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THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM THE ADMINISTRATIVE LAW COURT
Shirley C. Robinson, Administrative Law Judge

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Case No. 2013-001683

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Richland County Assessor, Respondent,

v.

James M. Hull, d/b/a Hull Storey Gibson Companies, LLC, Appellant.

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# FINAL BRIEF OF APPELLANT

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## STATEMENT OF ISSUES ON APPEAL

1. Did the Administrative Law Court fail to value the subject property in accordance with S.C. Code Ann. §12-37-930 when it did not properly consider the purchase price of the subject property when determining its fair market value?

2. Did the Administrative Law Court improperly apply the burden of proof and legal presumptions in determining the subject property's fair market value when it stated that the Assessor's valuation is presumed correct and when it did not give proper weight to the sales price of the property in contravention of law?

3. Did the Administrative Law Court's valuation of the subject property violate the Constitutional requirements for equal and uniform assessments?

## STATEMENT OF THE CASE

This matter arose from a reappraisal of the subject property (described more particularly herein) by the Richland County Assessor ("Assessor") for the taxable year 2010. The Respondent valued the two parcels at $3,928,700 and $674,300, respectively. James M. Hull d/b/a Hull Storey Gibson Companies, LLC ("Taxpayer") challenged the assessment and filed the appropriate Application for Review with Assessor. After review, Assessor changed the larger parcel's assessment from $3,928,700 to $3,571,500, while the smaller parcel's assessment did not change. Taxpayer properly appealed the valuation to the Richland County Board of Assessment Appeals ("Board") within the statutory period and a hearing was set for the matter.

On July 10, 2012, the Board conducted a hearing in which Taxpayer was represented by Matthew Matson and Assessor was represented by Mark Cheslak. After the hearing, the Board's decision of July 18, 2012, reduced Assessor's proffered value for the two parcels to $1,975,000. The Board's decision was based on the price that Taxpayer paid for the properties.

Assessor filed its intent to appeal the Board's decision to the Administrative Law Court of South Carolina with an appeal letter dated July 23, 2012, signed by John A. Cloyd, Richland County Assessor.

On January 9, 2013, the Administrative Law Court held a contested case hearing, presided over by the Honorable Shirley C. Robinson. R.E. Hanna, III and Matthew W. Matson represented Taxpayer and Malane S. Pike represented Assessor. After proposed orders and rebuttal briefs were submitted, the Court ruled on the matter by way of its

Final Order and Decision dated July 10, 2013. The Court overturned the Board's decision and reinstated Assessor's valuation of the properties.

From the Court's Final Order and Decision, Petitioner took this appeal by filing its Notice of Appeal on July 31, 2013.

## FACTS

SC Bypass, LLC ("Bypass") is a Georgia limited liability company managed by Taxpayer. (R. p. 94) At all times relevant to the instant matter, Bypass owned the properties which are located at or near the 2800 Block of Clemson Road and referred to as tax parcels R17400-05-34 ("Parcel 34") and R17400-05-44 ("Parcel 44") (collectively "subject property"). Parcel 34 consists of approximately 23.81 acres of vacant, cleared land located off of Clemson Road. Parcel 44 is an adjacent outparcel made up of approximately 1.72 acres located at 2820 Clemson Road. Bypass acquired both parcels in a single transfer through a Warranty Deed, dated September 3, 2009, that can be found in the Richland County Real Estate Office in Book 1553, Page 2782.

Because the Administrative Law Court specifically found that the subject property's sales price was not indicative of its fair market value, it is important to look at the circumstances surrounding the sale. On March 31, 2009, Taxpayer, through its agents, sent a letter of intent to purchase the subject property to Crescent Resources, LLC ("Crescent"), the former owner of the subject property. (R. pp. 96-97) The letter conveyed an offer to purchase the property for $1,200,000 signed by Wayne Grovenstein (of Hull Storey Gibson Companies, LLC or "HSG"). (R. pp. 97, 284-285) The letter was returned by Crescent's Elizabeth McMillan on May 6, 2009, with a counteroffer of $1,500,000. (R. pp. 97-98) Barry Storey (of HSG) signed McMillan's counteroffer on

May 8, 2009, indicating that the parties had come to an agreement as to the purchase/sale of the property. (R. pp. 97-98, 284-285)

