

RECEIVED

DEC 20 2017

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE ADMINISTRATIVE LAW COURT **S.C. SUPREME COURT**

Shirley C. Robinson, Administrative Law Judge

Opinion No. 5516 (S.C. Ct. App. filed September 14, 2017)

Charleston County Assessor, Respondent,

v.

University Ventures, LLC,Petitioner.

**RETURN TO UNIVERSITY VENTURES, LLC'S
PETITION FOR WRIT OF CERTIORARI**

Joseph Dawson, III, County Attorney
Bernard E. Ferrara, Jr., Deputy County Attorney
Johanna S. Gardner, Assistant County Attorney
CHARLESTON COUNTY ATTORNEY'S OFFICE
Lonnie Hamilton, III Public Services Building
4045 Bridge View Drive
North Charleston, South Carolina 29405
(843) 958-4010

Attorneys for Respondent

Other Counsel of Record:

Morris A. Ellison, Esquire
William T. Dawson, III, Esquire
WOMBLE BOND DICKINSON (US) LLP
5 Exchange Street
Charleston, South Carolina 29401
(843) 722-3400

Attorneys for Petitioner

TABLE OF CONTENTS

Argument 1
Conclusion 4

Respondent Charleston County Assessor (“Assessor” or “County”) submits this Return pursuant to Rule 242(f), SCACR, contending that Petitioner University Ventures, LLC (“University Ventures”) has failed to show any special or important reasons pursuant to Rule 242(b), SCACR, for this Court to grant a Writ of Certiorari to review the Court of Appeals decision in this case. The arguments presented in University Ventures’ Petition simply recites the lower courts’ affirmative rulings on its behalf regarding the reassessment cycle. However, University Ventures believes that if the Court of Appeals rejected the reassessment cycle then it must also agree with it that the hotel must escape taxation for 2011. This Court should reject this argument, which is being offered to explain why the \$8,180,000 hotel should avoid taxation rather than articulating the proper construction of South Carolina law regarding when improvements or additions must be taxed. University Ventures’ arguments simply disagree with the Court of Appeals construction of S.C. Code Ann. § 12-37-3140 (A)(1)(d) and (A)(2). State law requires the fair market value of subsequent improvements and additions (i.e., the completed hotel) to be added to the property at reassessment, not removed. Therefore, for the reasons stated herein, this Court should deny University Ventures’ Petition for Writ of Certiorari.

ARGUMENT

I. THIS COURT SHOULD DENY UNIVERSITY VENTURES, LLC’S PETITION FOR WRIT OF CERTIORARI BECAUSE ITS QUESTION PRESENTED IGNORES APPLICABLE SOUTH CAROLINA LAWS THAT RESOLVE THE QUESTION.

This Court should deny University Ventures Petition for Writ of Certiorari because its Question Presented would require the Court of Appeals and the Assessor to ignore rather than harmonize S.C. Code Ann. § 12-37-3140(A)(1)(d), (A)(2), (B), and (E) with the Reassessment Statute. See, S.C. Code Ann. § 12-43-217. It is undisputed that the hotel

was assessed for the first time in tax year 2010, after it was completed and received a certificate of occupancy in April 2009. Prior to the completion of the hotel, the Property was assessed as vacant land.

The University Ventures Court correctly cited to S.C. Code Ann. § 12-37-3140, Determining fair market value, to decide if the completed hotel should be taxed in 2011.

This code section provides in pertinent part:

Value attributable to additions and improvements, and changes in value resulting from assessable transfers of interest occurring in a property tax year **are first subject to property tax in the following tax year** except as provided pursuant to Section 12-37-670(B).

S.C. Code Ann. § 12-37-3140(E) (Emphasis added).

The Assessor provided University Ventures an assessment notice in 2010 adjusting the value of the Property with the completed hotel. The Court of Appeals even noted that University Ventures did not appeal or object to the \$8,180,000 fair market value of the additions and improvements of the Property.¹ Because the hotel was completed and certified for occupancy in the 2009 tax year, the value attributable to the additions and improvements of the Property are first subject to taxation in 2010, the following tax year.

University Ventures' disagreement with the Court of Appeals as to the application of S.C. Code Ann. § 12-37-3140 to tax year 2011, the year the County implemented a county-wide equalization and appraisal reassessment ("Reassessment"), does not

¹ S.C. Code Ann. § 12-60-2510(A)(1) provides taxpayers with a remedy to challenge their property tax assessment "whenever the assessor increases the fair market value or special use value in making a property tax assessment by one thousand dollars or more".

support the kind of reasons this Court considers when granting a Writ of Certiorari.

