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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Robert L. Reibold, Administrative Law Judge

Appellate Case No. 2022-000983

Timothy B. Smith, ... Appellant,

vs.

Charleston County Assessor, ... Respondent.

INITIAL BRIEF OF RESPONDENT

CHARLESTON COUNTY ATTORNEY'S OFFICE

Bernard E. Ferrara, Jr., Esq. (S.C. Bar No. 9034)
Kevin M. DeAntonio, Esq. (S.C. Bar No. 101169)
Brittney M. Darnell, Esq. (S.C. Bar No. 105274)
Lonnie Hamilton, III Public Services Building
4045 Bridge View Drive
North Charleston, South Carolina 29405
(843) 958-4010
bferrara@charlestoncounty.org
kdeantonio@charlestoncounty.org
bdarnell@charlestoncounty.org

Attorneys for Respondent

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INTRODUCTION

The Administrative Law Judge ("ALJ") did not commit errors of law in applying South Carolina Code Ann. § 12-43-220(c). Further, the ALJ's interpretation of the statute was not clearly erroneous or an abuse of discretion in view of the reliable, probative, and substantial evidence on the whole record. Therefore, this Court should affirm the decision of the ALJ.

It is undisputed that the Appellant owns the "legal residence parcel" located at 2520 Raven Drive in the Town of Sullivan's Island. The property contains a single-family residence that serves as the legal residence of Timothy B. Smith and Jenifer Smith and is currently qualified with the four percent legal residence special exemption. Appellant also owns the "separate, neighboring parcels" located at 2514 and 2524 Raven Drive in the Town of Sullivan's Island. Each of the properties contain single-family residences.

Appellant submitted applications to the Assessor for the four percent legal residence exemption for 2514 and 2524 Raven Drive, certifying they were his legal residence where he is domiciled. The Assessor denied the applications because Appellant's legal residence at 2520 Raven Drive already qualified for the tax exemption and Appellant was trying to receive the exemption on three parcels.

The ALJ granted summary judgment to the Assessor affirming the decision of the Assessor. Appellant has the burden of proof to show he qualifies for the four percent assessment ratio on 2514 and 2524 Raven Drive. *See Bovain v. Canal Ins.*, 383 S.C. 100, 678 S.E.2d 422 (2009). Appellant fails to meet that burden. Since Appellant both stipulates that 2520 Raven Drive is his legal residence and domicile, and fails to meet the legal residence application requirements of the statute for 2514 and 2524 Raven Drive, the ALJ properly granted summary judgment based on the Assessor's motion setting forth facts that remain undisputed and contested in a deficient manner.

STATEMENT OF THE CASE

This matter comes before the South Carolina Court of Appeals following Appellant Timothy B. Smith's appeal of the order granting Respondent Charleston County Assessor's motion for summary judgment, and the order denying Appellant's motion to reconsider. Appellant submitted an application to the Assessor for the four percent legal residence special exemption for Appellant's properties located at 2514 and 2524 Raven Drive, Sullivan's Island, South Carolina. The Assessor denied the application and Appellant appealed the denial to the Charleston County Board of Assessment Appeals ("Board"). The Board upheld the Assessor's denial.

On January 20, 2022, Appellant filed a request for a contested case hearing with the Administrative Law Court. On April 21, 2022, Respondent filed a motion for judgment on the pleadings, or alternatively, for summary judgment. On May 13, 2022, Appellant filed a cross motion for summary judgment. The parties entered into stipulations of fact of the matters to be presented to Judge Robert L. Reibold at the hearing on the motions held on May 26, 2022. On June 13, 2022, Judge Reibld issued his order granting summary judgment in favor of Respondent and denying Appellant's motion for summary judgment. On June 23, 2022, Appellant filed a motion to reconsider. On June 30, 2022, Judge Reibold issued an order denying reconsideration.

STATEMENT OF FACTS

Petitioner and Respondent enter into the following stipulations of fact:

1. This case involves three contiguous parcels of real property located at 2514 Raven Drive, 2520 Raven Drive, and 2524 Raven Drive on Sullivan's Island, South Carolina.

2. The property at 2514 Raven Drive is identified by Tax Map Number 529-06-00-095, and is owned by 2514 Raven Drive, LLC.

3. The property at 2520 Raven Drive is identified by Tax Map Number 529-06-00-094, and is owned by Petitioner.

4. The property at 2524 Raven Drive is identified by Tax Map Number 529-06-00-093, and is owned by Petitioner

5. The properties at 2514 Raven Drive, 2520 Raven Drive, and 2524 Raven Drive collectively comprise less than five acres.

6. The property at 2520 Raven Drive is presently receiving the legal residence classification. The properties at 2514 Raven Drive and 2524 Raven Drive are not presently receiving the legal residence classification.