On May 14, 2009, Crescent's President, Commercial Division, Patrick Henry, transmitted a letter attempting to revoke the agreement. (R. pp. 101-102, 286) The next day, a letter from Mr. Henry requested a final and best offer from Petitioner "due to significant interest in the site." (R. pp. 102-103, 288-289) Subsequently, Crescent filed a voluntary Chapter 11 bankruptcy petition in the United States Bankruptcy Court, Western District of Texas in June 2009. (R. pp. 104, 290)

The subject property was sold at an auction pursuant to the Bankruptcy Rules. (R. pp. 107, 291-292) The starting bid was $1,775,000, with bids increasing by $50,000. (R. pp. 106-107) Taxpayer was the highest bidder and purchased the subject property for $1,975,000, closing on September 3, 2009. (R. p. 106) The auction sale yielded a price $475,000, or 31.6%, higher than the previously negotiated agreement between Crescent, a company with over $1 billion in assets, and Taxpayer.

There were no other similar properties bought/sold in the Richland County area in 2009 or 2010 according to Assessor's witnesses.

## ARGUMENTS

### I. THE ADMINISTRATIVE LAW COURT'S FINAL ORDER AND DECISION SHOULD BE OVERTURNED BECAUSE OF ITS RELIANCE ON RICHLAND COUNTY ASSESSOR'S ARBITRARY VALUATION OF THE SUBJECT PROPERTY, WHICH DOES NOT COMPORT WITH THE REQUIREMENTS OF SOUTH CAROLINA LAW

"All property must be valued for taxation at its true value in money which in all cases is the price which the property would bring following reasonable exposure to the market, where both the seller and the buyer are willing, are not under compulsion, and are

reasonably well informed of the uses and purposes for which it is adapted and for which it is capable of being used." S.C. Code Ann. §12-37-930 (2012). There is no valid distinction between market value for sales purposes and market value for taxation purposes under the Code. *S.C. Tax Comm'n. v. S.C. Tax Bd. of Rev.*, 287 S.C. 415, 339 S.E.2d 131 (S.C. Ct. App. 1985).

Assessor's chief witness, Mark Cheslak, correctly stated that the job of an appraiser is to estimate the price at which the property would change hands in an arms length sale. (R. p. 62)

Q: Okay. And if you had purchasers on a market—on the open market, they could put different values on a property; isn't that correct?

A: Yes.

Q: And as an appraiser, aren't you trying to estimate what the purchaser would purchase the price for?

A: Correct.

Q: And here we have that value, right?

A: You mean Mr. Hull's property, yes.

Q: Right. And the subject prop---we have the actual sales price, right?

A: Correct.

Q: And the purpose of an appraisal is to estimate that sales price, correct?

A: Estimate a value. It's an estimate of value is what the appraisal does.

(R. p. 62, lines 5-21)

**A. Assessor's assessment failed to properly consider the actual, bona fide sale of the subject property in its valuation.**

**1. Assessor did not investigate the circumstances of the sale and ignored the facts when presented by Taxpayer.**

Assessor did not present evidence refuting that the sale was actual, voluntary, and bona fide. However, all of the evidence presented by Taxpayer regarding the sale of the property established that the sale was actual, voluntary, and bona fide. Testimony of Taxpayer's witness, Wayne Grovenstein, established that the §12-37-930 factors were present through reasonable exposure to the market and the parties were willing. (R. pp. 112-113) Mr. Grovenstein detailed the extensive negotiations which took place over a number of months. (R. pp. 96-113) He further testified that the bankruptcy gave an added level of protection to the sale as the seller could decide not to sell. (R. p. 113)

All of the elements of S.C. Code Ann. §12-37-930 (2013) were met in this sale: "...reasonable exposure to the market, where both the seller and the buyer are willing, are not under compulsion, and are reasonably well informed of the uses and purposes for which it is adapted and for which it is capable of being used." Cheslak agreed that these elements were met in his testimony, as follows:

Mr. Matson: Do you believe that this property had a reasonable exposure to the market since it was purchased back in 2005?

Mr. Cheslak: Yes.

Q: And the outparcels had been selling going back to 2006?

A: Yes.

Q: Okay. Do you have any reason to believe that the seller and buyer were not reasonably well informed of the uses of the property?

A: I believe they were well informed of the uses of the property.

Q: And do you believe that the seller and buyer were willing in this case? Do you have reason to believe that they weren't?

A: No.

