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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 GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT AND DENYING PETITIONER'S MOTION FOR SUMMARY JUDGMENT**

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). 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.

Under SCALC Rule 68, this Court may apply the South Carolina Rules of Civil Procedure in contested case proceedings where no ALC rule applies. Therefore, Rule 56, SCRCP, 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, 33, 530 S.E.2d 369, 371 (2000); Rule 56(c), SCRCP. 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, 327, 534 S.E.2d 672, 675 (2000). When determining whether any triable issue of fact exists, "the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party." Quail Hill, LLC v. Cty. of Richland, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010) (citation omitted). However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment can be granted. Trico Surveying, Inc. v. Godley Auction Co., Inc., 314 S.C. 542, 544, 431 S.E.2d 565, 566 (1993).

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"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), 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 ex rel. Doe v. Batson, 345 S.C. 316, 320, 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, 549, 694 S.E.2d 1, 6 (2010).

In this case, the parties agree that there is no genuine issue of material fact relevant to the transactions at issue. Therefore, it is appropriate to resolve the issues related to those transactions by summary judgment.

PETITIONER'S MOTION

Petitioner moves for summary judgment finding Petitioner's parasailing ticket sales income is exempted from the admissions tax. S.C. Code Ann. § 12-21-2420 (2014 & Supp. 2023) imposes an admissions tax on amounts paid to enter places of amusement. For purposes of that section, "admission" is defined in S.C. Code Ann. § 12-21-2410 (2014) as "the right or privilege to enter into or use a place or location." Petitioner argues parasailing falls under an exemption from admissions taxes found at section 12-21-2420(13), which states "[N]o tax may be charged or collected: . . . [o]n admissions to boats which charge a fee for pleasure fishing, excursions, sight-seeing and private charter." Petitioner argues parasailing falls within the language, "excursions, sight-seeing and private charter" in section 12-21-2420(13). Additionally, Petitioner points to S.C. Rev. Rul. #05-14, a policy statement issued by the Department, which states:

> It should be noted that it has been the longstanding position of the Department that . . . fees for boat, carriage, helicopter, plane or bus rides for touring, charter, fishing, or excursion . . . are not subject to the admissions tax.

In its motion, Petitioner states the following:

> ['']Excursion['] means: 'a short journey or trip, especially one engaged in leisure activity.' (Oxford Dictionary) or 'a usually brief pleasure trip' (Webster's Seventh New Collegiate Dictionary)[.] ['']Sight-seeing['] means: 'the activity of visiting

> places of interest in a particular location.' (Oxford Dictionary) or 'the act or pastime of seeing sights.' (Webster's Seventh New Collegiate Dictionary[.] [']Private charter[']means: 'the reservation of an aircraft, boat, or bus for private use.' (Oxford Dictionary) or 'a mercantile lease of a ship or some principal part of it.' (Webster's Seventh New Collegiate Dictionary)[.]

Petitioner argues section 12-21-240(13) is unambiguous and that the definitions Petitioner cites of "excursion," "sight-seeing," and "private charter" plainly encompass parasailing.

> The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. 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, 85, 533 S.E.2d 578, 581 (2000) (citation omitted). In the alternative, Petitioner argues if section 12-21-240(13) is ambiguous, then the Court is required to construe the ambiguity against the Department, citing Alltel Commc'ns, Inc. v. S.C. Dep't of Revenue, 399 S.C. 313, 321, 731 S.E.2d 869, 873 (2012). (Where the language relied upon to bring a particular person within a tax law is ambiguous or is reasonably susceptible of an interpretation that will exclude such person, then the person will be excluded, any substantial doubt being resolved in his favor.)

RESPONDENT'S MOTION

The Department moves for summary judgment finding Petitioner liable for admissions taxes on ticket sales for parasailing rides Petitioner conducted during the Audit Period. Section 12-21-2420 imposes an admissions tax on amounts paid to enter places of amusement. For purposes of that section, "admission" is defined in section 12-21-2410 as "the right or privilege to enter into or use a place or location." A "place of amusement" is "any enclosure or location consisting of an activity that occupies one's spare time, distracts the mind, relaxes, entertains, or gives pleasure." S.C. Rev. Rul. # 05-14. The Department's published policy statement specifically includes "para sail rides" as an example of a place of amusement subject to admissions taxes. Id.

The Department also argues Petitioner does not qualify for a tax exemption. Section 12-21-2420 provides exemptions for admissions taxes. "The language of a tax exemption statute must be given its plain, ordinary meaning and must be strictly construed against the claimed exemption." Home Med. Sys., Inc. v. S.C. Dep't of Revenue, 382 S.C. 556, 564, 677 S.E.2d 582, 587 (2009).

