

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas**

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Honorable George M. McFaddin, Jr., Circuit Court Judge

JAN 23 2020

SC Court of Appeals

Appellate Case No. 2019-001893

CCP Storage, LLC.....Appellant

v.

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

REPLY BREIF

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ARGUMENTS

Appellant submits this Reply Brief to briefly address the following Respondent's Argument.

A. 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.

The present case is based on only a few facts that both parties recognize as completely uncontestable:

i. The Appellant constructed a building on its property, which construction was completed by the end of December 2017. (Complaint ¶12.)

ii. The Assessor's Office issued a Notice of Valuation, Classification & Assessed Value (Assessment Notice), which acknowledged that the Appellant had completed substantial improvements to its property. (Complaint ¶12, Exh. B.)

iii. The Assessment Notice informed the Appellant that as the result of the Appellant completing substantial improvements, the fair market value of the property would increase to \$6,517,480.00. (Complaint ¶13, Exh. C.)

iv. As a consequence of the re-determination by the Assessor's Office of the fair market value of the property, the Assessor's Office issued a Tax Bill that assessed a tax against the property in the amount of \$163,675.75. (Complaint ¶14, Exh. D.)

Based on these facts, the Respondent asserts that the Appellant must have commenced an action consistent with the provisions of §12-60-80 of the South Carolina Code of Laws, 1976, as amended (the Revenue Procedures Act). Respondent goes on to assert that the Appellant had a period of ninety days to file a notice of objection with the Assessor's Office in compliance with the provisions of §12-60-2510 (A)(3). Finally, Respondent asserts that

the Appellants failed to file a notice of objection in a timely manner and therefore has waived its rights to challenge the actions of the Assessor's Office. Therefore this case should be dismissed without a hearing on the merits.

Respondent's key argument is that §12-60-80 is the sole jurisdictional statute that directs how a resident of the state of South Carolina may bring a civil suit to challenge the actions of a county agency and therefore the provisions of such statute must be strictly adhered.

The Appellant asserts that the actions of the Assessor's Office to re-determine the fair market value of the property on the occasion of the completion of substantial improvements violated the laws promulgated by the General Assembly, specifically §12-37-3140 (A)(1). §3140 (A)(1) identifies only four occasions when a county may re-determine the fair market value of property located within that county. However, the occasion identified by the Assessor's Office is not one of the four occasions listed in § 3140 (A)(1). Therefore, the actions of the Assessor's Office can only be construed as an unlawful exercise of its powers to assess.

The Appellant also asserts that the actions of the Assessor's Office to re-determine the fair market value of the property on the occasion of the completion of substantial improvements is an infringement of the constitutional mandates set forth in Section 6, Article X of the South Carolina Constitution. In Sec. 6, the General Assembly reserved unto itself the exclusive right to establish legislation as to the method and timing of assessment of real property within the State and specifically prohibited any county or other political subdivision the legislative authority to enact its own laws or ordinances.

“The General Assembly is authorized, by general law, to define “fair market value” and to define when property has been improved or when losses have occurred to change the value of the real property. The General Assembly shall establish, through the enactment of general law, and not through the enactment of local legislation pertaining to a single county or other political subdivision, the method of assessment of real property within the State that shall apply to each political subdivision within the State.”

To make sense of the actions of the Assessor’s Office would require a recognition of the validity of the acts of the Assessor’s Office to create a fifth occasion. However, it is clear such an action specifically contravenes the mandates of the General Assembly.

Although it is clear, based on the undisputed facts of this case, the actions of the Assessor’s Office violated both §12-37-3140 (A)(1), as well as Article X, Sec. 6 of the South Carolina Constitution, the Respondent would have the Appellant first commence an action in an administrative procedure in which the County would be called on to rule as to the legality of its own actions, appealable to an ALJ which is part of the executive branch. (§ 12-60-2540.) The Appellant asserts that the proposed course of action is in contravention to the holdings of the South Carolina Supreme Court espoused in the case of *Ward v. State of South Carolina*, 343 S.C. 14, 538 S.E.2d 245 (2000). In *Ward*, the Court specifically addressed the breadth of §12 -6-0-80. The Court in *Ward* stated:

that as a general rule, if the sole issue posed in a particular case is the constitutionality of a statute, a court may decide the case without waiting for an administrative ruling.

Since the ALJ is part of the executive branch, to permit it to determine whether the Assessor’s Office acted within the confines of the state statutes and state constitution must be construed as a violation of the separation of powers doctrine. *Id* at 18 538 S.E. 2d at 249. Therefore, as the ALJ is disqualified from hearing such matters, the only court that should have proper jurisdictional authority should be the circuit court.

