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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Robert L. Reibold, Administrative Law Judge

Appellate Case No. 2026-001190

Matthew DeNapoli and Lindsay DeNapoli,.. Appellants,

v.

Charleston County Assessor, ...Respondent.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. DO S.C. CODE ANN. §§ 12-60-2560(A) AND 12-54-85(F) BAR APPELLANTS' REFUND CLAIMS WHEN APPELLANTS SOUGHT REFUNDS OF *AD VALOREM* TAXES PAID MORE THAN TWO YEARS BEFORE FILING THEIR REFUND REQUEST?

STATEMENT OF THE CASE

This is an appeal from the South Carolina Administrative Law Court (hereinafter "ALC") concerning a tax refund request made by Matthew DeNapoli and Lindsay DeNapoli (hereinafter "Appellants") for *ad valorem* taxes paid to the Charleston County Assessor's Office (hereinafter "Respondent") relating to their property located at 918 Casseque Province, Mount Pleasant, South Carolina 29464. On April 16, 2024, Appellants applied to Respondent for a partial refund of *ad valorem* taxes paid between 2013 and 2021, alleging that they overpaid taxes during that nine-year period of time. (*See* Order of Judge Reibold Granting MSJ, at p. 3) On July 31, 2024, Respondent denied Appellants' refund request as untimely. (*See id*.) Appellants appealed the denial to the Charleston County Tax Refund Committee, which also denied the refund request as untimely on September 17, 2024. (*See id*.) Appellants then appealed to the Charleston County Board of Assessment Appeals (hereinafter "BAA"). (*See id*.) A hearing was held before the BAA on April 23, 2025, and Appellants' refund request was again denied as untimely on April 29, 2025. (*See id*.)

On May 21, 2025, Appellants filed a Request for Contested Case Hearing before the South Carolina Administrative Law Court appealing the decision of the BAA. The parties subsequently filed prehearing statements and completed discovery. (*See id*. at p. 1) Respondent filed a Motion for Summary Judgment arguing Appellants' refund request should be denied as a matter of law because Appellants failed to make the request within the two-year statute of limitations set by S.C. Code Ann. §§ 12-60-2560(A) and 12-54-85(F). (*See id*.; *see also*, Respondent's Motion for Summary Judgment) In response, Appellants filed Cross-Motions for Summary Judgment, Sanctions, and to Strike. (*See id*.; *see also*, Appellants' Cross-Motions and Associated Briefing) On April 3, 2026, the Honorable Judge Robert L. Reibold granted Respondent's Motion for

Summary Judgment and denied Appellants' Cross-Motions. (*See id*.) Appellants filed a Motion to Alter or Amend on April 11, 2026, which was denied on April 29, 2026. (*See* Order of Judge Reibold Denying Appellants' Motion to Alter or Amend; *see also*, Appellants' Motion to Alter of Amend and Associated Briefing) This appeal followed.

STATEMENT OF THE FACTS

Appellants own real property located in Charleston County at 918 Casseque Province, Mount Pleasant, South Carolina 29464 (hereinafter "Subject Property"). (*See* Order Granting MSJ, at p. 2) In 2015, Appellants applied to Respondent for the 4% Legal Residence Special Assessment (hereinafter "4% ratio") for the Subject Property. (*See id*.; *see also*, Respondent's Motion for Summary Judgment, at Exhibit A – Appellants' Prehearing Statement) On September 23, 2015, Respondent notified Appellants by letter that they were "provisionally" approved for a 4% ratio for tax year 2015. (*See* Respondent's Motion for Summary Judgment, at Exhibit B – 9/23/15 Letter from Respondent to Appellants) However, Respondent's notice expressly provided that:

> "… you will be required to submit your 2015 Federal (with all applicable schedules) and SC state tax returns reflecting your SC address when they are filed to fully meet and retain the legal residence exemption in Charleston County. ***Failure to provide this information will result in the removal of the legal residence exemption and you will be subject to back tax, penalties and interest for 2015***."

