RECEIVED
Jun 10 2024
SC Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Watertoys, LLC, d/b/a Tidalwave Watersports, Petitioner, v. South Carolina Department of Revenue, Respondent.	Docket No. 23-ALJ-17-0362-CC **ORDER DENYING PETITIONER'S MOTION FOR RECONSIDERATION**

This case is before the Administrative Law Court (ALC or Court) pursuant to a Request for Contested Case Hearing filed on September 5, 2023, by Watertoys, LLC, d/b/a Tidalwave Watersports (Petitioner). Petitioner contests a determination by the South Carolina Department of Revenue (Respondent, DOR, or Department) finding it liable for admissions taxes arising out of parasailing rides for which it charged passengers admission fees from September 1, 2018, to December 31, 2021 (the Audit Period). The parties entered into stipulations of fact dated March 20, 2024. On March 25, 2024, Petitioner filed a Motion for Summary Judgment. On March 29, 2024, DOR filed its own Motion for Summary Judgment. Responses and Replies were filed with respect to each of the motions. On April 18, 2024, this Court issued an Order Granting Respondent's Motion for Summary Judgment and Denying Petitioner's Motion for Summary Judgment. On April 24, 2024, Petitioner filed a Motion for Reconsideration. On May 7, 2024, DOR filed a response to the motion.

In its Motion to Reconsider, Petitioner raises for the first time an assertion that a genuine issue of material fact exists as to whether parasail rides fall under the exemption to the admissions tax for admission to boats which charge a fee for pleasure fishing, excursions, sight-seeing and private charter. Petitioner failed to raise this issue in its brief in support of its Motion for Summary Judgment or in response to Respondent's Motion for Summary Judgment. A party cannot use a Rule 59(e) motion to raise for the first time an issue that the party could have raised prior to judgment but did not. Hickman v. Hickman, 301 S.C. 455, 392 S.E.2d 481 (Ct. App. 1990).

Moreover, if Petitioner intended for the Court to find that a genuine issue of fact exists to foreclose summary judgment, it was incumbent upon Petitioner to file an affidavit or other evidence setting forth the factual dispute. A party may not rest upon the mere allegations or denials

FILED
05/14/2024
SC Admin. Law Court

of his pleadings. Rule 56(e) SCRCP. 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).

The remaining arguments in Petitioner's Motion for Reconsideration merely reiterate the arguments made in the Motions for Summary Judgment, which have been carefully considered and ruled upon by this Court. This motion does not seek to correct manifest errors of law or fact or to present newly discovered evidence. Accordingly,

ORDER

IT IS THEREFORE ORDERED that Petitioner's Motion for Reconsideration is **DENIED**.

AND IT IS SO ORDERED.



Deborah Brooks Durden, Judge
S.C. Administrative Law Court

May 14, 2024
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, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

Robin Coleman

Robin E. Coleman
Judicial Aide to Judge Deborah Brooks Durden

May 14, 2024
Columbia, South Carolina

