RECEIVED

SEP 19 2018

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Appellate Case No. 2017-002369

Charleston County Assessor, ... Petitioner-Respondent,

v.

University Ventures, LLC, ... Respondent-Petitioner.

REPLY BRIEF OF PETITIONER-RESPONDENT 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 Petitioner-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 Respondent-Petitioner

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES **PAGE**

STATUTES

LAW / ARGUMENT

I. RESPONSES TO ARGUMENTS BY UNIVERSITY VENTURES

A. Evidentiary Support and Authority to Consider Northbridge

University Ventures ("Taxpayer") mistakenly contends that the Assessor attempts to improperly supplement the record and has waived the right to argue the relevance of the tax year 1999 countywide assessment. (Resp't-Pet'r Reply Br. 17). The problem with Taxpayer's argument is that it ignores the Court of Appeals' *sua sponte* reliance on Northbridge and the 1999 assessment in its opinion. Charleston Cty. Assessor v. Univ. Ventures, LLC, 421 S.C. 194, 805 S.E.2d 216 (Ct.App.2017). The Court of Appeals acknowledged, "the ALC has recognized in several cases in which the Assessor was a party that 1999 was a reassessment year, although the Assessor ultimately delayed the implementation by two years to 2001." Id. at 205, 805 S.E.2d 222 (citations omitted). Taxpayer concedes that the information regarding previous and prospective countywide reassessments was "in response to the Court of Appeals' decision." (Resp't-Pet'r Reply Br. 11). Therefore, the Assessor did not supplement the record or raise any facts that it waived by failing to raise them at the ALC; it merely and permissibly responded to the basis for the Court of Appeals decision and its error.[1]

The Assessor actually agrees with Taxpayer's contention that the issue of "whether the Assessor properly conducted countywide reassessments in various other countywide reassessments, both historic and prospective. . . were not before either the ALC or the

---

[1] It is important to note that the years in the reassessment cycle was not a substantive issue before the ALC. The only testimony on the topic, albeit confusing and misquoted, is testimony elicited by Taxpayer's counsel on cross-examination of the Assessor's witness, which was subsequently included in the Taxpayer's proposed order, adopted by the ALC in its final Order, and affirmed by the Court of Appeals.

Court of Appeals." (Resp't-Pet'r Reply Br. 10). Accordingly, the Assessor's illustration and reconciliation of the 1999 reassessment in response to the Court of Appeals' decision demonstrates the reassessment cycle and how the two-year gap created by the Taxpayer and adopted by the Court of Appeals is a manifest error, and therefore, this portion of the Court of Appeals decision should be vacated.

B. Taxpayer Cannot Challenge Facts Stipulated to at Trial

University Ventures fallaciously attempts to challenge the date of value stipulated to at trial by suggesting the stipulated date of value was improper because it was based on a "3 year" cycle. To bolster that position, Taxpayer claims that "Atkinson Dredging Co. similarly does not authorize, require or support the Assessor's argument regarding its selection of December 31, 2008 as the valuation date." (Resp't-Pet'r Reply Br. 19 (citing Atkinson Dredging Co. v. Thomas, 266 S.C. 361, 223 S.E.2d 592 (1976)). After making this specious argument, Taxpayer repudiates this position and reaffirms the stipulated date of value by stating "[i]n this case, pursuant to South Carolina Code Annotated Section 12-43-217(A) and as determined by the ALC and the Court of Appeals, . . . the appropriate valuation date is December 31, 2008." (Resp't-Pet'r Reply Br. 19).

