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

GENERAL JURISDICTION DIVISION

CASE NO.:

701 ASSOCIATES, LLC, a Florida Limited Liability Company,
Plaintiff,

vs.

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.
_____/

COMPLAINT

PLAINTIFF, 701 ASSOCIATES, LLC ("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 Limited Liability Company 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, as Miami-Dade County Property Appraiser, PETER CAM, as Tax Collector of Miami-Dade County, Florida, and JIM ZINGALE, as 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.

COUNT I
CHALLENGE TO MARKET VALUE ASSESSMENT

6. Plaintiff adopts, incorporates herein and re-alleges paragraphs one through five.

7. 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, and said assessment (market value) exceeds the constitutional and statutory standard for just valuation adopted by the State of Florida.

8. The Defendant, PEDRO J. GARCIA's tax assessment of the Subject Property exceeds the constitutional and statutory standards of just valuation adopted by the State of Florida, and is therefore illegal and void.

9. The Defendant, PEDRO J. GARCIA, did not observe the essential requirements of law in determining the just valuation of the Subject Property, and, as such, the assessment (market value) is unjust, unequal and in excess of just valuation for the following reasons:

a. In assessing the Subject Property, said Defendant has failed substantially to comply with the requirements of *Florida Statutes §193.011* and professionally accepted appraisal practices as required by *Florida Statutes §194.301.*

b. In assessing the Subject Property, said Defendant has systematically and intentionally assessed the Subject Property substantially higher than comparable properties of the same class and quality and all or substantially all other property within the County, thereby placing the greater tax burden on Plaintiff's property than that borne by other taxpayers in contravention of the principles of equality, uniformity and just valuation of all property, as required by the *Florida Constitution* and the decisional laws of this State.

c. In assessing the Subject Property, said Defendant has deviated from accepted appraisal methods and valuation techniques, and said assessment constitutes a departure from essential requirements of law thereby rendering said assessment illegal and void.

d. In assessing the Subject Property, said Defendant has assessed the Subject Property at a ratio to just value in excess of the ratio to just value to which all, or substantially all, of the other property in Miami-Dade County, Florida, was assessed. By doing so, said Defendant has arbitrarily and systematically singled out and discriminated against Plaintiff as compared to all, or substantially all, other ad valorem taxpayers in Miami-Dade County, Florida, in violation of Plaintiff's rights to equal protection under the law, rendering said assessment illegal and void.

10. Plaintiff filed a petition with the Value Adjustment Board of Miami-Dade County, contesting the Property Appraiser's preliminary assessment of the Subject Property, and the matter was referred by the Board to a Special Magistrate for hearing. A hearing was held by and before the Special Magistrate, and the Special Magistrate's Findings of Fact and Conclusions of Law and Recommendation to the Value Adjustment Board is attached hereto as **EXHIBIT "C"**.

11. In assessing the Subject Property, Defendant, PEDRO J. GARCIA, has deprived Plaintiff of equal protection under the law as guaranteed by the provisions of *Section 1,* of the *14th Amendment to the Constitution of the United States,* and *Article I, Section 2*, of the *Constitution of the State of Florida.*

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 tax assessment (market value) of the Subject Property as described on **EXHIBIT "A"** 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 §193.011*, professionally accepted appraisal practices as required by *Florida Statutes §194.301*, and the criteria set forth therein in the assessment of the Subject Property;

4. That this Court find and determine that Defendant, PEDRO J. GARCIA's assessment (market value) of the Plaintiff's property is unequal, discriminatory, and confiscatory and in contravention of the requirements of uniformity, and just valuation of all property as mandated by *Section 1* of the *14th Amendment of the Constitution of the United States, Article I, Section 2,* of the *Constitution of the State of Florida,* and the decisional laws of this State;

5. That this Court enter an order declaring the just valuation of the Subject Property, or in the alternative, remand this matter to the Property Appraiser with appropriate directions as provided by *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 that portion of the Defendant's assessment found to be

in excess of just valuation, together with interest thereon and direct such further adjustment between the parties as may be necessary in connection therewith;

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

7. That this Court assess costs against Defendants, pursuant to *Florida Statutes §194.192* and award to Plaintiff reasonable attorneys' fees;

8. That this Court grant such other and further relief to the Plaintiff as it may deem just and proper.

COUNT II
FAILURE TO RETAIN ASSESSMENT CAP

12. Plaintiff adopts, incorporates herein, and alleges paragraphs one through five.

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

14.A During the calendar year 2020, the Plaintiff/Taxpayer acquired title to the Subject Property from its affiliate. The deed for such acquisition was recorded in the public records of Miami-Dade County, Florida. See **EXHIBIT "D"** attached.

14.B The grantor of the Subject Property as set forth in the above-described deed is MIAMI AUTOMOTIVE RETAIL, INC. Said grantor has been the sole owner of the Subject Property up until the time that said property was conveyed by the grantor to 701 ASSOCIATES, LLC, Plaintiff herein. The shareholders of the grantor and grantee are as follows:

1)	Mario Murgado	90%
2)	Alexander Andreus	5%
3)	Ricardo Barraza	5%

14.C The grantee is a Florida Limited Liability Company organized with the Secretary of State, Division of Corporations, on October 6, 2006. The Manager of the grantee upon its

organization was MARIO MURGADO. Additionally, the Members of the grantee upon its organization were the grantor's shareholders, owning one hundred percent (100%) of the equity of the grantee. No consideration was received by 701 ASSOCIATES, LLC from the Plaintiff herein.

14.D At the time that the deed for the Subject Property was delivered and recorded, Mr. MURGADO, Mr. ANDREUS and Mr. BARRAZA owned all of the equity of MIAMI AUTOMOTIVE RETAIL, INC., and also owned all of the equity of the Plaintiff herein. Thus, the equity of MIAMI AUTOMOTIVE RETAIL, INC., MURGADO, ANDREUS and BARRAZA received nothing from the Plaintiff, the grantee, that they did not already own as a result of the transfer.

14.E 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."

15. 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.*

16. 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.

17. 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 accessed 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."

18. 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.

19. The Legal Special Magistrate hearing this case denied same. See **EXHIBIT "E"**, attached.

20. 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 "E"** 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 Statute §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;

6. That this Court assess costs against Defendants, pursuant to *Florida Statutes §194.192* and award to Plaintiff reasonable attorneys' fees;

7. That this Court grant such other and further relief to the Plaintiff as it may deem just and proper.

DESIGNATION OF E-MAIL ADDRESSES

Pursuant to Florida Rule of Judicial Administration 2.516, undersigned counsel hereby designates his/her primary and secondary e-mail addresses for purposes of e-mail service as follows:

Stanley H. Beck:	Primary e-mail address:	becklawoffice@gmail.com
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DATED this 22nd day of July, 2022.

Respectfully submitted,

Stanley H. Beck, Esq.
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