

**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION**

The FLORIDA PACE FUNDING AGENCY,
a public body corporate and politic,

Petitioner,

v.

NANCY C. MILLAN, as Tax Collector
for Hillsborough County, Florida

Respondent.

Case No.: 23-CA-13775
Division: K

CLERK OF THE
CIRCUIT COURT
2023 SEP 19 PM 1:01
COURTS

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

THIS CAUSE is before the Court on the Emergency Petition for Writ of Mandamus (“Petition”),¹ filed by Petitioner, The Florida PACE Funding Agency, a public body corporate and politic (“Petitioner” or “Florida PACE”), on July 13, 2023. By way of mandamus, Petitioner seeks to compel Respondent, Nancy C. Millan, as Tax Collector for Hillsborough County, Florida (“Respondent” or “Tax Collector”), to collect certain non-ad valorem assessments in connection with Petitioner’s property assessed clean energy (“PACE”) program. The Court has carefully reviewed the Petition, the submissions of the parties, and applicable law. For the reasons set forth below, the Petition is denied.

I. Relevant Background.

The Florida Legislature has enacted legislation that allows property owners to finance certain energy-efficient improvements to their property with local government assistance. To this end, property owners may enter into voluntary financing agreements to provide for repayment of

¹ The Court previously determined that this matter did not warrant emergency handling.

the cost of the qualifying improvements over time. The statutory scheme surrounding such financing assistance is set forth in Section 163.08 of the Florida Statutes (hereinafter, “the PACE Act”).

Under the PACE Act, financing of such property improvements is repaid to the PACE lender under the “uniform method” of collection provided in chapter 197, Florida Statutes. *See* § 197.3632, Fla. Stat. (2023). Using that method, the tax collector will place a special assessment on the benefited property owner’s tax bill in the form of a non-ad valorem tax when the technical and other requirements of the statute are met. The tax collector thereafter remits the funds collected to the PACE lender. A tax collector’s duty under Section 197.3632 is a ministerial one.

In 2017, Florida PACE and Hillsborough County executed an Interlocal Agreement under which Petitioner was authorized to enter into PACE financing agreements with local property owners in Hillsborough County. Between 2017 and 2020, pursuant to the Interlocal Agreement, Florida PACE entered into financing agreements with local property owners in Hillsborough County and collected related special assessments using the uniform method in coordination with the Tax Collector. Then, in August 2020, the Hillsborough County Board of County Commissioners (“Board”) received a report prepared by the Consumers and Veterans Services concerning complaints involving “the potential victimization of elderly and other less advantaged homeowners” in relation to the PACE programs operating in the County. (Resp., Ex. 5.)²

Following deliberation, the Board voted to terminate its interlocal agreements with the four PACE providers that had been providing financing assistance in the County, including Petitioner,

² Complaints were lodged against three of the four PACE providers operating in the County. The report indicates that no complaint was filed concerning Florida PACE. *Id.*

and to end the issuance of any new PACE financing in Hillsborough County after December 7, 2020. (*Id.*, Exs. 6 & 7, at Item G-1.) The Board thereafter notified the Tax Collector of its decision.

According to Respondent, Florida PACE advised the Tax Collector in late April 2023 that it would be conducting its PACE program independently in Hillsborough County. Florida PACE asserted that it could do so despite termination of the Interlocal Agreement, and without Hillsborough County's participation or authorization. Florida PACE further informed the Tax Collector that it intended for post-termination PACE financing assessments to be collected on the Hillsborough County tax roll using the uniform method under Section 197.3632.

In response, the Tax Collector sent Florida PACE a letter on May 25, 2023, advising Florida PACE that Respondent had no legal authority to collect new assessments levied and imposed after the Interlocal Agreement's termination on December 7, 2020, and further, that she would have no legal authority to collect such new assessments in the absence of an interlocal agreement with the County. (*Pet.*, Appendix C.)³ Florida PACE filed this mandamus action nearly two months later, asserting in part that, given the applicable deadlines to certify the assessments on the tax rolls, an action for declaratory relief would not be feasible.

II. Analysis.

A party petitioning for a writ of mandamus must establish a clear legal right to the performance of the act requested, an indisputable legal duty, and no adequate remedy at law. *See Radford v. Brock*, 914 So. 2d 1066, 1067 (Fla. 2nd DCA 2005) (citation and quotations omitted). The right to be enforced must be established by law; mandamus may not be employed to litigate

³ The PACE assessments imposed prior to the termination, including those assessments to be collected over the course of several years, will continue to be included on the tax rolls for 2023 and beyond. (*Resp.*, p. 8 & Ex. 9.)

an entitlement to a right, *see Butler v. City of Melbourne Police Dep't.*, 812 So.2d 547, 548-549 (Fla. 5th DCA 2002); or to establish a right in the first instance, *see Florida League of Cities v. Smith*, 607 So.2d 397, 400-401 (Fla. 1992) (mandamus may be used “only to enforce a right clearly and certainly established in the law”). In this case, it is readily apparent from the submissions of the parties that Petitioner’s claimed legal right to performance of the ministerial duty sought to be compelled is neither clear nor established. The extraordinary relief of mandamus must therefore be denied.

