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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM HORRY COUNTY

Case No 2015-00225

RECEIVED

OCT 11 2017

SC Court of Appeals

Tommy J. Bellamy-----Appellant

V

Horry County Assessor-----Respondent

MOTION ON THE MERITS

Tommy J. Bellamy, Attorney Pro se
3684 Sea Mountain Highway
Little River, South Carolina 29566
843 457-3625

Attorneys for Respondent

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843 915-5040

Emma Ruth Brittain, Attorney at law
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Now comes the Appellant, Tommy J. Bellamy, Attorney Pro se, to file a motion on the merits, Rule 18.14 (entitles Motion on the Merits) of the Rules of Appellate Procedure. (RAP authorizes appellant courts to decide a case on the merits by way of motion, such a motion is denominated a “motion on the merits” (RAP 18.14(a)). Tommy J. Bellamy, Attorney Pro se hereby file the motion to affirm the decision of the appellant court and the South Carolina Supreme Court. This motion is filed on the certification to the South Carolina Supreme Court. On September 29, 2017, based on the vote of the Court, the Petition of Certiorari is denied and the motion to dismiss is denied as moot. The Respondent’s actions to profit by over-assessment of the Appellant’s property without refund is without merit. Appellant seeks refund from an error on assessment in 2008 and 2009 taxes that total of over \$30,000 plus interest on his property taxes.

ISSUES PRESENTED FOR REVIEW

The Respondent, Horry County Assessor’s erred in assessment of Tommy J. Bellamy property in 2008 and 2009. The Assessor’s 2010 appeal process was not in compliance to statute in accordance to South Carolina Law.

Tax notices for properties under appeal: Title 12, Chapter 60, and 12-60-2550: Chapter 54, and 12-54-25 payment of taxes, interest and penalties when valuation of property is appealed: Under receipt of written notice of appeal of a property valuation. *"If the valuation is less than that set as provided in this section, the assessment of the current year must be reduced by the cumulating difference between the assessment as entered and that determined by final review or appeal. The tax paid on the difference between the assessments as entered and that determined after final review **must be refunded together with interest determined in accordance with section 12-54-25."***

SC Code Ann 12-60-2540(A)(2014) states: within thirty days after the boards written decision, a property taxpayer or county assessor may appeal a property tax assessment made by the Board by requesting a contested case hearing before the Administrative Law Court in accordance with the rules of the Administrative Law Court. SC Code Ann 12-60-460. Upon exhaustion of his pre hearing remedy, a tax payer may seek relief from the department's determination by requesting a contested case hearing before the Administrative Law Court. This request must be made within thirty (30) days after the date the department's determination was sent by first class mail or delivered to the tax payer. The request was received by the Administrative Law Court on October 7, 2015. The date the appellant received the department's determination was September 8, 2015. The United States postal stamp shows proof of compliance to Section 12-60-460 (R p 40-41).

SCACR. Pursuant to Rule 210(g) on May 8, 2017, the Appellant served the respondent with the Second Amended Record on Appeal and Supplemental Record on Appeal that included all designated documents. The Respondent alleges that the Appellant failed to provide 2 documents in the Second Amended Record and Supplemental Record on file. These matters were previously designated and included in the designation of matter under Rule 209 and 210. The Supplemental Record on Appeal and the Second Amended Record on Appeal comply with the requirements of Rule 267. The Supplemental Record on Appeal complies with Rule 211(b), SCACR. The Appellant Court found Appellant failed to cure deficiencies contained in the Record on Appeal. The Appellant Court ruled that they would not act on Respondents Motion to Dismiss. The South Carolina Court of Appeals decline to act on the Appellant's motion to rehear filed on July 3, 2017. The Appellant Court has tied the Appellants hands by failing to order the Respondent, as requested by the Appellant to produce documents unknown to the Appellant. The

South Carolina Court of Appeals decline to act on the Appellant's motion to rehear filed on July 3, 2017.

