

IN THE DISTRICT COURT OF APPEAL
FIFTH DISTRICT OF FLORIDA

DARDEN RESTAURANTS, INC.
and GMRI, INC.,

Case No. 5D16-4049

Appellants,

L.T. Nos. 2014-CA-4289-0
2015-CA-4980-0

v.

RICK SINGH, as
ORANGE COUNTY PROPERTY
APPRAISER,

Appellee.

_____ /

**APPENDIX TO AMICUS CURIAE BRIEF OF
THE CHAMBER OF COMMERCE
OF THE UNITED STATES OF AMERICA,
THE RESTAURANT LAW CENTER, AND
THE FLORIDA RESTAURANT & LODGING ASSOCIATION**

On Appeal from a Final Order of the Ninth Judicial Circuit,
In and For Orange County, Florida

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1 recommendation that you're looking at as Plaintiff's
2 Exhibit 1?

3 A. Yes.

4 Q. Do you have an opinion within a reasonable
5 degree of professional certainty as to whether or not
6 29,033,332 was the fair market value of Darden's TPP as
7 of January 1, 2013 as required by the Florida
8 Constitution and law?

9 MR. KELLEY: Objection; no foundation laid that
10 the number conformed with professionally accepted
11 appraisal practice. There's been no evidence at all
12 offered on that. That's what 194.301 says, that
13 assessments must conform to professionally accepted
14 appraisal practices.

15 MR. HAZOURI: The assessment is required to
16 comply with the TPP guidelines. I will show Your
17 Honor that.

18 This statute is put in place to preclude the
19 argument from Mr. Kelley to suggest we have to bring
20 in an outside appraiser to say what the Property
21 Appraiser did was correct. As far as statute
22 195.032, establishment of standard of values. Your
23 Honor, this is the statute where the Florida
24 legislature directs the Department of Revenue, which
25 oversees this process, to prepare the guidelines

1 that we have entered into evidence.

2 It says, in furtherance of the requirements set
3 out in 195.032, the Department of Revenue shall
4 establish and promulgate measures of value not
5 inconsistent with those standards providing by law
6 to be used by property appraisers in all counties,
7 including tax districts, to aid and assist them in
8 arriving at assessments of all property.

9 That is exactly what Mr. Thayer has testified
10 has happened, is the TPP guidelines were provided
11 and OCPA followed them.

12 The standard measures of valuation of
13 particular types of property consistent with 193.011
14 and 193.461 -- let me try again.

15 The standard measures of value shall provide
16 guidelines for the valuation of property and methods
17 for property appraisers to employ in arriving at the
18 valuation of particular types of property consistent
19 with 193.011.

20 That's the statute that governs this, the eight
21 factors. The guidelines provide the Property
22 Appraiser with guidance on how to do it. Key
23 language here; the standard measures of value shall
24 assist the Property Appraiser in valuation and shall
25 be deemed prima facie correct, but shall not be

1 deemed to establish the just value of any property.
2 What that means is if the Property Appraiser follows
3 the guidelines, his assessed value that he arrives
4 at is deemed prima facie correct for a proceeding
5 like this.

6 The reason it doesn't establish the just value
7 of real property -- this last part, shall not be
8 deemed to establish the just value of any
9 property -- is because that allows the taxpayer,
10 Darden, to come in and challenge it and put on their
11 own evidence. If it just established a just value
12 ipso facto, they wouldn't have standing to come in
13 here.

14 What Mr. Kelley is saying, there's some sort of
15 foundation to say that the value that was needed
16 other than what we have done for Mr. Thayer to
17 testify that the value is correct is just simply
18 wrong under the law.

19 MR. KELLEY: May I respond, Your Honor?

20 THE COURT: Yes.

21 MR. KELLEY: Counsel is now acknowledging the
22 part that wasn't highlighted, but shall not be
23 deemed to establish the just value of the property,
24 as he points out, if it didn't say that, then there
25 would be an irrebuttable presumption in favor of the

1 value, which would deny due process of law. Notice
2 this sentence here, this is a very old section,
3 very, very old section. The legislature has spoke a
4 number of times since in other related sections.
5 Most notably, 194.301 it says, the standard measures
6 of value -- and the standard measures of value is
7 that entire guidelines which is in evidence as
8 Exhibit 9 -- shall assist the Property Appraiser and
9 shall be deemed prima facie correct.

