

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

William J. Montgomery,

Petitioner,

vs.

Spartanburg County Assessor,

Respondent.

Docket No. 13-ALJ-17-0104-CC

ORDER RECEIVED
DEC 18 2013

SC Court of Appeals

APPEARANCES: For Petitioner: James G. Carpenter, Esquire
L. Warren Clayton, III, Esquire
For Respondent: John H. Harris, Esquire

STATEMENT OF THE CASE

This matter came before the Administrative Law Court (ALC or Court) pursuant to S.C. Code Ann. §12-60-2540(A) for a contested case hearing requested by William J. Montgomery (Petitioner), against the Spartanburg County Assessor (Assessor) contesting the separate valuation of the land and the improvements, buildings or structures located on Petitioner's agricultural real property. The Petitioner exhausted all prehearing remedies with the Assessor and the Spartanburg County Board of Assessment Appeals (Board) and filed a timely request for a contested case hearing before the ALC.

The Petitioner filed a motion for summary judgment which, after notice to the parties, was argued by counsel for the Petitioner and Assessor before this Court on July 31, 2013. At the hearing, the Assessor made a cross-motion for summary judgment which was accepted and argued before the Court on the same day.

ISSUE

Whether structures on a tract of agricultural real property may be assessed at fair market value separately from the property upon which they sit; or whether the value of the structures is already included in, and subsumed by, the tract's fair market value for agricultural purposes (Agricultural Use Value).

FILED

November 19, 2013

SC ADMIN. LAW COURT

BACKGROUND

This appeal arises from an ad valorem tax assessment of real estate owned by the Petitioner conducted by the Spartanburg County Assessor. The real estate at issue is identified as TMS #6-68-00-016.00, located at 891 Mount Lebanon Road, Pauline, South Carolina 29374 (Property).

For the tax year 2011, the Assessor assigned an Agricultural Use Value using the soil capability method of valuation for the land of \$12,211, and a fair market value for the improvements of \$28,430. The Assessor then added the assessment of the fair market value of the improvements to the Agricultural Use Value to arrive at the valuation of the Property for tax purposes. Petitioner argues that the plain language of the statutes includes the value of these structures within the statutory calculation of Agricultural Use Valuation and that it is improper to add the fair market value of improvements.

The parties agree that the structures on the Property are related to the agricultural activities and uses of the Property -- they are neither residences nor related to some other business for profit.¹ The parties also agree that the real property in question is properly classified as agricultural use property; that it is owned by an individual; that the values and millage rate are accurate as calculated by the Assessor; and that the proper assessment ratio is four percent.

STANDARD OF REVIEW

Under ALC Rule 68, this Court may apply the South Carolina Rules of Civil Procedure in contested case proceedings where no ALC rule applies and when practicable. Therefore, Rule 56, SCRCF, applies in determining whether summary judgment is proper in this case. Summary judgment is proper when there is no issue as to any material fact and the moving party is entitled to a judgment as a matter of law. Quality Towing, Inc. v. City of Myrtle Beach, 340 S.C. 29, 530 S.E.2d 369 (2000); Rule 56, SCRCF. Summary judgment should not be granted even when there is no dispute as to evidentiary facts, if there is disagreement concerning the conclusions or inferences to be drawn from those facts. Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 534 S.E.2d 672 (2000); Fleming v. Rose, 338 S.C. 524, 236 S.E.2d 732 (2000). To determine whether any triable issues of fact exist, the reviewing court must consider the evidence and all reasonable ambiguities

¹ There are three buildings or improvements on the Property. Two structures serve as barns and storage sheds for farming equipment. The third is a mobile home which serves as an office for the farming operation and an occasional shelter for farm workers.

and inferences in the light most favorable to the non-moving party. Ferguson v. Charleston Lincoln Mercury, Inc., 349 S.C. 558, 563, 564 S.E.2d 94, 96 (2002). However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. Trico Surveying, Inc. v. Godley Auction Co., 314 S.C. 542, 431 S.E.2d 565 (1993).