MEMORANDUM IN SUPPORT OF MOTION ON THE MERITS

STATEMENT OF FACTS

The Horry County Assessor's Office performed a re-assessment of the Appellant's property for tax year 2008. The property value in 2007 was less than \$100,000. The property was re-assessed with an appraisal of \$683,000 in July 2008, five times greater than the 2007 tax year (R p 23). There is no statute of South Carolina Revenue ruling to show cause of the increase. The 2008 tax bill total \$8,741.04. According to the Assessor's office the property tax bill for 2008, must be paid by December 2009 or the property would be sold on tax auction with (1) one year to redeem the property. The Appellant was unable to pay the higher taxes. The Appellant's attorney requested a conference for an appeal on March 2, 2010 (R p 18-25). The assessor's office failed to schedule a conference, the assessor's office re-assessed the property at the attorney request to correct an error in assessment. Although, the assessor's office corrected the error in assessment on July 22, 2010 (R p 22) the assessor's office demanded the pre-assessment tax amount of \$30,754.53(R p 37) for redemption from the Appellant by December 31, 2010. Appellant redeemed the property for 30,754.53 on 12/09/2010. The Assessor's Office erred in assessment and changed the tax appraisal from \$683,000 to the correct amount of \$100,000 or less, but failed to refund the appellant the difference including interest and fees for the error as stated in statute of South Carolina Rule of Law. The property is Appellant's legal residence. The property is less than (5) acres and owned and occupied by the appellant as the Domicile and the

true fixed and permanent home and principle residence. An application was submitted and approved by the assessor's office to receive the 4% assessment ratio as in Sec. 12-43-220© (1). The same property tax in 2015 was only \$541.00(R p 34). The difference in the error in assessment and the reduced tax was never refunded to the appellant. The Appellant mailed a written request for correction and reduction of taxes on March 3, 2010 (R p 15-17) as requested by the assessor's office. The Horry County Assessor's office stated that the procedure for refund is to schedule an Appeal with the Horry County Assessors Appeal Board. The Horry County Appeals Board failed to schedule an appeal conference. The Appellant made multiple verbal requests to the assessor's office requesting the appeals board to act on the written request and schedule an appeals conference. The Assessor's office failed to inform the appellant of the SC Revenue Rulings, as states below: "the taxpayer may seek the refund of the excess taxes paid by filing a claim for refund with the county assessor who made the property tax assessment for the property for which the tax refund is sought. The claim for refund must be file within two years from the date of overpayment. A county council, by ordinance, may allow refunds for the county government portion of the property taxes for such additional past year as it determines advisable for property that constitutes an owner-occupant's legal residence. Application for refund as a result of a change in the assessment ratio must be submitted by the property taxpayer who qualified the property as his or her legal residence for the tax year and any refund will be paid to that individual, regardless of whether someone, other than the owner-occupant qualifying the home as a legal residence, paid the taxes. Secs. 12-43-220© (3); 12-60-430(22); 12-60-2560; 12-54-85(F)."

The Appellant mailed a written request for refund on March 20, 2015 (Supplemental R p 82). On March 31, 2015 the Tax Penalty Appeals Board finally respond to the appellants request for refund with a written denial (R p 3). The Appeals Board continued to deny the appellant an appeal hearing. The Horry County Appeals Board finally scheduled a hearing on August 25, 2015. The Appellant's appeal for refund was denied (R p 4). The date of the Respondents decision was on September 4, 2015. The appellant received the decision of denial on September 8, 2015.

SC Code Ann 12-60-2540(A)(2014) states: within thirty days after the boards written decision, a property taxpayer or county assessor may appeal a property tax assessment made by the Board by requesting a contested case hearing before the Administrative Law Court in accordance with the rules of the Administrative Law Court.

The appellant's request for a contested hearing was received by Administrative Law Court on October 7, 2015. The Administrative Law Judge dismissed the Petitioner's case on October 16, 2015 for filing the request for a contested hearing with the court more than thirty (30) days after the date of the board's written decision (R p 42-43). The appellant filed a Motion for reconsideration. The motion for reconsideration was denied(R p 40-41) The Appellant filed case with the South Carolina Court of Appeals. The Appellant Court Order on February 9, 2017, within twenty days of the date of this order, Appellant shall serve Second Amended Record on Appeal. The Second Amended Record on Appeal was served on February 17, 2017. The Respondent alleged that the Appellant failed to provide 2 documents in the Second Amended Record on Appeal. Pursuant to Rule 210(g) on May 8, 2017, the Appellant served the respondent with the Second Amended Record on Appeal and Supplemental Record on Appeal that included all designated documents.