(R. p. 62, line 22-p. 63, line 12)

The statute requires that all property be valued at the price it would bring when all of those conditions are met. *Id.*

Cheslak stated his role in determining the fair market value, but he misapplied the law. He reviewed the deed which showed the transfer of interest of the subject properties, so he not only knew what the property would bring, but what the property did bring "after reasonable exposure to the market, where both the seller and the buyer are willing, are not under compulsion, and are reasonably well informed of the uses and purposes for which it is adapted and for which it is capable of being used." *Id.* The South Carolina statute for fair market value mandates that the subject property be valued at the price that it sold for, $1,975,000, because all of the other requirements of the law were met. *Id.*

Instead of determining if the sale represented fair market value, Assessor assumed that the price was below market value.

Mr. Matson: And under South Carolina law, aren't you required to consider arms length transaction when you're appraising a property?

Mr. Cheslak: I did. I considered them, the purchase price.

Q: You considered it?

A: Yes.

Q: But you also testified that there were no sales in 2009; is that correct?

A: None that are comparable to the subject.

Q: I think – well, you said there were no sales in 2009, but this property was sold in 2009, was it not?

A: Yes. Well, if you include that, that sale took place in 2009, yes.

Q: But it was lower than the value you thought it should have been, correct?

A: It didn't stand up to the market of other sales in the area.

Q: But you don't have any other sales from 2009, right?

A: No, I don't. Not comparable to the subject, no.

(R. p. 55, lines 1-22)

Cheslak testified that he could have used the sales price, but chose not to do so. His approach is contrary to the language of §12-37-930. He did not accord substantial weight to the purchase price of the property. He did not overcome the presumption that the price paid was the value of the property.

The purchase price is demonstrative as to value because two unrelated parties agreed to exchange the property for that value. Any party who was not involved in the transaction would have to assume or guess why the parties came to that value. As Mr. Cheslak said, an appraisal is not an exact measure of value, its purpose is to "estimate a value," and it is not an exact science. (R. p. 61, lines 23-25, p. 62, lines 18-21) South Carolina case law supports this notion by placing emphasis on hard numbers which can be verified through actual sales. Also, the purchase price is to be given "substantial weight" and to be considered "presumptive evidence" as to the value. *Belk Dept. Stores v. Taylor*, 259 S.C. 174, 179 (1972); *Mazloom v. Mazloom*, 382 S.C. 307, 322 (Ct. App. 2009). This presumption of value is supported in fact by the idea that there are considerations which are difficult for an appraiser to adjust for, like changes in market conditions between initial contracting and closing dates, and closings with rights of refusal. (R. p. 149) Cheslak admitted that the Assessor's office does not adjust for such considerations. (R. p. 149) However, the market in 2008 was much different than the market in 2009 as evidenced by lower sales prices and a much lower volume of sales which was testified to by all of Assessor's and Taxpayer's witnesses. Because of the

admitted difficulty in considering all the components that go into a sale, it is necessary to closely examine the actual number that two willing parties agreed upon.

The statute's use of the word "must" is a mandate that the property will be valued at its "true value in money" as defined in the §12-37-930. Assessor failed to value the property based upon the statute's plain reading after admitting that the factors in the statute were present in the sale of the subject property. Although the statute's meaning is clear under its plain reading, if a substantial doubt exists it should be resolved in Taxpayer's favor. "It is a well-established rule of construction that a tax statute is not to be extended beyond the clear import of its language, and that any substantial doubt as to its meaning should be resolved against the government and in favor of the taxpayer." *Beard v. South Carolina Tax Comm'n*, 230 S.C. 357, 367 (1956).

**2. The Order's Conclusions of Law 13 and 14 incorrectly rely on Respondent's interpretation of *In Re Cable & Wireless USA, Inc.*, 331 B.R. 568 (Bankr. D. Dela. 2005) and *Lake County Assessor v. U.S. Steel Corporation*, 901 N.E.2d 85 (Ind. Tax Ct. 2009).**

After Cheslak testified that he had no reason to believe the buyer and seller were not willing participants in the transaction, Assessor argued that bankruptcy sales do not meet the willing seller test. Assessor's legal argument is based on *In Re Cable & Wireless USA, Inc.*, 331 B.R. 568 (Bankr. D. Dela.2005). However, taken in context, the sentence Assessor relies upon shows that it was merely testimony of a Florida taxing authority's witness and was not the actual holding of the Court. The quote from *In Re Cable* upon which Assessor's argument is based states:

> The sworn testimony of Stephen Barreca, presented by the Florida taxing authorities, is persuasive. He states that sales involving a bankruptcy do not meet the willing seller test because there is an element of compulsion in the sale transaction, even if it is an auction sale.