7. In January 2021, Petitioner requested that the properties at 2514 Raven Drive and 2524 Raven Drive receive the legal residence classification.

8. The Assessor denied Petitioner's request. The Charleston County Board of Assessment Appeals concurred with the Assessor. This contested case followed.

9. The issue in this contested case is whether Petitioner's properties at 2514 Raven Drive and 2524 Raven Drive are eligible to receive the legal residence classification, while Petitioner's property at 2520 Raven Drive is also receiving the legal residence classification.

STANDARD OF REVIEW

Ruel 68 of the South Carolina Rules of Procedure for the Administrative Law Court provides that the South Carolina Rules of Civil Procedure may be applied in proceedings before the ALC to resolve questions not addressed by the ALC rules. *See* Rule 68, SCALC. "The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder. When reviewing the grant of a summary judgment motion, this court applies the same standard that governs the trial court under Rule 56(c), SCRCP; summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." *Mead v. Beaufort Cnty. Assessor*, 419 S.C. 125, 130, 796 S.E.2d 165, 168 (Ct.

App. 2016) (citations omitted). "'A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner.'" *Mead*, 419 S.C. at 131, 796 S.E.2d at 168.

"'[C]ross motions for summary judgments do authorize the court to assume that there is no evidence which needs to be considered other than that which has been filed by the parties. Where cross motions for summary judgment are filed, the parties concede the issue before us should be decided as a matter of law. The question of statutory interpretation is one of law for the court to decide. The decision of the [ALC] should not be overturned unless it is unsupported by substantial evidence or controlled by some error of law.'" *Id.* (citations omitted).

ARGUMENT

I. The Administrative Law Judge's Interpretation and Application of South Carolina Code Section 12-43-220(c) Was Not an Error of Law.

The issue here is whether the ALJ erred in finding that separate, neighboring properties to the legal residence property do not qualify for the four percent assessment ratio. The APA expressly provides "a review of the administrative law judge's order must be confined to the record . . . [and a] . . . court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact." S.C. Code Ann. § 1-23-600, *et seq*.

South Carolina law requires the Assessor to qualify a property for the special four percent tax assessment ratio if it meets certain statutory requirements. The statute provides in part:

> The legal residence and not more than five acres contiguous thereto, when owned totally or in part in fee or by life estate and occupied by the owner of the interest, and additional dwellings located on the same property and occupied by immediate family members of the owner of the interest, are taxed on an assessment equal to four percent of the fair market value of the property.

South Caroliona Code § 12-43-220(c) requires Respondent to qualify the legal residence parcel containing the legal residence and no more than five acres contiguous to the actual legal residence for the special tax exemption. This Court decided a similar issue in 2022 rendering an unpublished opinion in *Yeo v. Lexington Cnty. Assessor.* In 2012, this Court affirmed the ALC's interpretation of section 12-43-220(c) and the assessor's decision to deny the taxpayer's application for the four percent assessment ratio on their home in *Ford v. Beaufort Cnty. Assessor*. This Court should affirm the ALJ's construction of section 12-43-220(c) based on the Court's decisions in *Yeo* and *Ford.*

In *Yeo*, appellant argued that the ALC erred in finding that neighboring property that appellant owned did not qualify for the four percent assessment ratio because it was not located on the same property as his legal residence. This Court was straightforward in its ruling. Yeo was not entitled to the four percent assessment ratio on the neighboring property. The Court succinctly stated: "Although Yeo owns [the] main property and neighboring property, Yeo resides at [the] main property, not [the] neighboring property. Further, [the] main property and neighboring property are separate properties with different tax map numbers." *Yeo v. Lexington Cnty. Assessor*, No. 2022-UP-161, 2022 S.C. App. Unpub. LEXIS 193, at *2 (Ct. App. Apr. 6, 2022).

In *Ford*, appellants argued the ALC erred in upholding the assessor's denial of their application for the four percent assessment ratio because the legal residence is subject to the six percent assessment ratio if it is one of any residences which are rented and located on the legal residence parcel. This Court found that the legal residence property includes the property on which a lessee's legal residence was located as well as contiguous property that does not exceed a total of five acres. *See Ford v. Beaufort Cnty. Assessor*, 398 S.C. 508, 513, 730 S.E.2d 335, 338 (Ct. App. 2012).

This Court makes it clear of its interpretation of what constitutes the legal residence parcel pursuant to the statute. It concludes that in the first sentence of the statute, it is apparent that the four percent assessment of the fair market value of the property is a percentage of the value of the property on which the legal residence is located plus the same percentage of the value of limited surrounding acreage.[1] Plainly stated, the four percent assessment is a percentage of the value of the legal residence property plus the value of up to five acres enclosing or encompassing the legal residence. The Court ruled that if "the property" upon which a lessee is liable for taxes obviously includes the property on which lessee's legal residence is located, as well as contiguous property not to exceed a total of five acres. The context of this statement confirms that a legal residence parcel includes the legal residence plus no more than five acres of contiguous land owned and occupied by the owner and where he is domiciled.

