

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Honorable George M. McFaddin, Jr., Circuit Court Judge, At-Large

Case No. 2019-CP-18-00360

CCP Storage, LLC.....Appellant,

v.

Dorchester County, Dorchester County Assessor's Office and Wayne Welch, in his capacity as
chief assessor within said office,.....Respondents.

INITIAL BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

1. DID THE CIRCUIT COURT ERR IN GRANTING RESPONDENTS' MOTION TO DISMISS APPELLANT'S COMPLAINT FOR DECLARATORY JUDGMENT BROUGHT IN CIRCUIT COURT FOR LACK OF SUBJECT MATTER JURISDICTION PURSUANT TO RULE 12(b)(1), SCRCP, SINCE THE SOUTH CAROLINA REVENUE PROCEDURES ACT ("RPA") CODIFIED AT S.C. CODE ANN. SEC. 12-60-10, *ET SEQ.*, PROVIDES THE EXCLUSIVE REMEDY FOR CONTESTING THE RESPONDENTS' ASSESSMENT OF APPELLANT'S REAL PROPERTY AND RESULTING TAX LIABILITY?
2. DID THE CIRCUIT COURT ERR IN GRANTING RESPONDENTS' MOTION TO DISMISS APPELLANT'S COMPLAINT FOR DECLARATORY JUDGMENT BROUGHT IN CIRCUIT COURT FOR FAILURE TO STATE FACTS SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION PURSUANT TO RULE 12(b)(6), SCRCP, WHERE THE APPELLANT HAS FAILED TO CHALLENGE THE CONSTITUTIONALITY OF ANY STATUTE AND WHERE APPELLANT'S CHALLENGE IS SOLELY AS TO STATUTORY APPLICATION?

STATEMENT OF THE CASE

Appellant filed this declaratory judgment action in the Dorchester County Court of Common Pleas on February 22, 2019, challenging the assessment of Appellant's real property by the Dorchester County Assessor, Wayne Welch, and the resulting tax liability for tax year 2018. Respondents filed a Motion to Dismiss pursuant Rule 12(b)(1), SCRCPP, for lack of subject matter jurisdiction and Rule 12(b)(6), SCRCPP, for failure to state facts sufficient to constitute a cause of action.

The Respondents' Motion was heard on April 12, 2019, resulting in the Order filed November 12, 2019, granting Respondents' Motion on both grounds.

Appellant filed its Notice of Appeal on November 13, 2019.

STANDARD OF REVIEW

Statutory interpretation is a question of law. *Lightner v. Hampton Hall Club, Inc.*, 419 S.C. 357, 364, 798 S.E.2d 555, 558 (2017). “[T]his Court reviews questions of law *de novo*.” *Id.* (citing *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008)). “The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible.” *Id.* (citing *Mitchell v. City of Greenville*, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015)).

FACTS

The Appellant is the owner of real property in the City of North Charleston, Dorchester County. Complaint p. 1. Appellant constructed a multi-story building on the property and a Certificate of Occupancy was issued by the City of North Charleston on December 7, 2017. Complaint p. 3, Exhibit B. The Dorchester County Assessor (“Assessor”) issued a Notice of Valuation, Classification & Assessed Value (“Notice”) to the Appellant dated August 30, 2018, with an appeal deadline date of November 30, 2018. Complaint p. 3, Exhibit C. Appellant appealed the Notice on December 13, 2018, but missed the deadline of November 30, 2018, as provided for in S.C. Code Ann. Sec. 12-60-2510(A)(3). Transcript p. 20 lines 1-8.

ARGUMENTS

I. THE CIRCUIT COURT LACKS SUBJECT MATTER JURISDICTION FOR THE ISSUES RAISED IN THE APPELLANT’S COMPLAINT BECAUSE THE SOUTH CAROLINA REVENUE PROCEDURES ACT IS SOLE REMEDY FOR A DISPUTE CONCERNING REAL PROPERTY TAXES.

