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

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

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FINAL BRIEF OF APPELLANTS

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TABLE OF CONTENTS

PAGES

Table of Authorities.....ii

I. Statement of Issues on Appeal.....1

II. Statement of the Case.....1

III. Statement of Facts.....2

IV. Standard of Review.....2

V. Argument.....3

VI. Conclusion.....16

TABLE OF AUTHORITIES

PAGES

CASES

B & A Development, Inc. v. Georgetown County
361 S.C. 453, 605 S.E.2d 551 (2004).....8

Brackenbrook, LP v. County of Charleston
360 S.C. 390, 602 S.E.2d 39 (S.C. 2004).....6, 7, 8

Bugsy's, Inc. v. City of Myrtle Beach
340 S.C. 87, 93, 530 S.E.2d 890, 893 (S.C. 2000).....12

Evans v. State of South Carolina
344 S.C. 60, 543 S.E.2d 547 (S.C. 2001).....15

Grier v. AMISUB of S.C., Inc.
387 S.C. 532, 725 S.E.2d 693 (S.C. 2012).....3

Hodges v. Rainey
341 S.C. 79, 533 S.E.2d 578 (S.C. 2000).....6, 15

Jones v. State Farm Mutual Automobile Insurance Co.
364 S.C. 222, 612 S.E.2d 719 (Ct. App. 2005).....3

Lightner v. Hampton Hall Club, Inc.
419 S.C. 357, 798 S.E.2d 555 (S.C. 2017).....9

Riverwoods, LLC v. County of Charleston
349 S.C. 378, 563 S.E.2d 651 (S.C. 2002).....7, 8

Shelley Construction Company Inc. v. Sea Garden Homes, Inc
287 S.C. 24, 336 S.E.2d 488 (Ct. App. 1985).....6

Storm M.H. v. Charleston County Baord of Trustees
400 S.C. 478, 735 S.E.2d 492 (S.C. 2012).....13, 15

TNS Mills, Inc. v. South Carolina Department of Revenue
331 S.C. 611, 624, 503 S.E.2d 471, 478 (S.C. 1988).....4

Ward v. State of South Carolina
343 S.C. 14, 538 S.E.2d 245 (S.C. 2000).....10, 11, 12

STATUTES

S.C. Code of Laws § 12-37-223 (A).....7

S.C. Code of Laws § 12-37-3140.....1, 2, 3, 4, 8, 9, 10, 11, 12

S.C. Code of Laws § 12-43-285 (B).....8

S.C. Code of Laws § 12-60-10 6

S.C. Code of Laws § 12-60-80 .....1, 2, 3, 6, 9, 10, 13

S.C. Code of Laws § 12-60-410 3

S.C. Code of Laws § 15-53-30.....1

OTHER AUTHORITIES

S.C. Constitution, Article X, Section 6.....1, 2, 5, 8, 9, 10, 12, 14, 15

I. STATEMENT OF ISSUE ON APPEAL

Did the circuit court err in its statutory construction of S.C. Code of Laws §12-60-80, by interpreting such statute as denying the Appellant the right to bring an action for Declaratory Judgment in accordance with the provisions of S.C. Code of Laws § 15-53-30 without having to first exhaust its administrative law remedies?

II. STATEMENT OF THE CASE

On February 22, 2019, Appellant filed a declaratory judgment action seeking a declaration that the chief assessor for the Dorchester County Assessor's Office (the Assessor's Office) failed to adhere to the provisions of S.C. Code of Laws § 12-37-3140(A), as well as Section 6 of Article X of the South Carolina Constitution. Specifically, the Appellant asserted that the Assessor's Office did not have the right to reassess the value of property owned by the Appellant on the occasion of the Appellant's completion of substantial improvements to its property, because the reason cited by the Assessor's Office for the conduct of the re-appraisal was not listed as an occasion approved by the State Assembly consistent with the governing statutes. (R. p. 010 - 011, ¶17-20.) On March 1, 2019, the Respondents filed a motion to dismiss pursuant to Rule 12(b)(1) and Rule 12(b)(6), SCRCP. (R. p. 016-018) (R. p. 022, lines7-11.) On April 12, 2019, The Honorable George M. McFaddin, Jr., Circuit Court Judge for Dorchester County, heard both the Appellant's request for a declaratory judgment and the Respondents' motion to dismiss. On November 12, 2019, the Circuit Court issued its order granting the Respondents' motion to dismiss. (R. p. 001-004.) Thereafter, the Appellant filed its Notice of Appeal with the South Carolina Supreme Court and the Clerk of Court for the 18th District on November 13, 2019. (Notice of Appeal.)