The South Carolina Department of Revenue maintains the same interpretation of the word "contiguous" in the statute as the ALJ. The Department of Revenue interprets the legal residence

[1] This Court stated and concluded:

> The Fords first take issue with the ALC's rejection of their argument about the significance of the term "this property," which is used in the next-to-last sentence of section 12-43-220(c)(1). The sentence reads as follows: "If this property has located on it any rented mobile homes or residences which are rented or any business for profit, this four percent value does not apply to those businesses or rental properties." (emphases added). Whereas the Fords argue "this property" includes only certain property contiguous to the legal residence and not the property on which the legal residence is located, the Assessor and the ALC maintain otherwise. We agree with the Assessor and the ALC.
>
> *In the first sentence of the above-quoted passage, it is apparent that the four-percent assessment "of the fair market value of the property" is a percentage of the value of the property on which the legal residence is located plus the same percentage of the value of limited surrounding acreage.* Furthermore, in the sentence immediately preceding the sentence at issue here, *"the property" upon which a lessee is liable for taxes obviously includes the property on which lessee's legal residence is located, as well as contiguous property not to exceed a total of five acres.* We therefore agree with the ALC that the phrase "this property" in the next-to-last sentence in section 12-43-220(c)(1) includes the property on which the legal residence of an owner-occupant is located and that a legal residence of an owner-occupant is therefore subject to the six-percent assessment ratio if it is one of "any residences which are rented" and located on "this property."

Ford v. Beaufort Cnty. Assessor, 398 S.C. 508, 512-13, 730 S.E.2d 335, 339 (Ct. App. 2012) (citing *McClanahan v. Richland Cnty. Council*, 350 S.C. 433, 438, 567 S.E.2d 240, 242 (2002)) (emphasis added).

parcel to include not more than five acres "contiguous to the actual residence."[2] The construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons." *Buist v. Huggins*, 367 S.C. 268, 276, 625 S.E.2d 636, 639 (2006). "Courts should consider not merely the language of the particular clause being construed, but the undefined word and its meaning in conjunction with the purpose of the whole statute and the policy of the law." *Branch v. City of Myrtle Beach*, 340 S.C. 405, 410, 532 S.E.2d 289, 292 (2000) (citation omitted).

It is undisputed that Appellant's legal residence is 2520 Raven Drive pursuant to the stipulations of fact, as well as the information in his application for the four percent assessment ratio submitted to the Assessor for 2514 and 2524 Raven Drive. Appellant has tortuously constructed an argument to the effect that any parcel containing the legal residence of the owner-occupant, unlike all other properties in Charleston County, the application of the four percent assessment ratio "extends up to five contiguous acres surrounding the [legal] residence even when the acreage crosses the property line to include a separate, adjacent tract of land" and any dwelling on the separate tract should there be one. (Order Granting Summ. J. in Favor of Resp't, p. 5).

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[2] The South Carolina Code of Laws, Regulation 117-1800 provides in part:

> 1. Qualification Requirements. The property *must be occupied by the owner as his legal residence* and the property and the owners of the property must meet the requirements of Section 12-43-220(c) of the South Carolina Code of Laws. The *legal residence includes not more than five acres contiguous to the actual residence* owned totally or in part in fee, or by life estate, *but shall not include any portion which is not owned and occupied for residential purposes*. If the residential real property is held in trust and the income beneficiary of the trust occupies the property as a residence, then the four percent assessment ratio described in Code Section 12-43-220(c) applies if the trustee certifies to the assessor that the property is occupied by the income beneficiary of the trust.
>
> 2. Definition of Legal Residence. For property tax purposes the term "Legal Residence" shall mean the *permanent home or dwelling place* owned by a person and occupied by the owner thereof and *where he or she is domiciled*.

Chapter 117, Dep't of Revenue, Art. 37, Property Tax Regs., S.C. Reg. 117-1800, Classification of Property – Legal Residence, 117-1800.1(1) & (2) (emphasis added).

Appellant's effort to treat properties in this manner must fail or the concepts of owner-occupant, legal residence, and domicile at that address fail. It renders a erroneous meaning of the Court's interpretation of the word contiguous in *Yeo* and *Ford* and by the South Carolina Department of Revenue. The Assessor asserts the ALJ is correct in his determination that the legal residence exemption applies to a parcel that contains no more than five acres contiguous to the actual legal residence and does not apply to separate, neighboring parcels containing dwellings or not.

