

**IN THE SUPREME COURT OF THE STATE OF FLORIDA
Case No. SC00-1555**

CITY OF NORTH LAUDERDALE,

Petitioner,

vs.

SMM Properties Inc., et al

Respondent.

_____ /

**AMICUS CURIAE ON BEHALF OF RESPONDENT
SMM Properties Inc., et al**

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**QUESTIONS from the DISTRICT COURT of APPEAL
FOURTH DISTRICT CASE NO. 98-03525**

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STATEMENT OF THE CASE AND FACTS

Respondent SMM Properties Inc., et al, filed a civil action in the Circuit Court of the Seventeenth Judicial Circuit, Broward County, seeking to invalidate a §197.3632, Fla. Stat. (1995) non ad valorem fire rescue special assessment, imposed by Petitioner, the City of North Lauderdale. After the first hearing, the trial Court determined that the assessment was valid by determining Emergency Medical Services did provide a special benefit to real property. At a second hearing the lower court ruled the assessment was fairly apportioned.

Respondent SMM Properties Inc., et al, appealed to the District Court of Appeal, Fourth District, which reversed the Circuit Court's decision. It opined Emergency Medical Services do not provide a special benefit to real property. The District Court of Appeal then certified two questions to this court to be of great public importance.

Amicus curiae, WILLIAM PHIL McCONAGHEY (“McCONAGHEY”), is a registered voter and has been the joint owner of the same Homesteaded residential property within Broward County, Florida since 1964.

SUMMARY OF ARGUMENT

Unlike the presence of fire protection, Emergency Medical Services (“EMS”) do not lower real property insurance premiums.

This court in *Lake County v. Water Oak Management* said its decision validating a special assessment for fire protection, would not cause a flood of assessments, is contravened by subsequent events. There now are numerous local governments that charge fire rescue assessments.

The inclusion of EMS makes the entire assessment invalid

Respondent SMM Properties Inc., et al, are a group of commercial property owners. They do not have certain additional rights granted to residential property owners provided by the Florida Constitution. This court should also consider those rights, such as the “Save our Homes Amendment” and “Homestead Exemption”, which are circumvented and eroded by invalid non ad valorem special assessments that contain charges for EMS.

Both the Respondent and McCONAGHEY enjoy additional rights which are also eroded and circumvented such as the ten (10) millage ad valorem tax cap. Huge yearly increases can and do occur in these special assessments , and the amount collected from special assessments can exceed the total received from a ten (10) mill ad valorem tax. Nor is such an assessment subject to the rolled back provisions of the Florida Statutes, and cannot be appealed to the County Value Adjustment Board.

Quoting Justice J. Wells dissenting opinion in *Harris v. Wilson*, “The citizens of this state have voted for millage caps on ad valorem taxes and for homestead exemption from levy of ad valorem taxes. However, the majority’s decision now allows governments to give these voter mandates a wink and a nod and the circumvents them by semantics in labeling as a special assessment

what actually is a tax”.

ARGUMENTS

A. PRESENCE OF EMERGENCY MEDICAL SERVICES DOES NOT LOWER INSURANCE PREMIUNS

1. A 4 to 3 decision by this court, in *Lake County v. Water Oak Management*, 695 So. 2d 667, (Fla. 1997), articulated at 669, the principal reason fire protection bestowed a special benefit to real property is, “by providing for lower insurance premiums ...”, However, in South Florida, the vast amount of the property insurance premium on residential is for windstorm, not for fire damage. Nevertheless, EMS does not improve the Insurance Services Organization (“ISO”) rating of a community, and therefore does not lower insurance premiums.

B. FLOOD OF ASSESSMENTS HAS OCCURED

2. This court in *Lake County at 670* stated, “Contrary to the assertions of the opponents to this assessment here, we do not believe that today’s decision will result in an never-ending flood of assessments”, is contravened by by subsequent events. There now are sixteen (16) local governments in Broward County that charge non ad valorem fire rescue special assessments and one (1) in Miami Dade County. All but two have ad valorem tax rates ranging from 3.9 to 7 mills, which are significantly below the ten (10) mill tax cap, Most of these have deleted EMS from the assessment this year in view of the matter before this court, the *en banc* decision in *SMM Properties, Inc., et al v. City of North Lauderdale*, 760 So.2d 998 (Fla.App. 4Dist. 2000), They have not lost revenues as they raised the amount charged commercial properties, rather than reduce the assessment per residential unit. If the inclusion of EMS is a valid, the assessed properties will be subject to tremendous increases in the future.

C. VALID PART CANNOT SAVE ASSESSMENT

3. The inclusion of EMS makes the entire assessment invalid, see *Small v. Sun Oil Company*, 222 So. 2d 196 (Fla. 1969), at 199;

"When, however, the valid and the void parts of a statute are mutually connected with and dependent upon each other as conditions, considerations, or compensations for each other, severance of good from bad would effect results not contemplated by Legislature and, in such situation, severability clause is not compatible with legislative intent and cannot be applied to save valid parts of the statute."

D. RESIDENTIAL RIGHTS ARE CIRCUMVENTED BY ASSESSMENTS CONTAINING EMERGENCY MEDICAL SERVICES _

4. Respondent SMM Properties Inc., et al, are a group of commercial property owners. They do not have certain rights granted by the Florida Constitution to Homesteaded residential property owners such as McCONAGHEY. This court should also consider those residential property rights, such as the “Save our Homes Amendment”, Art. VII, § 4(c)1, Fla. Const. (1992)¹, and “Homestead Exemption”, Art. VII, § 6(a), Fla. Const. which are being circumvented and eroded by invalid non ad valorem special assessments that contain charges for EMS. Emergency Medical Services do not provide a direct special benefit to

¹"Save Our Homes" prevents the valuation of residential properties for taxing purposes, that have Homestead Exemption, from increasing more than 3 percent or the inflation rate, whichever is less

the properties assessed ². The latter Homestead Exemption does not grant an exemption for valid special assessments.