(*Id*.) (***emphasis added***) Appellants did not provide Respondent with their 2015 Federal and South Carolina state tax returns, and therefore, beginning in tax year 2016, Appellants assessment ratio reverted to 6% in accordance with Respondent's September 23, 2015 correspondence. (*See* Order Granting MSJ, at pp. 2–3) From tax year 2016 through 2023, Appellants paid their *ad valorem* tax bills for the Subject Property at the assessed 6% ratio. (*See id*.; *see also*, Respondent's Motion for Summary Judgment, at Exhibit A – Appellants' Prehearing Statement)

In 2024, Appellants realized that they were classified at a 6% ratio. (*See* Order Granting MSJ, at p. 3; *see also*, Apps' In. Br. at pp. 13–14) Upon this realization, on April 16, 2024, Appellants applied to Respondent for a 4% ratio and sought refunds of taxes paid between 2013 and 2023. (*See* Order Granting MSJ, at pp. 2–3; *see also*, Respondent's Motion for Summary Judgment, at Exhibit A – Appellants' Prehearing Statement) On July 31, 2024, Respondent approved Appellants' 4% ratio application. (*See id.*) Additionally, Respondent retroactively applied Appellants' 4% ratio for tax years 2022 and 2023, and approved Appellants' refund application for those years. (*See id.*) Respondent denied Appellants' refund requests for all earlier years, applying the two-year statute of limitations under S.C. Code Ann. §§ 12-60-2560(A) and 12-54-85(F). (*See id.*)

STANDARD OF REVIEW

This appeal of the lower court's order granting summary judgment concerns a question of law and statutory interpretation which this Court reviews *de novo*. *Cromey v. S.C. Dep't of Revenue*, 434 S.C. 475, 479, 864 S.E.2d 551, 553 (Ct. App. 2021) (citations omitted); *see also Fairfield Waverly, LLC v. Dorchester Cnty. Assessor*, 432 S.C. 287, 289, 852 S.E.2d 739, 740 (Ct. App. 2020) (citation omitted). "When reviewing a grant of a summary judgment motion, this court applies the same standard that governs the trial court under Rule 56(c), *SCRCP*." *Mead v Beaufort Cnty. Assessor*, 419 S.C. 125, 130, 796 S.E.2d 165, 168 (Ct. App. 2016). Additionally, this Court "may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal." Rule 220(c), *SCACR*.

ARGUMENT

I. BECAUSE APPELLANTS SEEK A REFUND OF TAXES PAID MORE THAN TWO YEARS PRIOR TO THEIR REQUEST, THE LOWER COURT CORRECTLY APPLIED S.C. CODE ANN. §§ 12-60-2560(A) AND 12-54-85(F) IN FINDING APPELLANTS' REQUEST TIME BARRED.

Claims for real property tax refunds are governed by S.C. Code Ann. § 12-60-2560, which provides as follows:

> "Subject to the limitations in Section 12-60-1750, and ***within the time limitation of Section 12-54-85(F)***, a property taxpayer may seek a refund of real property taxes assessed by the county assessor and paid, other than taxes paid on property the taxpayer claims is exempt, by filing a claim for refund with the county assessor who made the property tax assessment for the property for which the tax refund is sought."

The referenced limitations period is set forth in S.C. Code Ann. 12-54-85(F), which states:

> "[C]laims for credit or refund must be filed within three years from the time the return was filed, or two years from the date the tax was paid, whichever is later. If no return was filed, a claim for credit or refund must be filed within two years from the date the tax was paid. A credit or refund may not be made after the expiration of the period of limitation prescribed in this item for the filing of a claim for credit or refund, unless the claim for credit or refund is filed by the taxpayer or determined to be due by the department within that period."

Thus, for property tax refunds where no return is filed, the operative deadline is two years from the date the tax was paid. *See id*. This deadline is mandatory. *See id*. ("A credit or refund ***may not be made*** after the expiration of the period of limitation . . . ."). The ALC consistently applies this statutory bar to deny untimely refund claims, even if the underlying assessment is erroneous.

In 2003, the ALC heard an appeal from the Charleston County Tax Refund Committee where a taxpayer sought a partial refund of real property taxes paid from 1993 through 2000. *See Harry E. Thornley v. Charleston Cnty. Assessor and Charleston Cnty. Auditor*, Docket No. 02-ALJ-17-0260-CC (S.C. Admin. Law Ct. March 19, 2003) ("*Thornley*"). In that case, the taxpayer discovered a discrepancy in the taxable acreage of his parcel, further alleging that respondent assessor, being unaware of the actual size of his parcel, overtaxed his parcel from 1993 through 2000. *See id*. at p. 2. Taxpayer received partial refunds for tax years 1999 and 2000 based upon the acreage discrepancy; however, the assessor did not issue refunds for tax years 1993 through 1998, finding those requests were untimely. *See id*. Finding for the assessor, the court held that the unambiguous language of S.C. Code Ann. §§ 12-60-2560 and 12-54-85(F) prevented the assessor from refunding real property taxes paid more than two years prior to the request. *See id*. at pp. 2-4. As the court observed, "[t]his result may be harsh, but the right to apply for a refund is purely statutory, and it is incumbent upon those seeking relief to proceed according to the statute affording such relief . . . . [t]here is no exception provided." *Id*. at pp. 2-3.

