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IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
FIFTH DISTRICT

Case No. 5D2024-1696
L.T. No.: 2019-CA-000268

MACWCP III, Corp.,

Appellant,

v.

RANDY MASK, in his official capacity as Sumter County Tax Collector and SUMTER COUNTY, FLORIDA,

Appellees.

_____/

APPELLANT'S REPLY BRIEF

Appellant, MACWCP III, Corp. ("MACWCP") finds it necessary to file this Reply Brief to rebut and correct Appellee's arguments in their Answer Brief as they are based on erroneous and misleading interpretations of statutes and case law – even to rely on a case that references a statute that had long since been amended, as noted in that case opinion itself.

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INTRODUCTION

References will remain the same as in the Initial Brief. Sumter County Tax Collector and Sumter County, individually and collectively as "**Appellee**". Appellant, MACWCP III, Corp. as "**MACWCP**". Case number 2019-CA-000268 (the order in which is on appeal) as "**QT Case**". Case number 2021-CA-000307 as the "**Value/Class Case**". MACWCP's Tax Deed is referred to as "**Tax Deed**". The tax deed property, Parcel D16-117, is referred to as the "**Tax Deed Property**".

(A) Appellee's Arguments that Appellee is an Indispensable Party are both Fallacious and Erroneous

Appellee argues that (**1**) case law, (**2**) statutes and (**3**) common law support the position that Appellee is an indispensable party to the QT Case. In each instance, Appellee's arguments are fallacious and erroneous.

(1) Fallacious Use of Case Law: Appellee cites Yorty v. Abreu, 988 So.2d 1155 (Fla. App. 2008) which found the tax collector to be an indispensable party to a case that involved a tax deed. Yorty involved the reversal of an earlier appellate court decision affirming a lower court's cancellation of a tax deed sale for failure of notice to the tax delinquent owner of the property. The Tax Collector was not a party to the earlier action or appeal. Once the order cancelling the tax deed sale was brought to the attention of the tax collector, the collector intervened claiming that because

the suit involved questions relating to a tax deed, pursuant to the 2003 version of Fla. Stat. §194.181(3), the Tax Collector was a necessary party to the suit. In footnote 1 of Yorty the Court notes the 2003 version of Fla. Stat. §194.181(3) on which the tax collector relied was subsequently amended in 2005; 2003 version reads as follows:

> (3) In any suit involving the collection of any tax on property, as well as questions relating to tax certificates or tax deeds, the tax collector charged under the law with collecting such tax shall be the defendant.

Fla. Stat. §194.181(3) was amended by Ch. 2004-349 sec.7(b) as follows:

> (3) In any suit involving the collection of any tax on property, as well as questions relating to tax certificates or applications for tax deeds, the tax collector charged under the law with collecting such tax shall be the defendant.

The statutory amendment meant no difference in Yorty because the case was all about an application for a tax deed. Clearly, the tax collector, who is charged with creating the list of all those who must be given notice of a tax deed sale, is an indispensable party when there is a claim of failure of notice. The tax collector must be given the opportunity to explain if reasonable additional steps, required under Jones v. Flowers, 547 U.S. 220 (2006), were taken after notice was returned unclaimed and unable to forward. The amendment, however, does make a difference to the instant case. The QT Case does not involve an application for a tax deed; this case involves a tax deed correction. It is not appropriate to cite a case that relied

on an old and no longer applicable version of a statute. *Cf*. Florida Export Tobacco Co., Inc. v. Department of Revenue, 510 So.2d 936, 12 Fla. L. Weekly 1579 (Fla. App. 1987).

