

THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
Honorable John D. McLeod

RECEIVED

Appellate Case No: 2014-002355

JAN 19 2017

SC Court of Appeals

FRANK R. MEAD, III Respondent,

v.

BEAUFORT COUNTY ASSESSOR Appellant.

APPELLANT'S PETITION FOR REHEARING

And now comes the Appellant, Beaufort County Assessor, and files the following Petition for Rehearing. For the reasons that follow, the Assessor hereby petitions the Court for rehearing of its Opinion No. 5460, filed on December 21, 2016, which affirmed, as modified, the Order of Summary Judgment, issued by the Administrative Law Court, in favor of the Respondent, Frank R. Mead, III.

INTRODUCTION

This appeal involves issues of statutory interpretation, specifically, a determination of those criteria which must be satisfied in order to qualify for the homestead exemption available under South Carolina law. It is the contention of the Appellant that property, to qualify for the homestead exemption, must satisfy not only those criteria imposed by section 12-37-250 of the South Carolina Code, but also

those criteria imposed by section 12-43-220(c)(2)(i). It is the further contention of the Appellant that the Court was in error in its determination that section 12-37-250 sets forth the sole criteria for eligibility for the homestead exemption, and in its corresponding determination that property which satisfies only those criteria set forth in section 12-37-250 is to be classified and taxed as residential on an assessment equal to 4% of the property's fair market value. For the reasons that follow, the Assessor respectfully requests that the Court of Appeals grant this petition for rehearing, and vacate its December 21, 2016 Opinion in this matter.

BACKGROUND

The captioned case is before this Court upon appeal from an Order of the Administrative Law Court, which granted summary judgment in favor of the Respondent, Mead. By its order, the ALC determined that Mead, upon satisfaction of only those criteria set forth in section 12-37-250(a)(1) of the South Carolina Code, became eligible for the homestead exemption, and eligible for a 4% assessment ratio on his residence, notwithstanding the taxpayer's rental of the residence for a period in excess of 138 days during the relevant tax year. In so ruling, the ALC rejected the arguments of the Appellant, who contended that Chapters 37 and 43 of Title 12 constituted parts of an overall statutory scheme involving taxation of real property, and that any determination of eligibility for the homestead exemption must thus consider the relevant provisions of both chapters. This Court, in disposing of the issues, affirmed the order of the ALC, as modified.

Based upon those considerations set forth hereinafter, this Court should grant rehearing in this matter, and reverse its holdings on these issues.

ARGUMENTS

A. The Court erred in its determination that Chapter 37 is the sole determinant of eligibility for the homestead exemption, and in its failure to acknowledge that section 12-43-220(c) of the South Carolina Code imposes an additional requirement for eligibility for the homestead exemption.

The Court determined that the availability of the homestead exemption is governed exclusively by the provisions of section 12-37-220 of the South Carolina Code. The Court also determined that a taxpayer, who satisfies the limited criteria as set forth within section 12-37-220, qualifies not only for the homestead exemption, but also, pursuant to section 12-37-250(A), for the 4% assessment ratio upon his subject property. These rulings are not supported by substantial evidence or by a plain reading of the relevant statutes.

As noted by the Court, the cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature. Chem Nuclear Systems, LLC v. South Carolina Board of Health and Environmental Control, 374 S.C. 201, 205, 648 S.E.2d 601, 603 (2007). If legislative intent can be reasonably determined in the language used, then that language must be construed in light of the intended purpose of the statute. McClanahan v. Richland County Council, 350 S.C. 433, 437, 567 S.E. 2d 240, 242 (2002). Moreover, the language of a statute must be read in a sense which harmonizes with its subject matter and accords with its general purpose. Chem Nuclear Systems, LLC v. South Carolina Board of Health and Environmental Control, 374 S.C. 205, 648 S.E.2d 603 (2007).

Equally importantly, a statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given

effect. Duval v. S.C. Budget and Control Board, 377 S.C. 36, 42, 649 S.E.2d 125, 127 (2008). Additionally, the real purpose and intent of the law makers will prevail over the literal import of particular words. Floyd v. Nationwide Mutual Insurance Co., 367 S.C. 253, 260, 626 S.E.2d 6, 10 (2006).

