

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Unpublished Opinion No. 2015-UP-303 (Ct.App. filed June 24, 2015)

Charleston County Assessor, Petitioner,

v.

LMP Properties, Inc., Respondent.

PETITION FOR WRIT OF CERTIORARI

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INDEX

Certificate of Counsel 1

Questions Presented 1

Statement of the Case 1

Arguments

 1. THE COURT OF APPEALS ERRED WHEN IT FOUND THAT THE PROPERTY'S
 FAIR MARKET VALUE SHOULD BE BASED ON REAL ESTATE MARKET
 CONDITIONS AS OF DECEMBER 31, 2007, A NON-REASSESSMENT YEAR,
 RATHER THAN REAL ESTATE MARKET CONDITIONS AS OF DECEMBER 31,
 2003, WHICH WAS THE LAST QUADRENNIAL REASSESSMENT 4

 2. SOUTH CAROLINA LAW REQUIRES HIGHEST AND BEST USE FOR
 PROPERTY TAX ASSESSMENT CHALLENGES TO BE DETERMINED BASED
 ON VALUES FOR CONDOMINIUMS AND APARTMENTS FROM THE SAME
 DATE OF VALUE 7

Conclusion 9

CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on August 20, 2015.

QUESTIONS PRESENTED

1. Whether the Court of Appeals erred when it found that the property's fair market value should be based on real estate market conditions as of December 31, 2007, a non-reassessment year, rather than real estate market conditions as of December 31, 2003, the date of value for the last quadrennial reassessment?
2. Whether South Carolina law requires highest and best use for property tax assessment challenges to be determined based on values for condominiums and apartments from the same date of value?

STATEMENT OF THE CASE

The Charleston County Assessor ("Assessor") filed a contested case hearing on December 11, 2009, before the Administrative Law Court ("ALC") challenging the decision of the Charleston County Board of Assessment Appeals ("Board") on the grounds that the Board erred in construing and applying an improper methodology to value real property owned by LMP Properties, Inc. ("LMP"). The Board stated in its decision that the Assessor estimated the value of 121 condominium units owned by LMP (the "Property" or "The Legends") at \$16,493,000 for tax year 2008,¹ and LMP estimated the value at \$7,602,367. The Board set a compromised value of \$10,090,500, and did not assign values to the separate types of condominium units owned by LMP. (R. pp. 0439-40). Instead, the Board valued The Legends as a group of rental units, an apartment complex, instead of individual condominium single family dwellings.

¹ The Assessor never valued the 121 condominium units as a total value, but instead, valued the units

The ALC held a contested case hearing on August 24 and 25, 2010, to determine the valuation of the 121 condominium units owned by LMP. The Assessor presented values of the various one bedroom, two bedroom, and three bedroom units comprising the 121 condominium units as set forth in Appellant's (Petitioner's) Exhibit 5, Appraisal Consulting Report, page 4 (unnumbered) and Exhibit 9, page 85, Summary of Floor Plan Values. (R. p. 0343; R. p. 0424).

The ALC filed its first Final Order and Decision on October 11, 2011, ordering that the Assessor value the property at \$8,565,000 as an apartment complex. The County filed its Notice of Appeal on November 17, 2011, challenging the ALC's Final Order and Decision. The Court of Appeals heard oral arguments on November 1, 2012, and issued its decision filed February 27, 2013 (the "LMP I Court"). The LMP I Court reversed the ALC's order to the extent the ALC determined the highest and best use of the units was based on a date of December 31, 2003.² The LMP I Court remanded so that the ALC may address the parties' arguments regarding valuation of the units. See Charleston Cnty. Assessor v. LMP Props., Inc., 403 S.C. 194, 743 S.E.2d 88 (Ct.App.2013). It sent its Remittitur to the ALC and parties on March 15, 2013.

The ALC heard oral arguments on July 30, 2013, and issued its second Final Order and Decision filed September 20, 2013. (R. pp. 0668-84). The County filed its Notice of Appeal on October 22, 2013, challenging the ALC's second Final Order and Decision. (R.

as reflected in the Summary of Floor Plan Values. (R. p. 0208; R. p. 0343; R. p. 0423).