“The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.” George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). “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.” David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006). A party may not rest upon the mere allegations or denials of his pleadings. Rule 56(e) SCRPC. A party opposing summary judgment must come forward with affidavits or other supporting documents demonstrating the existence of a genuine issue for trial. Doe v. Batson, 345 S.C. 316, 321, 548 S.E.2d 854, 856 (2001). One may not create a genuine issue of material fact and, thus, avoid summary judgment by asserting that the trier of fact may disbelieve uncontradicted evidence. Hoard ex rel. Hoard v. Roper Hosp., Inc., 387 S.C. 539, 694 S.E.2d 1 (S.C. 2010).

In this case, the parties agree that there is no dispute as to the relevant facts. The interpretation of the statutes governing the valuation of agricultural property is an issue of law. Therefore, it is appropriate to resolve that question by summary judgment.

DISCUSSION

The Assessor argues that the value of agricultural real property is determined by the combined value of two sub-classes of property. The first sub-class is the value of the improvements, buildings or structures on the land as determined using the fair market value method set forth in Section 12-37-930 of the South Carolina Code of Laws. The second sub-class is the value of the land based on “the productive earning power based on soil capacity” as determined by South Carolina Code of Laws Section 12-43-220(d)(2)(A). Respondent asserts that the structures on Petitioner’s property should be assessed at their fair market value because S.C. Code Ann. § 12-43-220(d)(2)(A) only applies to land and provides no valuation method for structures, leaving that valuation to be calculated under the default provision of Section 12-37-930. Respondent would add

the fair market value of the improvements, buildings and structures located on the Property to the Agricultural Use Value to arrive at the total assessed value of the Property.

In support of its position Respondent points out that its method of calculating the value of agricultural land and improvements separately comports with the Department of Revenue's (DOR) interpretation of Section 12-43-220(d)(2)(A) and the longstanding practice of all the counties in the state. "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." Duton v. South Carolina Bd. Of Examiners in Optometry, 291 S.C. 221, 223 (1987). "[W]here the construction of the statute has been uniform for many years in administrative practice, and has been acquiesced in by the General Assembly for a long period of time, such construction is entitled to weight, and should not be overruled without cogent reasons." Etiwan Fertilizer Co. v. South Carolina Tax Comm'n, 217 S.C. 354, 359 (1950). This is a situation where the DOR's construction of the statute is entitled to such respectful consideration; the first paragraph of Section 12-43-220(d)(2)(A) at issue here was enacted in 1979 by Act 199 and has been interpreted by the Department and counties to require adding the value of improvements to the Agricultural Use Value for thirty-four years.

Our Supreme Court has held that where "the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578, 581 (2000). "Where a statute is ambiguous, the Court must construe the terms of the statute." Wade v. Berkeley County, 348 SC 224, 229, 559 S.E.2d 586, 588 (2002). In construing a statute, the court looks to the language as a whole in light of its manifest purpose. Adams v. Texfi Industries, 320 S.C. 213, 464 S.E.2d 109 (1995). An ambiguity in a statute should be resolved in favor of a just, beneficial, and equitable operation of the law. State v. Hudson, 336 S.C. 237, 519 S.E.2d 577 (Ct. App. 1999). Furthermore, where substantial doubt exists as to the construction and interpretation of a legislative action with respect to the enactment and enforcement of tax statutes, the doubt must be resolved against the government. Columbia Ry., Gas & Elec. Co. v. Carter, 127 S.C. 473, 121 S.E. 377, 380 (1924).