As an initial matter, the parties do not dispute that the Tax Collector has a ministerial duty to place PACE assessments on the tax bills. But they hold differing views as to the circumstances under which that duty is triggered. The Tax Collector contends that her ministerial duty to perform under section 197.3632 is predicated upon Florida PACE’s authority to have the assessments included in the tax roll in the first instance. Florida PACE contends that its authority in this regard is beside the point insofar as the Tax Collector is concerned, and that any question concerning its authority to collect PACE assessments in Hillsborough County may not be questioned by Respondent.

The Tax Collector is correct that she may not be compelled to discharge the duty sought to be compelled unless she is “clothed with the authority” to do so. *See, e.g., Dante v. Ryan*, 979 So.2d 1122, 1123 (Fla. 3d DCA 2008) (citing cases). Because mandamus may only be used to compel an official to perform lawful duties; *see Eichelberger v. Brueckheimer*, 613 So.2d 1372, 1373 (Fla. 2d DCA 1993), the relevant analysis must consider whether the ministerial duty sought to be compelled is permitted by law in the first instance. *See, e.g.,* Section 197.3632(1)(a), Fla. Stat. (by definition, a levy, or non-ad valorem assessment, is one that is imposed “by a

governmental body authorized by law” to do so). In sum, Florida PACE must demonstrate that clearly established law gives rise to the performance of the ministerial duty to be compelled.

Examining the issue through this lens, Petitioner can point to no authority that clearly establishes the right it advances; namely, that Florida PACE is a governmental body authorized by law to impose non-ad valorem assessments independently across the state of Florida, and without the need to operate under cooperative, interlocal agreements with participating local governments respectively served by local tax collectors. By its own admission, Florida PACE’s authority in this regard is subject to both current and potential future litigation, which undermines Petitioner’s argument concerning the existence of a clear legal right. Further, Petitioner’s related suggestion that Hillsborough County—and not the Tax Collector—must be the one to raise this question in separate litigation only further serves to demonstrate that the legal right at issue here is not “clearly and certainly established” so as to warrant mandamus relief.

Petitioner’s reliance on *Escambia County v. Bell*, 717 So. 2d 85, 88 (Fla. 1st DCA 1998) for this lack-of-standing argument is misplaced. That decision involved cross-motions for summary judgment in a declaratory judgment action in which it was stipulated that the party seeking to impose the special assessment on the tax bill had the authority to do so. *Id.* at 87. Such is not the case here, as the Tax Collector contends that Florida PACE does not have the authority to impose the special assessment in the absence of an interlocal agreement. Moreover, the focus of *Escambia County* was on whether the tax collector had the authority to determine the constitutionality of a lien that could result from nonpayment of an assessment. *Id.* at 88. That circumstance is also not present here.

To demonstrate the existence of a clear legal right, Florida PACE places much reliance on the bond validation judgment entered in Leon County on October 6, 2022—which Petitioner

characterizes as a “functional declaratory judgment” that establishes Florida PACE’s right to compel the tax collector in Hillsborough County to place PACE assessments on the tax rolls without the need for an interlocal agreement. *See Florida PACE Funding Agency v. State of Florida, et al.*, No. 2022-CA-1562 (Fla. 2d Cir. Ct., Oct. 6, 2022) (hereinafter, “2022 Bond Validation Judgment”) (Pet., Appendix B.) Petitioner’s reliance on the 2022 Bond Validation Judgment is unavailing.

Relevant here, Respondent argues that the Bond Validation Judgment includes collateral issues that go beyond the limited scope of the issues to be decided in a bond validation proceeding, as prescribed by Chapter 75 of the Florida Statutes. As a result, Respondent contends, the parties affected thereby were effectively deprived of the opportunity to be heard on those issues, which go to the heart of the dispute concerning the respective rights at issue here. In light of Respondent’s well-taken concerns surrounding the judgment—and the fact that its validity and import is subject to considerable dispute with respect to the affected parties herein—the Court finds that the 2022 Bond Validation Judgment does not support a finding here that Petitioner possesses a clear legal right that would warrant extraordinary mandamus relief.⁴