² The LMP I Court reversed the ALC because it incorrectly determined The Legends' highest and best use of the units was an apartment complex based on the finding it was not legally permissible for The Legends to be converted to condominiums on December 31, 2003.

pp. 0685-0703).

The Court of Appeals heard oral arguments on April 16, 2015, and considered three issues: whether the ALC erred in (1) finding condominiums were not the highest and best use of the units, (2) calculating the market value of the units when used as condominiums, and (3) construing the South Carolina Supreme Court's holding in Lindsey v. S.C. Tax Comm'n, 302 S.C. 504, 508, 397 S.E.2d 95, 97 (1990). The Court of Appeals issued its decision on June 24, 2015 (the "LMP II Court"). The LMP II Court affirmed the ALC finding that there was substantial evidence to support the ALC's holding that condominiums were not a financially feasible use of the units in 2007 and, therefore, did not reach the second and third issues. Charleston Cnty. Assessor v. LMP Props., Inc., Unpublished Opinion No. 2015-UP-303 filed June 24, 2015.

Petitioner seeks a writ of certiorari to review the LMP II Court's decision to determine if South Carolina law requires a property tax assessment challenge in a non-reassessment year to be based on the market values as of the last reassessment's date of value or based on the market values as of the date of value for the tax year in question. If South Carolina law requires assessors to freeze real property values for a five-year cycle under the Quadrennial Reassessment Statutes (excluding assessable transfers of interest and the assessment of new improvements), then the LMP II Court's decision is inconsistent with State law because it adjusts the valuation of the condominiums based on real estate market conditions in 2007, instead of establishing its value based on December 31, 2003, which was date of value for the previous quadrennial reassessment.

ARGUMENTS

- I. **THE COURT OF APPEALS ERRED WHEN IT FOUND THAT THE PROPERTY'S FAIR MARKET VALUE SHOULD BE BASED ON REAL ESTATE MARKET CONDITIONS AS OF DECEMBER 31, 2007, A NON-REASSESSMENT YEAR, RATHER THAN REAL ESTATE MARKET CONDITIONS AS OF DECEMBER 31, 2003, WHICH WAS THE DATE OF VALUE FOR THE LAST QUADRENNIAL REASSESSMENT.**

In contravention to State law, the ALC valued LMP's units based on real estate market conditions for condominiums in 2007, rather than the real estate market conditions for condominiums as they existed in the year that the equalization and reassessment program was conducted and on which the assessment is based, which was December 31, 2003. This misapplication of the law, if followed by the Assessor, could inhibit uniformity and equitable assessment of real property throughout the State.

The Quadrennial Reassessment Statutes provide that "[n]otwithstanding any other provision of law, once every fifth year each county of the State shall appraise and equalize those properties under its jurisdiction." S.C. Code Ann. § 12-43-217(A) (2015). Moreover, if a taxpayer challenges his property tax assessment, the date of value and market conditions to be applied to the tax valuation challenges must be if warranted, **based on the market values of real property as they existed in the year that the equalization and reassessment program was conducted and on which the assessment is based.** S.C. Code Ann. § 12-43-215 (emphasis added). "The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature. Sloan v. Hardee, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007): When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning." Charleston Cnty. Assessor v. LMP Props., Inc. at 198,

743 S.E.2d 88, 90. The Court of Appeals and ALC erred when they construed the Quadrennial Reassessment Statutes to adjust real estate property values during the five-year reassessment cycle based on a decline in the real estate market, instead of stabilizing the Property's value during the cycle.

Nevertheless, the Court of Appeals affirmed the ALC finding that "[s]pecifically, LMP's expert's testimony supports the conclusion that – based on the depressed market for condominiums in Charleston in 2007 – condominiums were not a financially feasible use of the Units. Because condominiums were not a financially feasible use of the Units, condominiums could not be the highest and best use of the Units." Charleston Cnty. Assessor v. LMP Props., Inc., Unpublished Opinion No. 2015-UP-303. Although the Court of Appeals found that substantial evidence supports the ALC's finding that condominiums were not a financially feasible use of the units in 2007, the Court erred by making its decision based on the evidence in the record, which is based on the ALC's failure to correctly apply the Quadrennial Reassessment Statutes and the Court of Appeals' decision in Charleston Cnty. Assessor v. LMP Props., Inc., 403 S.C. 194, 743 S.E.2d 88 (Ct.App:2013) (LMP I).

