

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT  
S. Phillip Lenski, Administrative Law Judge

JUL 22 2019

SC Court of Appeals

Case Nos. 14-ALJ-17-0601-CC,  
14-ALJ-17-0602-CC

Fairfield Waverly, LLC, ..... Respondent,

v.

Dorchester County Assessor, ..... Appellant.

and

GS Windsor Club, LLC, ..... Respondent,

v.

Dorchester County Assessor, ..... Appellant.

**BRIEF OF AMICUS CURIAE**  
**SOUTH CAROLINA ASSOCIATION OF REALTORS®**

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### **STATEMENT OF ISSUES ON APPEAL**

Did the Administrative Law Court correctly find that property owners are entitled, on a prospective basis, to the property tax exemption under S.C. Code Ann. § 12-37-3135 (“ATI Fair Market Value Exemption” or “Exemption”) 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 qualified for the Exemption?

### **STATEMENT OF THE CASE AND FACTS**

Pursuant to Rules 213 and 208(b)(c), SCACR, the South Carolina Association of REALTORS® adopts the Statement of the Case, Statement of Facts, and Standard of Review of Respondents Fairfield Waverly, LLC and GS Windsor Club, LLC.

## ARGUMENT

### **THE ADMINISTRATIVE LAW COURT CORRECTLY RULED THAT RESPONDENTS ARE ENTITLED TO THE EXEMPTION.**

In 2011, the South Carolina Legislature enacted Act 57 which added new § 12-37-3135 to Title 12 of the South Carolina Code. Act No. 57, 2011 S.C. Acts 255. As set forth in the preamble to the enactment, the intention was to provide a property tax exemption as follows:

a property tax exemption equal to twenty–five percent of the fair market value of a parcel of real property and improvements thereon undergoing an assessable transfer of interest after 2010, which is currently subject to property tax, and subject to the six percent assessment ratio, to provide that this exemption may not reduce the value of the parcel below its current fair market value as reflected on the books of the property tax assessor, to provide that the fifteen percent cap on increases in value attributable to a countywide reassessment program is calculated on the value of the parcel as reduced by this exemption, to require notice to the assessor to claim this exemption which serves for so long as the property remains subject to the six percent assessment ratio, and to provide definitions applicable for the administration of this exemption[.]

This legislation was hailed by real estate professionals who found that the “point of sale” rules resulted in higher real property taxes and were a hindrance to the sale of commercial real property. See David Slade, *Changes to Property Tax Law Stimulates Some Real Estate Deals*, Post and Courier (Charleston), March 24, 2012 (attached as Exhibit A).

Section 12-37-3135 contains a number of defined terms and was (is) not easily understood by taxpayers. In 2012, the Charleston County Assessor’s office published a “white paper” explaining the mechanics of the new legislation. The Assessor explained:

Property that was at 6% **at the time of sale/transfer may be** eligible for a 25% exemption of value for tax purposes. The owner **MUST APPLY** no later than January 31, 2012 for the exemption to apply for this coming tax year (TY 2012). Failure to apply constitutes a waiver of the discount for the tax year in question. If a taxpayer fails to apply by January 31, 2012, they may apply in January of 2013. However, approvals will not be retroactive.

(Attached as Exhibit B (emphasis added)).

The Department of Revenue, in its Amicus Brief, takes the position and has advised the County Assessors to take the position that the “current fair market value” for purposes of this section morphs into the purchase price of the property and, as a result, the “exemption value” will always be less than the current fair market value and thus subject to § 12-37-3135B)(2). This contrived position ensures that any election to utilize the relief provisions contained in § 12-37-3135 will fail if the election is not made by January 31 of the year following the year of sale.

As a general rule,

Questions of statutory interpretation are questions of law, which we are free to decide without any deference to the court below. The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature. When a statute’s terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning. In interpreting a statute, words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute’s operation. Further, 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.

*In re Estate of Gurnham*, 407 S.C. 194, 203-04, 754 S.E.2d 875, 879 (2014) (citations and quotations omitted). The Administrative Law Court’s ruling applies the plain language of the statute to accomplish the goals intended by the General Assembly.

As pointed out by the Administrative Law Court, the position urged by the Department of Revenue and the Assessor is inconsistent with the language in § 12-37-3135(C) which permits a taxpayer to claim the Exemption “before January thirty-first for the tax year for which the owner first claims eligibility for the election.” (R. at 10). A better reading of § 12-37-3135(A)(2), which would be consistent with § 12-37-3135(C), is that the term “Current Fair Market Value” means the fair market value of a parcel of real property as reflected on the books of the County assessor for the year in which the assessable transfer took place. Such a construction advances the legislative purpose of providing a property tax exemption and prevents the section from being

rendered meaningless. *Denene, Inc. v. City of Charleston*, 352 S.C. 208, 212, 574 S.E.2d 196, 198 (2002) (“The Court must presume the legislature did not intend a futile act, but rather intended its statutes to accomplish something.”).

