

THE STATE OF SOUTH CAROLINA

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In the Court of Appeals

OCT 02 2017

SC Court of Appeals

Appeal from the Administrative Law Court

The Honorable S. Phillip Lenski

Case No. 2014-ALJ-17-0602-CC; 2014-ALJ-17-0601-CC

Fairfield Waverly, LLC,

Respondent,

v.

Dorchester County Assessor,

Appellant.

GS Windsor Club, LLC,

Respondent,

v.

Dorchester County Assessor,

Appellant.

**INITIAL BRIEF OF APPELLANT
DORCHESTER COUNTY ASSESOR**

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STATEMENT OF ISSUES ON APPEAL

1. Did the Administrative Law Court err in concluding property owners are entitled, on a prospective basis, to the property tax exemption under S.C. Code of Laws Ann. § 12-37-3135 if the property owner files for the exemption before January 31 of any tax year subsequent to the tax year for which the property first qualifies for the exemption?

STATEMENT OF THE CASE

This matter arises from contested case hearings requested by Fairfield Waverly, LLC (individually “Fairfield”) and GS Windsor Club, LLC (individually “Windsor”) and tried in the South Carolina Administrative Law Court (“ALC”) pursuant to S.C. Code Ann. § 12-60-2540(A) (2011). The contested cases before the ALC followed the Dorchester County Board of Assessment Appeals’ decisions denying both Fairfield and Windsor (collectively “Respondents”) the property tax exemption provided under S.C. Code Ann. § 12-37-3135. R._____ (November 10, 2014 Decision of Dorchester County Board of Assessment Appeals); (November 26, 2014 Decision of Dorchester County Board of Assessment Appeals. At the ALC, the cases were consolidated and heard together by agreement and upon stipulated facts as to both Respondents. R._____ (Stipulations of Fact filed May 14, 2015). The matters were tried May 20, 2015 before the Honorable S. Phillip Lenski who, by Order entered February 1, 2017, entered judgment in favor of Respondents. R._____ (Final Order

entered February 1, 2017). Dorchester County Assessor (“Assessor”) respectfully appeals the Order on the basis of an error of law. The sole issue before the ALC and on appeal to the Court of Appeals is whether or not the Respondents are entitled, on a prospective basis, to the Assessable Transfer of Interest fair market value property tax exemption available under SC Code Ann. § 12-37-3135 (“ATI Exemption”) if the notice of exemption is filed with the county in any year subsequent to the year the property first qualifies for such an exemption.

FACTS

Fairfield purchased the real property at issue (1900 Waverly Place, North Charleston, TMS# 181-00-00-040.000) on December 21, 2012 for a purchase price of \$13,850,000. R. _____ (Deed dated December 12, 2012). At the time of the purchase in 2012, the current fair market value and taxable value according to Dorchester County (the “County”) for the 2012 tax year was \$11,155,000. R. _____ (Fairfield Stipulation of Facts Filed May 14, 2015). The property was eligible for the ATI Exemption beginning with the 2013 Tax Year. R. _____ (*Id.*). Fairfield did not file for the ATI Exemption for the 2013 Tax Year and therefore did not qualify under S.C. Code Ann. § 12-37-3135(C) for the 2013 Tax Year. R. _____ (*Id.*). As a result, the County appraised the property for the 2013 Tax Year based on the

assessable transfer of interest which occurred in December 2012. R. _____
(*Id.*). Based on the assessable transfer of interest, the County appraised the
property as of December 31, 2012 for the 2013 Tax Year with a taxable
value of \$13,849,900. R. _____ (*Id.*). Fairfield applied for the ATI
Exemption for the 2014 Tax Year by filing an application on January 16,
2014. R. _____ (*Id.*). By letter dated August 19, 2014, the County denied
the ATI Exemption for Fairfield for the 2014 Tax Year. R. _____ (*Id.*). On
September 30, 2014, Fairfield properly protested the County's decision to
deny the ATI Exemption for the 2014 Tax Year. R. _____ (*Id.*). After a
hearing held on November 10, 2014, the Dorchester County Board of
Assessment Appeals upheld the County's determination by decision dated
November 26, 2014, and Fairfield timely appealed for a contested case
hearing before the ALC. R. _____ (*Id.*).

Similarly, Windsor purchased the property at issue (9580 Old Glory
Lane, Summerville, TMS# 171-00-00-216.000) on November 19, 2012 for a
purchase price of \$26,372,923. R. _____ (Deed dated November 19, 2012).
At the time of the purchase, the current fair market value and taxable value
according to the County for the 2012 tax year was \$17,230,100. R. _____
(Windsor Stipulation of Facts filed May 14, 2015). The property was
eligible for the ATI Exemption beginning with the 2013 Tax Year.

