

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

11

WILLIAM LOBECK,

Plaintiff,

Case No.: **0605863**

vs

LORI PARRISH, as Broward County Property Appraiser,
JUDITH M. FINK, as Broward County Tax Collector,
and JAMES ZINGALE, as the Executive Director
of the Florida Department of Revenue,

Defendants.

A TRUE COPY
HOWARD C. FORMAN
CLERK OF CIRCUIT COURT

APR 26 2006

COMPLAINT

Plaintiff, William Lobeck ("Lobeck"), sues Defendants Lori Parrish as Broward County Property Appraiser ("Appraiser"), Judith M. Fink as Tax Collector ("Collector"), and James Zingale ("Zingale") as the Executive Director of the Florida Department of Revenue, and alleges:

1. This is an action to contest the denial of and revocation of a homestead exemption for the tax years 1999-2004 and the subsequent reassessment of property taxes applicable to the subject property.
2. The Court has jurisdiction pursuant to Chapter 194, Florida Statutes, and Article V, sections 5 and 20 of the Florida Constitution. Venue is proper in Broward County, Florida pursuant to Section 194.171 (1), Florida Statutes, since the subject property is located in Broward County.
3. Appraiser is sued in her official capacity and is a necessary party to this action pursuant to Florida Statutes Section 194.181(2).

4. Collector is sued in her official capacity and is a necessary party to this action pursuant to Florida Statutes Section 194.181(3).

5. Zingale is sued in his official capacity as Executive Director of the Florida Department of Revenue and is a necessary party to this action pursuant to Florida Statutes Section 194.181(5).

ALLEGATIONS

6. During the relevant time period, Lobeck was the owner of property in Broward County identified as Broward County Parcel Number 10212-26-00200 ("Subject Property") whose legal description is believed to be: Presque Rio Amended 29-47 B Tract 3. The street address of the Subject Property is 704 Royal Plaza Drive, Fort Lauderdale, Florida 33301-2522.

7. In a letter dated February 24, 2006, Appraiser notified Lobeck that Appraiser's office had determined Lobeck had incorrectly received a homestead exemption during the years 1999-2004. Included with this letter was a bill for \$133,826.93. (Exhibit "A" attached) The decision by the Appraiser on February 24, 2006 that Lobeck's property for the tax years 1999-2004 was not the permanent residence of Lobeck to the exclusion of all others and that Lobeck's property was not entitled to homestead exemption for the tax years 1999-2004 is erroneous and in violation of Sections 4 and 6 of Article VII of the Florida Constitution. The subsequent reassessment of Lobeck's property for the tax years 1999-2004 and the imposition of additional taxes alleged to have been lost when the property improperly received homestead exemptions for the tax years 1999-2004 is likewise erroneous and in violation of Sections 4 and 6 of Article VII of the Florida Constitution.

8. Pursuant to Section 194.171(3), Florida Statutes, under protest Lobeck paid to Collector the full amount demanded on or about March 1, 2006.

9. Pursuant to Section 194.171(4), Florida Statutes, Lobeck's payment was not an admission that the tax was due.

10. Lobeck has performed all conditions precedent which are required to be performed by Lobeck in establishing his right to bring this action. Specifically, this action has been filed within the time period prescribed by Section 194.171(2), Florida Statutes.

11. Appraiser's denial of the homestead exemption on the Subject Property for the tax years 1999-2004 was improper because during all of the years in question Lobeck qualified for the homestead exemption, based on his being a permanent resident of Florida.

12. During the relevant time period, Lobeck had possession of legal or equitable title to the Subject Property; resided on the Subject Property; and had the intention to make the Subject Property his permanent residence.

13. The letter assessing Lobeck back taxes claims that Lobeck was denied the homestead exemption because the Subject Property was not Lobeck's permanent residence "to the exclusion of all others." Section 196.012(18), Florida Statutes, defines "permanent residence" as "that 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." Lobeck considered Florida his permanent residence.

14. Section 196.012(18), Florida Statutes, also requires that "[a] person may have only one permanent residence at a time; and, once a permanent residence is established in a foreign state or country, it is presumed to continue until the person shows that a change has occurred."