The Supplemental Record on Appeal and the Second Amended Record on Appeal complied with the requirements of Rule 267. The Supplemental Record on Appeal complies with Rule 211(b), SCACR. Pursuant to Rule 210(g) on May 8, 2017, the Appellant served the respondent with the Second Amended Record on Appeal and Supplemental Record on Appeal that included all designated documents. The Respondent alleged that the Appellant still failed to provide 2 documents in the Second Amended Record and Supplemental Record on file. These matters were previously designated and included in the designation of matter under Rule 209 and 210. The Second Amended Record on Appeal and Supplemental Record on Appeal comply with the requirements of Rule 210(g). The Supplemental Record on Appeal complies with Rule 211(b), SCACR. The Respondent failed to provide documented proof of existence of these documents to the Appellant Court.

The Petitioner's Motion to rehear was received by the South Carolina Appellate Court on June 26, 2017, less than fifteen (15) days after the filing of the order of the court. The Appellant files the petition for rehearing under Rule 221. The petition to rehear was in accordance with Rule 240. The Motion to rehear petition to reinstate was due to particularity the points that were supposed to have been overlooked or misapprehended by the court. The Respondent alleged that the Appellant failed to provide 2 documents in the Supplemental Record on Appeal: The South Carolina Court of Appeals decline to act on the Appellant's motion to rehear filed on July 3, 2017. The Appellant Court ruled that the Appellant failed to cure deficiencies contained in the Record on Appeal. The Appellant court ruled that they would not act on Respondents Motion to Dismiss. The Appellant Court ruled in favor of the Respondent by failing to order the Respondent to produce documents unknown to the Appellant.

Pursuant to Rule 221 © of the South Carolina Appellate Court Rule, the Appellate Court will not entertain petitions for rehearing on a motion or petition unless the action of the court on the motion or petition had the effect of dismissing or finally deciding a party's appeal. Accordingly, the Appellant Court found no basis for granting the petition to reinstate.

On July 14, 2017, the Appellant Tommy Bellamy moves the South Carolina Court of Appeals for an order for a Writ of Certiorari under rule 242(c). The Appellant petition for South Carolina Supreme Court rule on the above case through a Writ of Certiorari. On September 29, 2017, based on the vote of the Court, the petition of certiorari is denied and the motion to dismiss is denied as moot.

The Appellant seeks to file a motion on the merits Rule 18.14 (entitles Motion on the Merits) of the Rules of Appellate Procedure (RAP) authorizes appellant courts to decide a case on the merits by way of motion. Such a motion is denominated a “motion on the merits” (RAP 18.14(a)). The Appellant, Tommy J. Bellamy file the motion to affirm the decision of the appellant court and the South Carolina Supreme Court. This motion on the certification to the South Carolina Supreme Court. On September 29, 2017, based on the vote of the Court, the petition of certiorari is denied and the motion to dismiss is denied as moot.

STANDARD OF REVIEW

The standard for decision for such motion in laid out in rule RAP18.14 (e). The motion to affirm that the Assessor’s Office actions are clearly without merit. The appellant petitions the court to consider whether the issues” (a) are clearly controlled by settled law, (b) are factual and supported by the evidence or(c) are matters of judicial discretion and the decision and the decision was clearly within the discretion of the administrative agency.” RAP 18.14(e) (1) this motion on merits comply with RAP 17.3(a)

Argument

The Respondent, Horry County Assessor's err in assessment of Tommy J. Bellamy property in 2008, 2009. The Assessor's 2010 appeal process was not in compliance to statute in accordance to South Carolina Law. Section 12-60-1755. Crediting of erroneous property tax payments. If a tax payer or his agent pays property taxes in error, or the payment is erroneously credited, the treasurer shall credit the amount paid against the actual liability of the tax payer for the tax year in question. This section applies for any tax year for which proof is provided. Section 12-60-2140© after a final determination, if the property assessment is less than the adjusted property tax assessment, a corrected property tax assessment must be made and entered. The overpayment of tax must be refunded together with interest as determined in accordance with section 12-54-25 on the overpayment.