The ALC reached a similar conclusion in *Aiken County Assessor v. James F. Marvin*, Docket No. 14-ALJ-17-0194-CC (S.C. Admin. Law Ct. Oct. 2, 2014) ("*Marvin*"). In *Marvin*, respondent taxpayer "applied for and received" a 4% ratio in 2005. *Id* at *2. The taxpayer was assessed at the correct 4% ratio in 2006; however, starting in 2007, the petitioner county assessor incorrectly issued a tax bill with a 6% ratio. *See id*. at *3. Taxpayer's tax bills in 2008, 2009, 2010, 2011, and 2012 continued to assess the incorrect 6% ratio. *See id*. In 2013, taxpayer "requested a review of his tax bills, which revealed the erroneous assessment." *Id*. Upon discovering the error, taxpayer requested a refund of the excess taxes paid at the higher 6% ratio. *See id*. at *4. The Aiken County Audit and Review Committee agreed to refund excess taxes paid from 2010 through 2012; however, refunds were not issued for years 2007 through 2009 due to the statute of limitations. *See id*. Taxpayer appealed the decision to the Aiken County Board of Assessment Appeals, which reversed and granted the taxpayer refunds for tax years 2007 through 2009. The county assessor appealed that decision to the Administrative Law Court.

The Administrative Law Court ultimately reversed the refund decision of the Board of Assessment Appeals and denied the 2007, 2008, and 2009 refunds by applying the statute of limitations in S.C. Code Ann. §§ 12-60-2560 and 12-54-85(F). The court held:

> "The tax years at issue in this dispute are 2007, 2008, and 2009. Respondent filed his claim for a refund in 2013, which means the tax years in dispute were not filed within three years of the time of return or within two years from the date the taxes were paid.
>
> 'Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs. One purpose of a statute of limitations is to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights.' Therefore, Respondent's claim for refund for the tax years 2007, 2008, and 2009 is barred by the statute of limitations of Section 12-54-85(F)(1)."

Id. at *7–8 (internal citations omitted).

Here, like the taxpayers in *Thornley* and *Marvin*, Appellants seek refunds of real property taxes paid more than two years prior to their request. It is undisputed that Appellants sought partial refunds from Respondent in 2024 for tax years 2013 through 2021. Because Appellants applied for refunds in 2024, the earliest tax year from which Respondent could issue a refund pursuant to S.C. Code Ann. §§ 12-60-2560 and 12-54-85(F) was 2022. Appellants' requested refunds for tax years 2021 and earlier are untimely and barred as a matter of law. The lower court properly granted summary judgment on this ground.

Appellants argue the lower court erred by declining to address whether they were eligible for a 4% ratio before ruling on the statute of limitations. Appellants contend that the lower court erred in failing to apply S.C. Code Ann. § 12-43-220(c)(2)(iv), the statute establishing the required documentation to obtain a 4% ratio in South Carolina. (Apps' In. Br. at p. 19) Similarly, Appellants argue the lower court erred in failing to declare Respondent's actions in reverting their assessment ratio to 6% beginning in tax year 2016 *ultra vires* and void *ab initio*. (*See id*. at pp. 20–24).

Appellants also argue that the lower court erred by "deliberately narrowing the case to a single procedural question—the timeliness of the refund claims—while refusing to decide the threshold issues that controlled the outcome of the entire dispute." (*See id*. at pp. 26 –27)

These arguments miss the point. This case is not about whether Appellants were eligible for or should have received a 4% ratio. Instead, this case is about whether Appellants' refund application was timely. Whether Appellants were eligible for a 4% ratio prior to 2021 is immaterial to the issue of timeliness under S.C. Code Ann. §§ 12-60-2560 and 12-54-85(F). Therefore, the lower court did not err in declining to reach the merits of Appellant's eligibility arguments.[1] *See e.g.*, *Marvin*, at *3–4 (denying appellant taxpayers' untimely refund request despite erroneous 6% ratio).

Appellants also argue that the lower court failed to apply the appropriate standard of review, alleging that "multiple genuine issues of material fact" exist and that summary judgment was inappropriate. (Apps' In. Br. at p. 24–25) But the alleged issues of fact raised by Appellants relate to eligibility[2] which, as explained above, are immaterial to the lower court's application of the statute of limitations. (*See id.*) Thus, the lower court did not err in its application of the summary judgment standard of review. *See* Rule 56(c), *SCRCP* (requiring there be no genuine issue as to any ***material*** fact) (***emphasis added***).

