THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

APPEAL FROM
Administrative Law Court

The Honorable Deborah Brooks Durden, Administrative Law Judge

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Case No: 12-ALJ-17-0126-CC

Mitul Enterprises, L.P.....Appellant,

vs.

Beaufort County Assessor.....Respondent.

RETURN TO PETITION FOR REHEARING

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J. Andrew Yoho
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Attorneys for Respondent

Respondent, Beaufort County Assessor, submits this return in opposition to the Appellant Mitul Enterprises, L.P.'s Petition for Rehearing in the above referenced matter, in which an Opinion was filed by this Court on October 15, 2014. By its petition, Appellant seeks a rehearing of the matters addressed within this Court's Opinion affirming the Administrative Law Court's (ALC) determination that Respondent properly discovered, appraised, and assessed the value of the Holiday Inn as omitted property under S.C. Code § 12-39-220 (2014).

Appellant takes issue with the Court of Appeals' Opinion in various respects; however, the ALC and Court of Appeals correctly determined the Holiday Inn was omitted property, and that the omitted property statute was properly employed by the Assessor to recover the omitted tax value of the Holiday Inn. For the foregoing reasons, Appellant has failed to raise any issue that would warrant a rehearing on the matter, therefore the petition should be denied.

I. The Court of Appeals correctly determined the Holiday Inn constituted "omitted property."

Appellant asserts the Holiday Inn was not omitted property because Beaufort County was aware of the construction of the Inn and placed a value upon it. Appellant relies on Long Cove Home Owners' Association, Inc., v. Beaufort County Tax Equalization Board, 327 S.C. 135, 488 S.E.2d 857 (1997), in which the Supreme Court determined that a reassessment of a common area, originally valued at $0, did not constitute a proper use of the omitted property statute. However, the case at bar is clearly distinguishable from Long Cove. In

the instant case, the newly constructed Holiday Inn had been valued at $7,930,132.00 (Seven Million Nine Hundred Thirty Thousand One Hundred Thirty Two and No Dollars). However, due to a computer error, neither the Inn nor its tax value was indicated on the relevant tax rolls. As a result, the final bill did not reflect the actual value of either the newly constructed Inn, or the corresponding tax thereon. The Holiday Inn was not reassessed as in Long Cove; rather, due to error the Inn was omitted completely from the relevant tax rolls. Accordingly, the Court of Appeals correctly determined the Holiday Inn was omitted property and affirmed the decision of the ALC.

II. The Court of Appeals did not err by refusing to rely on In re: United AG Services, Inc. and correctly relied on Columbia Developers v. Elliott in determining the Holiday Inn constituted omitted property.

Appellant contends South Carolina lacks significant precedent with respect to the omitted property statute, and urges this Court to adopt precedent from Kansas. However, the ALC and this Court correctly refused to adopt the reasoning of In re: United AG Services, Inc., and properly relied on Columbia Developers vs. Elliott, 269 S.C. 486, 238 S.E.2d 169 (1977).

The facts presented in Elliott virtually mirror the circumstances presented in the instant case, where additions to an existing building, in the form of five additional stories, triggered a change in valuation in 1972. Id. at 488, 238 S.E.2d at 170. As was the case with the Holiday Inn here, the additional value of the newly added stories was not initially brought on the tax rolls, and those additional stories thus escaped taxation in the two succeeding years. Recovery of taxes for 1972 and 1973 was subsequently pursued, upon discovery of the erroneous

omission in 1974. Elliott at 489, 238 S.E.2d at 170. The Elliott Court discharged the appeal due to the appellant's failure to exhaust administrative remedies, and was not forced to address the issue of recovering taxes on omitted property. Elliott at 490, 238 S.E.2d at 171. Nonetheless, the Court chose to do so, and recognized that the property, although valued, was omitted from the tax rolls, and was, therefore, subject to the provisions of section 12-39-220. Elliott at 491, 238 S.E.2d at 171. The court's commentary both support the ruling of the Court of appeals here, which furthers the legislative goal of equal and uniform taxation of all property within the state, and removes the need to look to other jurisdictions for guidance.

Moreover, the Kansas statute cited by the Appellant differs substantively from the South Carolina statute at issue here. Whereas the Kansas statute refers only to the omission from the tax rolls of "...many real property", the relevant South Carolina statute, § 12-39-220, encompasses "...any real estate or new structure..." which has been omitted from the tax duplicate. [Emphasis supplied]. The ambit of the South Carolina statute is, therefore, significantly more comprehensive than the cited Kansas legislation, and Appellants' reliance on the Kansas opinion is correspondingly misplaced.

III. The Court of Appeals' Opinion provides a proper analysis of the Assessor's authority under the omitted property statute.