10 And then it talks below about the presumption
11 of correctness according to an assessment made by a
12 property appraiser. As we pointed out in the trial
13 brief, there is no presumption of correctness that
14 attaches to the Value Adjustment Board's value,
15 which is what we are in court here trying to
16 determine if it's correct or not. Nor, in this case
17 does it attach to the -- Mr. Singh's original
18 assessments, because in its last pronouncement of
19 the law in the 2009 amendment to 194.301 the
20 legislature removed any presumption of correctness
21 to an assessment that had been overturned by the
22 Value Adjustment Board with the Property Appraiser
23 as the Plaintiff.

24 Therefore, this statute that counsel is relying
25 on now at trial about the standard measures of value

1 being prime facie correct does not apply in a
2 situation like this where the Property Appraiser is
3 the Plaintiff. Because the Property Appraiser has
4 no presumption of correctness. And the -- so
5 there's no -- simply by showing compliance with that
6 part of the guidelines pertaining to a replacement
7 cost approach does not make the Property Appraiser's
8 value correct or the right value or anything like
9 that. There's got to be additional evidence offered
10 by a qualified witness that the value conforms to
11 professionally accepted appraisal practice; which is
12 what Section 194.301 specifically added when it was
13 amended in 2009.

14 It used to formerly just talk about 193.011.
15 But the 2009 amendment grafted onto the statute the
16 requirement about professionally accepted appraisal
17 practices.

18 Now, the other comment I have --

19 MR. HAZOURI: Do you have that statute? Is
20 that the presumption of correctness statute?

21 MR. KELLEY: 194.301 is the statute this action
22 was brought under.

23 MR. HAZOURI: Presumption of correctness,
24 correct? I would like to see the statute.

25 MR. KELLEY: Hang on a second.

1 MR. HAZOURI: I'd like to respond while he's
2 looking for that.

3 MR. KELLEY: I'd like to finish my argument,
4 please. Here, I've got the statute here.

5 So what the guidelines say at the bottom of
6 Page 3 -- and counsel asked the witness about Page
7 3. What it says at the bottom is as follows, quote:
8 These guidelines are not intended to limit or
9 restrict the property appraisers or the department
10 in the use of generally accepted valuation
11 techniques.

12 This is consistent with what the statute has
13 said since 2009 about the assessment must be shown
14 to conform to both 193.011 and generally accepted
15 appraisal practices. So as a condition to admitting
16 the witness's opinion on the ultimate issue in the
17 case, which is value, there has to be a foundation
18 laid that the opinion was arrived at as a result of
19 generally accepted appraisal practices. There's
20 been no such testimony offered at this point on that
21 subject.

22 MR. HAZOURI: Judge, what he just said, he has
23 not shown you a single case and the statute that he
24 cites does not say anything about what he's saying.
25 I'm going to explain that to you.

1 Let's remember what we are talking about. We
2 are talking about the foundation for this witness to
3 be able to testify whether he believes the value
4 that the property arrived at was a fair market
5 value. Expert witness foundation is what the
6 argument is being made. The statute that Mr. Kelley
7 is citing you to, 194.301, deals with the burden of
8 proof in this case, and specifically the presumption
9 of correctness.

10 And I wish I had a copy for you. But I'll just
11 read it to you, some of it. It's kind of long: In
12 any administrative or judicial action which a
13 taxpayer challenges an ad valorem tax assessment of
14 value the Property Appraiser's assessment is
15 presumed correct if the appraiser proves by a
16 preponderance of the evidence that the assessment
17 was arrived at by complying with 193.011 and any
18 other statutory requirements relating to classified
19 use values or assessment caps -- and here is the key
20 language -- and professionally accepted appraisal
21 practices.

22 So, Your Honor, if we were arguing for a
23 presumption of correctness, we would have to show
24 that what the Property Appraiser did complied with
25 professionally accepted appraisal practices. We are

1 not here arguing for presumption of correctness. We
2 are the Plaintiff. We are taking on the burden of
3 proof. So this statute relates only to preserving
4 the presumption of correctness. And it says, if the
5 Property Appraiser wants to do so, then it has to
6 show that it complied with professionally accepted
7 appraisal practices. This statute says absolutely
8 nothing -- and I can't express that enough; zero,
9 absolutely nothing about a foundation for our expert
10 to testify as to what the fair market value is.

11 This statute deals with if the Property
12 Appraiser prevails at the VAB, and Darden, in this
13 case the taxpayer, appeals and we come before Your
14 Honor and they are the Plaintiff and we are the
15 Defendant, we have the presumption of correctness,
16 and to keep the presumption of correctness, we have
17 to do these things. We lost at the VAB. We are the
18 Plaintiff. We are taking on the burden. There is
19 no presumption of correctness. So this entire
20 statute, which is the only legal authority he has
21 shown you, is entirely irrelevant to any foundation
22 to an expert witness testifying.