The quote is a portion of the testimony of a witness in the case. Assessor does not ask the Court to apply precedential law from the Bankruptcy Court of Delaware's ruling, rather it seeks to have the testimony of the Florida taxing authority's witness, Stephen Barreca, from that unrelated case be presented as binding authority over the assessment of vacant property in Richland County. Ironically, the judge in *In re Cable* accepted Barreca's testimony as more credible than another witness, Don Schmitt, in part because "Schmitt conceded that he never reviewed the bankruptcy cases filed on which sales he relied, including how they occurred, who was involved and what the underlying factors were at the time of the sale." *Id.at 580.* Quite similar to Schmitt's assessment (the assessment rejected by the Bankruptcy Court) in the *In re Cable* case, in the case at bar, the Assessor did not consider the underlying factors which were presented, namely: the extensive negotiations, the lengthy exposure to the market, and the nature of the parties involved—Crescent Resources had over $1 billion in assets at the time, and the Taxpayer is a regular buyer and seller of real property. The Court should not rely on the Assessor's opinion of value for the same reason—the Assessor's witnesses testified that they failed to investigate or consider the underlying factors of the instant sale/purchase.

Likewise in *Lake County Assessor v. US Steel Corp.*, 901 N.E.2d 85 at 92 (Ind. Tax Ct. 2009), the quoted text from Assessor's paragraph 14 is preceded by the statement, "First of all, many jurisdictions ascribe to the theory that bankruptcy sales can be reliable indicators of property value." In *Lake County*, the Indiana Tax Court quoted the Oregon Tax Court's determination that, "[U]nder those circumstances the choice is not to dismiss the sales out of bankruptcy as reflecting atypical considerations, but to instead examine the transactions to see if they are reliable indicators of market value." *Id.*

Again, in the decision cited by the Assessor, the Court advises that further inquiry is required to determine whether the transaction in Bankruptcy reflected market value, and in the case *sub judice*, the Assessor did not go through the appropriate steps to examine the transaction.

Neither of the Courts in the Assessor's cited cases advise that a bankruptcy sale can be ignored. Rather, those Courts state that the sale price in a Bankruptcy sale should be considered when the circumstances surrounding the sale are considered. South Carolina case law dictates that the sales price of the property subject to assessment must be considered and is a strong indicator of the fair market value. *See Mazloom*, 283 S.C. 307 (S.C. Ct. App 2009); *Belk*, 259 S.C. 174 (1972). If the Assessor chooses to disregard the price at which the property exchanged hands, he must provide his reasoning in a thorough and complete manner that demonstrates consideration of all of the factors discovered through his investigation of the sale and assessment of the property.

Assessor made it clear that the circumstances of the sale were not examined or given consideration. Terry Fancey, Assessor's Deputy Assessor for Appraisal, testified that a bankruptcy sale places undue stimulus on a sale. (R. p. 168) When questioned about his assumption that there was undue stimulus, he admitted that he didn't know how many people showed up to the sale, but assumed that there was only one other bidder. (R. p. 168) Fancey also testified that he is not familiar with auctions, but he believed there was an obligation to sell. (R. p. 168) The Court inquired further into his understanding of bankruptcy sales:

The Court: In this instance, the property sold at the bankruptcy auction for more than it would have sold for had they sold it to---

Mr. Fancey: Not knowing the full circumstances of what was—who was at the auction, how many were involved and all that, I just don't know what to say about that.

Q: Okay. And I'm just asking because it appeared that there was minimal consideration given to the purchase price in determining the fair market value for assessment purposes.

A: Our office would look at anything involving a bankruptcy or involving an auction. The reasonable question is to is it in fact a fair market transaction.

(R. p. 169, line 17-p. 170, line 6)

Fancey explained that he didn't know the full circumstances of the sale, but assumed that it was not fair market value. Taxpayer presented Assessor (and Fancey) with information regarding the prior negotiations and the procedures for the sale. The procedures for the bankruptcy sale were included in the Taxpayer's exhibits and presentation for the BoAA, but Fancey admitted he had never seen them. (R. p. 171)

Mr. Matson: Right. And you have no idea how many parties were part of this auction?

