THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE COURT OF APPEALS

Appellate Case No. 2019-001867

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Deborah Brooks Durden, Administrative Law Judge

Case No. 19-ALJ-17-0111-CC

Denis Yeo, Petitioner,

v.

Lexington County Assessor, Respondent.

PETITION FOR A WRIT OF CERTIORARI

Denis Yeo
224, 228 Newpark Place
Columbia, South Carolina 29212
(803) 447-0615
Pro Se

October 20, 2022

Other Counsel of Record:
Mr. Jeff M. Anderson
Davis Frawley LLC
140 East Main Street (29072)
Post Office Box 489
Lexington, SC 29071-0489
(803) 359-2512
Attorney for Respondent

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CERTIFICATE OF COUNSEL

Petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on June 10, 2022. The Remittitur was recalled on September 21, 2022.

QUESTIONS PRESENTED

1. Did the Court of Appeals err in ignoring the principle of contiguity enunciated in *Sonoco Products Company v. South Carolina Department of Revenue 378 S.C. 385, 662 S.E.2d 599 (2008)* in holding that main property and neighboring property are separate properties with different tax map numbers? Do different tax map numbers act to defeat contiguity?

2. Did the Court of Appeals err in affirming the lower court's decision in holding that Petitioner's house on adjacent property is not located on the same property as his residence and, therefore, is not entitled to a 4 percent residential assessment?

3. Did the Court of Appeals err in affirming the lower court's decision in its acceptance of Respondent's contention that, in order for the adjoining house to qualify for the lower assessment, it has to be occupied by an immediate family member?

4. Did the Court of Appeals err in not giving due deference to the South Carolina Department of Revenue Regulation 117-1800 and 117-1750.2?

5. Did the Court of Appeals err in misconstruing a key word in the statute, substituting the word "resides" for the word "occupie[s]" found in the statute and the department regulation?

STATEMENT OF THE CASE

This case arises from two adjacent, contiguous properties owned by Petitioner. Petitioner resides at 228 Newpark Place (TMS-001947-01-056) which was purchased on July 16, 2010. The other property is 224 Newpark Place (TMS-001947-01-057) which was purchased on October 12, 2011. (RA p. 39 – 41) The house on 224 is not used for business purposes and is not leased to a third party. 228 and 224 are situated on separate residential lots and have not historically been assessed as a single unit; they have not historically been in the same ownership, as they are now.

Legal Residence Special Assessment for 224 was not applied for at the time of purchase as Petitioner was told that it did not qualify, even though it was not rented nor used for business at the time. It was applied for on October 17, 2018 (RA p. 38) after it had ceased being rented for over a year. The application was denied by Respondent. Petitioner timely appealed to the Lexington County Assessment Appeals Board. The appeal was denied. Petitioner then timely appealed to the Administrative Law Court. A hearing was held on September 24, 2019 at the offices of the Administrative Law Court in Columbia, South Carolina. A Final Order denying the appeal was issued on October 17, 2019 and ordered that the Assessor shall assess TMS 001947-01-057 at the 6 % rate

for the 2018 tax year (R.A. p 2 - 5), whereupon Petitioner filed an Appeal from the Administrative Law Court on November 7, 2019. The Court of Appeals affirmed the judgement of the lower court and Petitioner filed for a rehearing which was denied on June 10, 2022. Petitioner did not receive notice of the denial, which went out by regular mail only. A Motion to Recall was filed and granted. The Remittitur was recalled on September 21, 2022. Petitioner seeks a writ of certiorari to review the decision of the Court of Appeals.

ARGUMENT

1 THE COURT SHOULD HAVE HELD THAT THE MAIN PROPERTY AND NEIGHBORING PROPERTY ARE CONTIGUOUS PROPERTIES IN THE SAME OWNERSHIP AND THUS ARE NOT SEPARATE PROPERTIES TO BE TAXED AT DIFFERING RATES.

In its landmark ruling in *Sonoco Products Company v. South Carolina Department of Revenue 378 S.C. 385, 662 S.E.2d 599 (2008)* the Supreme Court established the general proposition "...that where lots or lands are contiguous and in one ownership they may be assessed as a unit." The Court cited *Appeal of Susquehanna Collieries Co., 335 Pa. 337, 6 A.2d 831, 832 (1939)* (which stated that, where "contiguous tracts of land, separately assessed in the hands of different owners, are acquired by a single owner and used in the conduct of a single operation, they need not be assessed separately, but may be consolidated in a single assessment.")