The Appellant miscategorizes the basis for Respondents’ Rule 12(b)(1), SCRCPP, motion as a motion to dismiss for failure to exhaust administrative remedies. Rather, Respondents’ motion is based upon a lack of subject matter jurisdiction in the circuit court for the Appellant’s cause of action as the RPA provides the sole remedy for cases involving the illegal or wrongful collection of taxes or the attempt to collect taxes.

The Respondents' motion pursuant to Rule 12(b)(1), SCRC, alleges that the Court lacks subject matter jurisdiction over this controversy. The RPA provides the exclusive remedy for a dispute concerning real property taxes. S.C. Code Ann. Sec. 12-60-20 sets forth the intent of the General Assembly that the RPA provides a straightforward procedure to determine a dispute concerning property taxes. The Section further states that the RPA must be interpreted and construed in accordance with, and in furtherance, of that intent.

The RPA sets forth a detailed procedure which a taxpayer must follow to contest a property tax assessment and the fair market value of property. S.C. Code Ann. Sec. 12-60-2510 through 12-60-2540. That procedure includes an objection by the property taxpayer to the Assessor, a notice of right to protest the decision of the Assessor, an appeal to the Board of Assessment Appeals, and then an appeal to the Administrative Law Court.

A review of the Appellant's Complaint clearly indicates that the Appellant is contesting the valuation which the Assessor has placed upon its property and the resulting taxes assessed by Dorchester County. Complaint p. 2, Exhibit C. The Appellant alleges that the tax bill issued does not properly reflect the fair market value of its property and that the Assessor violated state law regarding the valuation of Appellant's property. Complaint p. 2-3. The Complaint alleges improper assessment determinations by the Assessor and further alleges that the actual controversy is the amount of taxes owed to Dorchester County. Complaint p. 6. The Complaint contains no allegation that Dorchester County has enacted either an unconstitutional ordinance, or any allegation challenging the constitutionality of a statute. Complaint p. 1-7.

S.C. Code Ann. Sec. 12-60-80(A) specifically provides that there is no other remedy other than the remedies provided for in the RPA in any case involving the illegal or wrongful collection of taxes or attempt to collect taxes. An exception is provided for in S.C. Code Ann. Sec. 12-60-

80(B) which permits a declaratory judgment action to be brought in circuit court where the sole issue is whether a statute is constitutional. This exception, however, does not include a claim that a statute is unconstitutional as applied. As noted above, there is no such allegation in the Appellant's Complaint. If the Appellant believes that the Assessor has failed to properly follow state law, the procedures to be followed to remedy this situation are found in S.C. Code Ann. Sec. 12-60-2510 through 12-60-2540.

The claims made by the Appellant are clearly covered by the RPA because (a) they involve the alleged improper assessment of the value of the Appellant's property and the tax bill which resulted therefrom, and, (b) the RPA exception (S.C. Code Ann. Sec. 12-60-80(B)) is not applicable. Three South Carolina Supreme Court decisions have held that taxpayers may not challenge local property taxes through lawsuits filed in the circuit court, as that would circumvent the requirements and prohibitions of the RPA. In *Brackenbrook North Charleston LP v. County of Charleston*, 602 S.E.2d. 39 (S.C. 2004), a group of taxpayers filed suit in circuit court, seeking a writ on mandamus, and declaratory and injunctive relief, concerning perceived higher millage rates applicable to non-owner-occupied residences. In *B&A Development, Inc. v. Georgetown County*, 641 S.E. 2d. 888 (S.C. 2007), *aff'd as modified* 605 S.E.2d. 551 (S.C. Ct. App. 2004), a group of taxpayers sued the county, county council, school district, and individual county officers in circuit court concerning the assessment of county property taxes and funding of local schools. In both *Brackenbrook* and *B&A Development*, the South Carolina Supreme Court held that the RPA refund claim procedure was the taxpayer's exclusive remedy, and the circuit court actions were dismissed. Finally, in the South Carolina Supreme Court's recent opinion in *Lightner*, the State of South Carolina and South Carolina Department of Revenue (SCDOR) challenged a circuit court ruling that the RPA is only applicable to disputes with SCDOR concerning property taxes and not a