Appropriate application of the foregoing rules of construction, to the statutory provisions at issue here, clearly renders the homestead exemption unavailable to the taxpayer, Mead.

The provisions of section 12-37-250 set forth limited requirements for qualification for the homestead exemption. Contrary, however, to the determination of the Court, Chapter 37, of Title 12, does not contain the only statutory provisions relating to the homestead exemption, and Chapter 37 is not the sole determinant of eligibility for that exemption. The homestead exemption is addressed not only within Chapter 37, but is also addressed, and additional requirements imposed, by the specific provisions of section 12-43-220(c)(2)(i), in Chapter 43 of Title 12.

Both Chapter 37 and 43 constitute parts of an overall statutory scheme encompassing taxation of real property. Both Chapters contain extensive cross-references to those respective chapters, including, among others, the following:

- (a) Section 12-37-252(B), which provides in relevant part, that “when a person qualifies for a refund pursuant to sections 12-60-2560 and 12-43-220(c) for prior years’ eligibility for the 4% owner-occupied residential assessment ratio, the person also may be certified for a homestead tax exemption pursuant to section 12-37-250.” (emphasis added);

(b) Section 12-37-252(C), which provides in relevant part, that "... if a deceased taxpayer failed to claim the assessment ratio allowed pursuant to section 12-43-220(c) ... before the date of the taxpayer's death, then the personal representative of the deceased taxpayer's estate is deemed the agent of the deceased taxpayer for purposes of the applications required pursuant to these sections and any claim for refund arising pursuant to resulting over payments."

(c) Section 12-37-220(B)(1)(e)(iv), which defines "house" to mean "a dwelling and the lot on which it is situated classified in the hands of the current owner for property tax purposes pursuant to section 12-43-220(c)."

(d) Section 12-43-220(d)(6), which provides that "any property which becomes exempt from property taxes under section 12-37-220(A)(1) or any economic development property which becomes exempt under section 12-37-220(B) is not subject to roll back taxes."

Moreover, both Chapters 37 (at section 12-37-220(A)(9), 12-37-250(A), and 12-37-252(A)), and 43 (at section 12-43-220(c)(2)(i)) also set forth specific provisions governing the availability of the homestead exemption.

In light of the demonstrated inter-relationship of the statutory provisions, any inquiry into eligibility for the homestead exemption, or the qualification for the 4% assessment ratio under section 12-37-252(A), does not end solely with consideration of the provisions of section 12-37-250. Equal consideration must be given to other statutory provisions which also address the availability of the homestead exemption,

and any analysis is incomplete without due consideration of section 12-43-220(c)(2)(i), which, as noted above by its specific terms, imposes additional conditions and restrictions upon persons seeking eligibility for the homestead exemption.

Section 12-43-220(c)(2)(i) states, in relevant part, that “a residence which has been qualified as a legal residence for any part of the year is entitled to ... the homestead exemption under section 12-37-250, if otherwise eligible, for the entire year.”

Section 12-43-220(c)(2)(i) thus sets forth

- (1.) A specific reference to the homestead exemption under section 12-37-250
- (2.) A specific recitation of additional requirements for eligibility for the homestead exemption under section 12-37-250 and
- (3.) A specific statement of legislative intent that the homestead exemption be available only to those properties meeting the requirements for the preferential 4% residence assessment ratio as set forth in section 12-43-220(c)(1).

Therefore, by the specific terms of section 12-43-220(c)(2)(i), qualification for the preferential 4% residential assessment ratio, provided by section 12-43-220(c), is a pre-requisite to eligibility for the homestead exemption under section 12-37-250. It follows that a failure of the property to qualify for the residential assessment ratio provided by section 12-43-220(c) disqualifies the property for the homestead exemption under section 12-37-250.

Similar considerations apply to the availability of a 4% assessment ratio under section 12-37-252. The Court, in its order, clearly determined that, pursuant to section 12-37-252(A), any property which satisfies the limited criteria set forth in section 12-37-250(A) is entitled to be taxed on an assessment equal to 4% of the property's fair market value. It is submitted that the Court, in its determination, was in error.