III. STATEMENT OF FACTS

The Appellant is the owner of a parcel of land located in the county of Dorchester, South Carolina, identified as 5146 Ashley Phosphate Road, North Charleston, South Carolina 29418, TMS# 172-00-00-066. (R. p. 006 ¶ 3) (R. p. 031, lines 3-5) The Appellant has owned this vacant parcel of land since 2006, each year paying approximately $25,000.00 in property taxes to the County. (R. p. 008 ¶ 9) (R. p. 010-011 ¶ 19.) On or about September of 2016, the Appellant commenced the construction of a multi-story building and completed construction of the building and related improvements on or about December 2017. (R. p. 008 ¶ 12) (R. p. 031, lines 18-22,)

In the fourth quarter of 2018, the Assessor's Office issued a Notice of Valuation, Classification & Assessed Value in which the Assessor's Office asserted that as the Appellant has completed construction of substantial improvements, the Assessor's Office has the lawful right to re-determine the value of the property. (R. p. 031, lines 22-25) (R. p. 060.) In the notice of reassessment, the Assessor's Office asserted that the value of the property had changed to $6,500,000.00 (R. p. 031, line 25) (R. p. 060). In the fourth quarter of 2018, Assessor's Office issued to the Appellant a tax bill in which Dorchester County assessed a real property tax against the property in the amount of $163,675.75. (R. p. 032, lines 1-4) (R. p. 064.)

The Appellant made numerous attempts to discuss the amount of the tax bill with the Assessor's Office, but the Assessor's Office refused to reconsider the matter. (R. p. 009 ¶ 14.)

IV. STANDARD OF REVIEW

This appeal is from a motion to dismiss ultimately interpreting various statutory provisions of S.C. Code of Laws § 12-60-80 and §12-37-3140, as well as Section 6 of Article X of the South Carolina Constitution. There are no material factual disputes for purposes of this appeal and

interpreting a statute(s) is a question of law. *Jones v. State Farm Mutual Automobile Insurance Co.,* 364 S.C. 222, 612 S.E.2d 719 (Ct. App. 2005).

V. ARGUMENT

The Circuit Court Erred In Interpreting §12-60-80 As To Require The Appellant To Exhaust Its Administrative Remedies Before Commencing An Action In The Circuit Court

The Circuit Court's order, based on a finding that §12-60-80 prohibits a taxpayer from pursuing a civil action in the circuit court that involves the challenge to the collection of taxes or attempt to collect taxes before exhausting its remedies set forth in § 12-60-410 (Supp. 2003) et. seq., is clearly erroneous, impermissibly adds words to §12-37-3140(A) that simply are not there, and fails to harmonize the mandate of the South Carolina Legislative Assembly with the actions taken by the Dorchester County Tax Assessor's Office.

S.C. Code §12-60-80(B), which grants to a property owner the right to proceed in a declaratory judgment action in the circuit court in the first instance, without having to first exhaust its administrative remedies, in those actions that challenge the constitutionality of the actions taken to collect a tax, is unambiguous and clear.

A. S.C. Code Ann. § 12-37-3140(A)(1)

The South Carolina Supreme Court has held that 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. *Grier v. AMISUB of S.C., Inc.*, 397 S.C. 532, 525 S.E. 2d 693 (2012). S.C. Code § 12-37-3140(A)(1) identifies the four occasions when it is appropriate for

a county assessor's office to re-determine the fair market value of property that lies within the jurisdiction of that county:

(1) the base year, 1976,

(2) December 31 of the first year in which an assessable transfer of interest has occurred,

(3) as determined on appeal, and

(4) as may be adjusted as determined in a countywide program.