R. _____ (*Id.*). Windsor did not file for the ATI Exemption for the 2013 Tax Year and therefore did not qualify under S.C. Code Ann. § 12-37-3135(C) for the 2013 Tax Year. R. _____ (*Id.*). As a result, the County appraised the property for the 2013 Tax Year based on the assessable transfer of interest which occurred in December 2012. Based on the assessable transfer of interest, the County appraised the property as of December 31, 2012 for the 2013 Tax Year with a taxable value of \$24,650,000. R. _____ (*Id.*). Windsor applied for the ATI Exemption for the 2014 Tax Year by filing an application on January 24, 2014. R. _____ (*Id.*). By letter dated August 19, 2014, the County denied the ATI Exemption for Windsor for the 2014 Tax Year. R. _____ (*Id.*). On September 30, 2014, Windsor properly protested the County's decision to deny the ATI Exemption for the 2014 Tax Year. R. _____ (*Id.*). After a hearing held on November 10, 2014, the Dorchester County Board of Assessment Appeals upheld the County's determination by decision dated November 26, 2014, and Windsor timely appealed for a contested case hearing before the ALC. R. _____ (*Id.*).

Respondents maintain the position that they should be entitled to the benefit of the ATI Exemption for the year in which they first claim eligibility for it, and using the fair market value determined when the

properties were first purchased. The Assessor, on the other hand, maintains that since the Respondents failed to apply for the exemption for 2013, the appraised value ultimately became the fair market value as that term is defined in subsection (A)(4) of the ATI Exemption statute. Further, the Assessor argues that this value also became the ATI fair market value as defined in subsection (A)(1) of the same statute, with the result being that both the fair market value and the ATI fair market value for 2013 and subsequent years are now the appraised value required due to an assessable transfer of interest (“ATI”); and, because the exemption was not sought by January 31, 2013 in order to establish the “exemption value” defined by the statute, both the “ATI fair market value” and “fair market value” as defined by the statute, as well as the “current fair market value” defined in subsection (A)(2) of the statute, are now the same values for tax year 2013 and subsequent tax years. The Assessor established the taxable value of the property of Fairfield in the amount of \$13,849,900 as a result of its appraisal of the property as of December 31, 2012, for the 2013 tax year. The Assessor established the taxable value of the property of Windsor in the amount of \$24,650,000 as a result of its appraisal of the property as of December 31, 2012, for the 2013 tax year.

ARGUMENTS

Tax appeals to the ALC are subject to the Administrative Procedures Act (APA). *Long Cove Home Owners' Ass'n v. Beaufort County Tax Equalization Bd.*, 327 S.C. 135, 139, 488 S.E.2d 857, 860 (1997). For an appeal from the ALC as to errors of law and statutory interpretation, the Court of Appeals is free to decide questions of interpretation without any deference to the court below. S.C. Code Ann. § 1-23-380(5)(d) (Supp. 2010); *City of Rock Hill v. Harris*, 391 S.C. 149, 152, 705 S.E.2d 53, 54 (2011). The Assessor respectfully argues that the decision of the ALC rests upon an error of law and statutory interpretation which this Court may decide without deference to the ALC's findings and conclusions.

- I. By operation of law and applicable statutory definitions, the exemption afforded by S.C. Code Ann. § 12-37-3135 may only be received if a property owner applies for such exemption before January 31 of the tax year following the triggering event of an assessable transfer of interest.

The first inquiry before the Court is whether or not the Respondents' real property underwent an assessable transfer of interest ("ATI") pursuant to S.C. Code Ann. Sec. 12-37-3150, which states in relevant part: "For purposes of determining when a parcel of real property must be appraised, an assessable transfer of interest in real property includes, but is not limited to . . . a conveyance by deed." With respect to both Respondents, real property was deeded to them during calendar year 2012, triggering an ATI

pursuant to statute and requiring an appraisal by the Assessor.