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. In interpreting a statute, "[w]ords must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." *Sloan v. Hardee*, 371 S.C. 495, 499, 640 S.E.2d 457, 459 (2007). "However, 'the statute must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect.'" *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011). Accordingly, courts "read statutes as a whole" and "should not concentrate on isolated phrases within the statute." *Id.*[3] South Carolina Code Ann. § 12-43-220 is a tax exemption statute that authorizes a special assessment ratio if an owner-occupant meets specific qualifications as dictated by the South Carolina General Assembly. It is the Court's policy of strictly construing

[3] The ALJ cites to the standards of statutory construction from the *Southeastern - Kusan, Inc. v. S.C. Tax Comm'n* case in his analysis of the statute, which this Court cites in the *Yeo* case:

> As a general rule, tax exemption statutes are strictly construed against the taxpayer. This rule of strict construction simply means that constitutional and statutory language will not be strained or liberally construed in the taxpayer's favor. 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. Only when the literal application of a statute produces an absurd result will we consider a different meaning.

Yeo v. Lexington Cnty. Assessor, No. 2022-UP-161, 2022 S.C. App. Unpub. LEXIS 193, at *2-3 (Ct. App. Apr. 6, 2022) (citations omitted); *see also Southeastern - Kusan, Inc. v. S.C. Tax Comm'n*, 276 S.C. 487, 489, 280 S.E.2d 57, 58 (1981) (citations omitted).

tax exemption statutes against the taxpayer. *Id*. This rule of strict construction means that Courts will not strain or liberally construe constitutional and statutory language in the taxpayer's favor. *Id.*; *see also* Resp't Br., p. 8 n3.

The General Assembly has made it a requirement that the legal residence and no more than five acres contiguous to the legal residence when owned and occupied by the owner of the property and where he is domiciled, are taxed on an assessment of four percent of the fair market value of the property. Under South Carolina law, the Assessor must strictly construe this requirement against Appellant and cannot construe it liberally in favor of him. The ALJ's interpretation and application of the statute is in accordance with the canons of statutory construction and State law. Based on that construction, the ALJ affirmed the Assessor's decision.

A. The Administrative Law Judge was not clearly erroneous in interpreting that the statute contemplates the four percent assessment ratio on only a single parcel of property.

The dwellings on separate, neighboring parcels of property to Appellant's legal residence parcel do not qualify for the four percent assessment ratio because Appellant "must have actually owned and occupied" the separate, neighboring residences as his legal residence and "been domiciled at that address." *See* S.C. Code Ann. § 12-43-220(c)(2)(i); *see also Mead v. Beaufort Cnty. Assessor*, 419 S.C. at 133-34, 796 S.E.2d at 170; *see also Shirer v. Calhoun Cnty. Assessor*, No. 2022-UP-330, 2022 S.C. App. Unpub. LEXIS 419, at *3 (Ct. App. Aug. 10, 2022) ("To qualify for the special property tax assessment ratio allowed by this item, the owner-occupant must have *actually owned and occupied* the residence as his legal residence and been domiciled at that address for some period during the applicable tax year."). Because Appellant does not own and occupy 2514 and 2524 Raven Drive as his legal residence and is not domiciled at those addresses, he fails to meet the statutory requirements to receive the tax exemption.

The South Carolina Constitution provides that "[t]he assessment of all property shall be equal and uniform in the following classifications . . . ." S.C. Const. art. X, § 1. To that end, the Legislature adopted the four percent assessment ratio statute, which further provides:

> To qualify for the special property tax assessment ratio allowed by this item, the *owner-occupant* must have actually owned and *occupied the residence as his legal residence* and *been domiciled at that address* for some period during the applicable tax year.

S.C. Code Ann. § 12-43-220(c)(2)(i) (emphasis added).

As a prerequisite to qualify for the four percent assessment ratio, the otherwise qualifying taxpayer must certify to the following statement:

> Under *penalty of perjury* I certify that:
>
> (A) the *residence which is the subject of this application is my legal residence and where I am domiciled* at the time of this application and that neither I, nor any member of my household, claim to be a legal resident of a jurisdiction other than South Carolina for any purpose . . . .

S.C. Code Ann. § 12-43-220(c)(2)(ii) (emphasis added).

Appellant certified under penalty of perjury on his legal residence exemption application for 2520 Raven Drive that the address of owner-occupant's primary residence is 2520 Raven Drive. Still, he and his wife made the same certification under penalty of perjury on the legal residence exemption application for 2514 and 2524 Raven Drive. *See* Ex. A, Resp't ['s] Not. of Mot. & Mot. for J. on the Pleadings and/or for Summ. J. It is contemptuous that Appellant and his wife submitted the application for the special assessment ratio indicating they are domiciled at three different addresses.