A careful reading of section 12-37-252(A) reveals clearly that it is only where a legal residence actually qualifies for the homestead exemption that such residence will be assessed at 4% of its fair market value. As noted hereinabove, property which fails to satisfy the criteria for residential assessment, as set forth within section 12-43-220(c)(1), is not qualified as a legal residence, and therefore does not qualify for the homestead exemption.

By the specific language of section 12-43-220(c)(2)(i), the initial qualification for the residential assessment ratio provided by section 12-43-220(c) is a pre-requisite to eligibility for the homestead exemption under section 12-37-250. As previously determined by this Court in Ford v. Beaufort County Assessor, the "legal residence" is "qualified" for the 4% residential assessment ratio only where the property, among other criteria, is not rented for a period in excess of the rental period allowed by statute. Ford v. Beaufort County Assessor, 398 S.C. 508, 730 S.E.2d 335 (2012),

The specific provisions of section 12-43-220(c)(2)(i) clearly provide that it is only such a "qualified" legal residence (one which satisfies the criteria for eligibility for the residential assessment ratio under section 12-43-220(c)) which is, in turn, eligible for the homestead exemption under section 12-37-250.

The Court, in its failure to consider the statutory requirements for eligibility, as specifically set forth within section 12-43-220(c)(2)(i), in the determination of eligibility for the homestead exemption, and in its determination assessment under section 12-37-252(A), was in error.

B. The Court was in error in its implicit determination that the South Carolina Department of Revenue no longer considers eligibility for the 4% residential assessment ratio, available under section 12-43-220(c) of the South Carolina Code, as a necessary criterion for eligibility for the homestead exemption under section 12-37-220.

The Court, within its Order, noted that the Department of Revenue, by previous Revenue Ruling No 97-18, had adopted the perspective urged by the Appellant – i.e., that the availability of the homestead exemption is dependent, in the first instance, upon satisfaction of the criteria for the residential assessment ratio under section 12-43-220(c) of the South Carolina Code. The Court further noted that the Revenue Ruling had been withdrawn by the Department's Information Letter No. 99-4. The Court then implicitly determined that the Department's position as set forth within the referenced Revenue Ruling had been abandoned.

Neither the Revenue Ruling nor the Information Letter was before the Court for review or consideration, and the Court's determination was thus unsupported by substantial evidence and was conclusory. Baldwin v. James River Corporation, 304 S.C. 485, 405 S.E.2d 421 (Court of Appeals 1991).

Moreover, as demonstrated by the accompanying Affidavit of Meredith Cleland¹, the Court's determination is also contrary to the continuing practice of the Department of Revenue, which practice and interpretation are entitled to deference by

¹ The affidavit is filed and submitted pursuant to Rule 240(c)(3) SCACR.

this Court. The Court was in error both in its implicit factual determination, and in its failure to provide appropriate deference to the agency (Department of Revenue), charged with enforcement of relevant statutes. Brown v. S.C. Department of Health and Environmental Control, 348 S.C. 506, 566 S.E.2d 410 (2002).

C. The Court was in error in its determination that section 12-43-220(c)(2) of the South Carolina Code was merely a pro-ration statute.

As demonstrated hereinabove, both Chapters 37 and 43 of Title 12 contain provisions specifically relating to the availability of the homestead exemption, and due consideration of the relevant provisions of both chapters is essential to a determination of eligibility for the homestead exemption. Section 12-43-220(c)(2)(i) of the South Carolina Code, by its specific provisions, sets forth additional criteria for eligibility for the homestead exemption. The statute specifically mandates, as an additional requirement for qualification for the homestead exemption, that property, in the first instance, also satisfy the statutory criteria for eligibility for the 4% residential assessment ratio, as set forth in section 12-43-220(c)(1).

Although section 12-43-220(c)(2)(i) may encompass pro-ration, it nonetheless also, by its explicit terms, imposes additional criteria (as detailed more thoroughly hereinabove), upon eligibility for the homestead exemption. It bears emphasis that the criteria imposed by section 12-43-220(c)(2)(i) are explicitly reiterated in section 12-37-252(B), relating to qualifications for refund, pursuant to section 12-43-220(c), for prior years' eligibility "... for the 4% owner-occupied residential assessment ratio". Such parallel references, within the respective chapters of Title 12, clearly demonstrates the interrelationship between the respective chapters 37 and 43 of Title 12, and equally clearly evidence the legislative intent that eligibility for the homestead exemption be

conditioned upon corresponding eligibility for the 4% residential assessment ratio, under section 12-43-220(c)(1).