**E. ADDITIONAL RIGHTS ARE CIRCUMVENTED BY
ASSESSMENTS CONTAINING EMERGENCY
MEDICAL SERVICES**

5. Both the Respondent and McCONAGHEY enjoy additional rights which are also circumvented by creating a special assessment, e.g. the ten (10) millage ad valorem tax cap Art. VII, § 9(b) Fla. Const.³. There is no legislative or Constitutional cap on these assessments. They are limited to providing a benefit which exceeds the amount assessed ⁴. Therefore, according to case

²" As noted in *Florida Dep't of Revenue v. Orange County*, 620 So. 2d 991 (Fla. 1993), the Florida Constitution will not countenance circumvention of constitutional protections for property owners.

³" See *State of Florida v. City of Port Orange*, 650 So. 2d 1 (Fla. 1994), the Court said, "in Florida's Constitution, the voters have placed a limit on ad valorem millage available to municipalities made homesteads exempt from taxation up to minimum limits These constitutional provisions cannot be circumvented by creativity." *Id.* @ 4.

⁴See *Atlantic Coast Line R. R. v. City of Gainesville*, 83 Fla. 275, 283-84, 91 So. 118, 121 (1922) (the theory of a special assessment is that "the value of certain property is enhanced by an improvement of a public character, the property thus receiving an special and peculiar benefit; and that upon such property a part or the whole of the cost of such public improvement is assessed to an amount not exceeding the amount of such benefits"). (Emphasis added)

law, the only restriction is the amount of the budget for the service. Consequently, large yearly increases can and do occur, and the amount collected from special assessments can exceed the total received from a ten (10) mill ad valorem tax⁵.

6. Non ad valorem assessment are not subject to the rolled back provisions of § 200.065(1) Fla. Stat. (1996) and cannot be appealed to the local County Value Adjustment Board as provided in § 194.011 Fla. Stat. (1996).

⁵ In Broward County, the City of Lauderdale Lakes increased from \$75 to \$192 per residential unit in one year. The City of Pembroke Pines raised its total fire assessment forty (40) percent.

**E. THIS COURT SHOULD NOT GIVE A WINK AND
A NOD TO ASSESSMENTS CONTAINING EMS_**

7. Justice J. Wells in his dissenting opinion in the solid waste special assessment case, *Harris v. Wilson*, 693 So.2d 945, at 950 said:

“My overarching concern is that the majority's decision fosters government that is not straightforward or honest about revenue raising. The citizens of this state have voted for millage caps on ad valorem taxes and for homestead exemption from levy of ad valorem taxes. However, the majority's decision now allows governments to give these voter mandates a wink and a nod and then circumvents them by semantics in labeling as a special assessment what actually is a tax. Voters are the victims of such deception, and I believe this Court should protect them from (Emphasis added)

it.”

CONCLUSION

This Court should not give a “wink and a nod” to this special assessment, which is actually a tax. It should affirm the Opinion of the District Court of Appeal, Fourth District.

CERTIFICATE OF FONT

The undersigned hereby certifies this brief was prepared in Times New Roman font, size 16, with proportioned 10 characters per inch.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of October, 2000, a true and correct copy of the aforementioned, was furnished via U.S. Mail to: EDNA CARUSO, esq., 1615 Forum Place, Suite 3A, W. Palm Beach, FL 33401; Neison O. Kasdin esq., Keith Mack, LLP, First Union Financial Center, 12th Floor, 200 South Biscayne Boulevard, Miami, FL 33131-2310; Frank A. Sheppard, esq. Pacific Legal Foundation, P.O. Box 5222188, Miami, Florida 33152; ROBERT L. NABORS, GREGORY T. STEWART, VIRGINA SAUNDERS DELEGAL, Nabors, Giblin & Nickerson P.A., 315 South Calhoun Street, Barnett Bank Building, Suite 800, Post Office Box 11008, Tallahassee, Florida 32302; SAMUEL S. GOREN, KERRY L. EZROL, MICHAEL D. CIRULLO, Jr., Josias, Goren, Cherof, Doody & Ezrol, P.A., 3099 E. Commercial Boulevard, Suite 200, Fort Lauderdale, Florida 33308; Alan P. Dagen esq., Schantz, Schatzman & Aaronson, P.A., First Union Center, Suite 1050, 200 South Biscayne Boulevard, Miami, FL. 33131-2394; Jamie Cole esq. Group City Emergency Medical Services Coalition of Broward County, Florida, Inc., 3111 Stirling Road, Suite B, Ft. Lauderdale, FL. 33312 and Randell Thorten esq., Village Center Community Development District, P.O. Box 58, Panasosfkee, FL. 33538.

**BY: _____
WILLIAM PHIL McCONAGHEY, PRO SE**

**Sid J. White, Clerk
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October 12, 2000

**Subject; Case No. SC00-1555
CITY OF NORTH LAUDERDALE, vs.
SMM Properties Inc., et al**

Re; 4th DCA Case No. 98-03525

Ladies and Gentlemen:

With regard to the above case, enclosed please find for filing:

- 1. One (1) original and seven (7) copies of an amicus curiae brief in this matter, from William Phil McConaghey.**
- 2. A disk containing the brief in Word Perfect version 6.1.**

Sincerely Yours,

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