THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM
Administrative Law Court

The Honorable Deborah Brooks Durden, Administrative Law Judge

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Case No.: 12-ALJ-17-0126-CC

Mitul Enterprises, L.P.....Appellant

-vs-

Beaufort County Assessor.....Respondent

APPELLANT'S FINAL REPLY BRIEF

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STATEMENT OF ISSUE

Whether Appellant's Issues II, V, and VI, as contained in Appellant's Brief, are preserved for review since they were both raised to and ruled upon by the Administrative Law Court.

ARGUMENT

Appellant's Issues II, V, and VI are all preserved for review and are properly before this Court. In order to be preserved for review by an appellate court, an issue must be raised to and ruled upon by the lower court. E.g. Gause v. Smithers, 403 S.C. 140, 742 S.E.2d 644 (2013) (in order to be preserved for review, an issue must be raised to and ruled upon by the trial judge); Regions Bank v. Owens, 402 S.C. 642, 741 S.E.2d 51 (Ct. App. 2013) (same). Of course, a party does not have to phrase an issue in the exact same terms at trial and on appeal. As long it is clear that an issue was raised to the trial judge, then it is preserved for review. See Herron v. Century BMW, 395 S.C. 461, 719 S.E.2d 640 (2011) (issue is preserved for review if issue was sufficiently clear to be reasonably understood by the judge); S.C. Dep't of Transp. v. First Carolina Corp. of S.C., 372 S.C. 295, 641 S.E.2d 903 (2007) ("[a]lthough SCDOT did not phrase its objection in the exact terms used in the issues on appeal, SCDOT's objection on the basis that the verdict form 'emphasizes damages by its bifurcated nature' provided a meaningful objection with sufficient specificity to allow the trial court to rule on the issue"); State v. Russell, 345 S.C. 128, 546 S.E.2d 202 (Ct. App. 2001) (although defendant did not use the words "corpus delicti" in his motion, it was clear from the record that the motion was made on that ground and argument was preserved for appellate review).

Appellant's Issue II addresses whether the Administrative Law Court erred in using the omitted property statute (S.C. Code Ann. § 12-39-220) to correct a mistake on

Appellant's Assessment and 2009 tax bill caused by a computer error. In its Brief, Appellant contends that at any time prior to the payment of the tax, S.C. Code Ann. § 12-39-250 could have been used to correct the computer error and that once the tax was paid, no one had the ability to assess additional 2009 property taxes based on the computer error.

At the hearing, Appellant raised this argument. For example, in closing arguments, Appellant argued as follows:

> Your Honor, there is a statute that not only -- I pointed it out to you that this statute deals with auditors, but **there's another statute, and that is 12-39-250**. And I've got a -- it deals with the circumstances under which -- there's one for you – under **which the auditor can correct errors**. And if you see, the title of this statute -- first of all, it's under Chapter 39 that deals with county auditors, and it says the duty to correct assessments and other errors. And so this statute deals with the circumstances under which a county auditor could go back and apply the omitted tax statute. And if you read this statute, **every one of the exceptions say at any time before the tax is paid. At any time before the tax is paid. Every one of these deal with situations before the tax is paid.** And here, the respondent concedes we had already paid these taxes, **we paid the full amount that they wanted us to pay, and, you know, we heard from them six months later that they wanted $100,000 more**.

(R. 37, line 5-R. 38, line 2) (emphasis added).

In the Order, the Administrative Law Court framed the issue as "[w]hether the Assessor properly imposed taxes on the value of a newly constructed inn on the subject property for the 2009 tax year via a tax notice correction issued after the original tax bill was paid." (R. 2). The Administrative Law Court then concluded that Respondent had the authority to levy $105,282.48 in additional taxes. (R. 8). Accordingly, Appellant's Issue II was raised to and ruled upon by the Administrative Law Court and is preserved for review.

Appellant's Issue V is also preserved for review. In Issue V, Appellant argues that if the Beaufort County Assessor can exercise the authority of S.C. Code Ann. § 12-39-220, such authority cannot be exercised when the Beaufort County Assessor testified that there is no duplicate as required by S.C. Code Ann. § 12-39-220.