D. The Court was in error in its determination that the relevant statutes were not characterized by ambiguity, and in its further failure to construe such ambiguities against the taxpayer, and in favor of the Appellant Assessor.

As demonstrated hereinabove, it is the contention of the Appellant that the relevant statutory provisions are unambiguous in their imposition of specific requirements for qualification for the homestead exemption, including those requirements as set forth, respectively, in section 12-37-250 of the South Carolina Code, and section 12-43-220(c)(2)(i). However, even in the absence of such legislative clarity, the provisions, as set forth within the legislative scheme encompassed by Chapters 37 and 43 of Title 12, are, at the very least, ambiguous. Under established rules of construction, ambiguities in statutory language creating exemptions or deductions from taxation are to be strictly construed against the taxpayer, who must clearly bring himself within the constitutional or statutory language upon which he relies. State vs. Life Insurance Company of Georgia, 254 S.C. 286, 292, 175 S.E.2d 203, 206 (1970). Established rules, which require construction of exemption/deduction statutes against the taxpayer, are plainly applicable to the statutes addressing the homestead exemption, whether within section 12-37-250, or within section 12-43-220(c). CFRE, LLC v. Greenville County Assessor, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011). Demonstrated ambiguities in the statutes at issue before the Court require construction against the taxpayer, and in favor of the Assessor. The Court, in its failure so to construe the statutes, was in error.

CONCLUSION

Based upon the foregoing considerations, it is respectfully submitted that the Court was in error in its failure to consider the relevant provisions of both Chapters 37 and 43 of Title 12 in its determination of eligibility for the homestead exemption. The Court was in further error in its determination that section 12-37-250 of the South Carolina Code sets forth the sole criteria for eligibility for the homestead exemption, in its determination that property satisfying the limited criteria in section 12-37-250 is entitled to a 4% assessment ratio pursuant to section 12-37-252(A), and in its failure to consider the additional criteria for eligibility as imposed by section 12-43-220(c)(2)(i). The Court was also in error in its implicit determination that the relevant statutes had been construed, against the position asserted by the Appellant, by the Department of Revenue, a finding which was without substantial evidence. The Court was also in error in its determination that section 12-43-220(c)(2)(i) was merely a pro-ration statute, and in its failure to consider the additional criteria, imposed by such statute, for eligibility for the homestead exemption. The Court was also in error in its failure to find ambiguity in the statutes under consideration, and in its failure to resolve such ambiguity against the taxpayer, and in favor of the Petition-Appellant.

For the foregoing reasons, the Appellant, Beaufort County Assessor, respectfully requests that this Honorable Court grant its petition for rehearing, vacate its opinion, and render judgment in favor of the Appellant.

SIGNATURE PAGE TO FOLLOW

HOWELL, GIBSON & HUGHES, P.A.

By: 

Stephen P. Hughes

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Attorney for Beaufort County Assessor

Bar No: 2805

Beaufort, South Carolina

January 17, 2017

THE STATE OF SOUTH CAROLINA

South Carolina Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Honorable John D. McLeod

Appellate Case No: 2014-002355

FRANK R. MEAD, III Respondent,

v.

BEAUFORT COUNTY ASSESSOR Appellant.

AFFIDAVIT OF MEREDITH CLELAND, SOUTH CAROLINA DEPARTMENT OF REVENUE

I, Meredith Cleland, after being duly sworn, do hereby make oath and affirm as follows:

1. I am employed with the South Carolina Department of Revenue (“Department”) as the Deputy Director, Government Services Division. I have been employed at the Department, in various capacities, for 36 years.
2. In my capacity as Deputy Director, Government Services, I oversee the Property Tax section of the Department. In addition, I am privy to the preparation, distribution and withdrawal of Policy documents as recommended to the Director of the Department by the Policy Section of the Department. I am, therefore, authorized to make this Affidavit on behalf of myself and the Department concerning the issues of legal residence and homestead and the longstanding Department position on these issues. Further, I make this Affidavit based on my own personal knowledge and my role and experience at the Department.
3. The Policy Section recommends advisory opinions to the Department’s Director for approval, modification or withdrawal. See, SC Rev. Proc. #09-3. These proposed rulings are circulated within the Department for comments prior to issuance, and may be modified based on comments received from Department employees. Id.

