

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
West Palm Beach Division  
www.flsb.uscourts.gov

IN RE:

Case No. 13-35141-EPK  
Chapter 11

PALM BEACH COMMUNITY  
CHURCH, INC.,

Debtor.

**DEBTOR'S MEMORANDUM OF LAW IN OPPOSITION TO  
PROPERTY APPRAISER'S MOTION TO INVOKE JURISDICTION [ECF 255]**

**THE 2014 PROPERTY TAXES ARE AN ADMINISTRATIVE EXPENSE**

1. Though the Debtor initially argued that the 2014 property taxes (the "**Taxes**") were not an administrative expense, after further review of Florida Statute 197.333 and the attendant case law, the Debtor concedes that the Property Appraiser is correct and that the Taxes are an administrative expense of the estate.

**PAYMENT OF THE TAXES DID NOT CONSTITUTE A WAIVER**

2. With regard to the Debtor's property rights, this Court must look to Florida law. As the Supreme Court stated in *Butner v. U.S.*, 440 U.S. 48, 55, 99 S.Ct. 914, 59 L.Ed.2d 136 (1979):

Property interests are created and defined by state law. Unless some federal interest requires a different result, there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding. Uniform treatment of property interests by both state and federal courts within a State serves to reduce uncertainty, to discourage forum shopping, and to prevent a party from receiving "a windfall merely by reason of the happenstance of bankruptcy." The justifications for application of state law are not limited to ownership interests; they apply with equal force to security interests... [Internal citations omitted.]

In the present case, the non-application of Florida law would provide just the sort of "windfall" described in *Butler* and sought by the Property Appraiser, as outlined below.

3. Under Florida law, the full payment of the Taxes did not act as a waiver of the Debtor's rights to challenge the amount or validity of the Taxes. Per Florida Statute 194.171(4):

Payment of a [property] tax shall not be deemed an admission that the tax was due and shall not prejudice the right to bring a timely action as provided in subsection (2) to challenge such tax and seek a refund.

The Debtor relied on this statute when it paid its taxes in full, believing that its rights to challenge the Taxes would be preserved, regardless of whether or not an objection was filed before confirmation of its plan (“**Confirmation**”). In fact, only once the Property Appraiser asserted its waiver argument more than 6 months after Confirmation<sup>1</sup>, and when learning that this Court would give credence to said argument, did the Debtor feel the need to file an objection to claim, which it did on July 13, 2015.

4. Quite simply, the rationale behind 194.171(4) is that full payment is good policy, in that municipalities can enjoy steady cash flow even during protracted property tax disputes. As the Florida 5<sup>th</sup> D.C.A. has stated, “The legislature's obvious objective in enacting the jurisdictional prerequisites [of Section 194.171] was to insure the continued flow of tax revenue during the extended period of an assessment challenge.” *Shank v. Havill*, 6 So.3d 631, 633 (Fla. 5th DCA 2009) (citing *Mikos v. Parker*, 571 So.2d 8 (Fla. 2d DCA 1990)). It is in the State's (and consequently the Counties') best interests to enact such a provision, thereby insuring an uninterrupted stream of tax revenue, regardless of challenges initiated by the payee.<sup>2</sup>

5. The Debtor was left with little choice but to pay the Taxes in full. Not only was the sale of vacant land to PNC (as contemplated by the attendant 363 order and confirmed plan terms) (the “**Land Sale**”) dependent on the property taxes being paid in full, but the Debtor, under Florida

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<sup>1</sup> A waiver-like argument may possibly be inferred from the Tax Appraiser's Motion, but nowhere in the Motion does the Tax Appraiser mention “waiver” or otherwise outline the requirements for waiver.

<sup>2</sup> It should be pointed out that the Debtor is limiting its analysis in this section (i.e., as to circumstances where claims are paid in full) specifically to Florida property tax claims.

law, could have also been exposed to significant penalties and interest on the challenged deficiency if it lost its challenge and had not paid the taxes in full. As stated in Florida Statutes 194.192(2):

If the court finds that the amount of tax owed by the taxpayer is greater than the amount the taxpayer has in good faith admitted and paid, it shall enter judgment against the taxpayer for the deficiency and for interest on the deficiency at the rate of 12 percent per year from the date the tax became delinquent. If it finds that the amount of tax which the taxpayer has admitted to be owing is grossly disproportionate to the amount of tax found to be due and that the taxpayer's admission was not made in good faith, the court shall also assess a penalty at the rate of 10 percent of the deficiency per year from the date the tax became delinquent.

Furthermore, Confirmation of the Debtor's Plan required full payment of all administrative expenses. Debtor's Plan, Article III, Section 3.02.

6. In sum, the determination that the Debtor waived its rights to challenge the amount of property taxes owed by paying its Taxes in full would be in contradiction to Fla. Stat. 194.171(4), and would essentially be disregarding the tenets of *Butner*, which held that bankruptcy courts should look to state law in the matters of property rights.