Additionally, the Department argues Petitioner is liable for penalties for failing to file its admissions tax returns during the Audit Period. S.C. Code Ann. § 12-54-43(C)(1) (2014) states:

> In the case of failure to file a return on or before the date prescribed by law, determined with regard to any extension of time for filing, there must be added to the amount required to be shown as tax on the return, a penalty of five percent of the amount of the tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction of the month during which the failure continues, not exceeding twenty-five percent in the aggregate.

S.C. Code Ann. § 12-54-43(C)(1) (2014). Section 12-54-43(E) states:

> In case of failure to pay any amount of any tax required to be shown on a return which is not shown, including an assessment within ten days of the date of the notice and demand for payment, there must be added to the amount of tax stated in the notice and demand one-half of one percent of the amount of the tax if the failure is for not more than one month, with an additional one-half of one percent for each additional month or fraction of a month during which the failure continues, not exceeding twenty-five percent in the aggregate.

S.C. Code Ann. § 12-54-43(E) (2014).

ANALYSIS OF THE MOTIONS

The parties do not dispute any of the material facts of this case. Both parties agree parasailing is a form of amusement. Therefore, the parties' respective motions turn on the issue of whether parasailing is exempted from the admissions tax. Section 12-21-2420(13) provides an exemption for "admissions to boats which charge a fee for pleasure fishing, excursion, sight-seeing and private charter." Petitioner points to S.C. Rev. Rul. #05-14 which states the Department does not consider "fees for boat, carriage, helicopter, plane or bus rides for touring, charter, fishing, or excursion" subject to admissions taxes. However, the same Department ruling specifically notes "para sail rides" are subject to admissions taxes. "If the statute or regulation 'is silent or ambiguous with respect to the specific issue,' the court then must give deference to the agency's interpretation of the statute or regulation, assuming the interpretation is worthy of deference." Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env't Control, 411 S.C. 16, 33, 766 S.E.2d 707, 717 (2014); quoting Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837, 843 (1984). "[C]ourts defer to an administrative agency's interpretations with respect to the statutes entrusted to its administration or its own regulations 'unless there is a compelling reason to differ.'" Kiawah, 411 S.C. at 34, 766 S.E.2d at 718.

Section 12-21-2420(13) is silent with respect to whether parasailing falls under "excursion, sight-seeing and private charter." Therefore, the statute is ambiguous with respect to whether

parasailing falls under the exemption. Petitioner argues South Carolina precedent requires the Court to resolve the ambiguity in favor of Petitioner. However, the Alltel case cited by Petitioner relates to whether a taxpayer is subject to a tax rather than whether the taxpayer is exempt from the tax. Both parties admit the admissions charged for Petitioner's parasailing rides are subject to an admissions tax pursuant to section 12-21-2420 unless an exemption applies to parasailing. Therefore, the Alltel case is inapplicable to this matter because there is no ambiguity about whether section 12-21-2420 applies to Petitioner.

Instead, the statute in question in this matter is a tax exemption. South Carolina law requires tax exemption statutes to be construed strictly against the claimed exemption. Home Med. Sys., 382 S.C. at 564, 677 S.E.2d at 587. The Department's interpretation of this matter in S.C. Rev. Rul. #05-14 states "para sail rides" are subject to the admissions tax. Parasail rides are not specifically exempted under either of the above code sections. Although section 12-21-2420(13) exempts "admissions to boats which charge a fee for . . . excursion, sight-seeing and private charter," the statute does not specifically exempt parasailing. In contrast, there is no ambiguity in the Department's interpretation. The Department explicitly states "para sail rides" are subject to the admissions tax. The later language in S.C. Rev. Rul. #05-14 regarding the Department's longstanding position that "fees for boat . . . rides for touring, charter, fishing, or excursion . . . are not fees to enter or use a place of amusement and are not subject to the admissions tax," merely supplements the preceding statement that "The following list of places of amusements is not all inclusive and is merely provided as guidance." The Department's longstanding interpretation, published in a policy statement, is entitled to deference. Moreover, the language of the exemption does not unambiguously include parasailing. Therefore, a strict construction of the exemption excludes parasail rides from its terms. Since Petitioner's admissions for parasailing rides are subject to the admissions tax as a matter of law, the Court grants the Department's motion for summary judgment and denies Petitioner's motion for summary judgment. Accordingly,

ORDER

IT IS HERREBY ORDERED that the Petitioners' Motion for Summary Judgment is **DENIED**.

IT IS FURTHER ORDERED that the Department's Motion for Summary Judgment is **GRANTED**. Furthermore, Petitioner is liable for penalties pursuant to section 12-54-43.

AND IT IS SO ORDERED.



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

April 18, 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

April 18, 2024
Columbia, South Carolina