Mr. Fancey: Right. Correct.

Q: You were not aware of the prior negotiations on this property?

A: No, I was not.

Q: And the fact that the prior negotiations were less than it sold at the bankruptcy has no bearing on your—

A: The first I became aware of that was during prepping for this case.

Q: Okay. And are you aware that a bankruptcy judge could void a sale if it did not comply with the—

A: I am not aware of what the powers of a bankruptcy judge are.

(R. p. 172, lines 1-16)

Taxpayer's Exhibit 3, pages 8 and 9 set forth the bidding procedures and outline the safeguards that the sale provided for the bankrupt estate. (R. pp. 291-292) As the bidding procedures set out, Crescent had the right to reject any offer it deemed inadequate or contrary to the best interests of the Debtors and their estates. (R. p. 292) This information did not affect Assessor's decision that the sale represented fair market value because Assessor did not consider this information although it was properly presented. Not only could the Debtor reject the sale in this case, but Bankruptcy trustees have a fiduciary duty to the estate and are tasked with conserving the estate and maximizing distributions to creditors. (*See Kalyna v. Swaine (In re Accomazzo),* 226 B.R. 426, 429 (D. Ariz. 1998) District Court sought to determine trustee's liability where it was alleged to have negligently failed to maximize the estate)

**B. Assessor's assessment uses favorable sales and information, while ignoring unfavorable sales and information, yielding its valuation system arbitrary as it does not seek the "true value in money" of the property assessed.**

Assessor's valuation of the subject property was based on two Restricted Use Appraisal Reports ("Respondent's Appraisal of Parcel 44" and "Respondent's Appraisal of Parcel 34") performed by Mark Cheslak, Commercial Appraisal Supervisor for Richland County Assessor's Office—one for each tax parcel that makes up the subject property. Assessor's Appraisal of Parcel 44 relied on the Direct Sales Comparison

approach which used four sales of outparcels in the area. None of the sales used in the Assessor's Appraisal of Parcel 44 occurred in the year of valuation, 2009; three occurred in 2008 and one occurred in 2010. (R. pp. 33-36) Assessor's Appraisal of Parcel 34 likewise relied on the Direct Sales Comparison approach, this time utilizing sales of three larger parcels in the area, which all sold at least one year prior to the subject property. (R. p. 127)

According to Cheslak, after an Assessable Transfer of Interest ("ATI") assessed values generally go up. (R. p. 47) But in the instant case Cheslak testified that the assessed value of the property was the same before the sale and after the sale; that is his assessment did not change. (R. p. 51) So his cursory consideration of the sales price was meaningless, as it did not affect his opinion of value.

Because the market value for taxation purposes is equivalent to the market value for sales purposes, the goal of the Assessor's appraisal is to approximate the price which the property would bring in a sale when the conditions of S.C. Code Ann. §12-37-930 are all met. It is unusual for an appraiser to have a recent sale of the property which he is appraising to use as a comparable. The subject property sold in September 2009, during the year of valuation.

Cheslak testified that he could have used the sale of the subject property, but he did not use the sale as one of his comparables. (R. p. 55) Instead he used sales of other properties to approximate what the sales price would have been for the subject property. Cheslak chose not to use the only sale in the area which took place in the year of valuation because it did not support his valuation. Instead he relied on more remote sales

which were purported to support his valuation. This application is arbitrary and is not supported in appraisal theory or in equity.

The most egregious example of Assessor's adoption of high sales prices as fair market value, even when considered far outliers, is the Walgreens property. Mr. Fancey testified that parcels less than 5 acres near the subject property were assessed at $9 per square foot (median) or $9.92 per square foot (average). (R. p. 77) But when the Walgreen purchase came through at $26 per square foot, an ATI was triggered, and it was assessed at $26 per square foot. (R. p. 79, 81) To use Mark Cheslak's words "if you look at the sales in the area, the immediate area, it just didn't fit with what was selling out there." (R. p. 29)

There was no inquiry as to whether such an unusually high sales price was considered to be fair market value, and Fancey explained "my understanding is typically that pharmacies pay a lot to purchase their land…" (R. p. 79) The Assessor's office used that sales price as their assessed value for the property, although it was a clear outlier. But when the subject properties were purchased at a price lower than the average assessed values, Assessor did not use the purchase price as fair market value. Fancey could have just as easily suggested that Taxpayer pays low prices for land and accepted the purchase price as its assessed value. The arbitrary application of purchase prices should not be tolerated where the South Carolina Constitution and Code require equitable assessments.