(2) Erroneous Interpretation of Statutes: In the second paragraph of page 12 of its Answer Brief, Appellee makes the false *and* irrelevant assertion that "Pursuant to section 194.181(2)(a) & (4) [*sic - should read (3)*], Florida Statutes, the property appraiser and/or the tax collector are proper parties in assessment and tax collection cases." The words "and/or" render this assertion false. §194.181(2)(a) requires the property appraiser to be a defendant in any action contesting the assessment of any property; §194.181(3) requires the tax collector to be a party to any suit involving the collection of a tax on property [***personal***] as well as questions relating to tax certificates or applications for tax deeds. [There is no statute authorizing a suit to collect real property taxes; Fla. Stat. §197.413 authorizes a suit on personal property taxes only.] Appellee's assertion is irrelevant here because the QT Case is not an action contesting the assessment, not a suit involving the collection of a personal property tax, and not related to a tax certificate or application for a tax deed. The QT Case is an action to quiet tax title in which an error in the Tax Deed was uncovered and corrected. As fully discussed in MACWCP's Initial Brief, at no time during the QT Case did

MACWCP challenge classification, valuation or assessment. Correcting the Tax Deed to state clearly that the parcel is a common area of Palm Ridge Plaza Commercial Subdivision in no way automatically affected the Tax Deed Property's valuation or classification or even whether the Property was assessed separately or proportionally to the subdivision's parcel owners.

Each subsection of §194.181 has a corresponding statute that identifies a particular tax suit. Fla. Stat. §197.413 and §197.444 are the corresponding statutes for §194.181(3). §197.413 identifies the tax collector as a party in a suit to collect a personal property tax. §197.444 identifies the tax collector as a party to an action involving tax certificates and applications for a tax deed. MACWCP's Tax Deed was corrected pursuant to §197.443(3). §197.443 identifies neither the tax collector nor the property appraiser as a necessary party. §194.181 does not identify either the tax collector or property appraiser as a party in quiet tax title action in which a tax deed is corrected pursuant to §197.443(3); nor does Fla. Admin. Rule 12D-13.066. In fact, as discussed in the initial brief, the only involvement of the tax collector when a tax deed is corrected is when Form DR-462, *Application for Refund of Ad Valorem Taxes* is presented to the tax collector pursuant to the administrative procedure set out in Fla. Stat. §197.182 and

Fla. Admin. Rule 12D-13.066. The rule of statutory interpretation applies here: *Expressio unius est exclusio alterius*.

(3) Erroneous Application of Common Law: Appellee asserts the common law principle that "An indispensable party is one whose interest in the controversy is of a nature that a final decree cannot be made without either affecting that interest or leaving the controversy in such condition that its final termination may be wholly inconsistent with equity and good conscience." This common law principal does not apply here; ***common law only applies when there is no statute governing the issue.*** "Where the statute is silent, the common law applies . . ." Palatka & I.R. Ry. Co. v. State, 3 So. 158, 23 Fla. 546 (Fla. 1887). "There being no statute, common law applies . . ." Ex Parte Chesser, 112 So. 87, 93 Fla. 590 (Fla. 1927). Firstly, the statutes are far from silent on this issue. §194.181 sets out an exhaustive list of tax suits where either a tax collector or property appraiser is a necessary party. A quiet tax title action in which the tax deed is corrected is not included in the list. As noted above, the statutes and rules do specifically involve the tax collector in the administrative procedure for paying out a refund on a tax deed that has been corrected by court order; the tax collector is not a party in the quiet tax title action in which a tax deed is corrected. Secondly, Appellee does not even qualify as an indispensable party under

the conditions set forth in the common law rule itself. Equity and good conscience do not sit with the Appellee in this case. The Appellee holds tens of thousands of dollars collected upon auction sale after misrepresenting the Tax Deed Property was not a common area.

B) Assertions that the Lower Court Lacked Jurisdiction are Erroneous

Appellee argues that there were two grounds on which the lower court lacked jurisdiction to enter the Order Correcting the Tax Deed: (1) *Res Judicata*, and (2) Fla. Stat. §194.171. To make these claims it was essential for Appellee to argue that the issues and parties in the QT Case and the Value/Class Case are identical.