4. In 1997, the Policy Section recommended Rev. Ruling #97-18 to the Director regarding the eligibility for Homestead Exemption and the reconciliation of the Homestead Exemption and Legal Residence. This Revenue Ruling was signed by Director Burnet R. Maybank, III on December 28, 1997 and noted that "the homestead exemption and legal residence are inextricably intertwined." SC Rev. Rul. #97-18, p. 5.
5. In 1999, the Department issued Information Letter 99-4 withdrawing Rev. Ruling #97-18.
6. At the time of Inf. Ltr. #99-4, the Department was in discussions with the Comptroller General's Office over which agency would be responsible for advice to and education of the local governments on issues of local government property taxes.
7. When Rev. Ruling #97-18 was withdrawn, no new Policy document was issued which addressed the connection of homestead and legal residence.
8. The Property Section at the Department has maintained, and continues to maintain, that the homestead exemption and legal residence issues are connected and that an applicant for a homestead exemption should first apply for, and qualify for, the legal residence assessment ratio.
9. The Property Section has advised County Auditors for many years, and continues to advise County Auditors, that if an applicant for Homestead Exemption has not yet applied for Legal Residency, that the Auditor should refer the applicant to the county assessor's office so the applicant can apply for and qualify for the legal resident assessment.

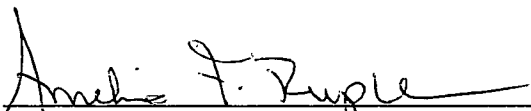
FURTHER AFFIANT SAYETH NOT.



Meredith Cleland

SWORN and subscribed to before me

This 17th day of January, 2017



Notary Public for South Carolina

My Commission Expires: 1/10/2018

THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
Honorable John D. McLeod

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SC Court of Appeals

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BEAUFORT COUNTY ASSESSOR Appellant.

PROOF OF SERVICE

I certify that I served the Petition for Rehearing of Appellant Beaufort County Assessor, and accompanying Affidavit of Meredith Cleland, on Frank R. Mead, III by depositing a copy of it in the United States Mail, postage prepaid, on this 15th day of January, 2017, addressed to his attorneys of record, Burnet Maybank, III and James P. Rourke, at their office at Nexsen Pruet, PLLP, P.O. Box 2426, Columbia, SC 29202.

HOWELL, GIBSON & HUGHES, P.A.

By: 

Stephen P. Hughes

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MATT WILLIAMS
WILLIAM H. COX, III

JAMES S. GIBSON, JR. *
Of Counsel

* Certified Mediator

January 17, 2017

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

RECEIVED

JAN 19 2017

SC Court of Appeals

Re: Frank R. Mead, III vs. Beaufort County Assessor
Appellate Case No 2014-002355
Civil Action No.: 13-ALJ-17-0585-CC
Our File No: 11340 SPH

Dear Ms. Kitchings:

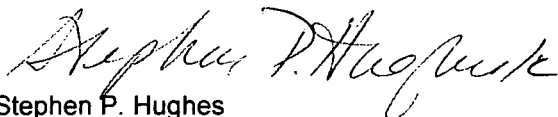
In connection with the above referenced matter, please find enclosed herewith for filing the following documents:

- a. Appellant's Petition for Rehearing, original and seven (7) copies;
- b. Affidavit of Meredith Cleland, filed pursuant to Rule 240(c)(3), SCACR, original and seven (7) copies;
- c. Proof of Service, original and seven (7) copies;
- d. Filing fee of \$25.00.

I would appreciate your filing the enclosed documents and returning clocked copies to me in the enclosed self-addressed, stamped envelope provided for your convenience.

Yours truly,

HOWELL, GIBSON AND HUGHES, P.A.



Stephen P. Hughes

SPH/cab
Enclosures

cc: Burnet Maybank, III, Esquire
James P. Rourke, Esquire