For properties subject to appraisal by virtue of an assessable transfer of interest that are also subject to the six percent tax ratio under S.C. Code Ann § 12-43-220(e), property owners may seek an exemption equal to twenty-five percent of the “ATI fair market value” as defined by S.C. Code Ann. § 12-37-3135, provided certain criteria are satisfied in calculating appraised valuations as defined within the statute. ATI fair market value is defined as “the fair market value of a parcel of real property and any improvements thereon as determined by appraisal at the time the parcel last underwent an assessable transfer of interest.” *Id.* However, no exemption value calculated pursuant to the statute may be less than current fair market value of the parcel. *Id.* If the ATI fair market value of the parcel is less than the current fair market value, the exemption otherwise allowed does not apply and the ATI fair market value applies as provided pursuant to Section 12-37-3140(A)(1)(b). *Id.* The statute defines “current fair market value” as the fair market value of a parcel of real property as reflected on the books of the property tax assessor for the current property tax year. *Id.*

Since the Respondents failed to seek the exemption for 2013, which was the tax year in which the ATI fair market value first applied, the newly appraised value became the “fair market value” as defined in § 12-37-3135.

This value also became the ATI fair market value as defined in the same Code section. The failure of the Respondents to apply for the ATI exemption for tax year 2013 resulted in the fair market value and ATI fair market value for 2013 (and subsequent years) to then become the “current fair market value” on the books of the Assessor for 2013 and beyond. In the absence of an applicable “exemption value” at the time the ATI fair market value first applies, the value constituting “current fair market value” during the calendar year the ATI occurred must then shift during the subsequent tax year to the new ATI appraised value, which value will continue to apply for tax years thereafter. As a result, the exemption simply becomes incapable of application due to the limitations imposed by subsections (B)(2)(a) and (B)(2)(b).

It is undisputed that §12-37-3135 (B)(1) provides for the exemption for which the Respondents applied. It is further stipulated that the Respondents failed to apply for the ATI exemption in 2013. The statute specifically provides as follows: “The exemption allowed by this section applies at the time the ATI fair market value *first* applies”. *Id.* (emphasis added). In this case, the ATI fair market value first applied in tax year 2013, the year in which the Respondents failed to file for the exemption. When the exemption did not occur, the newly appraised value triggered pursuant to the

ATI then *became* the current fair market value as reflected on the books of the property tax assessor for the 2013 property tax year and for all subsequent years as the same is defined in § 12-37-3135 (A)(2). This “shifting definition” is paramount in a proper analysis of when and how the exemption sought by the Respondents can occur.

In its Order, the ALC misconstrues the Assessor’s argument as to what constitutes current fair market value. R._____ (Final Order, p. 9). The practical application of the law ultimately results in shifting valuation definitions depending upon whether or not an exemption value is granted for the tax year that immediately follows an ATI. Although the Respondents timely applied for the exemption for tax year 2014, they were not eligible for the exemption since § 12-37-3135 (B)(2)(a) limits the exemption to an amount equal to twenty-five (25%) percent of the ATI fair market value, and no exemption value may be less than the current fair market value of the parcel. If the ATI fair market value is forced by operation of law and by definition to become the current fair market value, the values for comparison under subsection (B)(2)(a) have been rendered identical and no exemption can apply.

In this case, by sheer virtue of the definitions set forth by the legislature in § 12-37-3135 and the application of the ATI valuation statute

imposed upon county Assessors by § 12-37-3140, the appraised value triggered as a result of the Respondents' ATI in 2012 ultimately became the current fair market value on the books of the Assessor for tax years 2013 and beyond. Herein lies the critical component in which the Assessor respectfully argues the ALC erred.

Had the Respondents made application for the exemption before January 31, 2013, the Assessor would have been required to use the current fair market value as reflected on its books for 2012, and thus an exemption value could have possibly occurred through a comparison of the applicable valuations as defined by statute. Although the Respondents timely filed for the exemption in January of 2014 for the 2014 tax year, the limitations imposed by § 12-37-3135 (B)(2)(a) and (b) resulted in the Assessor's inability to grant the exemption as no such mechanism was afforded to the Assessor by virtue of the operation of the statutory definitions imposed by the Code—that is, if an exemption value is not established in the tax year immediately following the ATI, the new ATI fair market value *will* and must become the current fair market value for subsequent tax years.

In this case, a timely application for an exemption prior to January 31, 2013 would have required the Assessor to compare the current fair market value reflected on its books for 2012 (i.e. pre-ATI) against the new ATI fair

market value, which would have been two completely different values—an “apples-to-oranges” comparison for the analysis required under subsection (B)(2) of the statute. However, when such an exemption is not sought and granted within the admittedly narrow time frame following an ATI, both the statutory definitions and the ATI valuation statute require county Assessors to adopt the newly appraised ATI fair market value as *the* fair market value of the property, which thus becomes the current fair market value for the tax years subsequent to the ATI. By practical application and operation of law, a shift occurs in the definitions that force South Carolina’s Tax Assessors to compare identical valuations if a taxpayer applies for the exemption at any point after January 30 of the tax year in which the ATI fair market value first applied; and, most importantly in the analysis, if the values for comparison are identical—an “apples-to-apples” comparison of values for the necessary calculations under subsection (B)(2)—it naturally follows that no exemption can be granted by the plain language of the statute.