The Court looks at the property where the owner-occupant intends to make his domicile as the legal residence that qualifies for the tax exemption. This Court and the Department of Revenue

agree with the ALJ's analysis of "legal residence" and "domicile." *See*, *Begum v. Florence Cnty. Assesso*r, No. 2022-UP-069, 2022 S.C. App. Unpub. LEXIS 95, at *5 (Ct. App. Feb. 16, 2022).[4]

In *Begum*, this Court cites *Gasque v. Gasque*, 246 S.C. 423, 427, 143 S.E.2d 811, 812 (1965) for the proposition that "[t]he question of domicile is largely one of intent to be determined under the facts and circumstances of each case;" and *Ravenel v. Dekle*, 265 S.C. 364, 379, 218 S.E.2d 521, 528 (1975) ("intent is a most important element in determining the domicile of any individual. It is also elementary, however, that any expressed intent on the part of a person must be evaluated in the light of his conduct which is either consistent or inconsistent with such expressed intent."). "A person may have more than one residence, but cannot have more than one domicile." *Id.*

State law's definition of domicile in the election statutes is consistent with the ALJ's interpretation. Title 7, Elections, Chapter 1, General Provisions, South Carolina Code Ann. § 7-1-25 is titled: "Domicile defined." It confirms the ALJ's analysis providing: "A person's residence is his domicile. 'Domicile' means a person's fixed home where he has an intention of returning when he is absent. A person has only one domicile." *See* S.C. Code Ann. § 7-1-25; *see also* A GUIDE TO DETERMINING A TAXPAYER'S DOMICILE FOR INCOME TAX PURPOSES 4-6 (South Carolina Department of Revenue Policy Division, 1st ed. 2021).

In the instant appeal, it is undisputed that Appellant's legal residence and domicile is 2520 Raven Drive. *See* Ex. A, Resp't ['s] Not. of Mot. & Mot. for J. on the Pleadings and/or for Summ.

[4] In the *Begum* case, the Florence County Assessor appealed the order of the ALC finding the taxpayer was domiciled at the subject property for thirteen years, placed a thirty-year mortgage on the property, and intended to make the property her domicile and, therefore, qualified for the four percent assessment ratio. This Court stated: "The phrase 'legal residence' is sometimes used as the equivalent of 'domicile;' and it seems to me that in connection with the matter of the assessment of an income tax no sound distinction can be drawn between 'legal residence' and 'domicile.'" *Begum v. Florence Cnty. Assessor*, No. 2022-UP-069, 2022 S.C. App. Unpub. LEXIS 95, at *5 (Ct. App. Feb. 16, 2022) (citing *Phillips v. S.C. Tax Comm'n*, 195 S.C. 472, 477, 12 S.E.2d 13, 16 (1940) (quotation omitted).

J. Appellant further stipulated to the fact that he is presently receiving the four percent assessment ratio on 2520 Raven Drive and at trial conceded it is his legal residence. (Order Granting Summ. J. to Resp't, pp. 2 & 5). Appellant agreed with the ALJ's interpretation of the statute conceding that if a property owner lived on a single ten-acre parcel, the property owner would receive the four percent preferred tax treatment on the residence and five acres immediately surrounding the residence but not on the remaining acres of the same tract. (Order Granting Summ. J. to Resp't, p. 9; *see also* Tr. p. 29, line 18–p. 30, line 18).

The ALJ carefully considered the statute as a whole in concluding that a legal residence is limited to one address and does not permit such a broad construction as argued by Appellant. *See* Tr., p. 40, line 10–p. 48, line 11; p. 57, line 13–p. 58, line 2. Therefore, Appellant cannot claim multiple legal residences on separate, neighboring parcels of property to Appellant's legal residence parcel. Likewise, Appellant cannot claim the separate, neighboring parcels are where he is domiciled.

Appellant's actions are consistent with his intent to claim 2520 Raven Drive as his domicile. On account of that, Appellant offers no compelling or cogent reasons to reverse the construction of the statute by the ALJ. Based just upon Appellant's stipulations of fact, his concessions at trial, and application of the principle – a person may have more than one residence, but cannot have more than one domicile – there is no genuine issue of material fact that Appellant's legal residence and where he is domiciled is 2520 Raven Drive and, therefore, the Assessor is entitled to summary judgment as a matter of law.

B. Appellant's reliance on the *Sonoco* case is misplaced.

Appellant claims Courts have liberally construed "contiguity" and cites the *Sonoco Products Company* case. (App. Br., § I(C) ¶ 1). However, the *Sonoco* case is distinguished from

the instant case before this Court. In *Sonoco*, the Supreme Court cited several statutes defining contiguity and in each of the statutes, contiguity was not destroyed by an intervening road, or public right of way, or marshlands or creeks. The Court looked at those as "intervening connectors" and if such intervening waterway or railroad track would be adjacent sharing a continuous border, the intervening connector does not destroy contiguity. In *Sonoco*, the Court ruled that in the instance where a manufacturer's manufacturing facility and its office building is separated by the public road and railway tracks, the office building does not qualify for the special six percent assessment ratio. *Sonoco Products Co. v. S.C. Dep't of Revenue*, 378 S.C. 385, 397, 662 S.E.2d 599, 605 (2008).