⁴ The Court recognizes that a complaint in any action to validate bonds under Chapter 75 must be filed in the Circuit Court for Leon County pursuant to the relevant provisions of Florida Statute Section 163.01, and that the resulting judgment entered therein is conclusive as to the parties. *See Fla. Stat. § 75.09.* However, as recognized by the 2022 Bond Validation Judgment itself—and in numerous decisions of the Florida Supreme Court on review of such judgments—a court’s task is to determine three principal issues, namely: (1) whether the public body has authority to issue the subject bonds; (2) whether the purpose of the obligation is legal; and (3) whether bond issuance complies with the requirements of law. (2022 Bond Validation Judgment, at p. 9) (citing *Strand v. Escambia Cnty.*, 992 So.2d 150, 154 (Fla. 2008)). As Respondent correctly notes, validation proceedings under Chapter 75 do not contemplate the adjudication of collateral issues “not going directly to the power to issue the securities and the validity of the proceedings with relation thereto.” *Keys Citizens For Responsible Gov’t, Inc. v. Fla. Keys Aqueduct Auth.*, 795 So. 2d 940, 944 (Fla. 2001) (citing cases and observing that such issues, if found to be collateral, are subject to deletion from the final bond validation judgment).

Also telling is the language of Florida PACE’s “Amended and Restated Interlocal Agreement Relating to the Establishment of the Florida PACE Funding Agency” (“Charter Agreement”), adopted in 2017, which contemplates the entry into subscription agreements with local governments as a prerequisite to the imposition of PACE assessments in those localities. (Pet., Appendix A, § 1.01). In addition, the express language of Florida PACE’s prior Interlocal Agreement with Hillsborough County undercuts Florida PACE’s argument that the PACE Act permits Florida PACE to operate independently and without the need for entry into interlocal agreements with subscribing local governments. *See, e.g.*, Resp., Ex. 4 at § 3.03(C) (recognizing that Florida PACE’s right to impose new non-ad valorem assessments shall end upon termination of the Interlocal Agreement with Hillsborough County.) As Respondent points out, there have been no intervening changes in the relevant statutory scheme surrounding PACE financing and assessments since the enactment of Florida PACE’s Charter Agreement and the entry of the prior Interlocal Agreement with Hillsborough County in 2017.

In sum, Petitioner has failed to demonstrate the existence of a clear legal right that would entitle it to mandamus relief.⁵ A full discussion of the remaining issues is therefore unnecessary. However, the inadequate-remedy prong required for mandamus relief does bear some mention.

In its brief, Petitioner recognizes that an action for declaratory judgment would be an appropriate remedy—which itself is a concession that the legal right at issue has not been established. But rather than seek declaratory relief, Petitioner made the speculative calculation that such a course of action “would take too long to be effective.” (Pet., p. 12.) A review of the

⁵ The decision attached to Petitioner’s request for judicial notice does not change the analysis. In that case, the Twelfth Judicial Circuit granted what appears to be a similar request for relief. (*See* Req. for Judicial Notice, Doc. 8.) However, that decision—entered by a sister circuit following the filing of the Petition in this case—cannot be used to support a finding that any legal rights described therein have been clearly established to warrant mandamus relief here.

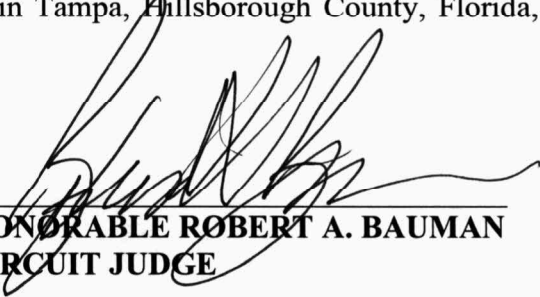
record suggests that Petitioner’s claimed emergent need for mandamus relief was of its own making, stemming from ostensible delay in taking action to have its rights determined to meet the relevant tax deadlines. Because Petitioner failed to demonstrate the lack of other adequate remedies—including those put forward by Respondent—the extraordinary remedy of mandamus is not authorized for that additional reason.

III. Conclusion.

Accordingly, it is hereby **ORDERED** that:

1. The Petition for Writ of Mandamus is **DENIED** without prejudice to the Petitioner seeking further relief as appropriate.
2. Respondent’s Motion to Abate, which seeks to stay or abate this matter pending completion of the procedural requirements of Chapter 164, is **DENIED** without prejudice as moot.
3. Petitioner’s Request for Judicial Notice, filed August 15, 2023, is **GRANTED**.
4. The Alternative Writ of Mandamus, entered August 1, 2023, is **DISCHARGED**.
5. The Clerk of the Court is directed to close this case.

DONE and **ORDERED** in Chambers in Tampa, Hillsborough County, Florida, on the 18th of September, 2023.



HONORABLE ROBERT A. BAUMAN
CIRCUIT JUDGE

Copies Furnished To:

All Counsel of Record