The LMP I Court addressed two issues. First, S.C. Code Ann. § 12-43-215 mandates that any adjustment be based on market values as of the last reassessment. Second, S.C. Code Ann. § 12-43-215 is silent regarding the date to determine highest and best use. The LMP I Court stated:

Section 12-43-215 states merely that any adjustment to a property's value must be "based on the market values of real property as they existed in the year that the equalization and reassessment program was conducted" The statute is silent on the date to be used for determining the highest and

best use of the property. Accordingly, it cannot be read to mandate a diversion from the general rule that the use of the property is to be determined as of December 31st of the preceding year. Such a finding would result in potentially unreasonable and illogical valuations in instances when the use of a property changes, potentially dramatically, from time of the last reassessment.

Charleston Cnty. Assessor v. LMP Props., Inc., 403 S.C. 194, 743 S.E.2d 88 (Ct.App.2013).

The LMP I Court reversed the ALC when the Court found that December 31, 2007, was the correct date to determine highest and best use, not December 31, 2003.

However, the LMP I Court did not invalidate the law of equalization and reassessment, which requires adjustments to be made based on the market values and conditions of real property as they existed in the year that the equalization and reassessment program was conducted. S.C. Code Ann. § 12-43-215; See also, Id. In Charleston County, the last reassessment was in 2004 with a lien date of value of December 31, 2003 (with the reassessment values to be implemented in 2005).

Therefore, under State law, the market values, trends, and conditions for this property tax assessment appeal cannot be based on 2007 market conditions. Instead, in accordance with the Quadrennial Reassessment Statutes and decision of the Court of Appeals in LMP I, the market values, trends and conditions for the units are based on 2003 market conditions. Therefore, this Court should grant Petitioner's writ of certiorari to review the Court of Appeals' decision because the various assessors in South Carolina may or may not adjust values in a non-reassessment year based on market conditions preventing uniformity and equitable assessment of real property throughout the State. See, S.C. Code Ann. § 12-43-210.

II. **SOUTH CAROLINA LAW REQUIRES HIGHEST AND BEST USE FOR PROPERTY TAX ASSESSMENT CHALLENGES TO BE DETERMINED BASED ON VALUES FOR CONDOMINIUMS AND APARTMENTS FROM THE SAME DATE OF VALUE.**

Even if the Court of Appeals correctly determined that Assessors may adjust values in a non-reassessment year based on a decline in real estate values, the property values used to determine the highest and best use must be based on values from the same date of value. That did not occur in this case. South Carolina law provides for the date to determine highest and best use when a property owner appeals the value of a property tax assessment. The LMP I Court stated:

The statute is silent on the date to be used for determining the highest and best use of the property. Accordingly, it cannot be read to mandate a diversion from the general rule that the use of the property is to be determined as of December 31st of the preceding year. Such a finding would result in potentially unreasonable and illogical valuations in instances when the use of a property changes, potentially dramatically, from time of the last reassessment.

LMP Props., Inc., 403 S.C. 194, 743 S.E.2d 88 (emphasis added).

The LMP II Court affirmed that the LMP units' highest and best use is as apartments with a fair market value of \$8,565,000. However, that value is based on real estate market conditions as they existed in 2003 for apartments. (R. pp. 0002 - 12). In contrast, the ALC relied on real estate market conditions as they existed in 2007 for condominiums to find that apartments are the highest and best use for the property. This contravenes the LMP I Court decision and the Quadrennial Reassessment Statutes. It is well-settled that "[t]he pertinent date to determine the value of property for a given tax year is December 31st of the preceding year." Lindsey v. S.C. Tax Comm'n, 302 S.C. 274, 275, 395 S.E.2d 184, 185 (1990)(citing S.C. Code Ann. § 12-37-900 (1976)). In this case, the date of value

can only be December 31, 2007, or December 31, 2003, for both uses as apartments and condominiums. However, the ALC clearly used 2003 apartment values and compared them to 2007 condominium values, in violation of State law.

