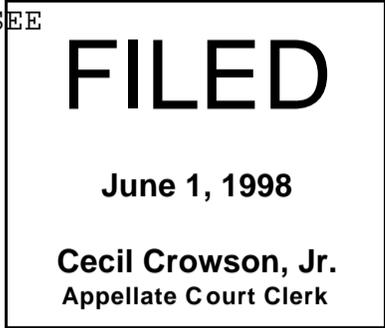


IN THE SUPREME COURT OF TENNESSEE

AT KNOXVILLE



CASTLEWOOD, INC.,

(

Plaintiff-Appellant,

(

(

Anderson County

v.

(

Hon. William E. Lantrip,

Chancellor

ANDERSON COUNTY, TENNESSEE; PATSY

STAIR, TRUSTEE; OWEN K. RICHARDSON,

S. Ct. No. 03S01-9705-CH-00053

TAX ASSESSOR; CITY OF OAK RIDGE,

TENNESSEE; AND THE TENNESSEE STATE

BOARD OF EQUALIZATION,

Defendants-Appellees.

(

For Plaintiff-Appellant:

For Defendants-Appellees:

Bernard E. Bernstein

Knoxville

David A. Stuart

Clinton

Doris C. Allen

Knoxville

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Oak Ridge

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O P I N I O N

JUDGMENT OF COURT OF

APPEALS AFFIRMED.

REID, SP. J.



1 classified by the county property assessor as residential property  
2 and assessed for county and city taxes at 25 percent of value, while  
3 the remaining 80 units, which were held by Castlewood to be rented to  
4 separate occupants, were classified as industrial and commercial  
5 property and assessed at 40 percent of value.

6  
7 The trial court found that the units owned by Castlewood  
8 should be classified as residential property. The Court of Appeals  
9 reversed, holding that the rental units are industrial and commercial  
10 property within the meaning of Article II, Section 28 of the  
11 Tennessee Constitution.

12

13

#### I

14

15 Article II, Section 28 classifies real property into four  
16 categories: public utility, industrial and commercial, residential,  
17 and farm. The constitution does not further define the classes of  
18 property other than to state, "residential property containing two  
19 (2) or more rental units is hereby defined as industrial and  
20 commercial property." The distinction between industrial and  
21 commercial and residential is set forth in the statute:

22

23 "Industrial and commercial property" includes  
24 all property of every kind used, directly or  
25 indirectly, or held for use, for any commercial,  
26 mining, industrial, manufacturing, trade,  
27 professional, club (whether public or private),  
28 nonexempt lodge, business, or similar purpose,  
29 whether conducted for profit or not. All real  
30 property which is used, or held for use, for  
31 dwelling purposes which contains two (2) or more  
32 rental units is hereby defined and shall be

1           classified as "industrial and commercial  
2           property."

3  
4  
5   Tenn. Code Ann. § 67-5-501(4)(1994).

6  
7           "Residential property" includes all real  
8           property which is used, or held for use, for  
9           dwelling purposes and which contains not more  
10          than one (1) rental unit. All real property  
11          which is used, or held for use, for dwelling  
12          purposes but which contains two (2) or more  
13          rental units is hereby defined and shall be  
14          classified as "industrial and commercial  
15          property."  
16  
17

18   Tenn. Code Ann. § 67-5-501(10)(1994).

19  
20           Neither the constitution, these statutes, nor the  
21   Horizontal Property Act makes any specific reference to the  
22   classification of condominium property for taxation purposes. The  
23   Horizontal Property Act provides that taxes on condominiums "shall be  
24   assessed against and collected on each individual apartment, each of  
25   which shall be carried on the tax books as a separate and distinct  
26   entity for that purpose, and not on the building or property as a  
27   whole." Tenn. Code Ann. § 66-27-120(a) (1993). Castlewood insists  
28   that because the Horizontal Property Act deems each condominium unit  
29   to be a separate parcel for ownership and taxation purposes, its 80  
30   condominium units are separate residential dwellings rather than "two  
31   or more rental units." The provisions of the Horizontal Property Act  
32   do not support the taxpayer's position.  
33

34           There is no mistaking the meaning of the constitutional

1 provision or the statute. The buildings owned by Castlewood contain  
2 two or more rental units held for dwelling purposes. Neither the  
3 constitution nor the statute suggests that condominiums should be  
4 classified for assessment purposes differently than other residential  
5 property. Consequently, the appropriate classification of the  
6 plaintiff's multiple condominium units is industrial and commercial.