Likewise, Cheslak did not properly consider the deed restrictions serve as limitations to the development of the subject property. Regardless of the method used to determine true value, deed restrictions affecting the use of the land must be considered

when determining the property's value. *Long Cove Home Owners' Ass'n v. Beaufort County Tax Equalization Bd.*, 327 S.C. 135, 488 S.E.2d 857, 1997 S.C. LEXIS 147 (S.C. 1997). Mr. Cheslak testified that he did not adjust his valuation for deed restrictions. (R. p. 45) There was a "very long list of deed restrictions" but he believed they were similar to one of the comparable properties, but not the others. (R. p. 45) The deed restrictions on the subject property were significantly different than his comparable properties, but Cheslak chose not to make an adjustment. Again, when Cheslak and Fancey were presented with information that did not support their valuation they ignored the information and chose not to make adjustments to their assessment.

## II. THE ADMINISTRATIVE LAW COURT'S FINAL ORDER AND DECISION DID NOT USE THE APPROPRIATE PRESUMPTION AND STANDARD OF REVIEW.

### A. The ALC did not use the sales price as presumptive value in its analysis of fair market value.

"[E]vidence of purchase price of the assessed property while not conclusive is to be accorded substantial weight on the issue of 'fair market value.'" *Belk*, 259 S.C. 174 at 179. "The price paid for property at an actual, voluntary, and bona fide sale thereof is presumptive evidence of the property's value." *Mazloom*, 283 S.C. 307 at 322.

Assessor's appraisal did not accord substantial weight to the sale price, nor did it treat the sales price as presumptive evidence. Because Assessor failed to apply the correct presumptions in its analysis, the Court's reliance on the Assessor's appraisal was arbitrary and contrary to law. The analysis should have started with the presumption that the sales price was the fair market value of the subject property based upon §12-37-930, *Belk* and *Mazloom*. Cheslak stated that he considered the sales price, but, "it just didn't fit with what was selling out there," even though there were no other sales in the year of

valuation. (R. p. 29) When Cheslak was presented with evidence that the sale met the requirements of §12-37-930, he ignored the evidence and again presumed that the sales price was not reflective of fair market value. (R. pp. 44-45, 54-55) Terry Fancey based his opinion that the sale did not represent fair market value on Cheslak's analysis. (R. pp. 85-86) Fancey did not do an independent investigation as to the purchase price and his office does not "have the luxury to investigate the specifics of every individual sale that occurs." (R. pp. 86, 151) Presumptive evidence is not conclusive evidence and may be rebutted. *See generally, Amgen Inc. v. Conn. Ret. Plans & Trust Funds*, 133 S. Ct. 1184, 1193 (2013). However, the evidence presented by Taxpayer as to the value and sales price was admittedly ignored. Assessor's failure to appropriately consider the sales price and the circumstances surrounding the sale was improper. Therefore, the Court's reliance on the Assessor's opinion of value was arbitrary and not based in law.

**B. The ALC incorrectly presumed Assessor's valuation to be correct and determined the burden of proof was on Taxpayer.**

While the ALC contested case is a *de novo* hearing, the hearing is presented to the Court as an appeal. *See Reliance Ins. Co.*, 327 S.C. 528, 534-535 (Ct. App. 1997). That does not mean that the Court is restricted to a review of the record of the Board of Assessment Appeals ("BoAA"). *Id.* It does mean that the Assessor, as the appealing party has the burden of proof, as they are the party seeking relief from an adverse decision. *Id.* (emphasis added)

The Order's Conclusion of law paragraph 10 purports that the Assessor's valuation is presumed correct. (R. p. 9, ¶10) This statement is correct at the outset of an appeal from the Assessor's initial valuation. *Reliance* at 534. At the beginning of the process the Assessor's value is presumed correct but only until the Taxpayer proves the

true value. *Id.* Once the taxpayer has overcome that presumption and proven the true value at the Board of Assessment Appeals, the Assessor cannot further appeal to the Administrative Law Court and enjoy the same presumption, which has already been overcome.