(1a) Parties Not Identical: At the very outset, Appellee's argument that *res judicata* applies fails on the issue that the parties are identical; Appellee relies on the erroneous and misleading arguments discussed above to claim that the Appellee was an indispensable party to the QT Case to claim that the parties were identical. As thoroughly discussed above, there is no basis in case law, statute or common law to hold Appellee to be an indispensable party to a quiet tax title action in which the tax deed is corrected.

(1b) Issues NOT Identical: Appellee asserts that the goal of obtaining a refund of the Tax Deed makes the issues in the QT Case identical with that

of the Value/Class Case. That is simply not the case. **Refunds are damages, not issues**. As referenced in MACWCP's Initial Brief, the Restatement (Second) of Judgments §27 (1982) sets out the general rule:

> When an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim.

Having the goal of obtaining a refund is not an issue of fact or law that was actually litigated and determined. In the Initial Brief MACWCP thoroughly discussed the issues of fact and law that were actually litigated and determined, together with the exceptions to issue preclusion that apply here. In short, the issue in the QT Case involved correcting the Tax Deed; the Value/Class Case involved a valuation and classification challenge.

(2a) <u>Value/Class Case Challenged the Assessment:</u> The basis of Appellee's assertion that the Lower Court lacked jurisdiction under §194.171 to enter the Order Correcting the Tax Deed is that the QT Case was an action to challenge the classification or assessment of the Tax Deed Property. Appellee spends much time rehashing the assessment and classification issues in the Value/Class Case, <u>all to no point</u>. MACWCP has acknowledged that the Value/Class Case was litigated and decided as a challenge to the valuation and classification of the Tax Deed Property as the reason for finding the *tax <u>deed</u> <u>void</u>* under <u>Fla, Stat</u>. §197.444. However, §197.444

gives standing only to a *tax* *certificate* holder (not a tax deed holder) to find a *tax certificate* (not a tax deed) to be *void* (not corrected). Further, §197.444 does not even accommodate an assessment challenge. Under §194.171 only a taxpayer has standing to challenge an assessment. Under Fla. Stat. §194.181(1), a tax certificate holder is not a taxpayer. None of these issues were litigated and decided in the QT Case.

(2b) Appellee Wrong on the Facts: Appellee falsely asserts at the top of page 23 of their Answer Brief that MACWCP "maintained that once it received an identification of the property as a "common area" by the court [*in the QT Case*], it then possessed the right to a nominal assessment by the tax assessor." Contrary to Appellee's assertion, at no point in the proceedings of the **QT Case** did MACWCP ever challenge the classification or valuation or assessment. In fact, MACWCP repeatedly stated throughout the QT Case and Initial Brief that MACWCP was not challenging the classification, valuation or assessment of the Tax Deed Property, because there was nothing wrong with the classification or valuation of the Tax Deed Property or who was the assessed owner or whether it was assessed proportionately or separately. The jurisdictional limitations of §194.171 do not apply here.

(2c) Appellee Applies Inapplicable Case Law: Appellee reviews cases involving tax certificates decided under the analysis of Ward v. Brown, 894 So.2d 811 (Fla, 2005). In all those cases the underlying claim was an assessment or classification challenge. None of those cases apply to a quiet title case in which a tax deed was corrected. Correcting the Tax Deed to state that the Tax Deed Property is a common area of a commercial subdivision in no way affects classification, valuation, who is the assessed owner, or whether the parcel was assessed proportionately or separately. Correcting a tax deed is not a classification or assessment challenge. ***Appellee does not argue otherwise*** as encapsulated in a paraphrase of the quote above from Appellee's Answer Brief: correcting a tax deed does not grant the automatic right to a change in the assessment.