23 Now, tying it in, this is the relevant statute,
24 Your Honor. The best you can say is it's old.
25 Well, it applies. He said, well, 194.301 was

1 changed. That's burden of proof, presumption of
2 correctness. Has nothing to do with what we are
3 talking about. And I read that to you. He says the
4 presumption of correctness -- the last sentence, the
5 presumption of correctness afforded on assessments
6 made by a property appraiser shall not be impuned
7 merely because the standard measures of value do not
8 establish a just value of any property.

9 That is simply saying if the Property Appraiser
10 had a presumption of correctness, our statement here
11 that the guidelines are not deemed to establish the
12 just value of any property does not get rid of the
13 presumption of correctness. Well, this entire
14 sentence is irrelevant in this case, because we are
15 not here arguing for presumption of correctness. He
16 is taking presumption of correctness statute and
17 language that has nothing to do here today and he's
18 trying to apply it to a foundation for expert
19 testimony.

20 We submit the objection is far off base.

21 MR. KELLEY: If I could respond, briefly, Your
22 Honor.

23 Counsel did not read down far enough in the
24 statute. We're talking about what the statute says
25 in subsection 2(b), as in boy. What it says down

1 there -- and this is for the action like this for
2 the Court to adjust the value. Says, if the party
3 challenging the assessment -- that's Mr. Singh --
4 satisfies the requirement of paragraph A, which is
5 to show by a preponderance of the evidence that the
6 value does not represent just value, it says, the
7 Court shall --

8 MR. HAZOURI: You skipped the language. Come
9 on.

10 MR. KELLEY: The Value Adjustment Board or the
11 Court shall establish the assessment if there is
12 competent substantial evidence of value in the
13 record which cumulatively meets the criteria of
14 193.011 and professionally accepted appraisal
15 practices.

16 There is no alternative version of this
17 subparagraph that deals with when the Property
18 Appraiser is the Plaintiff. What it says is the
19 Court cannot change the value being challenged
20 unless there is evidence that is competent and
21 substantial that meets professionally accepted
22 appraisal practices.

23 MR. HAZOURI: Your Honor, he skipped over,
24 intentionally, the most important language in the
25 statute, which tells what it's about. You can see

1 he didn't highlight it here because he decided to
2 skip over it.

3 It says, if the party challenging the
4 assessments satisfies the requirements of paragraph
5 A, the presumption provided in subsection one is
6 overcome and the Value Adjustment Board or the Court
7 shall establish the assessment if there is competent
8 substantial evidence of value in the record which
9 cumulatively meets the requirements of 193.011 and
10 professionally accepted appraisal practices.

11 There's no presumption here. So this entire
12 section has nothing to do with it. There's not a
13 presumption or correctness. We have the burden of
14 proof. I have my expert on. He's testified that
15 they complied with the guidelines which are deemed
16 prima facie correct and he can give his opinion of
17 value. And it's up to you to decide whether it's
18 good or not.

19 MR. KELLEY: There is no other alternate
20 section, Your Honor, that talks about where the
21 Property Appraiser is the Plaintiff and talks about
22 the circumstances under which the Court can change
23 the value. The legislature just wrote one version
24 of it, and they did reference a presumption of
25 correctness. The presumption is in subsection one,

1 but we also know because of the posture of this case
2 there's no presumption that attaches to the original
3 assessment.

4 So you are left with one subsection that talks
5 about, if the party challenging the assessment, the
6 Property Appraiser, satisfies the requirements of
7 paragraph A, which is the burden of proof, if they
8 satisfy the burden of proof then what circumstances
9 can the Court change the value. And they've only
10 said it one time. And it says it's got to be where
11 there's competent substantial evidence,
12 professionally accepted appraisal practice.

13 So my point is there's been no evidence yet
14 offered as a foundation that what the Property
15 Appraiser office did comports with professionally
16 accepted appraisal practices.

17 MR. HAZOURI: No requirement to do it, Judge,
18 follow the DOR guidelines. They're deemed prima
19 facie correct. We take the burden of proof. It's
20 up to you to decide. This doesn't have anything to
21 do with foundation for this witness's testimony.

22 THE COURT: Objection overruled.

23 BY MR. HAZOURI:

24 Q. Going back to the question; do you have an
25 opinion within a reasonable degree of professional

Respectfully submitted,

By /s/ Chris W. Altenbernd

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CERTIFICATE OF SERVICE

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