Although courts give great weight to an agency's long-standing construction of a statute, such a construction is not dispositive. Plyler v. Evatt, 313 S.C. 405, 408, 438 S.E.2d 244, 246

(1993). While a court typically defers to an agency's construction of its own regulation, where the plain language of the statute is contrary to the agency's interpretation, the Court will reject its interpretation. Brown v. South Carolina Dept. of Health and Env'tl. Control, 348 S.C. 507, 560 S.E.2d 410 (2002). "Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute." Hodges v. Rainey, 341 S.C. 79, 85 (2000) (citations omitted). The language in Sections 12-37-10(1) and 12-43-220 - 230 is unambiguous. It is clear that the "fair market value for agricultural purposes" includes land used for the growth of agricultural products and the buildings or improvements on that land. South Carolina's statutes, regulations and case law, as well as the DOR's instructional publications, all support the Petitioner's position that structures located on a tract of agricultural real property, which are not used as a "legal residence" or "other business for profit," are classified as agricultural real property and their taxable value is included in the tract's "fair market value for agricultural purposes."

The South Carolina Constitution requires certain properties to be taxed as "agricultural real property." "Agricultural real property which is actually used for such purposes shall be taxed on an assessment equal to: (A) four percent of its value for such purposes." S.C. CONST. Art. X, § 1; see also S.C. Code Ann. § 12-43-220(d)(1)(A).

Under South Carolina law, if at least 50% of a tract of real property is used for agricultural purposes, the entire tract must be classified and assessed as "agricultural real property" and the Assessor may not carve out and separately assess a small portion of the tract (such as the structures attached thereto), even if it is not being used strictly for agricultural purposes. There are only two exceptions to this rule: (1) "legal" residences of the taxpayer or his immediate family, and (2) when the real property is being used for some other "business for profit." See S.C. Code Ann. §§ 12-43-230, 12-43-220(c)(1); S.C. Code Regs. 117-1780.1 – 117-1780.3.

S.C. Code Ann. § 12-43-230(a) provides:

[T]he words "agricultural real property" shall mean any tract of real property which is used to raise, harvest or store crops, feed, breed or manage livestock, or to produce plants, trees, fowl or animals useful to man, including the preparation of the products raised thereon for man's use and disposed of by marketing or other means. It includes but is not limited to such real property used for agriculture, grazing, horticulture, forestry, dairying and mariculture. In the event at least fifty percent of a real property tract shall qualify as "agricultural real property," the entire tract shall be so classified, provided no other business for profit is being operated thereon. The term "agricultural real property" shall include real property used to provide free housing

for farm laborers provided such housing is located on the tract of land that qualifies as agricultural real property.

S.C. Code Ann. § 12-43-230.

S.C. Code Ann. § 12-43-220(d) provides, in pertinent part:

“Fair market value for agricultural purposes” when applicable to lands used for the growth of . . . agricultural products, means the capability of the soil to produce typical agricultural products of the region considering any natural deterrents to the potential capability of the soil as of the current assessment date.

S.C. Code Ann. § 12-43-220(d)(2)(A).

[F]air market value for agricultural purposes must be determined by adjusting the applicable base year value by an amount equal to the product of multiplying the applicable base year value by a percentage factor obtained through the formula provided in this item. For tax year 1988, the applicable base year is 1981. The fair market value for agricultural purposes determined for the 1991 tax year is effective for all subsequent years.

(ii) The percentage factor provided in this item is derived from the most recent edition of the United States Department of Agriculture publication “AGRICULTURAL LAND VALUES AND MARKETS”, specifically, from “**Table 1--Farm Real Estate Values: Indexes of the average value per acre of land and buildings . . .**” as listed for this State.

S.C. Code Ann. § 12-43-220(d)(2)(B) (emphasis added). Thus, the tables used to arrive at the Agricultural Use Value include the value of buildings in the calculation.

Moreover, the definition of “real property” includes the structures and improvements on the land. “‘Real property’ shall mean not only land, city, town and village lots but also all structures and other things therein contained or annexed or attached thereto which pass to the vendee by the conveyance of the land or lot.” S.C. Code Ann. § 12-37-10(1). DOR’s publication, *South Carolina Property Tax* § 110.1, states, “‘Real property’ means **not only land, but also all structures and other things therein contained or annexed or attached** to the land that pass . . . by the conveyance of the land.” *Id.* (emphasis added).