7. In addition, the Bankruptcy Code, in Section 502(j), clearly contemplates the situation where an allowed claim is paid in full, said claim is later reconsidered by the court, and a debtor in possession can obtain a refund of its payment. "This subsection [11 U.S.C. 502(j)] does not alter or modify the trustee's right to recover from a creditor any excess payment or transfer made to such creditor."

**THE DEBTOR DID NOT DEMONSTRATE INTENT TO WAIVE ITS RIGHTS**

8. The Debtor never intended to waive its right to challenge the Taxes. As the 11<sup>th</sup> Circuit held, under Florida law, "The related concept of waiver is the *intentional* relinquishment of a known right." *Dooley v. Weil (In the Matter of Garfinkle)*, 672 F.2d 1340, 1347 (11<sup>th</sup> Cir. 1982) [Emphasis supplied] *citing Fireman's Fund Ins. Co. v. Vogel*, 195 So.2d 20 (Fla.App.1967);

*Gilman v. Butzloff*, 155 Fla. 888, 22 So.2d 263 (1945); *Rader v. Prather*, 100 Fla. 591, 130 So. 15 (1930). Furthermore, the *Garfinkle* court held that:

Waiver requires (1) the existence at the time of the waiver a right, privilege, advantage, or benefit which may be waived; (2) the actual or constructive knowledge thereof; and (3) an intention to relinquish such right, privilege, advantage, or benefit. Waiver may be express, or, as in this case, implied from conduct. A party may waive any right which it is legally entitled to, including rights secured by contract. When waiver is implied from conduct, the acts, conduct, or circumstances relied upon to show waiver must make out a clear case. Furthermore, waiver does not arise from forbearance for a reasonable time. [Internal citations omitted.]

*Id.*

In the case at hand, as to prong #3, the Debtor never evidenced an intention to relinquish its rights; rather, the Debtor paid the Taxes in full so that the Land Sale could close, per the settlement agreement with PNC, the 363 sale order, and the confirmed plan (the “Plan”).

9. In addition, the Debtor filed its lawsuit in state court challenging the amount of the Taxes on December 9, 2015, yet paid the Taxes in full *after* the suit was filed, in January of 2015. The debtor’s actions clearly demonstrate an intent to preserve its rights to challenge. As stated by the Florida 4<sup>th</sup> DCA, “Waiver is the intentional or voluntary relinquishment of a known right or conduct which warrants an inference of the relinquishment of a known right.” *Citizens Prop. v. Michigan Condo. Ass’n.*, 46 So.3d 177, 178 (Fla. 5<sup>th</sup> DCA 2010) *quoting Aberdeen Golf & Country Club v. Bliss Constr., Inc.*, 932 So.2d 235, 244 (Fla. 4<sup>th</sup> DCA 2005). *See also In re S&I Invstmnts.*, 421 B.R. 569, 578 (Bankr. S.D. Fla. 2009)(“[W]aiver is either an intentional relinquishment of a known right, or conduct giving rise to a reasonable inference of a known right...The determination of the question of waiver is a factual inquiry and is within the discretion of the trier of fact.”) Here, the facts of the case clearly demonstrate that the Church never intended to waive its rights to

challenge denial of the religious exemption, and in fact, only “did the right thing” by paying the Taxes in full, relying on Fla. Stat. 194.171(4) to later seek a partial refund.

**THIS COURT CAN RECONSIDER THE TAX CLAIM AFTER CONFIRMATION**

10. Though the 2014 property tax claim (the “**Tax Claim**”) was an allowed claim at Confirmation, this Court can reconsider the claim under 11 U.S.C. § 502(j) and Fed. R. Bankr. P. 3008, and as more fully explained in the Debtor’s *Motion to Reconsider Allowance of Claim* [ECF 259]. In *In re Gomez*, 250 B.R. 397, 401 (Bankr. M.D. Fla. 1999) (J. Jennemann), the Debtor objected to the claims of secured creditors 2 months after the confirmation of her plan, though the objected-to claims were filed 3 months before plan confirmation. The creditors asserted that the confirmed plan was *res judicata* and that any issues as to their claims should have been raised at or prior to confirmation. In ruling that the Debtor should have the opportunity to demonstrate “cause” to allow reconsideration, the Court held that “Section 502(j) contemplates the reconsideration of allowed or disallowed claims *both before and after confirmation*. In fact many courts have held that, under § 502(j) and Federal Rule of Bankruptcy Procedure 3008, a claim may be reconsidered at any time before the case is closed.” *Id.* at 399-400. [Emphasis supplied.] *See also Sheffield v. HomeSide Lending, Inc. (In re Sheffield)*, 281 B.R. 67, 71 (Bankr. S.D. Ala. 2001)(Holding that debtor’s failure to object pre-confirmation to a creditor’s claim did not bar the debtor, on *res judicata* and waiver theories, from later seeking reconsideration of the allowance of the claim.)

