

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

GENERAL JURISDICTION DIVISION

CASE NO.:

2181 CAPITAL INVESTMENTS, INC.,
a Florida Corporation,
Plaintiff,

vs.

COMPLAINT

PEDRO J. GARCIA, Miami-Dade
County Property Appraiser; PETER
CAM, Miami-Dade County Tax
Collector; and JIM ZINGALE,
Executive Director, Department of
Revenue, State of Florida,
Defendants.

PLAINTIFF, 2181 CAPITAL INVESTMENTS, INC. (“Plaintiff” or “Taxpayer”). sues the
DEFENDANTS, PEDRO J. GARCIA, as Property Appraiser of Miami-Dade County, Florida,
 (“Property Appraiser”); PETER CAM, as Tax Collector of Miami-Dade County, Florida (“Tax
Collector”); and JIM ZINGALE, as Executive Director of the State of Florida, Department of
Revenue (“Executive Director”) and alleges as follows:

VENUE, JURISDICTION AND PARTIES

1. Plaintiff is now and was at all times material herein responsible under law for
payment of the assessment of the property tax described below, pursuant to *Florida Statutes*
§194.181(1). Taxpayer is a Florida Corporation authorized to and conducting business in the State
of Florida.

2. This action is filed pursuant to *Florida Statutes §194.036(2)* and *§194.171* to contest
the validity of the *ad valorem* tax assessment of the property described in **EXHIBIT “A”** attached

hereto, referred to herein as the "Subject Property". The folio number, applicable tax year, property address and legal description of the Subject Property are set forth on **EXHIBIT "A"** attached.

3. This action is brought by the Plaintiff pursuant to *Florida Statutes §194.171*. Jurisdiction and venue of this action are placed in this Court by *Florida Statutes §194.171*.

4. Defendants, PEDRO J. GARCIA, Miami-Dade County Property Appraiser, PETER CAM, Tax Collector of Miami-Dade County, Florida, and JIM ZINGALE, Executive Director of the Department of Revenue, of the State of Florida are named herein, pursuant to *Florida Statutes §194.181*.

5. This action is brought timely pursuant to *Florida Statutes §194.171(2)*. In compliance with *Florida Statutes §194.171(3)*, Plaintiff has paid to the Tax Collector not less than the amount of the tax which the Plaintiff admits in good faith to be owing. A true and correct copy of the receipt of Plaintiff's payment is attached as **EXHIBIT "B"** to this Complaint. Said payment by the Plaintiff is made without prejudice, under protest and is believed to exceed substantially the amount of tax in good faith to be owed to the Tax Collector.

6. Defendant, PEDRO J. GARCIA, placed a preliminary assessment (market value) upon the Subject Property (as adjusted by the Value Adjustment Board) in the amount set forth on **EXHIBIT "A"** attached to this Complaint.

FAILURE TO RETAIN ASSESSMENT CAP

7. Plaintiff adopts, incorporates herein and alleges paragraphs one through six.

8. Prior to the calendar year 2020, the Plaintiff/Taxpayer's affiliate, DISCOS Y EMPANADAS ARGENTINAS, INC., acquired title to the Subject Property. The deed for that acquisition was recorded in the public records of Miami-Dade County, Florida.

9A. During the calendar year 2020, the Plaintiff/Taxpayer acquired title to the Subject Property from its affiliate, DISCOS Y EMPANADAS ARGENTINAS, INC. The Quit Claim Deed

and Corrective Deed for such acquisition were recorded in the public records of Miami-Dade County, Florida. See **EXHIBIT “D”** attached.

9B. DISCOS Y EMPANADAS ARGENTINAS, INC. has been the sole owner of the Subject Property until the time that said property was conveyed by it to the Plaintiff herein.

9C. Plaintiff herein is a Florida Corporation organized with the Division of Corporations on April 23, 2018. The managers and members of the grantee were and are ALBERT MUNIZ and JESUS GUERRA, each owning 50%.

As a result of the deed for the Subject Property, legal title to the property transferred between DISCOS Y EMPANADAS ARGENTINAS, INC. and the Plaintiff herein and equitable ownership of the Subject Property remains, 100%, in the owners of DISCOS Y EMPANADAS ARGENTINAS, INC. and the owners of the Plaintiff as a result of their sole ownership of the Plaintiff herein. No consideration was received by DISCOS Y EMPANADAS ARGENTINAS, INC. from the Plaintiff herein.