The present case involves residential property, not manufacturing property. *Sonoco* involves the manufacturer's office building tax assessment ratio of 10.5%, not the owner-occupant's residential tax assessment ratio of 4%. Manufacturing property is appraised by the Department of Revenue. Owner-occupied property is appraised by the county assessor. Here, there are no intervening connectors separating the legal residence parcel from the separate, neighboring parcels. Here, the ALJ construed the statute finding that the legal residence exemption applies only to one parcel that includes not more than five acres contiguous to the actual legal residence and does not apply to separate, neighboring parcels containing dwellings or not. Unlike in *Sonoco*, the "well-settled doctrine that an individual can have *legal domicile in only one dwelling*" is the controlling principle here. (Order Granting Summ. J. to Resp't, p. 7) (emphasis added). The ALJ's and Assessor's construction of the statute conveys a clear and definite meaning that is consistent with the plain reading of it and, therefore, this Court should affirm the ALJ's grant of summary judgment.

C. Appellant's interpretation of the statute leads to an absurd result.

Appellant claims that contiguity be read with the same definition as the Court did in the *Sonoco* case. This leads to an absurd result. The result would be massive turmoil and disarray in the State. It would treat others similarly situated unfairly. If the four percent assessment ratio applied to separate, neighboring properties to the owner-occupant's legal residence property, conceivably, individuals could purchase unlimited numbers of separate, neighboring properties to their legal residence property, as long as the total acreage did not exceed more than five acres, and have those properties assessed at the four percent assessment ratio. This would result in mass holdings of residential properties that are not legal residence properties and where the owner is not domiciled. The properties would be assessed at the State's lowest assessment ratio thus impacting local county and municipal government tax revenues. Beyond that, it would be irrational and unfair to those individuals who own vacant lots, rental properties, or second vacation homes that are not separate, neighboring parcels to their legal residence property, to be taxed at the six percent assessment ratio.

II. The Administrative Law Judge did not err in granting summary judgment to the Assessor because the Town of Sullivan's Island's prohibition of combining adjoining parcels was not the issue before the Administrative Law Court.

Appellant raises issues that are not before the ALC. Appellant states in his motion to reconsider: "Here, Sullivan's Island's arbitration [sic] zoning ordinance prohibiting the combination of parcels amounts to a government taking without compensation. Petitioner is being harmed by Sullivan's Island's arbitrary zoning ordinance prohibiting the combination of parcel." (Pet'r ['s] Mot. To Recons., § II ¶ 9). The issue before the ALJ was not what the Town of Sullivan's Island's zoning ordinance allows or prohibits, or its consitutionality. The issue is whether the

Assessor's decision that multiple neighboring adjacent properties to the legal residence property do not qualify for the four percent tax assessment ratio.

Appellant's arguments center on the Sullivan's Island zoning ordinance and forms from other counties that are not part of the record for the Court's consideration. Appellant claims that residents of Georgetown County may simply "fill out a form" and have their lots combined as opposed to residents of Charleston County and the Town of Sullivan's Island. This statement has no context. It is vague and ambiguous and thus it is meaningless. Further, it lacks support of substantial evidence in the record on appeal. No evidence exists in the record that supports what it means to "have their lots combined" or "merge the two lots" from a zoning perspective. This Court should strike and disregard any reference to them in Appellant's brief. Moreover, the context of the forms is contrary to Appellant's explanation of them. (App. Br., § III ¶ 2).

By way of example, the Georgetown County's form titled "Request for Parcel Division/Combination" does not say that a resident "can purchase two or more contiguous parcels, fill out [the] form and have them combined, entitling the resident to the four percent tax classification." (App. Br., § III ¶ 2). Instead, the form provides that "prior to submitting the form, plats must be approved by the Planning Department and recorded in the Register of Deeds Office." Georgetown County regards combination of lots as a zoning matter, not an assessor determination of an application for the four percent assessment ratio. The form suggests that the boundary lines of multiple parcels may be abandoned and adjusted into a single parcel. It further appears that the owner may divide or combine the parcels for tax purposes upon receiving plat approval from the zoning staff. For tax purposes, a parcel divided in this manner is consistent with the ALJ interpretation that a taxpayer might "receive preferred tax treatment on the [legal] residence and

five acres immediately surrounding the residence but not on the remaining acres of the same tract." (Order Granting Summ. J. to Resp't, p. 9).