The decision of the Dorchester County Assessor to re-determine the value of the property was based on the sole fact that the property had undergone new construction. (R. p. 060.) In order to support the position of the assessor's office, a fifth additional provision would need to be identified in the statute, one that would permit the assessor's office to adjust values at the time a property owner should complete substantial improvements to his property. In *TNS Mills, Inc. v. S.C. Department of Revenue,* 331 S.C. 611, 624, 503 S.E.2d 471, 478 (1988), the Court has held that "[s]tatutes, as a whole, must receive practical, reasonable, and fair interpretation, consonant with the purpose, design, and policy of lawmakers. Subtle or forced construction of statutory words for the purpose of expanding a statute's operation is prohibited." *Id.* p. 624, S.E.2d at 478. The purpose for enacting such statute was to ensure that the levies issued by the counties would be fair, equitable and uniform to all residents of the state of South Carolina. The General Assembly's actions to regulate the occasions in which a reassessment may be made is without doubt: the State wished to override any attempt by a local government to create its own regulations or ordinances. It is clear, based on a reading of § 12-37-3140(A)(1), that the Assessor's Office did not have the authority to adjust the value of the Appellant's property in 2018, as the reason identified in the Notice of Valuation, Classification & Assessed Value, "New Construction" is not listed among

the four occasions in which the Legislature has authorized a county to act. Therefore the Circuit Court should have ruled in favor of the Appellant's request that the Circuit Court direct the Assessor's Office to revise the tax bill consistent with the laws of the state of South Carolina. The Appellant also cites additional authority supporting its position in Section B below. As the Assessor's Office has violated the laws of the State, it should not be necessary that the Appellant first exhaust its administrative remedies as set forth in the Act, and therefore it may proceed directly to the circuit court for the issues to be decided de novo.

B. Section 6, Article X of the South Carolina Constitution

In accordance with the terms of Section 6, Article X of the South Carolina Constitution, the South Carolina General Assembly has identified only two occasions when the Assembly deemed appropriate those specific occasion when a county may adjust the value of property located within such county's boundary: (i) every five years, or (ii) in the event of an assessable transfer of interest occurs. The South Carolina Legislature also made it clear that the power and authority to regulate the methods and occasions for adjusting the value of property located within the state of South Carolina vests solely with the General Assembly by stating "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." (S.C. Const., art. X, § 6.) Thus it is abundantly clear that the South Carolina General Assembly has explicitly reserved solely unto itself the authority to establish how and when values may be adjusted, which values serve as a basis for fixing the tax liability. Based on the language recited above, it is clear that the General Assembly did not extend to the counties the power to establish the occasions on which the value of property located within its boundary, may be adjusted. The

cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000.) In order to validate the actions of the Assessor's Office, the Circuit Court would be required to uphold the Assessor's action of establishing an additional event that allows the County to adjust the value of property. The right of the Circuit Court to recognize the authority as being vested in Dorchester County to adjust the value is completely inconsistent and contradicts the well settled laws of this state. In *Shelley Construction Co. v. Sea Garden Homes, Inc.,* 287 S.C. 24, 28, 336 S.E.2d 488, 491 (Ct. App. 1985), the South Carolina Court of Appeals held that "We are not at liberty, under the guise of construction, to alter the plain language of [a] statute by adding words which the legislator saw fit not to include."

As the General Assembly has reserved to itself the exclusive right to regulate the occasions which are deemed appropriate to readjust values, the Circuit Court should have ruled the actions of the Dorchester County Assessor's Office as being in violation of the South Carolina Constitution and therefore unenforceable. To hold otherwise, as the Circuit Court erroneously did, requires that it ignore the mandates of the General Assembly as well as the rules of statutory construction.