This general proposition, which may be termed The General Principle of Contiguity, has been ignored by the courts below in the case at hand. The Court of

Appeals in its opinion, apart from citing § 12-43-220(e)(1), does not mention contiguity at all in its opinion. To it, contiguity means nothing at all: contiguous or not, the neighboring property is to be taxed at the 6 percent rate, since, according to the court the main property and neighboring property are two separate properties with different tax map numbers.

In this regard, the Court followed the decision of the Court in *J.M. Guthrie and Lou D. Guthrie vs. Orangeburg County Assessor Docket No. 01-ALJ-17-0173-CC (2001)* where the court opined, "Only under a strained and liberal definition of "legal residence" could the term be construed in the taxpayer's favor to include two separate dwellings on two separate lots, **whether contiguous or not.**" (Emphasis added). As stated by Petitioner in his Final Brief, it is this last phrase - "whether contiguous or not" - that constitutes reversible error in the Guthrie case. (Final Brief p 6)

The decision of the Court of Appeals puts it in conflict with the principle of contiguity enunciated in the Supreme Court decision in *Sonoco*. The *Guthrie* court did not have the benefit of the *Sonoco* decision. Such is not the case with the court in the case at hand.

The Administrative Law Court, while it concedes that the two properties are contiguous, declines to follow through with the implications of the *Sonoco* decision. The Respondent also, while conceding the contiguity of the properties, likewise declines to follow through with the implications of the properties being contiguous. Each, in their own way, have sought to defeat the general proposition enunciated by the Supreme Court in the *Sonoco* case - the Court of Appeals by ignoring it altogether; the ALC in restricting

the legal residence to the actual residence when it states "Under these facts, 224 and 228 are separate and distinct properties and Section 12-43-220(c)(1) specifically requires additional dwellings to be "located on the same property."": and the Respondent by insisting that the additional dwelling has to be occupied by a family member to qualify for the lower assessment. Each, in their own way, have forcibly construed the statute to arrive at the same end result – a denial of the general principle of contiguity enunciated in *Sonoco* resulting in an inequitable taxing of property.

It is clear from the *Sonoco* case that just as a road or public right of way - which are physical features – do not act to destroy contiguity, still less do incidental separations, and property lines and tax map numbers which are constructs of the mind. While the *Sonoco* case dealt with a manufacturing facility, and the case at hand involves residential property, they are both governed by Section 12-43-220 of the statute, under different sub-sections: thus, the consideration of contiguity and its implications should be consistent for both types of property. By ignoring contiguity, the Court of Appeals decision is in conflict with the prior Supreme Court decision in *Sonoco*.

As far as Petitioner is aware, the Supreme Court has not ruled on the issues presented in the case at hand. Thus, novel question of law may exist that need to be addressed by the highest court in this state.

2. THE COURT SHOULD HAVE REVERSED THE LOWER COURT'S ERROR IN HOLDING THAT PETITIONER'S HOUSE ON ADJACENT PROPERTY IS NOT LOCATED ON THE SAME PROPERTY AS HIS RESIDENCE.

The ALC erred in construing the phrase in Section 12-43-220(c)(1), "located on the same property" as the property of the actual residence and not the contiguous property. This is evidenced by the omission of the crucial words, "...and not more than five acres contiguous thereto...." in its quoting of the statute in the decision, and in putting the words, "located on the same property" in bold type. In restricting additional dwellings to the same property as the actual residence, the ALC has gutted the statute. Here, the ALC sought for an interpretation in the Respondent's favor where the plain and unambiguous language of the words omitted from the statute left no room for construction, contra *Southeastern-Kusan, Inc. v. South Carolina Tax Commission, 276 S.C. 487, 489, 280 S.E.2d 57, 58 (1981).*

It is to be noted that the ALJ's ruling in the case at hand is glaringly inconsistent with her ruling in a previous case referred to in the hearing.

THE COURT: So, in that case, I ruled that this other house was - - because it was contiguous and it was not rented out and it was not used for any business, that it was entitled to the four percent. (Tr Pg 45 Ln 4 – 8; RA 31, Ln 4 – 8)

When asked by the ALJ to distinguish the case at hand with the ruling in that case, Respondent replied it depends on the condition of the house. (Tr. Pg 45, Ln 12 – 13; RA 31, Ln 12 - 13) A shed will qualify while a livable structure won't! Such is the absurdity that results from the strained construction of the statute.