11. In the present case, the Tax Collector filed its increased amended claim only 2 days before Confirmation, and therefore the new amount could not be adjudicated in time to confirm the plan. Bankruptcy courts in this state have held that when such a situation exists, the court can hear a post-confirmation objection to the claim. *See In re Tomasevic*, 275 B.R. 103, 110 (Bankr.

M.D. Fla. 2001) (Holding that a debtor could object to a claim after confirmation because (a) the creditor filed its claim shortly before confirmation; (b) the debtor was “tenacious” in its efforts to resolve his objection; (c) the objection did not cause any interruption in the creditor receiving its funds; and (d) the court regularly heard claims objections and therefore could efficiently administer the matter.) *See also Russo v. Seidler (In re Seidler)*, 44 F.3d 945, 948 (11<sup>th</sup> Cir. 1995)(“This effect [*res judicata* of a confirmed plan], however, is premised on the notion that the bankruptcy court has addressed in the confirmed plan and order only those issues that are properly within the scope of the confirmation hearing. Issues that were not mature for decision and could not be appropriately resolved in either the confirmation hearing or in the order confirming the plan are not barred.”) In the present case, with the amended Tax Claim filed just 2 days before Confirmation, and with significant and extensive evidentiary issues needing to be determined in resolving the claim, the Tax Claim could not have been resolved and adjudicated in time to complete Confirmation.

12. Furthermore, the Debtor’s confirmed Plan specifically provides that this Court retains jurisdiction to hear objections to claims, even after the Confirmation order is entered:

11.01 From and after entry of the Confirmation Order, the Bankruptcy Court shall retain such jurisdiction as is legally permissible over the reorganization case for the following purposes:

(a) to hear and determine any and all objections to the allowance of any Claim or any controversy as to the classification of Claims.

13. The Debtor is only now seeking reconsideration of the allowed claim and a hearing on an objection to claim because it (a) relied on the Florida statutes which preserved its rights to later seek a refund; (b) had an urgent need to complete Confirmation so that the Land Sale could occur, according to the Church’s settlement with PNC; (c) was not aware that the Tax Appraiser would argue *res judicata* and waiver until the Tax Appraiser filed its Jurisdiction Motion on June

15, 2015; and (d) only learned that this Court would give credence to the waiver argument at the Hearing on July 9, 2015.

14. Though Rule 3008 does not set a limit on when a court can reconsider an allowed claim, notably in 1984 an amendment to the Code removed the limitation that said reconsideration had to occur before the case was closed. *See 9 Collier on Bankruptcy*, ¶ 3008.01[3], (16<sup>th</sup> ed. rev. 2015). Nevertheless, the Debtor's case has not even been closed, further strengthening the Debtor's position that a reconsideration can be heard.

15. Sufficient "cause" exists for this court to reconsider the allowance or amount of the Taxes. The court in *Gomez* articulated the standards for "cause" under 502(j) when a claim has not been argued on its merits:

In cases where the proof of claim was not actually litigated but instead was deemed allowed by the Confirmation order without objection, courts instead have articulated a different standard to establish cause for reconsideration under § 502(j). These courts have weighed several factors to determine if sufficient cause was shown. The factors include (1) the extent and reasonableness of the delay, (2) the prejudice to any party in interest, (3) the effect on efficient court administration, and (4) the moving party's good faith. This Court accepts this standard to show cause in situations where the debtor seeks reconsideration of a claim deemed allowed at a confirmation hearing without objection. Substantial discretion exists in deciding whether to grant a motion to reconsider a claim under § 502(j).

*Gomez*, 250 B.R. 397 at 401. [Internal citations omitted.]

As to the four prongs of the "Cause" test: (1) There was no unreasonable delay, as the Value Adjustment Board petition was filed the day the Confirmation order was entered, and the state court suit was filed only 5 days later; (2) There is no prejudice to the Tax Collector as it has been paid in full. In addition, a pre-Confirmation objection would not have affected the Confirmation of the plan, as all creditors were paid in full, and a reduction in the Debtor's tax liability would not have affected plan feasibility or fairness; (3) This Court can efficiently administer this issue, as it

routinely hears claims objections; and (4) the Debtor acted in good faith by relying on the non-waiver statute of 194.171(4), paid the Taxes in full, and challenged the exemption denial in state court as opposed to bankruptcy court not for an improper purpose, but rather because it in good faith believed that said action was more appropriately adjudicated in state court.