In the instant case, the BoAA found that the actual value of the property was proved by the Taxpayer, thereby dismissing the Assessor's valuation. (R. p. 13) The suggestion that the appealing party has a presumption of correctness would force the Taxpayer to twice overcome the presumption of correctness. The value appealed to the Administrative Law Court was $1,975,000, which was determined by the BoAA. As in *Reliance*, the Assessor bore the burden of proof at the ALJ. Unlike *Reliance*, in the case at bar, Taxpayer proffered substantial evidence which supported its valuation through testimony regarding the sale and the owner's opinion of value which examined comparable sales and comparable equity. Under *Reliance*, South Carolina law requires that the Assessor (who was the Petitioner at the ALC) and not Taxpayer would have had the burden of proof.

**C. Taxpayer's value and evidence was supported by comparable sales, equitability of assessments, and an arms length sales price and did not focus on disputing Assessor's value.**

The Order's Conclusion of law paragraph 11 mischaracterizes Taxpayer's position and improperly gives weight to the Assessor's opinion. "An appraiser's opinion of value is entitled to weight where the opposing party offers only cursory valuation evidence and focuses almost exclusively on disputing the appraiser's value." *Lewis v. Lewis*, 392 S.C. 381, 709 S.E.2d 650 (2011).

In *Lewis* a husband and wife disputed the value of their marital residence in an equity proceeding. *Id.* Mrs. Lewis hired an appraiser to determine the value of the property and his testimony was allowed, without objection, in the trial. *Id.* Mr. Lewis did not present an appraisal and simply sought to establish a lower valuation by presenting what was determined to be cursory evidence. *Id.* The *Lewis* Court in footnote 9 points out that Mr. Lewis was inconsistent in his presentation of his value where he testified as to a value of $350,000 after filing a financial declaration with a value of $400,000. *Id.*

In the instant matter Mr. James Hull presented testimony and exhibits which demonstrated his opinion of value based on comparable sales, comparable equity, the sales price, and his extensive knowledge of commercial real estate. Mr. Hull has been in the real estate business for over 40 years. (R. p. 119) While he no longer does third-party appraisal work, he buys property for a living and is required to value property in that profession everyday. (R. p. 119) He has also been admitted as an expert witness in North Carolina, Georgia, South Carolina, and Tennessee in the area of valuation of commercial properties. (R. p. 125) Mr. Hull prepared two documents setting forth his informal appraisal of the property based on comparable sales and comparable equity, which were admitted into evidence without objection. (R. pp. 237, 267)

The distinction between Mr. Lewis' presentation of evidence and Mr. Hull's is night and day. Mr. Lewis sought to discredit a third-party appraiser by presenting cursory evidence, while Mr. Hull presented his opinion of value based upon a wealth of practical knowledge, experience, and comparable sales. In the instant case no third-party appraiser was hired, by either Taxpayer or Assessor, to independently determine the

value. Additionally, Mr. Hull's valuation was supported by the sales price and his testimony about the acquisition.

## III. THE ADMINISTRATIVE LAW COURT'S FINAL ORDER AND DECISION'S RELIANCE ON ASSESSOR'S VALUATION IS ILLEGAL BECAUSE THE ASSESSABLE TRANSFER OF INTEREST EXEMPTION TO THE REASSESSMENT CAP VIOLATES THE SOUTH CAROLINA CONSTITUTION.

South Carolina law requires that all property within the same class must be assessed uniformly and equally. S.C. Const. art. X, §1; S.C. Code Ann. §12-43-210(A). The Administrative Law Court's Final Order and Decision in its Conclusions of Law section dismissed Taxpayer's argument for equitable assessment, specifically stating in paragraph 15: "While our Constitution requires equality and uniformity in tax assessments, 'absolute accuracy with respect to valuation and complete equality and uniformity are not practically attainable.'" *Reliance Ins. Co. v. Smith,* 327 S.C. 528, 537 (Ct. App. 1997) (quoting *Wasson v. Mayes*, 252 S.C. 497, 502)