The form cites S.C. Code Ann. § 12-37-3130 and S.C. Regulation 117-1740.02. The code section is a definitional statute that offers little, if any application, to the facts before this Court, and the regulation is not cited correctly. Still, section 117-1740.2(2)(C) provides: "Each parcel represents one property record, which is one unit of land that is capable of being separately assessed." This is contrary to Appellant's interpretation that the legal residence parcel at 2520 Raven Drive plus the multiple, neighboring parcels at 2514 and 2524 Raven Drive represent one property that is capable of being separately assessed. However, that is not what is being portrayed here. Appellant "does not per se desire to combine his lots." (App. Br., § III ¶ 2). He wants the preferred assessment ratio on three standalone parcels, each with separate identifying tax map parcel numbers and each containing residential dwellings.

The issue of the Town of Sullivan's Island prohibition against combining parcels is a ploy that misdirects the actual issue before the Court. It is not irrelevant to this appeal. Equally, the interpretations of section 12-43-220 by the various assessors of Georgetown, Beaufort and Berkeley counties regarding merging parcels within the respective jurisdictions are not issues of this appeal. Appellant offered no documentary evidence for the ALJ's consideration to support his conjecture regarding combining or merging parcels in the respective jurisdictions.

It follows that the concessions of Appellant cited by the ALJ end the suppositions and conjecture of Appellant, but instead, and support the ALJ's interpretation of the statute.[5] Based on

[5] *See* Order Granting Summ. J. to Resp't, p. 9 (emphasis added).

> *Taxpayer conceded at the hearing that if a property owner lived on a single 10-acre parcel, the property owner would receive the preferred tax treatment on the residence and five acres immediately surrounding the residence but not on the remaining acres of the same parcel.* Article X, Section 1(3) accordingly serves as a limit on what property may be afforded favored tax treatment. It would be incongruous to construe a

the stipulations of fact and concessions at trial along with Appellant's own arguments and inartful presentation of his statutory and constitutional challenges, the ALJ properly granted summary judgment to the Assessor that as a matter of law, Appellant is not entitled to the four percent tax assessment ratio on 2514 and 2524 Raven Drive.

III. The ALJ's Construction of the Statute Does Not Violate the Rights of Equal Protection of Appellant.

Based on Appellant's arguments and the contested case filed before the Administrative Law Court, the ALJ disagrees that the words in section 12-43-220(c) and Article X, Section 1(3) of the South Carolina Constitution statute are plural, but instead singular in refence to application of the assessment to the fair market value of "such property." Appellant fails to show how the ALJ's construction of section 12-43-220(c) that limits application of the tax assessment benefit to only the legal residence parcel, is unconstitutional as applied to him.

Appellant's equal protection argument rests on the premise that other parts of South Carolina and Sullivan's Island are treated differently than Appellant and that residents of Georgetown County may simply "fill out a form" and have their lots combined as opposed to residents of Charleston County and the Town of Sullivan's Island. As discussed above, those issues are not before the ALJ. The forms are not part of the record. There is no merit to the argument. This Court should strike and disregard any reference to them in Appellant's brief.

Appellant's argument demonstrates a misunderstanding of the powers of the municipalities and county governments when he claims: "If Charleston County is going to allow municipalities to prohibit the combination of lots, then it is the burden of Charleston County to demonstrate that

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constitutional provision which was intended to limit access to preferred tax treatment as broadly extending such access to multiple parcels or tracts with separate addresses and tax map numbers.

authority supporting such a prohibition, and how the prohibition does not violate citizens' constitutional right to the four (4) percent classification on their legal residence AND five contiguous acres containing additional dwellings occupied by family members." (Pet'r ['s] Mot. To Recons., § II; App. Br., § II ¶ 5). If Appellant believes the Town of Sullivan's Island's zoning ordinance prohibiting the combination of lots is unconstitutional, it is Appellant's burden to prove the ordinance that in a separate action against the Town, not the County in this action.

In order to successfully bring an as applied challenge to the constitutionality of the four percent legal residence assessment ratio statute before the ALJ, Appellant must show that the statute is otherwise constitutional, except as applied to Appellant. Appellant's underlying argument is that the plain language of the statute and the constitutional provisions do not support the ALJ's interpretation. (App. Br., § III ¶ 4). Appellant offers no reasoning to support this conclusion of law. As a result, no such showing of unconstitutionality of the construction of the statute exists in Appellant's contested case petition or brief.

In *Fop v. S.C. Dep't of Revenue*, "[the] Court recognizes that 'the determination of whether a classification is reasonable is initially one for the legislature and will not be set aside by the courts unless it is plainly arbitrary.'" *Fop v. S.C. Dep't of Revenue*, 352 S.C. 420, 430, 574 S.E.2d 717, 722 (2002). Moreover, "[f]or tax statutes, 'the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes.' The purpose of the tax statutes is to raise revenue." *Id.*, 352 S.C. at 432, 574 S.E.2d at 723 (citing *Madden v. Ky.*, 60 S.Ct. 406, 408 (1940)). For that reason, the South Carolina Supreme Court held:

> All statutes are presumed constitutional and will, if possible, be construed so as to render them valid. (citation omitted). A legislative act will not be declared unconstitutional unless its repugnance to the constitution is clear and beyond a reasonable doubt. (citation omitted). A legislative enactment will be declared

> unconstitutional only when its invalidity appears so clearly as to leave no room for reasonable doubt that it violates a provision of the constitution. (citation omitted).