Appellant paints this Court's opinion as granting Assessors unbridled authority singlehandedly to classify any "omitted value" as "omitted property", and warns that this Court's opinion will "open the floodgates for South Carolina Assessors" with no end to an assessor's tax net. Appellant's characterization of

this Court's opinion as granting unfettered authority to the Assessor is completely unfounded and without merit. The Opinion correctly sets forth that in furtherance of "the legislative intent of collecting duly owed taxes," the Assessor is the appropriate party to determine when property has been omitted from the tax rolls. Despite the Appellant's concerns, the Assessor is bound by the confines of the omitted property statute and is not granted blanket authority to collect additional taxes due to "the installation of a ceiling fan or fireplace", as Appellant suggests. Rather, under the Opinion, an Assessor can identify only properties, and/or newly constructed improvements, such as the Holiday Inn, that escaped taxation, and place such omitted properties upon the tax rolls. Appellant appears to suggest that the Opinion produces an absurd result. However, allowing a property valued at $7,930,132.00 (Seven Million Nine Hundred Thirty Thousand One Hundred Thirty Two and No Dollars) to escape appropriate taxation, and barring the Assessor from pursing the remaining tax monies owed, would itself not only sound in absurdity and prove costly to this County and the remaining Counties, but would also violate the express legislative goal of assuring that all real and personal property in South Carolina is properly subject to taxation. Accordingly, the ALC and this Court were correct in rejecting Appellant's argument on the issue, and rehearing should be denied on this ground.

IV. The Court of Appeals correctly determined Appellant is not entitled to receive the benefit of the doubt in this instance because there is no question Appellant is required to pay taxes on the Holiday Inn for tax year 2009.

Appellant contends this Court erred in its determination that Appellant was not entitled to receive the benefit of the doubt in this dispute. As noted in

Respondent's brief and the Opinion, there is no dispute or ambiguity as to whether the Holiday Inn was subject to taxation for 2009. Accordingly, because Appellant does not contend the Inn property should not be taxed for 2009 because of an ambiguity in any statute that *imposes* a tax, Appellant is not entitled to the benefit of the doubt in construction of the omitted property statute.

The taxpayer has argued that the purported ambiguity in the subject statute must be resolved in favor of the Appellant. However, tax legislation is to be interpreted in favor of the taxpayer only if there is, in fact, substantial doubt as to the ambit of the legislation. Under the circumstances of the instant case, there is no doubt, either substantial or otherwise, that both the taxpayer and its property are subject to the imposition of taxes on the newly constructed Inn, which had initially been omitted from the relevant tax rolls.

As previously argued on behalf of the Respondent, the cardinal rule of statutory construction is to ascertain and to give effect to the intent of the legislature. Moreover, it is the real purpose and intent of the lawmakers which will prevail over the literal import of particular words of the statute, and courts will reject a statutory interpretation that leads to a result so plainly absurd that it could not have been intended, or which would defeat the plain legislative intention.

Here, by enactment of § 12-37-210, the General Assembly has clearly expressed its mandate that all real and personal property be subject to taxation. Moreover, the importance of this mandate has been emphasized by the additional enactment of the statute at issue here, § 12-39-220, specifically requiring that taxes be charged against any real estate or new structure which

has been omitted from the County duplicate tax rolls. The interpretation, as urged upon this Court by the Appellant, is clearly contrary to, and would defeat, the expressed intent of the legislature.

Appellant takes issue with the determination by the ALC that taxpayers receive the benefit of the doubt in tax disputes only when the dispute centers on whether a taxpayer is subject to a tax or the amount of a tax. In support of this position, Appellant cites several opinions which purportedly relate to the "enforcement" of tax statutes—language that Appellant suggests encompasses all tax statutes. However, those authorities establish that a statute is strictly construed in favor of a taxpayer when the matter at issue relates to whether a taxpayer's conduct or its property is encompassed by a tax-imposing statute, not in all instances in which a taxpayer disputes a tax. Appellant's argument that a taxpayer should be given the benefit of the doubt in all tax statutes would require that a taxpayer be relieved of a tax obligation merely by taking issue with the government's ability to levy, collect, or otherwise recover taxes. Such an application would lead to an obviously absurd result.

Furthermore, taxpayers do not always receive the benefit of the doubt in tax disputes. See York County Fair Assoc. v. S.C. Tax Comm'n., 249 S.C. 337, 341, 154 S.E.2d 361, 363 (1967) ("Constitutional and statutory language creating exemptions from taxation will not be strained or liberally construed in favor of the taxpayer claiming the exemption, he must clearly bring himself within the constitutional or statutory language upon which he relies"). Accordingly, the

Court of Appeals correctly determined that Appellant was not entitled to the benefit of the doubt and Appellant's petition for rehearing should be denied.