C. S.C. Code § 12-60-80 (Supp. 2003)

1. The Respondents' reply to the requests set forth in the Appellants' Complaint is that Appellant should first be required to exhaust the administrative appeals procedure as set forth in S.C. Code of Laws § 12-60-10 et. seq. (R. p. 022, lines 12-18.) The Respondents have sought to rely on three South Carolina Supreme Court cases. The first, B*rackenbrook North Charleston v. County of Charleston,* 360 S.C. 390, 602 S.E.2d 39 (2004), an action was brought by a group of

taxpayers, each owning property commonly referred to as "commercial property", to enforce a ruling originally issued in the case in *Riverwoods, LLC v. County of Charleston*, 349 S.C. 378, 563 S.E.2d 651 (2002) by the South Carolina Supreme Court. The facts of *Riverwoods* are as follows: (i) Charleston County adopted Ordinance 1163 (City Ordinance) pursuant to the authority granted to the counties by the General Assembly by S.C. Statute §12-37-223A (Supp. 2001), (ii) the Ordinance provided in part that an increase in the amount of a tax against property that is classified as a taxpayer's "primary residence" is to be capped by an increase of no more than 15%; and (iii) a group of taxpayers, owning commercial property, sought injunctive relief in which they asserted that the application of the City's Ordinance was invalid as the City Ordinance was inconsistent with the terms of §12-37-223A. The Supreme Court agreed with the taxpayers and held that for an ordinance to be valid it must be consistent with the general law of the State, i.e. the enabling legislation. Id. p. 386, S.E.2d at 659. Subsequent to the Court's ruling in *Riverwoods*, the same parties filed an injunctive action with the circuit court seeking the enforcement of the Court's ruling in *Riverwoods.* The trial court denied the petitioner's request for injunctive relief and the taxpayers filed an appeal. The Court's findings in *Brackenbrook* could be summarized by stating that the Court had already addressed the issue in a previous case (*Riverwoods*), and as such, the County is bound to take whatever remedial action as the Court has required without the Court issuing a writ of mandamus or injunctive relief. *Brackenbrook North Charleston v. County of Charleston,* 360 S.C. 390, 400, 602 S.E.2d 39, 49 (2004). Therefore the sole issue before the Court in *Brackenbrook* was whether the plaintiff must first exhaust its administrative remedies as set for forth in the Act. The Court ruled that the plaintiff must exhaust its administrative remedies, but in its ruling noted that the legal issue related to the validity of the City Ordinance had already been ruled upon. Therefore the case in *Brackenbrook* did not present any new legal issue for the Court

to decide. Rather, the matter was purely enforcement, such an action better suited to be brought before the governing local appeal board with the right to appeal to the administrative court. In the present case the facts are materially different from those presented in *Brackenbrook*. The actions of the Assessor's Office must be ruled upon in light of the terms of §12-37-3140(A). Similar to the legal analysis in *Riverwoods*, the Court is called upon to rule whether the actions of the Assessor's Office are valid considering the mandate of the General Assembly espoused in ¶6 of art. X of the S.C. Constitution and restrictive language of § 12-37-3140(A). Since the actions of the Assessor's Office have been challenged as violating the mandates of ¶6 and -3140(A), the Court should rule consistent with its holdings in *Riverwoods* that such actions merit the attention of the circuit court, with the right to appeal any decision to the S.C. Court of Appeals.

The Respondents also cite as authority to support their position that the Appellant must first exhaust its administrative law remedies *B & A Development, Inc. v. Georgetown County*, 361 S.C. 453, 605 S.E.2d 551 (2004). In that case, the petitioner asserted that the amount needed to fund the yearly school operations for that county was overstated, which overstatement led to an improper millage and consequently a tax liability that was incorrect. The key distinction between the present case and *B & A Development* is that the counties are specifically empowered to determine the yearly millage in accordance with the provisions of S.C. Code Ann. §12-43-285(B) (Supp. 2003). In the present case there is no such enabling statute that extends to the counties the authority to establish an additional event under which it may adjust the value of property owners. As the General Assembly has chosen not to grant to the counties and local authorities the discretion to enact additional provisions related to the reassessment statute, the Circuit Court should have ruled that the actions of the Assessor's Office were a breach of S.C. Constitution art. X, §6. As such breach can only be construed as a constitutional breach, the Appellant was within its rights

in accordance with the terms of § 12-60-80 (B) to initiate an actions in the first instance in the circuit court.