Finally, I am convinced by the legislative history of the relevant statutes that the General Assembly intended for the value of buildings and improvements to be subsumed within the calculation of Agricultural Use Value. Agricultural Use Values were first enacted in 1975 by Act 208 § 2(d).² Similar to today’s § 12-43-220(d), Act 208 provided a tax break for agricultural “real

² 1975 Act 208, § 2(d) stating in part: “(d) Agricultural **real property** which is actually used for such purposes shall be taxed on an assessment equal to four percent of its fair market value for such purposes . . .”

property.” However, things changed between 1976 and 1979 with the enactment of 1976 Act 618. The 1976 Act 618, § 5 amended Act 208, § 2(d) of 1975 – changing the statutory language from “agricultural *real property*” to “agricultural *land*”.³ Act 618 also added what is now § 12-43-220(d)(2)(A), but it did not contain references to “land” for growth of timber until three years later. The General Assembly then changed the reference from agricultural “*land*” back to agricultural “*real property*” in 1979 Act 133, § 2.⁴

For a period of three years in 1976-1978, South Carolina’s agricultural real property valuation statute (what is now § 12-43-220(d)) specifically applied only to agricultural “*land*.” However, in 1979 the General Assembly amended § 12-43-220(d)(1), so that “fair market value for agricultural purposes” would apply not only to agricultural “*land*,” but to agricultural “*real property*” which, by definition, includes both the land and all structures attached thereto. The change from agricultural “*land*” to “*real property*” was the only change made to § 12-43-220(d)(1) in Act 133. This portion of § 12-43-220(d)(1) has not changed since it was amended by Act 133 of 1979. Therefore, in 2011 the

³ 1976 Act 618, § 5 (underline and 2nd bold added) stated:

SECTION 5. Tax assessment on agricultural land. – Section 2(d) of Act 208 of 1975 is amended to read:

(d)(1) Agricultural land which is actually used for such agricultural purposes shall be taxed on an assessment equal to

(A) Four percent of its fair market value for such agricultural purposes for owners or lessees who are individuals or partnerships and certain corporations which do not:

(2) 'Fair market value for such agricultural purposes' is defined as the productive earning power based on soil capability to be determined by capitalization of typical cash rents or by capitalization of typical net annual income of like soil in the locality or a reasonable area of the locality, not including the agricultural products thereon. Soil capability means the capability of the soil to produce typical agricultural products of the area considering any natural deterrents to the potential capability of the soil as of the current assessment date.

⁴ 1979 Act 133 (emphasis added) stated:

No. 133

An Act To Amend Sections 12-43-220 And 12-43-230, Code Of Laws Of South Carolina., 1976, As Amended, Relating To Equalization And Reassessment Program For Real Property, And To The Definition Of The Term "Agricultural Real Property" For Purposes Of Tax Assessment, So As To Change The Reference From Agricultural Land To Agricultural Real Property And To Include Property Used To Provide Free Housing For Farm Laborers In The Definition Of "Agricultural Real Property".

Taxing of real property

SECTION 2. Subitem (1) of item (d) of Section 12-43-220 of the 1976 Code, as last amended by Act 438 of 1978, is further amended by striking the word "land" on line one and inserting "real property". When amended, the subitem shall read:

"(1) Agricultural real property which is actually used for such agricultural purposes shall be taxed on an assessment equal to:

(A) Four percent of its fair market value for such agricultural purposes"

Agricultural Use Value for Petitioner's Property already included the value of the structures on Petitioner's Property. The Assessor's separate assessment and taxation of the Petitioner's farm buildings was improper and constituted a double taxation.