Notwithstanding Taxpayer's inconsistency, this argument—right or wrong—is not properly before this Court. "A stipulation is an agreement, admission or concession made in judicial proceedings by the parties thereto or their attorneys." Milton P. Demetre Family Ltd. P'ship v. Beckmann, 413 S.C. 38, 50, 773 S.E.2d 596, 602-603 (2014) (citing Kirkland v. Allcraft Steel Co., 329 S.C. 389, 392, 496 S.E.2d 624, 626 (1998)). Furthermore, "[s]tipulations, of course, are binding upon those who make them." Id. The interpretation of a stipulation is addressed to the sound discretion of the trial court and will not be

reversed on appeal absent an abuse of that discretion. Id. at 31, 507 S.E.2d at 337 ("Whether to abrogate the stipulation is addressed to the sound discretion of the trial judge, and an appellate court will not interfere with that decision except when there is a manifest abuse of discretion."). Since Taxpayer concedes that "the parties stipulated to the December 31, 2008, date of value selected by the Assessor," and the ALC adopted the parties' stipulation in its Findings of Fact, this Court should reject the Taxpayer's attempt to challenge the same. Therefore, December 31, 2008, is presumed to be the correct date of value.[2]

---

[2] Assuming, *arguendo*, that there was no stipulation and the Taxpayer was free to choose a date of value other than December 31, 2008, Taxpayer would be left with either December 31, 2009 or December 31, 2007, depending on the tax year it believes the reassessment should be conducted. Taxpayer claims "that the 'true value' of real property for purposes of ad valorem taxation is determined as of December 31 of the year prior to the tax year." (Resp.-Pet'r Reply Br. 19). More accurately, the Lindsey Court held "[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 Com., 302 S.C. 274, 275 n.1, 395 S.E.2d 184, 185 (1990) (citing S.C. Code Ann. § 12-37-900 (1976) and Atkinson Dredging Co. v. Thomas, 266 S.C. 361, 223 S.E.2d 592 (1976)). Nonetheless, for Taxpayer's argument to have vitality (i.e., Taxpayer disagrees with the Assessor's date of value), Taxpayer must claim either 12/31/07 or 12/31/09 as the date of value. Meaning, for the Taxpayer supposition to work, the year in which the Assessor is equalizing and appraising property to set values ("valuation must be complete at the end of the *fourth* year") must be either 2008 (with at date of value 12/31/07) or 2010 (with a date of value 12/31/09). See S.C. Code Ann. § 12-43-217(A) (2015). However, even if either date could be reconciled with the Quadrennial Reassessment Statute's date to conduct the reassessment, neither date of value (12/31/07 or 12/31/09) would achieve Taxpayer's purpose (i.e., its improvements escaping taxation for the reassessment implemented in tax year 2011). See S.C. Code Ann. § 12-37-3140(E) (2013).

Furthermore, there is no evidence in the record to suggest that the December 31, 2008, date of value used by the parties was incorrect. Therefore, the year in which the Assessor was due to conduct the appraisal and equalization program was 2009, not 2008 or 2010. "Property valuation must be complete at the end of December of the fourth year. . .." S.C. Code Ann. § 12-43-217(A) (2015). If 2009 is the end of the fourth year and December 31, 2009 is also the date of value, then it would be an impossibility to conduct the appraisal and equalization program by the end of 2009 and use December 31, 2009 as the date of value. To achieve that purpose, the Assessor would have to appraise and equalize every property prospectively starting early in 2009 given the number of properties in Charleston County based on a fictious real estate market. The same conundrum would hold true if the end of the fourth year were 2008 or 2010.

Taxpayer attempts to blend the date of value with when valuation must be complete defies logic and leads to an absurd result. The date of value and the year in which reassessment is conducted cannot be the same date. The fault in Taxpayer's reasoning is that it acknowledges December 31, 2008, is the correct date of value, but it ignores the fact that the Assessor has to actually conduct reassessment.

C. Taxpayer's "True Value" of the Property Has Not Been Affected by the Two-Year Gap in the Reassessment Cycle

Taxpayer mistakenly contends that the Assessor's alleged two-year gap should result in the Property tax including the completed hotel in 2010, allowing the hotel to escape taxation for the Reassessment implemented in 2011, and reinstating the full property tax assessment including the hotel in 2012 and subsequent years thereafter. (Resp't-Pet'r Reply Br. 15). This application as the Court of Appeals noted is simply absurd. Charleston Cty. Assessor v. Univ. Ventures, LLC, 421 S.C. 194, 207, 805 S.E.2d 216, 223 (Ct.App.2017). Although Taxpayer briefed its arguments at length, it failed to address the State Legislature's adoption of the South Carolina Real Property Valuation Reform Act in 2006, which was intended to compliment the Quadrennial Reassessment Statute not to create an inequity.[3] The South Carolina Real Property Valuation Reform Act provides in pertinent part a method of valuation for added improvements that harmonizes applicable South Carolina laws, rather than creating some windfall for an intervening tax year.