15. During the relevant time period, Lobeck had no other permanent residence aside from the Subject Property.

16. Lobeck terminated his non-Florida residency in 1997. This was evidenced not only by his purchase of a home in Florida but by the relocation of his business to Florida.

17. Section 196.015, Florida Statutes, lists factors that should be considered in determining intent to establish a permanent residence in Florida. None of the listed factors weighs against Lobeck when making this analysis. During the relevant time period, Lobeck's residence was located in Broward County; Lobeck's place of employment was located in Broward County; Lobeck was registered to vote, and actually voted, in Broward County; Lobeck had a valid Florida Driver's license; and Lobeck used a Florida address on his federal income tax returns and lived and worked in Florida year round.

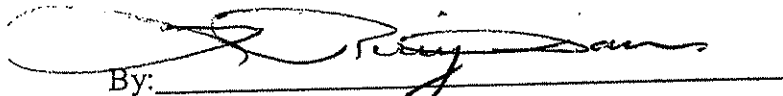
18. Because Appraiser improperly denied and revoked the homestead exemption, the assessed value of the Subject Property has exceeded the limitations set out in Section 193.155(1), Florida Statutes, and Section 4 of Article VII of the Florida Constitution for each of the years 1999-2004, and this incorrect valuation continues to this day.

WHEREFORE, Lobeck demands that this Court take jurisdiction over this cause and the parties hereto; enter an Order setting aside the assessment on the Subject Property; establish the proper assessment of the Subject Property in accordance with the Constitution of the State of Florida and Florida Statutes Section 193.155; and declare that the Subject Property qualified for homestead exemption for the tax years 1999-2004; enter an Order directing Collector to refund the \$133,826.93 paid by Lobeck; award Lobeck his costs incurred in bringing this action pursuant to Florida Statutes Section 194.192; and award such other general relief as may be just and equitable.

Dated this 20th day of April, 2006.

Respectfully submitted,

AKERMAN SENTERFITT
106 East College Avenue, Suite 1200 (32301)
P. O. Box 1877
Tallahassee, FL 32302-1877
Phone: (850) 224-9634
Fax: (850) 222-0103
Email: riley.davis@akerman.com



By: _____

J. Riley Davis, Esq.
Florida Bar Number: 118121
Todd D. Engelhardt
Florida Bar Number: 0013444



Broward County Property Appraiser's Office
115 S. Andrews Avenue, Room 111
Fort Lauderdale, Florida 33301
(954) 357-6830 • Fax: (954) 357-8474
www.bcpa.net

February 24, 2006

William Lobeck
704 Royal Plaza Dr.
Fort Lauderdale, FL 33301

Folio No. 0212-26-0020
OPSC: H-06-02-975

Dear Mr. Lobeck:

The above-referenced property has been reviewed by the Broward County Property Appraiser's Office, and it has been determined that the property on which you received a homestead exemption was not your permanent residence to the exclusion of all others. Therefore, pursuant to Florida law, this property was not entitled to homestead exemption for the tax year(s) 1999-2004.

PLEASE CONSIDER THIS NOTICE OF THE FOLLOWING ACTION:

Your 2005 Exemption is denied and with respect to prior tax year(s) 1999-2004, a tax lien will be filed with the Broward County Records Division within thirty (30) days from the date of this letter, as required by Section 196.011, Florida Statutes. The purpose of this lien is to recover the taxes lost when the property received homestead exemption(s) to which it was not entitled. In lieu of recordation of the lien you may, prior to March 9, 2006, pay the taxes, including penalties, interest and costs, in the total amount of \$133,826.93. Payment must be in the form of a cashier's check or money order payable to the Broward County Revenue Collector and mailed to the Revenue Collector's Office at 115 S. Andrews Avenue, First Floor, Governmental Annex, Ft. Lauderdale, Florida 33301. You may call the Revenue Collector's Office at (954) 468-3426 if you have a question regarding payment.

If you need to discuss the Property Appraiser's decision with respect to your property, please call Lindy Wren for an appointment at (954) 357-6950 prior to the lien recordation date.

Very truly yours,


RONALD J. CACCIATORE
Director of Professional Standards & Compliance
RJC:lw

"A"