(C) Appellee Misses the Point to the Discussion of Fla. Stat. §193.0235

Appellee raises Fla. Stat. §193.0235 to show that the Tax Deed Property was properly assessed its full value. As mentioned several times above, in the QT Case MACWCP does not challenge the classification or valuation of the tax deed Property or the fact that it was assessed its full value separately and not assessed proportionally to subdivision parcel owners. In the QT Case and this appeal MACWCP discusses §193.0235 to establish why the Tax Deed needed to be corrected. The Tax Deed needed

to be corrected because the Property Appraiser **inappropriately and negligently used Fla. Stat. §193.0235 to determine that the Tax Deed Property is not a common area.** This entire controversy is the result of the Property Appraiser improperly using §193.0235 to determine what is and what is not a common area of a commercial subdivision. Rather, Fla. Stat. §193.0235 instructs when a common area must be proportionally assessed to subdivision parcel owners.

(D) Public Policy of §194.171 is Not Applicable

Appellee asserts the policy expressed in Ward v. Brown that applies to all cases involving a classification or assessment challenge under §194.171. That policy focuses on adherence to the time limitations for filing a petition to the Value Adjustment Board and for filing a complaint to challenge the assessment. However, correcting a tax deed is not a classification or an assessment challenge subject to the jurisdictional time limitations of §194.171. Those time limits cannot be imposed on an action to quiet tax title in which an error in the tax deed is discovered and thereafter corrected. Contrary to what Appellee has falsely asserted throughout their Answer Brief, the Order Correcting the Tax Deed in no way affected the Property's valuation or classification or whether the Property was assessed separately or proportionally to the subdivision's parcel owners. MACWCP rests on the

argument in its Initial Brief that the public policy favors holders of tax deeds that have been corrected - even so far as to give tax deed holders unlimited time to claim a refund.

(E) Public Policy of Fla. Stat. §197.443, More Specific Statute Controls

MACWCP established above that the public policy of §194.171 is not applicable on the facts, because MACWCP does not challenge the assessment, classification or valuation in the QT Case. However, assuming that a correction results in a change in value, §197.443(2) anticipates this:

> (2) The department, upon receipt of the certificate of error, if satisfied of the correctness of the certificate or upon receipt of a court order, shall notify the tax collector, who shall cancel or correct the certificate. A tax certificate correction or cancellation that has been ordered by a court and that does not result from a change made in the assessed value on a tax roll certified to the tax collector shall be made by the tax collector without order from the department.

Further, §197.443(3) refers to a tax deed that has been corrected ***for any reason***: "…tax deed that is void or corrected for any reason, is entitled to a refund…"

Whereas Fla. Stat. §194.171 deals with assessment challenges in general, §197.443 specifically deals with corrections that may change the assessed value and tax deeds corrected for any reason. Assuming a conflict between §197.443 and §194.171, §197.443 controls because it is the more specific statute:

> It is well settled that a more specific statute covering a particular subject is controlling over one covering the same subject in general terms. Mendenhall v. State, 48 So.3d 740, 748 (Fla.2010). Two facially conflicting statutes can therefore be harmonized where one statute "addresses the precise factual setting under consideration." Palm Harbor Special Fire Control Dist. v. Kelly, 500 So.2d 1382, 1385 (Fla. 2d DCA), affirmed,516 So.2d 249 (Fla.1987). Cricket Props., LLC v. Nassau Pointe at Heritage Isles Homeowners Ass'n, Inc., 124 So. 3d 302 at 307 (Fla. App. 2013)

CONCLUSION

Appellee is wrong on the facts and wrong on the law. Appellee is not an indispensable party to the QT Case. *Res judicata*/claim preclusion does not apply. Fla. Stat. §194.171 does not apply, nor does its public policy. The public policy expressed in the clear words of Fla. Stat. §197.443(3) applies: when a tax deed is corrected for any reason, the tax deed holder is entitled to a refund. MACWCP's Tax Deed required correction due to the misinterpretation by the Sumter County Property Appraiser of Fla. Stat. §193.0235.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served this **30th day of October 2024** to the email addresses designated on the Florida Courts E-filing Portal or below, including

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CERTIFICATE OF COMPLIANCE

The undersigned attorney for Appellant certifies that Appellant's Initial Brief is a computer-generated brief in compliance with the font and word count limit required by Fla. R. App. P. 9.210 and 9.045.

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