IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR VOLUSIA COUNTY CIVIL DIVISION

Case No. 2006 10504 CIDL

POORNIMA & AVINASH CHARITABLE FOUNDATION, et al.,

Plaintiffs,

-vs-

MORGAN GILREATH, as Volusia County Property Appraiser, and DR. JIM ZINGALE, as Executive Director, etc.,

Defendants.

FINAL JUDGMENT FOR DEFENDANTS

THIS MATTER came on for Final Hearing before the Court sitting as the finder of fact on July 23-4, 2007. The Court heard the testimony of the witnesses, including an evaluation of their demeanor, veracity and truthfulness, considered the evidence and heard the argument of counsel. The Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. This action challenges the January 1, 2005 assessments for tax purposes of 45 of the 47 separate condominium parcels in the River Club Condominium, located directly on the Halifax River in South Daytona, Volusia County, Florida. Each of the parcels was owned or controlled by Plaintiff Gupta Realty Corporation as of that date.[1]

[1] Two persons not involved with Plaintiffs own Condominium Parcels 102 and 207, which are not involved in this action.

2. Gupta Realty Corporation acquired most of the parcels in a bulk transaction in 1988 for $1,800,000, or approximately $41,000 per parcel. Mrs. Poorniima Gupta testified that the parcels were bought for the purpose of renting them. They have not been offered for sale. Mr. Avinash Gupta testified that as of January 1, 2005, 40 of the 45 units were available for rent and various family members lived in the others.

3. On August 25, 1995, Mr. Gupta wrote to the Property Appraiser's office, "Also, the above referenced property is not condos any more, as we are in the process of cancelling the condominium association. It is operated as a rental apartment complex." (Defendants' Exhibit 2)

4. Thereafter, until 2005, the Volusia County Property Appraiser's office assessed the River Club as if it were a rental apartment complex, using an income approach to value. The initial 2005 assessments were for between $18,000 and $19,000 per unit and were derived by that income approach. Charles Lyons, the Appraisal Activity Director for all residential and time share condominiums in Volusia County, testified that one could not buy any condominium parcel in Volusia County as of January 1, 2005 for such a low value.

5. During August, 2005, Mr. Lyons realized that the River Club property should never have been appraised by an income approach. The individual condominium parcels should have been

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According to Mr. Gupta, "They never co-operate and always complain against us."

appraised by the sales comparison method, the most appropriate valuation method. In his opinion, it had been a mistake to have ever appraised these parcels in bulk by the income approach to value. There was sufficient market information for Mr. Lyons to value the parcels using the market approach to value derived from sales of condominium parcels in other projects on the Halifax River. When he changed the methodology, he stated that he took into account the income producing potential, but that the income approach was not the most appropriate method to use. Mr. Lyons testified that in making the amended assessments, he considered each of the criteria in Section 193.011, Florida Statutes. He also testified that no condominium parcels in Volusia County were assessed by the income approach to value in 2005.

6. Mr. Gilreath sent amended notices of proposed property taxes to Plaintiff in August, 2005 (Plaintiffs' Exhibit "4," increasing the assessments to between $100,000 and $120,000 per condominium parcel. The Court finds that Plaintiffs lost no rights as a result of these corrections to the assessments because Plaintiffs timely invoked their administrative remedies and actually obtained relief from the Volusia County Value Adjustment Board. A property appraiser is authorized to correct errors at any time, §197.122, F.S.

7. The building was damaged in the three hurricanes that hit Volusia County in 2004. The Volusia County Value Adjustment Board directed the Property Appraiser to reduce the 2005 amended assessments by the amount of Mr. Gupta's estimate of storm damage,

$572,000, or $12,722 per unit, which are the final assessed values being challenged in this action. (See Plaintiffs' Exhibit "9.") The Court notes that while ordinarily a condominium association would make repairs to the condominium structure, Gupta Realty Corporation has not paid assessments to the River House Association for its units. Mr. Gupta referred to the Association as "dysfunctional."

8. Mr. Gupta felt that since the 2005 assessment of the mobile home park to the south had not increased, the assessment of Gupta Realty Corporation's condominium units should not have been increased 600^. The Court notes that on January 22, 2007, Plaintiffs and Defendants stipulated that Plaintiffs would formally withdraw their equal protection challenge. Additionally, there is no assessment for land in a condominium parcel, which consists of a "unit" plus an undivided share of "common elements" - the Property Appraiser simply shows 25% of the total assessed value in the land value column on the property record card, according to Mr. Lyons.