challenge to the collection and retention of admission taxes by the Defendants. The circuit court had ruled that the Respondent in the case was therefore not required to exhaust its administrative remedies under the RPA. The Court reversed the Circuit Court and found the RPA applied to disputes concerning property taxes which may involve the SCDOR or a county or municipality. It noted that Article 9 of the RPA provides procedures for resolving state and county property tax disputes and stated that the preamble of the 2007 amendment intended to include disputes concerning property taxes. The Court found that the RPA was intended to include disputes concerning property taxes. The Court further found that there is no other remedy other than those provided in the RPA in any case involving the illegal or wrongful collection of taxes or attempt to collect taxes. S.C. Code Ann. Sec. 12-60-80(A). The RPA requires if a taxpayer brings an action covered by the RPA in circuit court, the circuit court must dismiss the case without prejudice. S.C. Code Ann. Sec. 12-60-3390.

II. BECAUSE THE APPELLANT'S COMPLAINT FAILS TO ALLEGE A CHALLENGE TO THE CONSTITUTIONALITY OF A STATUTE OR ORDINANCE BUT RATHER ONLY CHALLENGES THE INTERPRETATION AND APPLICATION OF A STATUTE BY THE ASSESSOR, THE APPELLANT'S CLAIMS FAIL TO FALL WITHIN THE RPA EXCEPTION WHICH WOULD ALLOW A DECLARATORY JUDGMENT ACTION IN CIRCUIT COURT.

▷ The second basis for Respondents' Motion to Dismiss was a failure to state facts sufficient to constitute a cause of action pursuant to Rule 12(b)(6), SCRPC. Section 12-60-80(A) provides "there is no remedy other than those provided in this chapter in any case involving the illegal or wrongful collection of taxes, or attempt to collect taxes." Section 12-60-80(B) does provide for an exception, but only when there is a question as to whether a statute is constitutional on its face. In such a facial challenge, a declaratory judgment action may be brought in circuit court. However, the statute limits such challenges to facial challenges to the constitutionality of the statute and clearly prohibits such actions for "as-applied" constitutional challenges.

The Appellant's constitutional challenge is strictly as to whether the Assessor properly applied statutory law in issuing his August 30, 2018, Notice of Valuation, Classification and Assessed Value, and as such, Appellant's challenge falls outside the exception for declaratory judgments actions provided for in S.C. Code Ann. Sec. 12-60-80(B). Complaint p. 3, Exhibit C. "A Facial challenge is an attack on a statute itself as opposed to a particular application." *State v. Legg*, 416 S.C. 9, 13, 785 S.E.2d 369, 371 (2016) (citing *City of Los Angeles, Calif. V. Patel*, 135 S.Ct. 2443, 2449, 192 L.Ed.2d 435 (2015)). "When a party challenges a statute arguing it can never be applied constitutionally, the party is bringing a facial challenge." *Id.* (citing *United States v. Salerno*, 481 U.S. 739, 745, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987)). "A facial challenge is 'the most difficult...to mount successfully,' as it requires the challenger show the legislation at issue is unconstitutional in all its applications." *Id.* at 13-14 (quoting *Salerno*, 481 U.S. at 745, 107 S.Ct. 2095); *Sabri v. United States*, 541 U.S. 600, 604, 124 S.Ct. 1941, 158 L.Ed.2d 891 (2004). "In an 'as-applied' challenge, the party challenging the constitutionality of the statute claims that the application of the statute in the particular context in which he has acted, or in which he proposes to act, would be unconstitutional." *Doe v. State*, 421 S.C. 490, 503, 808 S.E.2d 807, 813-14 (2017) (citing *Ada v. Guam Soc'y of Obstetricians & Gynecologists*, 506 U.S. 1011, 1011, 113 S.Ct. 633, 121 L.Ed.2d 564 (1992) (Scalia, J., Rehnquist, C.J., and White, J., dissenting), *denying cert. to* 962 F.2d 1366 (9th Cir. 1992)). "[F]inding a statute or regulation unconstitutional as applied to a specific party does not affect the facial validity of that provision." *Id.* (citing *Travelscape, LLC v. South Carolina Dept. of Revenue*, 391 S.C. 89, 109, 705 S.E.2d 28, 39 (2011)).