## 7 8 II

9  
10 In Snow v. City of Memphis, 527 S.W.2d 55 (Tenn. 1975),  
11 the taxpayer claimed that the constitutional amendment defining  
12 residential property containing two or more rental units as  
13 commercial property violates the equal protection clause of the  
14 Fourteenth Amendment of the United States Constitution. In that  
15 case, the Court first noted the latitude given the states in matters  
16 of governance:

17  
18 "The States have a very wide discretion in the  
19 laying of their taxes. . . . the States have  
20 the attribute of sovereign powers in devising  
21 their fiscal systems to ensure revenue and  
22 foster their local interests. Of course, the  
23 States, in the exercise of their taxing power,  
24 are subject to the requirements of the Equal  
25 Protection Clause of the Fourteenth Amendment.  
26 But that clause imposes no iron rule of  
27 equality, prohibiting the flexibility and  
28 variety that are appropriate to reasonable  
29 schemes of state taxation."  
30  
31

32 Id at 64 (quoting Allied Stores of Ohio, Inc. v. Bowers, 358 U.S.  
33 522, 79 S. Ct. 437 (1959)).

34

1           The Court then held that the State's action will be  
2 sustained if there is a "rational basis" for the classification:

3  
4           "But there is a point beyond which the State  
5 cannot go without violating the Equal Protection  
6 Clause. The State must proceed upon a rational  
7 basis and may not resort to a classification  
8 that is palpably arbitrary. The rule often has  
9 been stated to be that the classification 'must  
10 rest upon some ground of difference having a  
11 fair and substantial relation to the object of  
12 the legislation.' (Citations omitted.) 'If the  
13 selection or classification is neither  
14 capricious nor arbitrary, and rests upon some  
15 reasonable consideration of difference or  
16 policy, there is no denial of the equal  
17 protection of the law.' Brown-Forman Co. v.  
18 Commonwealth of Kentucky, 217 U.S. 563, 573, 30  
19 S. Ct. 578, 580 [(1910)] State Board of Tax  
20 Com'rs of Indiana v. Jackson, 283 U.S. 527, 537,  
21 51 S. Ct. 540, 543 [(1931)]. That a statute may  
22 discriminate in favor of a certain class does  
23 not render it arbitrary if the discrimination is  
24 founded upon a reasonable distinction, or  
25 difference in state policy."  
26

27  
28 Id. at 64-65. It concluded that the test of whether a classification  
29 which discriminates will survive an equal protection challenge of  
30 arbitrariness, is whether "any state of facts reasonably can be  
31 conceived that would sustain it." Id. at 65.

32  
33           The Court in Snow v. City of Memphis, found that "[t]he  
34 purpose and objective of the [amendment to Article II, Section 28] is  
35 to tax income-producing property at a higher rate than owner-occupied  
36 residences and farms." Id. at 66.

37  
38           . . . [I]t is clear that there is discrimination  
39 in favor of the real property owner who lives in

1 one-half of a duplex and rents the other half  
2 and in favor of the real property owner who  
3 rents one or more single-family residences.  
4 There is substantial proof in the Nashville case  
5 that single-family residences for rental  
6 purposes make a poor investment. The cost of  
7 land on the one hand and the savings to be  
8 effected in the construction and operation of  
9 multi-unit apartments render it inconceivable  
10 that any investor would be in the business of  
11 renting single-family residences. It is obvious  
12 that the Convention and the people deemed it  
13 reasonable to embrace within the favored  
14 classification of a owner-occupied residence,  
15 owners of additional single-family residences  
16 and the owner who lives in one-half of his  
17 duplex.  
18  
19

20 Id at 66. This favored classification does not extend to the owner  
21 of the 80 condominium rental units which are, to the owner-taxpayer,  
22 income producing property.  
23

24 The decision of the Court of Appeals is affirmed, and  
25 costs are taxed against Castlewood, Inc.  
26

27 \_\_\_\_\_  
28 Lyle Reid, Special Justice  
29

30 Concur:

31  
32 Drowota, Birch, and Holder, JJ.

33  
34 Anderson, C.J. - Not participating.