The ALJ's ruling in the other case, as stated by her, is, in Petitioner's opinion, correct, and should have been applied here as it encapsulates the Department of

Revenue's regulation as discussed under Argument 4 below. To avoid the inconsistency, the ALC resorted to the construction that it did, thus denying the principle of contiguity in practice while giving it lip service in principle. The Court of Appeals should have reversed but did not, not even giving lip service to contiguity.

3. THE COURT SHOULD HAVE RULED THAT THE ADJOINING HOUSE DOES NOT HAVE TO BE OCCUPIED BY AN IMMEDIATE FAMILY MEMBER TO QUALIFY FOR THE LOWER ASSESSMENT.

This case began with the denial by Respondent of Petitioner's application for the four percent assessment of the adjoining house. The reason given for the denial was that the house was not occupied by an immediate family member. At issue here is the construction of the conjunction "and" in Section 12-43-220(e)(1): "and occupied by immediate family members of the owner of the interest". Is it a sine qua non, as Respondent contends, (Tr. Pg 47, Ln 8 – 10, RA Pg 32, Ln 8 – 10) or a concessio as argued by Petitioner to Respondent, at hearing, and in his Final Brief (pg 10-13)?

The denial by Respondent of Petitioner's application, supported by the County Board of Appeals, was appealed to the ALC for a ruling on this specific issue. Strangely, the ALC did not rule directly and definitively on this very important issue. It omitted the word "only" before "if" in its decision, stating, "A dwelling qualifies for this reduced rate if it is occupied by immediate family members of the owner of the interest and is located on the same property as the legal residence.". In so doing, the ALC left unanswered the question as to whether the "and" in the statute is a sine qua non or a concessio. It is noted

that the ALC declined to disqualify Petitioner's appeal on the grounds argued by Respondent – that the dwelling must be occupied by an immediate family member when it had an opportunity to do so. It did not construe the "and" of the statute, ("and occupied by immediate family members"), as a sine qua non, as does Respondent. However, the ALC denied Petitioner's appeal on the ground that the house was not located on the same property as the legal residence. In so doing, the ALC erred, as argued above. The Court of Appeals, likewise, did not address the issue and offer any clarification. The Court of Appeals let this error stand and thus its decision should be reversed.

4. THE COURT SHOULD HAVE GIVEN DUE DEFERENCE TO THE SOUTH CAROLINA DEPARTMENT OF REVENUE REGULATION 117-1800.

Chevron U.S.A., Inc. v. NRDC, 467 U.S. 837 (1984) established the doctrine of Chevron deference in which a court will give the agency [Department] deference in ambiguous situations as long as the agency interpretation is reasonable. Thus, the ALC and Court of Appeals may not substitute their own construction of the statute for the Department's interpretation of it, as they have done in the case at hand.

Conspicuous by its absence in the arguments by the Respondent, and the decisions of the ALC and the Court of Appeals, is any reference to Department regulations that bear on the issue at hand. These regulations militate against the forced and strained construction of these arguments. Had the ALC deferred to the Department's statement as to what constitutes the legal residence, it would not have omitted the phrase, "and not more than five acres contiguous thereto" in citing the statute, and would not have ruled as it did.

It is clear that the statute is ambiguous: even the Respondent and the ALJ admit as much.

MR. ANDERSON: ... The assessor has -- has to try to uphold the law the best he can under the 12-43-220, which is a very -- a convoluted statute, in my opinion. It's just that they -- I think they ought to start over and shorten it up.

THE COURT: That would make our lives a little easier. - - -

MR. ANDERSON: It ---

THE COURT: --- wouldn't it?

MR. ANDERSON: It would.

THE COURT: Somebody put me out of a job.

MR. ANDERSON: In -- instead of just clarifying something, they add to stuff to the end of it. They just keep adding stuff and -- and I just -- I get frustrated with it, but that's another story. . . . (Tr. pg 52 Ln 21 - pg 53, Ln 11)

It is also clear that Department regulation 117-1800 is reasonable. As Petitioner has argued in his Final Reply Brief, the regulation is elegant in its simplicity combining the two disqualifying situations in the statute - "residences (the plural is to be noted) which are rented or any business for profit." - in one requirement, "shall not include any portion which is not owned and occupied for residential purposes.". Simplicity is the essence of reasonableness. Thus, the two requirements of *Chevron* are met. Chevron deference is needed in the case at hand to prevent the overreach of the tax collector.