V. The Court of Appeals did not err in its determination that the Assessor was the appropriate party to levy the additional tax under Section 12-39-220.

Appellant contends this Court erred by extending the Assessor's authority by implication. However, Appellant fails to consider the division of labor among County Auditors and Assessors, and further fails to acknowledge the statutory job description of an Assessor as it relates to the recovery of taxes on omitted property. See S.C. Code § 12-37-90 (2014). Under Appellant's theory, the Auditor should be required to perform the Assessor's job in recovering omitted taxes or the taxes should not be recovered at all. The ALC and this Court acknowledged that this reasoning would produce an absurd result, and correctly determined that the Assessor was the appropriate party to take action under the omitted property statute. See Floyd v. Nationwide Mutual Ins. Co., 367 S.C. 253, 260, 626 S.E.2d 6, 11 (2006) ("A statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers. The real purpose and intent of the lawmakers will prevail over the literal import of particular words."); Spartanburg Sanitary Sewer District v. City of Spartanburg, 283 S.C. 67, 74, 321 S.E.2d 258, 262 (1984) ("A statute must be construed in light of its intended purpose, and, if such purpose can be reasonably discovered from its language, the purpose will prevail over the literal import of the statute."); McMillen Feed Mills, Inc. of S.C. v. Mayer, 265 S.C. 500, 510-11, 220 S.E.2d 221, 226 (1975) (stating all rules of statutory construction are

subservient to the one that legislative intent must prevail if that intent can be reasonably discovered in the language used, which language must be construed in light of the intended purpose of the statute).

VI. The Court of Appeals properly relied on Columbia Developers, Inc. v. Elliott.

Appellant claims this Court erred in its disregard of Long Cove, and in reliance on Elliott. However, as noted hereinabove, the Court of Appeals correctly distinguished Long Cove and applied the analysis in Elliott, which was analogous to the facts and issues presented in the case at hand. Accordingly, Appellant's Petition for Rehearing should be denied.

VII. The Court of Appeals did not err in determining that Appellant's Issues II, VI, and VII were not preserved for appellate review.

Appellant contends that issues II, VI, and VIII, found in its initial brief, were properly preserved for appellate review, and that this Court erred in not addressing them. Appellant argues the Court of Appeals failed to address its arguments regarding (a) the application of the omitted property statute when the tax on a property has been paid, (b) the failure of the Assessor to maintain a duplicate, and (c) failure of the Assessor to issue a proper and correct Assessment Notice.

As noted by Appellant, an issue must be raised and ruled on by a judge in order to be preserved for appellate review. See Herron v. Century BMW, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011). Although Appellant sets forth areas in the record in which these arguments were arguably raised to the ALC, there is no mention of these arguments in the ALC's Final Order. Furthermore, Appellant

did not request that the ALC alter or amend its Final Order. Accordingly, because these issues were not ruled on by the ALC, as required by the issue preservation rules of the appellate courts, this Court properly declined to address them. See Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001) (stating where an issue presented to the trial court is not explicitly ruled on in the final order, the issue must be raised by an appropriate post-trial motion to be preserved for appeal); Shealy v. Aiken County, 341 S.C. 448, 535 S.E.2d 438 (2000) (stating trial judge's general ruling insufficient to preserve specific issue for appellate review; where trial judge does not explicitly rule on argument raised, and no Rule 59 motion filed, appellate court may not address the issue).

Conclusion

As set forth hereinabove, Appellant has failed to put forth any reason that would justify the granting of its Petition for Rehearing. Accordingly, the Beaufort County Assessor respectfully submits that Appellants motion should be denied.

HOWELL, GIBSON & HUGHES, P.A.

By: _____

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Beaufort, South Carolina
November 6, 2014

CERTIFICATE OF SERVICE

I certify that I served the foregoing yes upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on 7 day of November, 2014.

By: J. Andrew Yoho
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November 7, 2014

Hon. Jenny Abbott Kitchings
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Re: Mitul Enterprises, LP vs. Beaufort County Assessor
Appellate Case No: 2013-000106
Civil Action No.: 12-ALJ-17-0126-CC
Our File No: 10777 SPH

Dear Ms. Kitchings:

Please find enclosed herewith for filing the original and one (1) copy of Return to Petition for Rehearing of Respondent, together with Respondent's Proof of Service with regard to the above referenced matter. By copy hereof I am serving a copy of the these documents upon Appellant's counsel.

With kindest regards, I am

Yours truly,

HOWELL, GIBSON AND HUGHES, P.A.

J. Andrew Yoho

JAY/kah
Enclosure
cc: J. Ashley Twombley, Esquire – w/ enclosures