After the first contested case hearing in 2011, the ALC ruled that LMP's 121 units' highest and best use was as apartments and assigned a value of \$8,565,000 for the property. (R. pp. 0002-12) (Order, Oct. 11, 2011). In that 2011 Order, the ALC stated that "[t]he critical date for valuation in this case is December 31, 2003. . . . The 121 units must be valued as apartments, a use that satisfies all four steps of the highest and best use analysis. The Court finds the value of the 121 units as an apartment complex to be \$8,565,000. (R. pp. 0002-12) (Order, Oct. 11, 2011).

After the LMP I Court remanded the valuation, based on oral arguments and submission of proposed orders from the parties, the ALC again ruled that the 121 units' highest and best use was as apartments and assigned a value of \$8,565,000 for the property. (R. pp. 0668-84) (Order, Sept. 20, 2013). In the 2013 Order, the ALC ruled that "[b]ased on the evidence presented during the hearing, there is no dispute between the parties as to the method for valuing the subject property as an apartment complex. Both parties agree that the income method of valuation should be used. Using this valuation method, the Assessor's expert valued the subject property as apartments at \$8,565,000." (R. pp. 0668-84) (Order, Sept. 20, 2013).

The LMP II Court overlooked the critical point that the fair market value of \$8,565,000 of the units as apartments is based on market values and conditions as they existed in 2003. In contrast, the LMP II Court found that "[s]pecifically, LMP's expert's

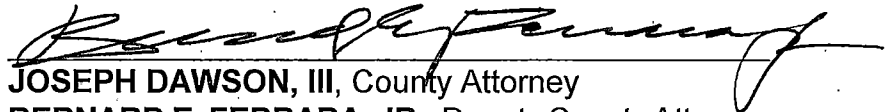
testimony supports the conclusion that – based on the depressed market for condominiums in Charleston in 2007 – condominiums were not a financially feasible use of the Units. Because condominiums were not a financially feasible use of the Units, condominiums could not be the highest and best use of the Units.” Charleston Cnty. Assessor v. LMP Props., Inc., Unpublished Opinion No. 2015-UP-303. Therefore, the decisions of both the LMP II Court and ALC arbitrarily apply 2007 and 2003 market conditions for condominiums and apartments in violation of the Quadrennial Reassessment Statute and in contradiction with the LMP I Court decision. Therefore, this Court should grant Petitioner’s writ of certiorari to review whether the decision of the Court of Appeals is in conflict with its prior decision and whether it complies with State law regarding equalization and reassessment.

CONCLUSION

For the reasons stated, Petitioner asks this Court to grant the petition for a writ of certiorari.

Respectfully submitted,

CHARLESTON COUNTY ASSESSOR



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Charleston, South Carolina
September 21, 2015

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Shirley C. Robinson, Administrative Law Judge

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Charleston County Assessor,Petitioner,

v.

LMP Properties, Inc.,Respondent.

PROOF OF SERVICE

I certify that I have served the **Petition for Writ of Certiorari** upon all counsel of record and the Clerk of the South Carolina Court of Appeals by depositing a copy of the same in the United States Mail, postage prepaid, on September 21, 2015, addressed as follows:

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September 21, 2015

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Re: Charleston County Assessor v. LMP Properties, Inc.
Appellate Case No. 2013-002264

Dear Mr. Shearouse:

Enclosed please find for filing the original and seven (7) copies of the Petition for Writ of Certiorari and three (3) copies of the Appendix, along with the Proof of Service and check in the amount of \$100.00 for the filing fee. I would appreciate your acknowledging receipt of these documents by date-stamping the extra copy of the enclosed and returning it to me in the enclosed envelope.

By copy of this letter, I am serving opposing counsel with these documents and the Honorable Jenny Abbott Kitchings, Clerk of the Court of Appeals, with a copy of the Petition for Writ of Certiorari and the Proof of Service. Should you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,

CHARLESTON COUNTY ATTORNEY'S OFFICE

Johanna S. Gardner

JSG/

Enclosures

cc: Stanley C. Rodgers, Esquire
Honorable Jenny Abbott Kitchings, Clerk of the Court of Appeals

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