Ed Hughes, the Beaufort County Assessor, testified Beaufort County does not maintain a duplicate and that the Beaufort County tax roll is now produced electronically. (R. 21, lines 17-22). Mr. Hughes also testified that he believes the reference to a duplicate is obsolete. (R. 32, line 24-R. 34, line 3). During closing arguments, Appellant stated that S.C. Code Ann. § 12-39-220, a statute that should be strictly construed against the taxing authority, states "if the county auditor discovers that any real estate or new structure, then they shall immediately charge it on the duplicate." (R. 35, lines 11-14). Appellant also argued that the statute is antiquated and does not make sense given today's technology and that it therefore cannot be applied under these circumstances. (R. 35, line 1-R. 36, line 3).

In the Order, the Administrative Law Court determined that Respondent no longer had a duplicate. (R. 6). The Administrative Law Court then held that the Assessor for the Respondent had the authority to impose additional taxes on Appellant under S.C. Code Ann. § 12-39-220: "Therefore, I must conclude that the Assessor had the authority under Section 220 to discover that property was omitted, to appraise the omitted property, and to assess the tax on any omitted property." (R. 7). Therefore, Appellant's Issue V was raised to and ruled upon by the Administrative Law Court and is preserved for review.

Finally, Appellant's Issue VI is also preserved for review. Appellant argues in Issue VI that the Administrative Law Court erred in allowing Respondent to collect

additional taxes from Appellant when Appellant never received a proper and correct Assessment Notice for those taxes as required by S.C. Code Ann. § 12-60-2510(A)(1).

In its closing argument, Appellant raised this issue to the Administrative Law Court:

> And as you would suspect, there's a statute that says before you go collect tax on property you've got to do certain things. And one of the things they have to do, and they have to mail it prior to October 1st, is they have to mail the tax holder an assessment notice, which they did that here. That included the assessment that was $64,190. They were required to do that under the law. **That assessment notice was required under 12-60-2510**, it was required to state what the property tax assessment was, and it did, 69,000 -- or 65,190. And the assessment notice under this section, it must be in writing and it must include those things. **There is not a single -- there is no assessment notice in the record anywhere, and that's because one doesn't exist, that includes an assessment of the $540,000**. If you go back and look through all the evidence that were admitted in, all the documents that were admitted into evidence, in June of 2010 when they found this out, Mr. Hughes sent a little one-page letter, and he attached to that one-page letter a property tax bill, but **he never sent and [sic] assessment**. And under 12-60-2510, the notice must include the property tax assessment. So what we've got here, Your Honor, and what it boils down to is they're trying to collect -- **they're trying to assess this property for an assessment of $540,000 with no assessment notice, none whatsoever. They absolutely cannot do that. You have -- you are required to send this out to a taxpayer before you go collect the taxes on it, and there's not even one here today**. (R. 38, line 9- R. 39, line 19) (emphasis added).

In its Order, the Administrative Law Court specifically held that the Assessor for Respondent had the ability to assess the tax on any omitted property: "Therefore, I must conclude that the Assessor had the authority under Section 220 . . . to assess the tax on any omitted property." (R. 7). Thus, Appellant's Issue VI was raised to and ruled upon by the Administrative Law Court and is preserved for review.

CONCLUSION

For the reasons contained herein and in Appellant's Brief and as may be raised in any Supplemental Briefs and at oral arguments, Appellant's Issues II, V, and VI are all preserved for review, and the Final Order and Decision of the Administrative Law Court should be reversed as stated herein and judgment entered on behalf of Appellant Mitul Enterprises, L.P.

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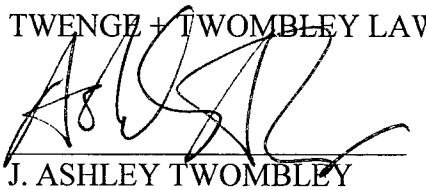
BY: 

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October 4, 2013

CERTIFICATE OF COUNSEL

The undersigned, J. Ashley Twombley, certifies that the herein Final Reply Brief of Appellant complies with Rule 211(b) the South Carolina Appellate Court Rules.

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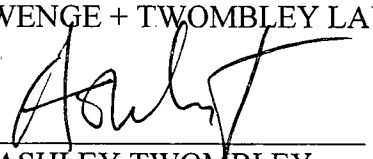
BY: 

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