CONCLUSIONS OF LAW

9. The property appraiser loses his presumption of correctness if he has failed to consider properly the criteria in s. 193.011 or if the assessment is arbitrarily based on appraisal practices which are different from the appraisal practices generally applied by the property appraiser to comparable property within the same class and within the same county. §194.301, F.S. The Court finds that Plaintiffs failed to prove either of those

contentions, so their burden was to show the assessments excessive by clear and convincing evidence. *Bystrom v. Bal Harbour 101 Condominium Association, Inc.* 502 So.2d 1312 (Fla. 3d DCA 1987) holds:

> "[T]he presumption of correctness dissolves only when the appraiser is disentitled to the presumption by failing to substantially comply with section 193.011." *Vero Beach Shores, Inc. v. Nolte*, 467 So.2d 1041, 1044 (Fla. 4th DCA 1985). The Appraiser testified to the fact that since there was recent data available concerning the sales of similarly situated units the "market approach" was used in arriving at the valuation of the property. This court has previously held that where an appraisal is based on sales of comparable properties the Appraiser "necessarily considers all, and uses some, of the factors set forth in section 193.011." *Bystrom v. Valencia Center, Inc.*, 432 So.2d 108, 110 (Fla. 3d DCA 1983), review denied, 444 So.2d 418 (Fla.1984); accord [*Vero Beach Shores, Inc. v.*] *Nolte*, 467 So.2d at 1042-43. (Emphasis supplied.)

Although the testimony of a property owner is admissible as an opinion of value, Mr. Gupta's testimony was only that he would be satisfied with the assessments shown in the initial notices, Plaintiffs' Exhibit "3". He offered no independent estimate of value for the property.

10. The method of assessment to be used is up to the Property Appraiser, not the Courts. *Havill v. Lake Port Properties, Inc.*, 729 So.2d 467 (Fla. 5th DCA 1999), *Blake v. Xerox Corporation*, 447 So.2d 1348 (Fla. 1984). Although the owner of a single-family home or a condominium apartment may choose to rent it out, this does not make it rental property which should be valued by the income approach when there is ample sales data from which to derive an assessment. As the Supreme Court aptly noted in *Bystrom V.*

Whitman, 488 SO.2D 520 (Fla. 1986):

> The core issue in any action challenging a tax assessment is the amount of the assessment, not the methodology utilized in arriving at the valuation. [citation omitted] An appraiser may reach a correct result for the wrong reason. *City National Bank of Miami v. Blake*, 257 So.2d 264 (Fla. 3d DCA 1972)

Plaintiffs did not present any expert testimony as to the just (market) value of any of their condominium parcels as of January 1, 2005. Plaintiffs' reliance on *Schultz v. Lurie*, 512 So.2d 1003 (Fla. 2d DCA 1987) is misplaced. In that case, the taxpayer owned all of the units within a condominium property, so he had the power to terminate the condominium. Because of the two other owners at River Club, Plaintiffs lack that ability.

11. The Property Appraiser is required to assess each condominium parcel separately, without regard to the number of apartments the owner owns or controls. The Property Appraiser must appraise property, not ownership. *Muckenfuss v. Miller*, 421 So.2d 170 (5th DCA 1982), *Palm Beach Development and Sales Corp. v. Walker*, 478 So. 2d 1122 (4th DCA 1985), *Appleby v. Nolte*, 682 So.2d 1140 (Fla. 4th DCA 1996), §718.120, F.S.

12. Just as the Property Appraiser is not permitted to value a condominium apartment as time share before the condominium becomes a time share under Florida law, *Gilreath v. Westgate Daytona, Inc.*, 871 So.2d 961 (Fla. 5th DCA 2004), it would be equally erroneous for the Property Appraiser to assess a condominium property as if it were one rental apartment property prior to termination of the declaration of condominium.

IT IS THEREFORE ADJUDGED:

1. The 2005 assessments of each of the condominium parcels listed in Paragraph 14 to the Complaint, as reduced by the Volusia County Value Adjustment Board, is ratified and confirmed in all respects.

2. The Complaint is dismissed with prejudice and Defendants shall go henceforth without day.

3. The Court retains jurisdiction of this matter for the purpose of taxing costs upon motion of Defendants and to enter such further orders as may be necessary to carry out this Final Judgment.

ORDERED at DeLand, Volusia County, Florida, this 28th day of August, 2007.

Robert K. Rouse, Jr.
Circuit Judge

Copies furnished:

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Gaylord A. Wood, Jr. and B. Jordan Stuart, Post Office Box 1987, Bunnell, FL 32110-1987, Attorneys for Defendants.

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT JANUARY TERM 2009

NOT FINAL UNTIL THE TIME EXPIRES TO FILE REHEARING MOTION, AND, IF FILED, DISPOSED OF.

POORNIMA & AVINASH CHARITABLE, ETC., ET AL.,

Appellants,

v.

Case No. 5D07-3275

MORGAN GILREATH, ETC., ET AL.,

Appellee.

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Decision filed January 13, 2009

Appeal from the Circuit Court
for Volusia County,
Robert K. Rouse, Jr., Judge.

Brett Hartley, Daytona Beach,
for Appellants

Gaylord A. Wood, Jr., of Wood & Stuart,
P.A., Bunnell, for Appellee

PER CURIAM.

AFFIRMED.

PALMER, C.J., SAWAYA and TORPY, JJ., concur.

REC'D JAN 14 2009