Further, the Department of Revenue’s argument that “[t]he plain language of § 12-37-3135 indicates that the ‘current fair market value’ of the property is a dynamic – not static – value that may change from year to year” is not correct. Section 12-37-3135 is a stand-alone section and does not rely upon and is not controlled by any other provision within the Code. By the plain language of § 12-37-3135(A), the definitions used in § 12-37-3135(A)(1)-(5) are only applicable to § 12-37-3135. *See* Act No. 57 at Preamble (“to provide definitions applicable for the administration of this exemption”); S.C. Code Ann. § 12-37-3135(A) (“As used in this section”). Thus, the definitions provided in § 12-37-3135 are separate and distinct from those provided elsewhere.

Those definitions are as follow:

(1) “ATI fair market value” means 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.

(2) “Current fair market value” means 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.

(3) “Exemption value” means the ATI fair market value when reduced by the exemption allowed by this section.

(4) “Fair market value” means the fair market value of a parcel of real property and any improvements thereon as determined by the property tax assessor by an initial appraisal, by an appraisal at the time the parcel undergoes an assessable transfer of interest, and as periodically reappraised pursuant to Section 12-43-217.

(5) “Property tax value” means fair market value as it may be adjusted downward to reflect the limit imposed pursuant to Section 12-37-3140(B).

S.C. Code Ann. § 12-37-3135(A)(1)-(5). Given this language, the term “current fair market value” is a static provision and means the fair market value of the property on the Assessor’s books in the year of the sale. The “ATI fair market value” is, in effect, the sales price of the property. These are separate terms with separate meanings. The Department of Revenue’s construction renders the two terms functionally the same.

The 25% exemption is applied to the ATI fair market value to establish a new value for property tax purposes, the “exemption value.” However, “no exemption value calculated pursuant to this section may be less than current fair market value of the parcel.” S.C. Code Ann. § 12-37-3135(B)(2). If after applying the 25% exemption, the value of the property exceeds the “current fair market value”, the “current fair market value” is the new value for property tax purposes. *Id.*

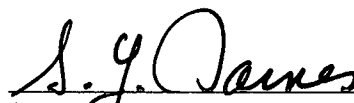
The legislature did not specify a particular year this calculation must be made. In fact, it did the opposite by stating that the Exemption would apply if the taxpayer notified the county assessor “before January 31 for the tax year for which the owner first claims eligibility for the exemption.”

The Department of Revenue in its Statement of Issues on Appeal, its ARGUMENT topic heading and in several places in its Brief, utilizes the phrase “failed to apply” implying an application and approval process. There is, in fact, no application or approval process, but merely a notice given to the County Assessor “that the property will be subject to the six percent assessment ratio... before January thirty-first for the tax year in which the owner first claims eligibility for the exemption.” S.C. Code Ann. § 12-37-3135(C). This language provides that the Exemption is at the election of the property owner and does not suggest, as the Department of Revenue argues, that if the election is not made before January 31 of the year following the assessable transfer the election will result in no tax benefit to the property owner.

CONCLUSION

For the reasons cited herein, this Court should affirm the decision of the Administrative Law Court in ruling that the Respondents would be entitled to the ATI Fair Market Value Exemption allowed by § 12-37-3135.

Respectfully submitted,



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Charleston, South Carolina  
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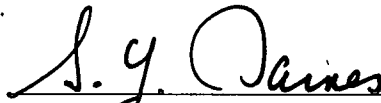
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Dorchester County Assessor, ..... Appellant.

**CERTIFICATE OF COUNSEL**

The undersigned certifies that this Brief of *Amicus Curiae* – South Carolina Association of REALTORS® complies with Rule 211(b), SCACR.



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Dated: July 19, 2019

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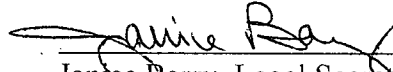
I certify that I have served the *Motion for Leave to File an Amicus Curiae Brief of the South Carolina Association of REALTORS®* and the *Amicus Curiae Brief of the South Carolina Association of REALTORS®* on all attorneys of record by depositing copies of the same in the United States Mail, postage prepaid, on July 19, 2019, addressed to:

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July 19, 2019

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
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SC Court of Appeals

Re: Fairfield Waverly, LLC v. Dorchester County Assessor and GS Windsor Club, LLC v. Dorchester County Assessor; Case Nos. 14-ALJ-17-0601-CC, 14-ALJ-17-0601-CC  
Appellate Case No.: 2017-000569

Dear Ms. Kitchings:

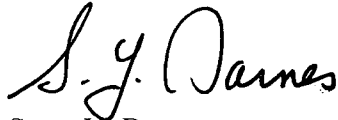
Enclosed please find an original and seven (7) copies of South Carolina Association of REALTORS®'s Motion for Leave to File an *Amicus Curiae* Brief, proposed Amicus Brief, and Proof of Service, together with a check for \$50.00.

I have also enclosed the original and (16) copies of the *Amicus Curiae* Brief for conditional filing in the event the Motion for Leave is granted. Please return the extra clocked copies of both the Motion and the Brief to me in the enclosed self-addressed stamped envelope.

Thank you for your assistance. Please call me if you have any questions.

Sincerely yours,

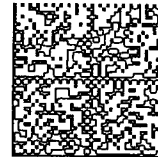
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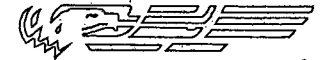
Scott Y. Barnes

SYB/jmb  
Enclosures

cc: Andrew T. Shepherd  
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