Furthermore, University Ventures fails to cite to the Court of Appeals' error or misapplication of any laws. Instead, Petitioner cites to S.C. Code Ann. § 12-37-3140(A)(1), "the property's fair market value is the value applicable at the later of certain events" and that the "certain events" enumerated in S.C. Code Ann. § 12-37-3140(a) – (d) do not apply to the tax year 2010 valuation of the Property. University Ventures conveniently fails to acknowledge the University Ventures Court's reliance on S.C. Code Ann. § 12-37-3140(A)(2), nor does it give effect to S.C. Code Ann. § 12-37-3140(A)(2) and (E), which contemplate exactly what should happen in a reassessment year or in any tax year. First, S.C. Code Ann. § 12-37-3140(A)(2) addresses how subsequent improvements to Property are treated: "To the fair market value of real property as determined at the time provided in item (1) of this subsection, there must be added the fair market value of subsequent improvements and additions to the property."

Secondly, S.C. Code Ann. § 12-37-3140(E) contemplates how the addition of improvements are treated in a reassessment year: "Value attributable to additions and improvements . . . occurring in a property tax year are first subject to property tax in the following tax year except as provided pursuant to Section 12-37-670(B)." In this case, the hotel as an improvement is first subject to taxation in 2010, the year after it was completed. Thirdly, S.C. Code Ann. § 12-37-3140(B) establishes a limit on the increase in the fair market value of real property attributable to a reassessment of fifteen percent, except "this limit does not apply to the fair market value of additions or improvements to real property in the year those additions or improvements are first subject to property tax." This statute contemplates the value of the improvements as its true fair market value,

without regard to the increase in value above the otherwise 15% capped value. Once the value is added to the Property value, it remains on the books regardless of whether the date of value precedes the completion of the improvement.

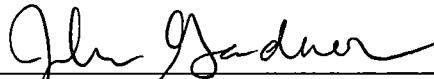
To reiterate, once the hotel as an improvement is first taxed in 2010, the value of the improvement remains on the Property for future years. This is consistent with the December 31, 2008 date of value, during which the Property is valued as vacant land. Thereafter, once the hotel was taxed after its completion, it stays on the books as an added value to the fair market value in accordance with S.C. Code Ann. § 12-37-3140(A)(2). Petitioner's blatant disregard for South Carolina law is the obvious fallacy in University Ventures' Question Presented; therefore, the Court should deny its request.

CONCLUSION

For the foregoing reasons, the Court should deny University Ventures, LLC's Petition for Writ of Certiorari.

Respectfully submitted,

CHARLESTON COUNTY ASSESSOR



JOSEPH DAWSON, III, County Attorney
BERNARD E. FERRARA, JR., Deputy County Attorney
JOHANNA S. GARDNER, Assistant County Attorney
CHARLESTON COUNTY ATTORNEY'S OFFICE
Lonnie Hamilton, III Public Services Building
4045 Bridge View Drive
North Charleston, South Carolina 29405
(843) 958-4010

ATTORNEYS FOR RESPONDENT

Charleston, South Carolina
December 18, 2017

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

DEC 20 2017

APPEAL FROM THE ADMINISTRATIVE LAW COURT

S.C. SUPREME COURT

Shirley C. Robinson, Administrative Law Judge

Opinion No. 5516 (S.C. Ct. App. filed September 14, 2017)

Charleston County Assessor, Respondent,

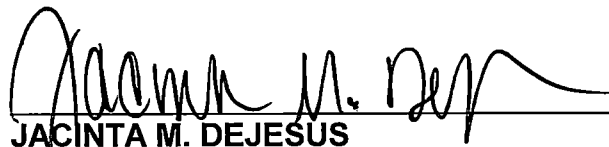
v.

University Ventures, LLC, Petitioner.

PROOF OF SERVICE

I certify that I have served the original and six (6) copies of the **Return to Petitioner University Ventures, LLC's Petition for Writ of Certiorari**, upon the Clerk of the Supreme Court and on all counsel of record by depositing a copy of the same in the United States Mail, postage prepaid, on December 18, 2017, addressed as follows:

Morris A. Ellison, Esquire
William T. Dawson, III, Esquire
WOMBLE BOND DICKINSON (US) LLP
5 Exchange Street
Charleston, South Carolina 29401



JACINTA M. DEJESUS
CHARLESTON COUNTY ATTORNEY'S OFFICE