Taxpayer's equity argument was not intended to suggest any "intentional and systematic undervaluation," which must be shown to prove inequality under *Sunday Lake Iron Co. v. Wakerfield Tp.*, 274 U.S. 350, 352-353 (1918). Rather, Taxpayer raised the equity argument at trial when Richland County Assessor's witness, Terry Fancey, introduced evidence about the equitable nature of their valuations surrounding the subject properties. (R. p. 267) While he argued that his office maintained equitable valuations, Fancey explained that with ATIs "you get an inequity built in." (R. p. 76) He further explained that this occurs because values of surrounding properties may stay the same until the next reappraisal period, but a property subject to an ATI will be reappraised at the date of transfer. (R. p. 76) Fancey elaborated regarding taxable value and capped

value, "[I]f a property sells for $300,000 and it's capped at 115, for the year that we apply the ATI, the market value is 300,000 and the taxable value is 300,000." (R. p. 159) A property reappraised based upon an ATI is not subject to a maximum 15% increase over the reassessment period, referred to as the capped value. S.C. Code Ann. §§12-37-3140 & 12-37-3150. This "built in" inequity should not be tolerated as it clearly violates the Constitutional requirement that property within the same class must be assessed uniformly and equally.

The inequitability of ATIs was predicted prior to the law going into effect. (www.intlappraisal.com/pdf/Fall2008_Feature.pdf) In the article, the International Appraisal Company explained how the *South Carolina Valuation Reform Act* (§12-37-3110, et. seq.) would lead to glaring inequities. *Id.* Their explanation was the same as Mr. Fancey's, properties that sold would most likely be valued very differently (often much higher) than properties that didn't sell. *Id.* It is easy to see that two people could own identical houses next door to each other and pay entirely different tax bills.

This inequity has been observed in practice and taxpayers through their elected officials have sought guidance on the matter through an Attorney General's Opinion. *2012 SC AG LEXIS 61*. The taxpayer noted, "I have noticed in the past that if a property sells for more [than] the assessed value that the county automatically ups the appraised value. However, if the property sells for less than the assessed value then nothing changes." *Id. at 1*. The opinion agrees that a value may increase when a property sells for more than its assessed value, but does not specifically address the latter part of the questions. *Id. at 5.*

There have been attempts to pass legislation which would change the *South Carolina Valuation Reform Act* to make up for the inequities, including H.B. 3272, 118th Session (2009). (http://www.scstatehouse.gov/sess118_2009-2010/bills/3272.htm) In 2011, Act No. 57 was passed and codified as S.C. Code Ann. §12-37-3135, which allows for a partial exemption for some commercial properties subject to ATI reappraisals for properties which are valued after 2010. S.C. Code Ann. §12-37-3135.

The inequities caused by ATI reappraisals are inconsistent with the Constitutional mandates for equal and uniform taxation of property. While attempts to change the law in a "patchwork" manner may eventually help future taxpayers, many taxpayers are currently subject to inequities based on the current system. Taxpayer urges the Court to overrule *Sunday Lake Iron Co.* (which is nearly 100 years old) and its progeny which did not contemplate the complex changes in the ad valorem property tax valuation system that are now in place.

## CONCLUSION

For the reasons set forth above, Appellant respectfully requests that this Court find:

1) that the Administrative Law Court failed to give proper weight to the evidence presented by Appellant, particularly the sales price of the subject property;

2) that the Administrative Law Court did not apply the correct burden of proof and presumptions in its determination of the fair market value of the subject property;

3) that the Administrative Law Court's valuation did not follow the mandates of

equal and uniform assessments in accordance with the South Carolina Constitution.

Appellant prays that this Court REVERSE and REMAND the decision of the Administrative Law Court with instruction that it apply and adopt the values found by the Board of Assessment Appeals.

Respectfully submitted, this 28th day of January, 2014.

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM THE ADMINISTRATIVE LAW COURT
Shirley C. Robinson, Administrative Law Judge

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Case No. 2013-001683

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Richland County Assessor, Respondent,

v.

James M. Hull, d/b/a Hull Storey Gibson Companies, LLC, Appellant.

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CERTIFICATE OF COUNSEL

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The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

January 28, 2014

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PROOF OF SERVICE

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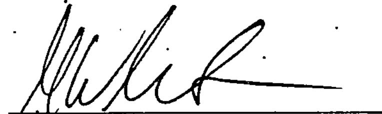
I certify that I have served the FINAL BRIEF OF APPELLANT on Richland County Assessor by depositing a copy of it in the United States Mail, postage prepaid, on this day, addressed to its attorney of record, John M.S. Hoefer, P. O. Box 8416, Columbia, South Carolina 29202 and by email to jhoefer@willoughbyhoefer.com and pikemal@gmail.com.

January 28, 2014



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