**THE RIGHT TO CHALLENGE THE PROPERTY TAXES IS THE DEBTOR'S PROPERTY**

16. Pursuant to the Debtor's Plan, Section 7.03, "Upon the entry of the Confirmation Order, the Reorganized Debtor shall be vested with all of its property free and clear of all claims and interests of creditors, except as otherwise provided for herein." Therefore, the Debtor's right to seek a refund, that is, to challenge the denial of the religious exemption, was a property right which the Debtor owned upon Confirmation.

**DENIAL OF THE OPPORTUNITY TO CHALLENGE TAXES WOULD VIOLATE DUE PROCESS**

17. A denial of the Debtor's right to bring a cause of action challenging the Taxes would be a violation of the 14<sup>th</sup> Amendment of the U.S. Constitution. *See Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 429, 102 S.Ct. 1148, 1154, 71 L.Ed.2d 265 (1982) (Holding that where a procedural limitation on a claimant's ability to assert a right deprives a claimant of a property right, due process requires that the established state procedure must provide a proper procedural safeguard before the claimant's property interest is destroyed.) ("[A] cause of action is a species of property protected by the Fourteenth Amendment's Due Process Clause...Due Process Clauses protect civil litigants who seek recourse in the courts, either as defendants hoping to protect their property or as plaintiffs attempting to redress grievances.")

18. Furthermore, under Fla. Stat. 192.0105, "Taxpayer Rights", subsection (2)(i), "The Right to Due Process", the Debtor has the right to, *inter alia*, "bring action in circuit court



to contest a tax assessment or appeal value adjustment board decisions to disapprove exemption or deny tax deferral.”

19. The Tax Appraiser’s “gotcha” argument based on technical procedures rather than equitable or substantive harm would cause serious consequences for the Church, increasing its tax liability by over \$100,000.<sup>3</sup> Unlike the other claims in this case (e.g., PNC’s claim), the Taxes are not a “final” claim: They are a unique claim which has a special state statute, applicable here. In sum, the Church has never had a full and fair opportunity to challenge the Tax Appraiser’s unilateral decision to deny the Church’s religious exemption, and therefore the deprivation of its “day in court” would be a denial of the Church’s Due Process rights.

**NO PREJUDICE TO CREDITORS EXISTS IF CHURCH IS ALLOWED TO CHALLENGE THE TAXES**

20. The Tax Appraiser argued at the hearing on the Motion (the “**Hearing**”) that creditors have the right to know of potential lawsuits that might have enlarged the estate, which could be used to increase the frequency and amount of a debtor’s payments. However, the Church’s creditors were paid in full shortly after Confirmation, so this argument does not apply in this case.

**THE TAX COLLECTOR’S ACCEPTING VOTE WAS NOT IN CONNECTION WITH THE 2014 TAXES**

21. The Tax Appraiser argued at the Hearing that it submitted a ballot accepting the Plan in reliance on the full payment of the Tax Claim; in fact, said ballot, as this Court pointed out, was only for the prepetition claim for 2013 property taxes, which are not at issue here.

**THE INCREASED CLAIM AMOUNT WAS FILED AFTER THE CONFIRMED PLAN WAS FILED**

22. Though the Plan contained a provision that all administrative expenses would be paid in full on the Effective Date, or otherwise by agreement of the Parties, the Tax Collector failed

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<sup>3</sup> Though the Tax Appraiser’s argument is somewhat technical, it should be noted that no “bright line” rule or statute was violated. As an analogy, this is not a case where an appeal was filed on day 31 when a prospective appellant had 30 days to file an appeal. Rather, this is a subjective situation that relies on the equities of the situation. There was no “black letter” deadline that was missed by the Debtor.

to file its amended claim, which increased the property tax amount by over \$100,000, until 11 days after the Plan was filed, and only 2 days before the Confirmation hearing. In addition, no other notice or pleading was filed with the Court before November 6, 2014, stating the Tax Appraiser's intention to increase its claim.

**THE DEBTOR'S REQUEST TO ESCROW THE DISPUTED TAX AMOUNT WAS DENIED**

23. After the state court suit was filed challenging the denial of the tax exemption, and before the Land Sale, the Debtor's state court counsel made a request of the Tax Collector/Appraiser that the disputed portion of the Taxes be placed in escrow pending outcome of the state suit. The Tax Authorities, however, denied said request, and therefore the Debtor had to pay the Taxes in full to complete the closing of the Land Sale.

24. The Debtor did not request that this Court enter an order allowing the Land Sale to go forward with the disputed Taxes held in escrow, as the Debtor was relying on Florida Statute 194.171(4) in preserving its rights to later challenge the exemption and obtain a partial refund.

WHEREFORE, for the reasons stated herein, the Debtor respectfully requests that this Court deny the Tax Appraiser's Motion, allow for the 2014 property tax claim to be considered, allow for a hearing on the objection to said claim to occur, and for such other and further relief as this Court deems just and proper.

Respectfully Submitted,

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