Notwithstanding this clear statutory authority, Taxpayer claims that the lower 2011 tax valuation is a result of the Assessor's creation. However, there is no evidence in the record to support this claim. To the contrary, for all taxpayers in Charleston County, the value of new improvements are added when they are fit for their intended purpose pursuant to S.C. Code Ann. § 12-37-3140(E) (2013). Therefore, the taxation of the

---

[3] "The value of real property for purposes of the imposition of the property tax is subject to the provisions of this article. Except where inconsistent, the provisions of this article are in addition to and not in lieu of other provisions of law applicable to the valuation of real property for purposes of the property tax. If the provisions of this article are inconsistent with other provisions of law, the provisions of this article apply." S.C. Code Ann. § 12-37-3120 (2013).

completed hotel in 2010 trumps the removal of the hotel for taxation in 2011, in accordance with S.C. Code Ann. § 12-37-3140(E) (2013).

The flaw in the Taxpayer's property tax assessment statutory construction is its failure to harmonize to the Quadrennial Reassessment Statute *and* the South Carolina Real Property Valuation Reform Act. "In construing statutory language, the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect. A statute should not be construed by concentrating on an isolated phrase." S.C. State Ports Auth. v. Jasper Cty., 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006) (internal citation omitted).

Notwithstanding the alleged two-year gap, the rules of statutory construction dictate, "[t]he hotel could not be valued as an incomplete hotel because of the statutory requirement that a new structure cannot 'be listed or assessed for property tax until it is completed and fit for the use for which it is intended.'" Charleston Cty. Assessor v. University Ventures, 421 S.C. 194, 208, 805 S.E.2d 216, 224 (Ct.App.2017) (citing S.C. Code Ann. § 12-37-670(A)). It is axiomatic that the General Assembly defines what is fair by virtue of the laws it enacts. In this regard, Taxpayer has failed to identify how the alleged two-year gap results in a misapplication of applicable State laws.

CONCLUSION

For the foregoing reasons, this Court should vacate the Court of Appeals' decision to the extent it holds that the Assessor used a six-year reassessment cycle, instead of a five-year reassessment cycle in accordance with S.C. Code Ann. §12-43-217 (2013).

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 PETITIONER-RESPONDENT

Charleston, South Carolina
September, 17 2018

RECEIVED

SEP 19 2018

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Appellate Case No. 2017-002369

Charleston County Assessor, ... Petitioner-Respondent,

v.

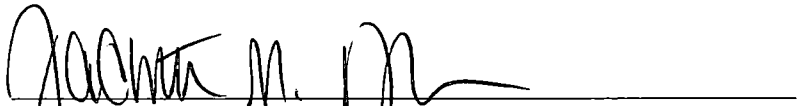
University Ventures, LLC, ... Respondent-Petitioner.

PROOF OF SERVICE

I certify that I have served the original and fifteen (15) copies of the **Reply Brief of Petitioner-Respondent Charleston County Assessor**, 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 September 17, 2018, addressed as follows:

Honorable Daniel E. Shearouse
Clerk of Court
THE SOUTH CAROLINA SUPREME COURT
Supreme Court Building
1231 Gervais Street
Columbia, South Carolina 29201

Morris A. Ellison, Esquire
William T. Dawson, III, Esquire
WOMBLE BOND DICKINSON (US) LLP
Post Office Box 999
Charleston, South Carolina 29402
Attorneys for Respondent



JACINTA M. DEJESUS
CHARLESTON COUNTY ATTORNEY'S OFFICE