9D. At the time that the deed for the Subject Property was delivered and recorded, Mr. MUNIZ and Mr. GUERRA owned all of the Subject Property through the ownership of DISCOS Y EMPANADAS ARGENTINAS, INC., and also owned all of the equity of the Plaintiff herein. Thus, Mr. MUNIZ and Mr. GUERRA received nothing from the Plaintiff, the grantee, that they did not already own as a result of the transfer.

9E. Based upon the foregoing, Plaintiff alleges and asserts that, “the deed to the Subject Property represented a mere book transaction and transfer between legal and equitable title.”

10. Pursuant to the Florida Constitution and *Section 193.1555* of the *Florida Statutes*, certain types of real property in Florida are entitled to a ten percent assessment increase limitation (“10% Assessment Limitation”). The 10% Assessment Limitation limits the annual increase in

properties assessed value to 10%. “Any change resulting from such reassessment may not exceed 10% of the assessed value of the property for the prior year.” *Section 193.1555(3), Florida Statutes.*

11. For the tax year 2021, after transfer of title to the Subject Property by the Plaintiff/Taxpayer’s affiliate to the Plaintiff/Taxpayer, the Property Appraiser erroneously removed the 10% Assessment Limitation benefit from the Subject Property and erroneously reassessed the Subject Property at just value.

12. While the 10% Assessment Limitation is properly removed upon a sale between unaffiliated parties, such a transaction did not occur in this case. *Florida Statutes §193.1555(5)(b)* reads as follows:

“(b) A change of ownership or control means any sale, foreclosure, transfer of legal title or beneficial title in equity to any person, or the cumulative transfer of control or of more than 50 percent of the ownership of the legal entity that owned the property when it was most recently assessed at just value, except as provided in this subsection. There is no change in ownership if:

1. The transfer of title is to correct an error.
2. The transfer is between legal and equitable title.
3. For a publically traded company, the cumulative transfer of more that 50 percent of the ownership of the entity that owns the property occurs through the buying and selling of shares of the company on a public exchange. This exception does not apply to a transfer made through a merger with or acquisition by another company, including acquisition by acquiring outstanding shares of the company.”

13. As indicated in the preceding paragraph, *Florida Statutes §193.1555(5)(b)* precludes reassessment of the Subject Property where there is no cumulative transfer of control. Additionally, in subparagraph 2, transfers between legal and equitable title are excluded from a change of ownership. It is important to note that paragraph 2 refers to transfers “between” legal and equitable title. It does not relate to a transfer from legal to equitable title which would be much more restrictive. Between is a simple word and merely means among.

14. The Legal Special Magistrate hearing this case denied same. See **EXHIBIT "C"** attached.

15. Plaintiff has determined and affirmatively asserts that the value approved by the Value Adjustment Board which reassesses the 10% Assessment Limitation violates Section 193.1555 of the *Florida Statutes*.

WHEREFORE, Plaintiff respectfully requests:

1. That this Court take jurisdiction of the subject matter and the parties hereto pursuant to *Florida Statutes §194.171(1)*;

2. That this Court find and determine that the assessed value of the Subject Property as described on **EXHIBIT "C"** attached hereto is in excess of just valuation and therefore illegal and void;

3. That this Court enter a decree setting aside the tax assessment of the Subject Property and determine that the Defendant, PEDRO J. GARCIA, failed to comply with the requirements of *Florida Statutes §193.1555* and the criteria set forth therein and the assessment of the Subject Property;

4. That this Court enter an order declaring the just valuation (assessed value) of the Subject Property, or in the alternative, remand this matter to the Property Appraiser with appropriate directions as provided in *Florida Statutes §194.301(2)(b)* assessing a tax thereon and directing a refund of the taxes paid by the Plaintiff which are based on a portion of the Defendant's assessment found to be an excess of just valuation (assessed value) together with interest thereon and direct such further adjustment between the parties as may be necessary in connection therewith;

5. That this Court waive and abate all penalties imposed by the Property Appraiser against the Plaintiff;

