attorney, Stephen P. Clark Center, 111 N.W. 1st Street, Suite 2810, Miami, Florida 33128-1993 and E-mailed to: mastrucc@miamidade.gov

LAW OFFICES OF CHARLES F. ATWOOD III
Attorneys for Plaintiff
P.O. Box 166-108
Miami, Florida 33116-6108
Telephone: (305)-373-8995
Telefax: (305)-371-3055
Electronic Mail Address: umlaw72@aol.com

BY: 

CHARLES F. ATWOOD III

Fla. Bar #0145693

LAW OFFICES OF CHARLES F. ATWOOD III

13380 S.W. 131st STREET, SUITE 119

MIAMI, FLORIDA 33186-5857

MAILING ADDRESS: P.O. BOX 166108, MIAMI, FL 33116-6108

E-MAIL: UMLAW72@AOL.COM

CHARLES F. ATWOOD III

TELEFAX

(305) 371-3055

TELEPHONE
(305) 373-8995