



Beach Taxpayers Win Appeal

The First District Court of Appeals ruled today that the land underlying condominium units at both Beach Club and Portofino Towers is owned by Escambia County, and is thus immune from ad valorem taxation. The twin decisions (Portofino v. Jones and Beach Club v. Jones) reverse rulings from two Escambia County trial courts holding that the leaseholders at Beach Club and Portofino, and not the County, were the true owners of the land.

The two decisions follow the ruling and rationale of a decision released last year, Island Resorts v. Jones. The Property Appraiser, Chris Jones, applied the Island Resorts ruling to most non-perpetual residential and business leases at Pensacola Beach. He argued, however, that condominium leases inextricably combined land and improvements, and thus the owner of the improvements also owned the land. The First DCA found those arguments to be “without merit.”

“This ruling should put to an end the beach tax controversy,” Ed Fleming, who together with Todd Harris, represented both Beach Club and Portofino. Fleming and Harris were also the attorneys who obtained a reversal of Jones’ taxation of land in the earlier Island Resorts v. Jones decision released last year.

Harris explained that the opinion followed the plain language of the taxing statutes, as well as common sense, and rejected an argument that government-owned land somehow lost its immunity by virtue of being subjected to a condominium declaration. “Neither of those arguments were supported by law,” Harris said. “This opinion does nothing more than apply the plain language to the controlling statutes.”

The twin decisions establish binding precedent for Pensacola Beach, Fleming said, that should end the last remaining beach tax controversy; i.e., tax treatment of non-perpetual condominium leases. “Although the Property Appraiser could ask the Florida Supreme Court for review,” Fleming said, “there is no valid basis for doing so. In fact, since the issuance of Island Resorts, yet

another District Court of Appeals (the Third DCA) has also followed the ruling and rationale of Island Resorts, meaning there is no conflict jurisdiction. I would hope that no further tax dollars are spent arguing issues that have now been decided and established.”

Harris said that these twin decisions have no direct impact on the legislation pending before Congress that would give Escambia County the option, but not the obligation, to offer fee simple title to leaseholders in return for those leaseholders being taxed as fee simple owners. However, he said the ruling certainly gives Escambia County a financial incentive for pursuing that litigation. He said Congressional action is required as the deed of Santa Rosa Island to Escambia County contains language that forbids the County from granting deeds, and limits the County to granting leases only.

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