The Appellant's challenge is to the application of the statute and as such, cannot properly be brought in circuit court. Appellant fails to assert a facial challenge to any statute; all assertions and allegations by Appellant are as to how the statute has been applied to the Appellant. In

Appellant's brief, Appellant is correct in that Section 12-60-80(B) is "unambiguous and clear." However, Appellant ignores the second sentence of subsection B which states "[t]his exception does not include a claim that the statute is unconstitutional **as applied** to a person or a limited class or classes of persons." (Emphasis added). The Appellant admits in its Statement of the Case "that the chief assessor for Dorchester County Assessor's Office ... failed to adhere to the provision of S.C. Code of Laws § 12-37-3140(A) as well as Section 6 of Article X of the South Carolina Constitution." The Appellant fails to make any facial challenges to any statute. It simply asserts the Respondents applied the statute incorrectly.

The South Carolina General Assembly has clearly created a procedure to deal with "as-applied" challenges as we have here, the RPA. It clearly acknowledged that questions of facial challenges to constitutionality cannot be addressed by the Administrative Law Court since it is part of the executive branch of government and therefore must be brought before the circuit court. *Ward v. State*, 343 S.C. 14, 18, 538 S.E.2d 245, 247 (2000). Again, the issues Appellant brings forth are "as-applied" challenges.

Because the Appellant's Complaint failed to allege any facial challenge to the constitutionality to any statute or ordinance, the Respondents' Rule 12(b)(6), SCRCF, was properly granted.

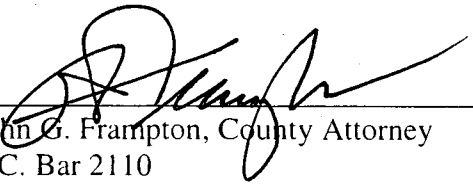
CONCLUSION

The Appellant failed to timely object to the assessment of their property as required by the RPA and now is attempting to circumvent the sole remedy provided by the RPA as well as the sole exception provided in it for a facial constitutional challenge.

For the reasons stated by the circuit Court in its Order herein and for the reasons stated above, this Court should affirm the Order and allow the dismissal to stand.

Respectfully submitted,

January 9, 2020



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Case No. 2019-CP-18-00360

CCP Storage, LLC,.....Appellant,

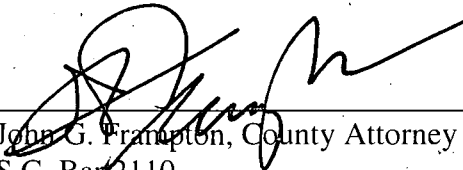
v.

Dorchester County, Dorchester County Assessor's Office and Wayne Welch, in his capacity as
chief assessor within said office,.....Respondents.

PROOF OF SERVICE

I certify that I have served one copy of the Respondents' Initial Brief and Respondents' Designation of Matter to be Included in the Record on Appeal by depositing a copy of each in the United States Mail, postage prepaid, on January 9, 2020, addressed to Appellant's attorney of record, Randolph W. Cooper, 109 River Landing Drive, Suite 100-B, Daniel Island, South Carolina 29492.

January 9, 2020



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RE: *CCP Storage, LLC, Appellant, v. Dorchester County, et al., Respondents*
Case No. 2019-CP-18-00360
Appellant Case No. 2019-001893

Enclosed for filing in the above referenced appeal are the following:

1. One copy of Respondents' Initial Brief.
2. Respondents' Designation of Matter to be Included in the Record on Appeal.
3. Proof of Service.

Sincerely;

A handwritten signature in black ink, appearing to read "John G. Frampton", is written over the typed name.

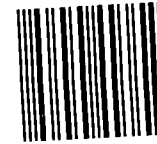
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