The third case cited by the Respondents is *Lightner v. Hampton Hall Club, Inc.*, 419 S.C. 357, 798 S.E.2d 555 (2017). In *Lightner*, the plaintiff operated a private club. The S.C. Department of Revenue collected an admissions tax on club dues paid by its members. The plaintiff in that action asserted three causes of action:

(1) A claim for damages based on a quantum meruit theory,

(2) A claim that the defendant's actions were unlawful, and

(3) A claim that the actions of the Depart. of Revenue were a breach of fiduciary duty.

The plaintiff also filed a motion for certification of class so that the plaintiff could bring such suit as a class action. The defendants filed a motion to dismiss pursuant to Rule (b)(6), SCRCP. The Court in rendering its holdings found that the issue of the collection of a tax on club dues from its members was within the parameters of S.C. §12-60-80, as such statute was not limited to matters of collection of property taxes only. Since §-80 applies, a class action cannot be maintained by the plaintiff, and as the plaintiff did not assert whether the actions of the Depart. of Revenue raised a constitutional challenge of a statute, the plaintiff must first exhaust its administrative remedies before commencing an action in circuit court. The facts in the present case are clearly distinguishable from those of *Lightner*. In the present case, the Appellant is requesting the circuit court to address whether the actions of the Assessor's Office are consistent with the mandates of §6 of art. X as well as whether the actions of the Assessor's Office are consistent with the provisions of §12-37-3140(A). The requests of the Appellant requires the circuit court to interpret the intentions of the State Assembly in its promulgations of §6 as well as whether the actions of

the Assessor's Office are permitted as a permissible occasion described in -3140(A). The issues before the circuit court involve the constitutional interpretation of a provision of the S.C. Constitution as well as a constitutional interpretation of a state statute, specifically whether such statute should be interpreted broadly to construe the actions of the Assessor's Office as valid, or should the statute be given its ordinary meaning thereby holding the actions as being in violation of said statute and therefore invalid. As the issues before the circuit court require an interpretation of a section of the Constitution and state statute, the Court of Appeals should rule that the matter involves a constitutional challenge that lay properly before the circuit court and therefore should be remanded to the circuit court with instructions consistent with the holdings of this Court of Appeals.

2. Respondents' sole argument is that § 12-60-80 requires a party to first exhaust its administrative law remedies under the Act before it may commence an action in circuit court. (R. p. 016-018.) However, the South Carolina Supreme Court in several cases have identified certain situations in which a party may bring an action initially in the circuit court without first having to exhaust its administrative law remedies. The Appellant asserts that the actions of the Assessor's Office to adjust the property value of the Appellant's property contravenes the mandates S.C. Const. art. X, §6, which Section reserves unto the General Assembly the exclusive authority to regulate the specific occasions when it is appropriate for a county to reassess the value of property located within its boundaries. This disregard of the provisions of §6 by the Assessor's Office and the failure of the Assessor's Office to follow the provisions of § 12-37-3140(A) must be construed as a constitutional breach. In the case of *Ward v. State of South Carolina,* 343 S.C. 14, 18-19, 538 S.E.2d 245, 249-250 (2000), the Court has identified several instances in which a party may pursue an action in circuit court before exhausting its administrative remedies contained

in the Act. The present case involves a challenge by the Appellant of the Assessor's Office's interpretation of §-3140(A). The Appellant asserts that the Assessor's Office had no authority to reassess the value of the Appellant's property at the time of the completion of the construction of improvements to the property, that such action can only be characterized as a constitutional breach of the S.C. Constitution and the recognized laws of the state. In *Ward*, the Supreme Court has held:

> ...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.

Id at 18-19, 538 S.E.2d at 249-250.