Petitioner's Final Reply Brief (pages 2 - 6) sets forth fully his arguments as to the Department's regulations and how they undercut the arguments of Respondent which have been erroneously upheld by the ALC and affirmed by the Court of Appeals.

5. THE COURT SHOULD NOT HAVE MISCONSTRUED THE WORD "OCCUPIE[S]" (FOUND IN THE STATUTE AND DEPARTMENT REGULATION 117-1800-1.1) AS "RESIDES".

In its decision the Court of Appeals cited *Southeastern-Kusan, Inc. v. South Carolina Tax Commission*, 276 S.C. 487, 489, 280 S.E.2d 57, 58 (1981). ("As a general rule, tax exemption statutes are strictly construed against the taxpayer."); *id.* ("This rule of strict construction simply means that constitutional and statutory language will not be strained or liberally construed in the taxpayer's favor."); *id.* ("It does not mean that [an appellate court] will search for an interpretation in [an assessor's] favor where the plain and unambiguous language leaves no room for construction."); *id.* at 489-90, 280 S.E.2d at 58 ("Only when the literal application of a statute produces an absurd result will we consider a different meaning."):

In construing "occupies" as "resides", the Court of Appeals has sought for and come up with an interpretation in the assessor's favor. Respondent argued at hearing that Petitioner does not occupy the adjoining house.

MR. ANDERSON: . . . He doesn't occupy it. Our position is he's not occupying. He's -- he's -- you can only have one residence and the residence in the one house next door. That's where he lives. That's where he goes to sleep at night. (Tr. pg 43 Ln 21 – pg 44 Ln 1. RA pg 29 Ln 21 – pg 30 Ln 1)

In its decision, the Court of Appeals echoes Respondent's interpretation of "occupy" when it says, "Yeo resides at main property, not neighboring property." Its reasoning seems to be, if Petitioner is not residing in the adjoining house, he is not occupying it. If he is not occupying it, he does not qualify for the lower assessment. However, as argued in Petitioner's Final Brief (page 10), the term "occupying", ordinarily, is a term signifying actual possession.

> "The word "occupation" may be so used in connection with other expressions, or under peculiar facts of a case, as to signify a residence. But ordinarily the expressions "occupation", "possessio pedis", "subject to the will and control", are employed as synonymous terms, and as signifying actual possession." *Lawrence v. Fulton 19 Cal. 683 (1862) Supreme Court of California*

Also, as argued in Petitioner's Final Brief (page 10), Respondent's forced interpretation of the word "occupation" leads to an absurd result - a structure that is livable does not qualify for special assessment, while a shed with a bathroom does. (Tr. pg 46, Ln 24 – pg 47, Ln 1). This puts the tax collector in the position of an architectural board to determine which structure qualifies and which does not; surely, something the Legislature did not contemplate. The Court of Appeals, in tacitly accepting Respondent's interpretation of "occupy" is burdened with the absurd result of Respondent's interpretation.

CONCLUSION

The Court of Appeals, in its affirming the ALC decision, failed to answer any of the issues raised by Petitioner as to the strained construction of the statute by Respondent

and the ALC, and the errors of the ALC decision. This case begs for a proper construction of the statute. Terms like "Legal residence", "occupy", and even the conjunction "and", have been strained almost beyond recognition to the advantage of the tax collector, resulting in an unjust enrichment.

Because the issues raised here are of considerable constitutional significance, in Petitioner's judgement, as relating to matters affecting tax policy and procedures - more specifically, uniformity of practice in the tax assessment of contiguous properties in one ownership, be they manufacturing or residential - the issue of Chevron deference and the jurisprudence of this state, the equitable and consistent taxing of residential property across the different jurisdictions, and because many more citizens of this state are impacted than Petitioner alone, Petitioner believes that they ought to be considered by the highest court in this state and prays that certiorari be granted.

Respectfully submitted,

Denis Yeo
228 Newpark Place
Columbia, SC 29212
803-447-0615
Pro Se

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Lexington County Assessor, Respondent,

PROOF OF SERVICE OF PETITION FOR WRIT OF CERTIORARI

I certify that I have served the Petition for Writ of Certiorari on the Lexington County Assessor, Respondent by emailing a copy of it to his attorney of record, Mr. Jeff M. Anderson, Davis Frawley LLC, 140 East Main Street, P.O. Box 489, Lexington, SC 29071-0489.

October 21, 2022

Denis Yeo
228 Newpark Place
Columbia, South Carolina 29212
(803) 447-0615
Pro se

cc: Mr. Jeff M. Anderson