Joytime Distribs. & Amusement Co. v. State, 338 S.C. 634, 640, 528 S.E.2d 647, 650 (1999).

A classification bears a rational relationship to its purpose as long as there is some evidence that it will further a legitimate purpose. *See Nordlinger v. Hahn*, 505 U.S. 1, 10, 112 S.Ct. 2326, 120 L.Ed.2d 1 (1992) (explaining that the equal protection clause is satisfied so long as there is a plausible policy reason for the classification, the facts on which the classification is based rationally may have been considered to be true by the decision maker, and the relationship of the classification to the goal is not so attenuated as to render the distinction arbitrary or irrational).

It is clear the statute has a legitimate State purpose and the ALJ's construction is consistent with that purpose. The Legislature has created a classification, which includes a tax benefit to owner-occupants of residential property upon meeting certain statutory requirements that excludes those individuals from receiving the same tax benefit when they are already receiving it on their legal residence where they are domiciled. There is a legitimate government interest in limiting the tax exemption on only the legal residence where the owner-occupant is domiciled – South Carolina determines property taxes by looking at the market values of owner-occupied and non-owner occupied residential properties, and commercial and manufacturing properties, and assigns different assessment ratios to each of the classifications for purposes of determining property taxes. The statute is rationally related to that purpose, and all owner-occupants are treated alike. Absent a showing by Appellant that this classification is a *hostile and oppressive discrimination* and its repugnance to the constitution is *clear and beyond a reasonable doubt*, Appellant's challenge fails.

IV. The ALJ was Correct in Interpreting S.C. Code Ann. § 12-43-220(c)(1) as a Tax Exemption Statute.

Appellant further claims that South Carolina Code Ann. § 12-43-220 is not an exemption statute but a tax classification statute. He challenges the Supreme Court's decision in the *CFRE* case as "simply bad law." (App. Br., § IV ¶ 4). He relies on *Black's Law Dictionary* and the citation of *CFRE* in the *Ford* case for support. (App. Br., § IV ¶ 2 & 4.)

However, Appellant's citation of *Black's* and his readings of the cases are misplaced. Appellant relies on the definition of 'tax exemption.' He claims: "Petitioner is not seeking to not be subject to taxation or an exemption." However, in effect, he is seeking not to be subject to taxation. He seeks exemption from paying taxes assessed at the higher tax assessment ratio of six percent, but instead at the preferred ratio of four percent, resulting in lower taxes paid on three parcels of property.

His citation of the *Ford v. Beaufort Cnty. Assessor* case gets him nowhere. *See Ford v. Beaufort Cnty. Assessor,* 398 S.C. 508, 514, 730 S.E.2d 335, 339 (Ct. App. 2012) (holding that the ALC correctly characterized the four percent assessment ratio as an exemption or deduction and correctly construed any uncertainty in the statute [12-43-220] against the Fords); *see also CFRE, LLC v. Greenville Cnty. Assessor,* 395 S.C. 67, 74, 716 S.E.2d 877, 881(2011) (implying section 12-43-220(c)(1) provides a statutory tax exemption and referencing 'our policy of strictly construing tax exemption statutes against the taxpayer.'). Therefore, since our Supreme Court recognizes section 12-43-220 as a tax exemption statute, this Court must construe it against Appellant.

CONCLUSION

Appellant offers no compelling or cogent reasons to reverse the construction of the statute by the ALJ. For the reasons set forth above, Respondent Charleston County Assessor respectfully requests this Court affirm the Administrative Law Judge's June 13, 2022 Order Granting Summary Judgment in Favor of Respondent.

Respectfully submitted,

CHARLESTON COUNTY ATTORNEY'S OFFICE

/s/ *Bernard E. Ferrara, Jr.*
Bernard E. Ferrara, Jr., Esq. (S.C. Bar No. 9034)
Kevin M. DeAntonio, Esq. (S.C. Bar No. 101169)
Brittney M. Darnell, Esq. (S.C. Bar No. 105274)
Lonnie Hamilton, III Public Services Building
4045 Bridge View Drive
North Charleston, South Carolina 29405
(843) 958-4010
bferrara@charlestoncounty.org
kdeantonio@charlestoncounty.org
bdarnell@charlestoncounty.org

Attorneys for Respondent

April 3, 2023
Charleston, South Carolina