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[1] To be clear, Respondent disputes Appellants' claims that they were eligible for a 4% ratio at the time of their original application. Having recently moved from out of state, Appellants did not have South Carolina state tax returns at the time and therefore could not have complied with S.C. Code Ann. § 12-43-220(c)(iv)(A). This is why Respondent only provisionally approved Appellants and required them to supplement their application with South Carolina tax returns or forfeit the 4% ratio the following tax year. But as the lower court correctly held, these issues are irrelevant to the narrow question of timeliness before the Court. (*See* Order Denying Motion to Rec. at p. 5)

[2] For example, Appellants' alleged issues of fact include "whether any official determination of ineligibility of statutory notice of revocation was ever made or sent" or whether Respondent marked Appellants' initial application "Approved." (Apps' In. Br. at p. 24–25)

Therefore, in following the ALC's precedents in *Thornley* and *Marvin*, the lower court correctly applied the statute of limitations and granted summary judgment for Respondent. For those reasons, this Court should affirm the lower court's order granting summary judgment.

II. THE LOWER COURT CORRECLTY FOUND *CHEWNING* INAPPLICABLE WHEN CONSIDERING APPELLANTS' ALLEGATIONS OF FRAUD.

Appellants allege that Respondent engaged in a scheme of fraud during this litigation, including "conceal[ing] the absence of any statutory notice of revocation, present[ation] of a knowingly false narrative to the Board of Assessment Appeals, and fil[ing] a premature motion for summary judgment while discovery was still incomplete." (*Id*. at p. 28) Appellants argue the lower court erred in "refusing to apply the doctrine of extrinsic fraud" described in *Chewning v. Ford Motor Co.*, 354 S.C. 72, 579 S.E.2d 605 (2003). (*Id*. at p. 28) However, Appellants offer no explanation of how the lower court erred, nor do they explain what the court should have done when applying *Chewning*. (*Id*. at p. 29)

In *Chewning*, the plaintiff brought claims seeking to vacate an earlier jury verdict in a products liability action, alleging that defendant committed fraud upon the court by conspiring with witnesses during discovery and trial to conceal documents and commit perjury. *See Chewning* at 77, 579 S.E.2d at 607. The circuit court dismissed plaintiff's claims as untimely, but the Court of Appeals reversed. *See id*. The South Carolina Supreme Court held there is no statute of limitations when a party seeks to set aside a judgment due to fraud upon the court. *See id*. at 80, 579 S.E.2d at 610. The court further held that the fraud must be extrinsic, rather than intrinsic, in order for the alleging party to secure equitable relief. *See id*. The court defined extrinsic fraud as "fraud that induces a person not to present a case or deprives a person of the opportunity to be heard." *Id*. at 81, 579 S.E.2d at 610 (quoting *Hilton Head Ctr. of South Carolina v. Public Serv. Comm'n*, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987)).

The lower court properly found *Chewning* inapplicable. *Chewning* involved a subsequent proceeding to reopen a jury verdict for fraud upon the court. (*See* Order Granting MSJ at p. 7) In this case, Appellants complain of conduct occurring during the current proceeding—conduct they were aware of and raised to the court before it issued its final order granting summary judgment. This is unlike *Chewning*, where the alleged conduct was discovered several years after the case concluded. The lower court correctly held that the conduct alleged by Appellants occurred in 2025 and was not extrinsic fraud. (*See id*.) Such conduct could not have prevented Appellants from timely filing refund claims for tax years 2013 to 2021. (*Id*.) Moreover, Appellants raised these issues with the lower court, demonstrating that they were not deprived of an opportunity to be heard. Thus, the lower court properly found *Chewning* inapplicable.

Chewning's inapplicability aside, Appellants' claims of fraud lack support in the record. For example, Appellants claim that Respondent "concealed" the fact that they were not sent a letter in 2016 notifying them of the removal of their 4% ratio. But Respondent directly addressed this point when responding to Appellants' written discovery in the ALC. (*See* Respondent's Resp. to Apps' Motion for Extension of Time at p. 2-3). Appellants also claim that Respondent presented a "false narrative" to the BAA when it asserted Appellants 4% ratio was revoked in 2016. But there is no dispute that the Assessor did, in fact, revoke Appellants' 4% ratio in 2016, making the statement truthful. Lastly, Appellants characterize Respondent's filing of a motion for summary judgment as fraudulent, which is absurd on its face. The lower court correctly declined to apply *Chewning* to these allegations.

Therefore, the lower court was correct in applying the statute of limitations found under S.C. Code Ann. §§ 12-60-2560 and 12-54-85(F) while finding *Chewning* inapplicable.

CONCLUSION

Wherefore, for the foregoing reasons, Respondent requests the ALC's order granting Summary Judgment be affirmed.

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