The Respondent asserts that §12-60-80 is the only jurisdictional statute that governs how a party may bring an action to challenge the validity of the actions of a county or the actions of an official in the conduct of his work, citing the language of Para. (A) of said statute, which refers to certain type of cases involving a “wrongful collection of taxes, or an attempt to collect taxes.” In the present case, the Appellant is not asserting that the Assessor’s action of collection or its attempt to collect is unlawful. The Appellant fully recognizes the right of the County to collect real property taxes from property owners located within said county. However, the Appellant is challenging the right of the Assessor’s Office to establish an additional occasion, not listed in §12-37-3140 (A)(1) as it violates the mandates set forth in Art. X, Sec. 6 of the Constitution. The Appellant asserts the statutory authority for originally commencing the action in circuit court is contained within §15-53-30. This Code Section specifically provides that a party may seek a declaration of rights before the circuit court in a matter in which the construction or validity of an ordinance is in question. Referring to the Assessment Notice, the reasons cited for the Notice was “New Construction” and “Nov Change”. (Complaint ¶13, Exh. C.) The essence of the actions of the Assessor’s Office is that it is creating its own ordinance. The Appellant is challenging this new ordinance which the County has created and which the Appellant asserts violates the Constitution of South Carolina. Therefore, the action of the Appellant to originally file a suit in the circuit court is lawful and completely complies with the statutory requirements of §15-53-30.

CONCLUSION

The Appellants were authorized under the jurisdictional authority extended to it under the provisions of §15-53-30 to file an action originally with the circuit court. Therefore the case should be remanded to the circuit court with the instructions that the circuit court shall conduct a hearing to determine whether the Assessor's Office had the lawful authority to re-determine the amount of taxes that should be paid for the tax year 2018.

Respectfully submitted,
January 22, 2020



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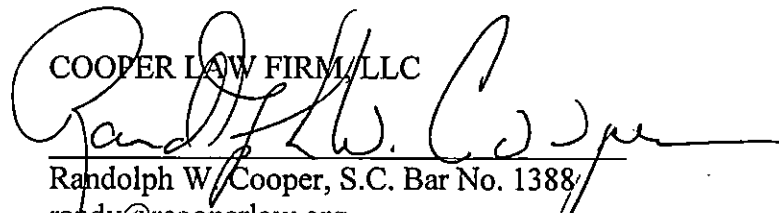
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CERTIFICATE OF COUNSEL

The undersigned certifies that the Reply Brief of Appellants complies with Rule 208(a), SCACR

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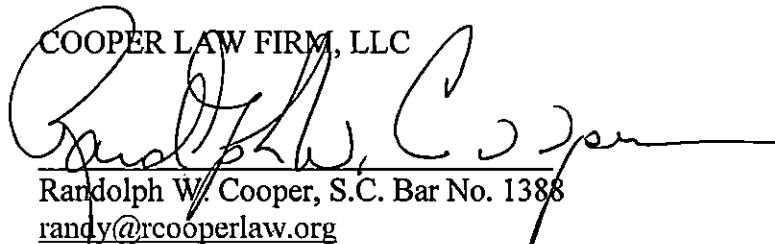
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PROOF OF SERVICE

I certify that I have served Appellant's Reply Brief on Respondents, by depositing copies with UPS for next day delivery, on January 22, 2020, addressed to John G. Frampton, Esquire and Bradley A. Mitchell, Esquire, 201 Johnston Street, St. George, S.C. 29477.

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January 22, 2020

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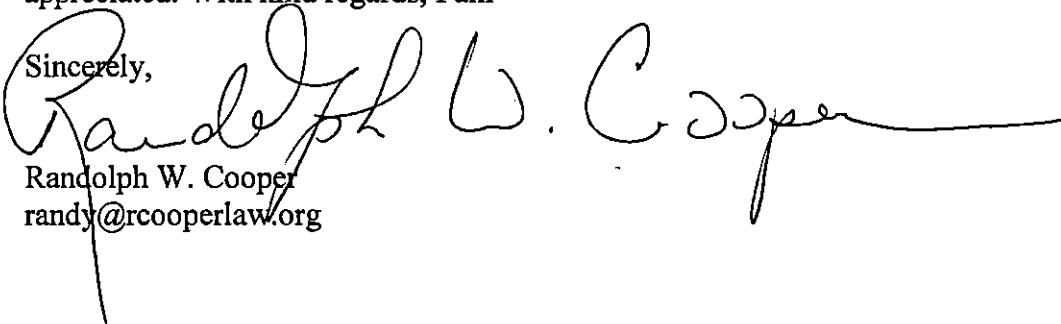
Your Honor:

In connection with the above referenced case, I have enclosed the following:

Appellant's Reply Brief

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