Section 12-60-2520 (b) if upon examination the county assessor does not agree with the tax payer, the assessor shall schedule a conference with the property taxpayer within thirty (30) days of the date of the request for a meeting or as soon as practical. If the matter is not resolved at the conference, the assessor shall advise the property taxpayer of the right to protest and provide the tax payer a form on which to file a protest. The appellant was unaware and misinformed of the correct procedures to file within two years from the date of overpayment to seek the refund of the excess of taxes paid by simply filing a claim for refund with the Assessor's office. Therefore the Respondent is in violation of Secs. 12-43-220© (3); 12-60-430(22); 12-60-2560; 12-54-85(F)

The Horry County Assessors erred in proper assessment of Petitioner's property in 2008 and 2009, failed to refund overpayment after final determination of assessment and failed to schedule a conference with the taxpayer within thirty days of the written request. The Horry County Assessors actions were not in compliance to above statutes as accordance to South

Carolina Law. SC Code Ann 12-60-460, upon exhaustion of his pre hearing remedy, a tax payer may seek relief from the department's determination by requesting a contested case hearing before the Administrative Law Court. This request must be made within thirty (30) days after the date the department's determination was sent by first class mail or delivered to the tax payer. The request was received by the Administrative Law Court on October 7, 2015. The date the petitioner received the department's determination was September 8, 2015. The letter to the Judge for reconsideration with United States postal stamp on September 8, 2015 shows proof of compliance to Section 12-60-460 (R p 40-41). The Administrative Law Judge dismissed the Petitioner's case on October 16, 2015 for filing the request for a contested hearing with the Court more than thirty (30) days after the date of the board's written decision (R p 42-44). Pursuant to Rule 242©, the Court shall not send the remittitur to the lower court or administrative tribunal until the time to petition for a Writ of Certiorari has expired. The Appellant's Motion to rehear was denied by the Court of Appeals on July 12, 2017, the Appellant petition for Writ of Certiorari is submitted on July 14, 2017, within the time to petition. Tommy J. Bellamy filed the motion to affirm the decision of the South Carolina Appellant Court and the South Carolina Supreme Court. This motion on the certification to the South Carolina Supreme Court, on September 29, 2017 is based on the vote of the Court, the petition of certiorari is denied and the motion to dismiss is denied as moot.

CONCLUSION

For the reasons stated above, petitioner asks the Appellant Court to grant the petition for Motion on Merits. The Motion on Merits with the South Carolina Court of Appeals will help to prevent the Horry County Assessors from overcharging the citizens and property owners of Horry

County in the future. The Horry County Assessors must comply with statues of the State of South Carolina.

Respectfully submitted,

A handwritten signature in black ink that reads "Tommy Bellamy". The signature is written in a cursive style with a large, looping final flourish.

Tommy J. Bellamy
3684 Sea Mountain Highway,
Little River, South Carolina 29566
843 457-3625

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Tommy J. Bellamy-----Appellant

V

Horry County Assessor-----Respondent

PROOF OF SERVICE

I certify that I have served the Motion on Merits to Horry County Assessors by depositing a copy of it in the United States mail, postage prepaid, on October 9, 2017. Respondent, Horry County Assessor's Attorney on record as addressed below:


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3684 Sea Mountain Highway
Little River, South Carolina
29566

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Tommy J. Bellamy
3684 Sea Mountain Highway
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843 457-3625

The Honorable Jenny Abbott Kitchings
Clerk of Court of Appeals
P.O. Box 11629
Columbia, S.C. 29211

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SC Court of Appeals

Re: Tommy J. Bellamy vs Horry County Assessor
Case No. 2015-00225

Dear Ms. Jenny Abbott Kitchings:

My name is Tommy J. Bellamy, Attorney Pro se in the above-referenced matter. Please find enclosed a Motion on the Merits to be filed. A \$ 25.00 filing fee is enclosed. A copy of this motion is mailed to Respondent's Attorney on file.

Thank you,


Tommy J. Bellamy

Date: October 10, 2017

Tommy J Bellamy
3684 Sea Mt Highway
Little River, SC
29564

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The Honorable Jenny Abbott Kitching
Clerk of Court, SC Court of Appeals
P.O. Box 11629
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