While the public policy and intent of the legislature to which the ALC alludes may have theoretically been to provide for tax relief for taxpayers facing the sometimes-disparate results of the ATI assessment statute embodied at § 12-37-3140, the practical and operative application of the exemption statute does not rest solely within the language of S.C. Code Ann.

§ 12-37-3135(C) upon which the ALC bases its decision. Rather, "the 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." *S.C. State Ports Auth. v. Jasper County*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006). The Court should not concentrate on isolated phrases within the statute, but should read the statute as a whole and in a manner consonant and in harmony with its purpose. *State v. Sweat*, 379 S.C. 367, 376, 665 S.E.2d 645, 650 (Ct. App. 2008), *aff'd*, 386 S.C. 339, 688 S.E.2d 569 (2010).

In the instant case, the prospective application envisioned by the ALC's decision is based solely upon language of subsection (C) that seemingly allows a taxpayer to claim the exemption before January 31 of any year after an ATI. However, when assessing the exemption statute as a whole, and its accompanying body of laws under Article 25 of Title 12, S.C. Code of Laws, an exemption claimed at any point after January 30 of the tax year for which the ATI fair market value first applies will be rendered fruitless by the operation of the other provisions and definitions within the statute and the Act. Even if there exists some ambiguity in the isolated language of subsection (C) when interpreting the phrase "for the tax year for which the owner first claims eligibility for the exemption," the operative

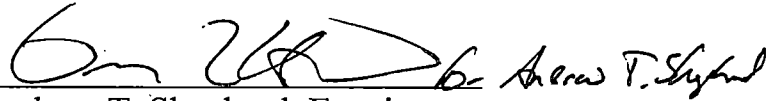
provisions and definitions of the remaining portions of the statute and the Act effectively limit the prospective application of the statute to solely the time period between the date of an ATI and January 30 of the following tax year when the ATI fair market value first applies. For the case before the Court, that means the Respondents could have prospectively first claimed eligibility for the exemption for tax year 2013 at the time of their ATI in 2012, before the ATI fair market value had been (or could be) calculated. However, by virtue of the definitions of the exemption statute and by operation of the appraisal requirements of the Act, first claiming eligibility for the exemption in any subsequent tax years is effectively rendered moot and the limitations imposed by subsection (B)(2) provided the Assessor with no other means to grant the exemption sought by Respondents.

CONCLUSION

For the reasons stated herein, the Court should reverse the decision of the ALC.

Respectfully submitted,

September 29, 2017


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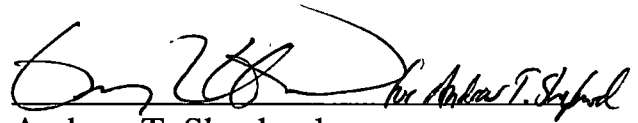
Dorchester County Assessor,

Appellant.

CERTIFICATE OF SERVICE

I certify that I have served the Appellant's Initial Brief and Appellant's Designation of Matter to be Included in the Record on Appeal, on the Respondents, by depositing a copy of each in the United States Mail, postage prepaid, on September 29, 2017, addressed to their attorneys of record, Burnet R. Maybank, III and James Rourke, Post Office Drawer 2426, Columbia, South Carolina, 29202.

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Via U.S. Mail

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SC Court of Appeals

RE: Fairfield Waverly, LLC v. Dorchester County Assessor
Docket No.: 14-ALJ-17-0602-CC

Windsor Club, LLC v. Dorchester County Assessor
Docket No.: 14-ALJ-17-0601-CC

Dear Ms. Kitchings:

Enclosed, please find the original and two (2) copies of the **Initial Brief of Appellant Dorchester County Assessor, Appellant's Designation of Matter for Inclusion in Record on Appeal and Certificate of Service**, pursuant to the above referenced matter(s). At your earliest convenience, please file and return the clocked copies to our office in the self-addressed, stamped envelope provided.

Should you have any questions or request any further information, please feel free to contact our office at the number listed below.

With kind regards, I am

Respectfully,


Cierra Richards
Paralegal to Andrew T. Shepherd, Esquire

Enclosure(s): as stated

cc: Burnet R. Maybank, III, Esquire (via U.S. Mail)
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