

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM THE ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Judge

ALC No. 11-ALJ-17-0299-CC
Appellate Case No. 2013-002550
Unpublished Opinion No.: 2015-UP-325

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JUL 13 2015
SC Court of Appeals

Tilbros, Inc.,Respondent,
vs.
Cherokee County Assessor's Office.....Appellant.

PETITION FOR REHEARING

Pursuant to Rule 221, SCACR, the Petitioner, Cherokee County Assessor's Office, seeks a rehearing on the following points that this Honorable Court may have overlooked or misapprehended in its decision.

1) Presumption of Correctness

The Administrative Law Judge cited the presumption of correctness in his Order (Final Order paragraph 10, R. p. 9). However, the ALJ failed to properly apply this presumption. This Honorable Court overlooked or misapprehended the error committed by the ALJ in failing to properly apply the presumption that the assessor's assessment of value was correct.

2) Statutory Construction

This Honorable Court overlooked or misapprehended Petitioner's argument concerning statutory construction. Petition asserts S.C. Code Ann. Section 12-37-930 must be read and construed in conjunction with the S.C. Real Property Valuation Reform Act, S.C. Code Ann. Sections 12-37-3110 et. seq. Particularly, Section 12-37-3140 is applicable as cited in Appellant's brief.

The ALJ did not apply both of these statutes to the valuation process and therefore the ALJ committed an error of law, which should be corrected by this Honorable Court.

In the present case Tilbros, Inc. purchased a hotel which at the time of purchase had lost its flag (Branding). Tilbros, Inc. made upgrades to the property and eventually obtained the Sleep Inn flag. The valuation date was December 31, 2008 which was shortly after the hotel began operating under the Sleep Inn flag. This was right after the banking crisis of the fall of 2008. The appraisal of Tilbros, Inc. is fatally flawed. The ALJ failed to properly construe the S.C. Code Ann. Sections 12-37-930- and 12-37-3140 and should have reviewed the valuations in light of these statutes.

In the present case when Tilbros purchased the property and they lost the flag (branding) of the property, this included the loss of the reservation system. The hotel must "recover" from this loss. Tilbros rebranded the hotel as a Sleep Inn and began operating under this flag on August 30, 2008. Hotels are unique for assessment purposes. Hotels are income producing and, therefore, the income approach is one of the methods of calculating value. Although Tilbros' "improvements" to the property did not come after December 31, 2008, the true effects of the improvements would not be felt until after December 31, 2008. The

appraiser for Tilbros wants to take a "snapshot" of value isolated to December 31, 2008 whereas the tax assessor includes information beyond December 31, 2008 for similar income producing hotels so that a true value can be derived.

The approach of the tax assessor is in conformity with Section 12-37-3140 and the approach by Tilbros' appraiser is not. It takes a reasonable amount of time to see the benefits from the improvements. Here the Tilbros' appraiser bases the occupancy rate and the expense rate on an "effective" five (5) months. In reality here's what happened. Prior to the purchase of the hotel it had a 96 percent occupancy rate. Tilbros purchases the hotel for Three Million and No/100 (\$3,000,000.00) Dollars on May 6, 2008, the hotel then loses its flag and reservation system. Tilbros makes improvements and on August 30, 2008 the hotel is re-branded as a Sleep Inn. The four (4) months of time from August 30, 2008 until December 31, 2008 is just insufficient upon which to base a value under the income approach because the impact of the improvements will not be truly seen until later. That's why the tax assessor included data from other sources when calculating the occupancy rate, the average daily rate and the expense ratio. What the tax assessor did was in conformity with Section 12-37-3140 and what the appraiser for Tilbros did was not in conformity with the statute.

Therefore, the ALJ committed an error of law in utilizing an appraisal method that did not comply with the law.

3) Abuse of Discretion

This Honorable Court overlooked or misapprehended Petitioner's argument that the Administrative Law Judge abused his discretion in valuing the property.


S.C. law does not require the use of any particular method of valuing property. The experts for both parties recognize there are generally three (3) different methods to

determine the value of real property. The cost approach, the sales comparison approach and the income approach (R. P. 79 II. 4 – 10). The appraiser for Tilbros only used the income approach and did not use the cost approach or the sales comparison approach. (R. p.; 79 I. 11-24; p. 81 I. 8-p. 83 I. 21). In his appraisal the appraiser for Tilbros recognizes that the value of the subject property is fluid and not static. The report states “constantly changing economic, social, potential and physical conditions have varying effects upon real property values. Even after the passage of a relatively short period of time, property values may change substantially and require a review based on differing market conditions”. (Petitioner’s Exhibit 5, R. pp. 338 and 339). The report also notes that the subject property had a 2008 assessed value of Two Million Two Hundred Thirty Three Thousand Six Hundred and No/100 (\$2,233,600.00) Dollars; that the property was purchased for Three Million and No/100 (\$3,000,000.00) Dollars on May 6, 2008; that it operated with no flag for almost four (4) months in 2008; on August 30, 2008 the hotel opened as a Sleep Inn; and that the hotel had good site data including good visibility from I-85. (Petitioner’s Exhibit 5, R. pp. 342, 348, 349 and 351). However, the appraiser concludes that because of the economic downtime as of December 31, 2008 the value of the hotel had plummeted to Six Hundred Ninety Eight Thousand and No/100 (\$698,000.00) Dollars.

In its brief Petitioner sets forth various reasons why the Tilbros’ appraiser was incorrect in his appraisal and value. The ALJ rejected the value of Six Hundred Ninety Eight Thousand and No/100 (\$698,000.00) Dollars. After rejecting the Tilbros value the ALJ should have made a finding that Tilbros did not prove the true value of the property and accepted the value of the taxing authority at One Million Eight Hundred Seventy-Six Thousand and No/100 (\$1,876,000.00) Dollars. The ALJ abused his discretion when he placed a value of One Million

Thirty-Two Thousand (\$1,032,000.00) Dollars on the property.

For the reasons set forth herein, the Petitioner, Cherokee County Assessor's Office, seeks a rehearing in this matter.



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Appellant.

PROOF OF SERVICE

I, William G. Rhoden, Esquire, Counsel for Respondent in the above referenced matter, certify that I have served the within **Petition for Rehearing** by depositing a copy of same in the United States Mail, postage prepaid, addressed as follows:

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Dated this 10th day of July, 2015.



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July 9, 2015

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SC Court of Appeals

Jenny Abbott Kitchings, Clerk
S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Tilbros, Inc. vs. Cherokee County Assessor's Office,
11-ALJ-17-0299-CC

Dear Ms. Kitchings:


Enclosed please find the following:

1. Original and seven (7) copies of the Petition for Rehearing on behalf of Cherokee County Assessor's Office;
2. Original and one (1) copy of Proof of Service and
3. Check in the amount of \$25.00

Would you please file and return the extra copies back to me in the self-addressed stamped envelope that I have provided.

With best regards, I am,

Sincerely,



William G. Rhoden

WGR/te

cc: file

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William T. Dawson, III, Esquire
Joseph L.V. Johnson, Esquire
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As per attached Shipping Declaration. Not required.

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