Finally, Respondent asserts that the multiple references in § 12-43-220(d) to "fair market value for agricultural purposes" applying to "land" used for growth of timber or other agricultural products in supports that the position Agricultural Use Value only applies to land, and does not include the structures thereon. The repeated use of the term "land" in § 12-43-220(d)(2) was added by 1979 Act 199, Part II, § 23. A review of Act 199 shows the General Assembly included an introductory paragraph in Act 199, § A, identifying South Carolina's substantial timber production, and expressing the need to distinguish property used for farming trees versus other crops, and the need to value property used for timber growth differently than property used to produce other agricultural products.⁵ Therefore, references to timber or crop "land" in § 12-43-220(d)(2) were

⁵ 1979 Act 199 states:

A. The General Assembly *finds* that a *substantial part* of the lands used for the growth of agricultural products in this State is in fact *used for the growth of timber*. The remainder of land used for the growth of agricultural products is applied to the growth of many other diverse agricultural products. *Because of this situation* the General Assembly finds that the income from timberlands should be used to determine the use value of such lands and income of lands used to produce other agricultural products should be used to determine the use value of those lands. The General Assembly further finds that a locality may appropriately include more than one county and be designated as a region.

B. The first paragraph of item (2) of subsection (d) of Section 12-43-220 of the 1976 Code, as last amended by Act 438 of 1978, is further amended to read:

'Fair market value for such agricultural purposes' when applicable to land used for the growth of timber is defined as the productive earning power based on soil capability to be determined by capitalization of typical cash rents of such lands for timber growth or by capitalization of typical net income of similar soil in the region or a reasonable area of the region from the sale of timber, not including the timber growing thereon, and when applicable to land used for the growth of other agricultural products the term is defined as the productive earning power based on soil capability to be determined by capitalization of typical cash rents or by capitalization of typical net annual income of similar soil in the region or a reasonable area of the region, not including the agricultural products thereon. Soil capability when applicable to lands used for the growth of timber products means the capability of the soil *to* produce such timber products of the region considering any natural deterrents to the potential capability of the soil of the current assessment date. The term when applicable to lands used for the growth of other agricultural products shall mean the capability of the soil to produce typical agricultural products of the region considering any natural deterrents to the potential capability of the soil' as of the current assessment date. The term 'region' shall mean that geographical part of the State as determined by the Tax Commission to be reasonably similar for the production of such agricultural products.

C. The provisions of Section 12-43-220 of the 1976 Code amended in paragraph B shall apply to the tax year 1979 and thereafter.

attempts to distinguish areas used for growing timber versus other products, and not an expression of the General Assembly's intent for "fair market value for agricultural purposes" to only apply to land.

Based on the foregoing, I find that judgment should be entered in favor of the Petitioner. The statutory classification of "agricultural use value" includes the value of the structures located on Petitioner's property. Therefore, the property that is the subject of this matter should be assessed and taxed based on its "fair market value for agricultural purposes." That value must be calculated using the formula set forth in S.C. Code Ann. § 12-43-220(d)(2). Buildings and improvements located on the property may not be separately valued because their value is included in, and subsumed by, the fair market value for agricultural purposes.

ORDER

IT IS THEREFORE ORDERED that the Petitioner's Motion for Summary Judgment is **GRANTED** and Respondent's Cross Motion for Summary Judgment is **DENIED**.

IT IS FURTHER ORDERED that the Board's final decision in this matter is reversed. The Petitioner's Property identified as TMS #6-68-00-016.00 shall be assessed and taxed based on its agricultural use value alone without adding a separate value for the improvements on the Property.

AND IT IS SO ORDERED.

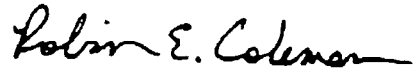


Deborah Brooks Durden
Administrative Law Judge

November 19, 2013
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Robin E. Coleman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



Robin E. Coleman
Judicial Aide to Deborah Brooks Durden

November 19, 2013
Columbia, South Carolina

FILED

November 19, 2013
SC ADMIN. LAW COURT