The Respondents draw a fine line between the constitutional interpretation of a statute versus determining the constitutionality of the actions of a local agency in its application of specific parameters contained within a state statute. The Respondents assert that the Appellant has failed to show that an issue of the constitutional interpretation of a state statute exists. (R p. 023-024). The Respondents' sole argument is that there is a distinction between a constitutional interpretation of a state statute and the constitutional interpretation of a state statute in its application of actions of a local agency" (R p. 023-024.) This distinction that the Respondents call for has no legal merit. In both situations the court, in arriving at its decision, must first ascertain the meaning and breadth of a statute. The Supreme Court has stated that to require a party to go before an agency or ALJ who cannot rule on the constitutionality of a statute would be a futile act. Id at 19, 538 S.E.2d at 250. In the present case, the Respondents would be calling upon their own office and that of an administrative law judge to interpret whether their actions were constitutional or, as the Appellant has asserted, an exercise that exceeds the authority granted to a county pursuant to -3140(A). The Supreme Court has described such action as a "futile act" and an inefficient way to determine whether the Assessor's Office acted in accord with the mandates set forth in S.C. Const. art. X, §6, as well as -3140(A). Id at 19, 538 S.E.2d at 250.

3. The General Assembly has recognized that it may be prudent in certain cases to confer to local government the authority to issue its own ordinances and regulations. Such laws are commonly referred to as "Enabling Statutes". In the present case, the actions of the Assessor's Office is tantamount to its establishment of its own ordinance that would authorize the reassessment of property within its jurisdiction in the event substantial improvements are made to a piece of property, as such specific authority is not specifically granted to a county under the provisions of § 12-37-3140(A). However, the General Assembly has not seen it fit to issue any sort of enabling statute as it concerns the identification of events when a county may reassess property values. In fact, the General Assembly's action of modifying § 6 of Art. X of the S.C. Const. (the identification of events at which time a county may reassess property values) has been explicitly reserved to the General Assembly (S.C. Const. X, § 6.) The Supreme Court in *Bugsy's Inc. v. City of Myrtle Beach*, 340 S.C. 87, 93, 530 S.E. 2d 890, 893 (2000) has stated

> Determining whether a local ordinance is valid is a two-step process. The first step is to determine whether the [county] had the power to adopt the ordinance. If no power existed, the ordinance is invalid. If the county had the power to enact the ordinance, the second step is to determine whether the ordinance is consistent with the Constitution and general laws of the State.

Id. p 93, S.E.2d at 893. Applying the two-step test espoused in Bugsy's, the county's actions of reassessing the value in the event of substantial improvement fails at both levels. As stated earlier the General Assembly has chosen not to enact an enabling statute of the kind that would grant to the county the authority to establish events additional than those listed in §– 3140(A). Secondly, such an ordinance would fail since the list of events identified in §– 3140(A) do not include such an event. Therefore, the actions of the Assessor's Office must be construed as a constitutional breach of the S.C. Constitution and the governing statute.

4. Although Respondents argue that S.C. Code § 12-60-80 (Supp. 2003) represents the laws of the State without exception, the holding of the S.C. Supreme Court in *Storm M. H. v. Charleston County Board of Trustees*, 400 S.C. 478, 735 S.E.2d 478 (2012) would suggest otherwise. In *Storm M. H.*, the Supreme Court stated that the general rule is that administrative remedies must be exhausted absent circumstances supporting an exception to the application of the general rule. However, in *Storm M. H.*, the Court also identified several exceptions when or where it would be appropriate to commence an action in the circuit court without having first exhausted its administrative remedies. One such exception is in the case where an important public interest and resolution would promote judicial economy. The recited exception would apply to the present case because the Assessor's Office has decided of its own accord that it is lawful to reassess the value of a piece of property on the occasion of improvements being made to the property. In today's economy, where there exists a shortage of office and commercial space in many populated counties, it is often the decision of the property owner to make substantial improvements to the property for various economic reasons, such as to increase the unit capacity or to increase rental rates. These type of improvements typically cause the value of such property to increase significantly. If a county has the right to reassess on the occasion of a property owner making substantial improvements, then it stands that it is very likely that the situation that the Appellant is dealing with is also being experienced by many other residents of the state and therefore a judicial resolution would promote judicial economy. As the Respondents argue that there are no exceptions to the rule of the exhaustion of administrative remedies, to which position the Court has identified several exceptions in which it would be appropriate to commence an action in circuit court prior to the exhaustion of the administrative remedies, the Court should rule that the Circuit Court has

erred in its ruling and should remand the present case to the circuit court to re-hear the case consistent with the findings of this Court.

5. Prior to the enactment of § 6, art. X of the S.C. Const., the general policy of the various county assessor's offices was to use the occasion of a sale of property as the appropriate occasion to reassess. The problem with such application is that it resulted in the inequitable shift of taxes to new houses constructed and sold in a community. Residential homes held in the same family for multiple generations bore a disproportionately small portion of the tax burden as the values of the properties were assessed well below market. The General Assembly recognizing that the large disparity created under existing law, passed in 2006, a modification of § 6 which identified two occasions when the Assembly deemed it proper to conduct a reassessment of values of property. Under the modification of the constitution, in addition to the occasion of a transfer of property, it also required all counties to conduct a state wide reassessment of the values of properties located within each county every five years in order that the "Property tax levies shall be uniform to persons and property within the jurisdiction of the body imposing such taxes" (S.C. Constitution art. X, § 6.) The General Assembly recognizing the importance of having a uniform policy consistent throughout the state, reserved unto itself the sole right to ascertain what other events it would deem proper to authorize a reassessment of value. In the present case, the Assessor's Office has chosen to disregard the mandates issued by the General Assembly when it decided that it could reassess properties on the occasion of the completion of substantial improvements to property. For this Court to approve the actions of the Assessor's Office would create a dangerous precedent of permitting local government to create its own laws and regulations any time a county arbitrarily decides that the actions of the General Assembly are not up to date or obsolete, or even to its liking. Such action could only be described as an erosion of state powers

in favor of local authority. The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. *Hodges v. Rainey*, 341, S.C. 79, p. 85, 533 S.E.2d 578 p. 584 (2000). Acknowledging the clear intent of the General Assembly as expressed in §6, any action taken by the Assessor's Office inconsistent with the Assembly's intent should be treated as unconstitutional act and considered as invalid. As the acts of the Assessor's Office have ramifications state wide, the Appellant asserts that it would be inappropriate to require Appellant to exhaust the various levels of hearings as required by the Act before it can commence an action filed in the circuit level. Keeping in mind the holdings of the Supreme Court in *Storm M. H.*, the expedited hearing of the circuit court should be considered as a proper exception to the general rule of requiring a party to first exhaust its administrative law remedies as set forth in the Act.

6. Clearly, the issue that has been raised by Appellant could only be described as novel. The Appellant is unable in its research of South Carolina court cases, to find a case specifically on point that would support the actions of the Assessor's Office in the present case. A fundamental interpretation of § 6 of art. X of the S.C. Const. would suggest that the actions of the County in the present case as being in violation of that constitutional provision. In *Victor Evans v. State of South Carolina*, 344 S.C. 60, 543 S.E.2d 547 (2001), the South Carolina Supreme Court specifically addressed the issue of whether a novel issue should be decided on a motion to dismiss. In *Evans*, the Court has taken the position, that as a general rule, questions of novel impressions should not be decided on a Rule 12(b)(6), SCRP, motion to dismiss. Instead, a novel issue is best decided in light of testimony to be adduced at trial. The Circuit Court's Order in favor of Respondents' motion to dismiss should be overturned and remanded back to the circuit court to conduct a full trial which would allow the Appellant to fully present the relevant facts and the Appellant's position of the laws of the State.

VI. CONCLUSIONS

For the foregoing reasons, the Appellant respectfully asks this Court of Appeals to vacate the order granting Respondents' motion to dismiss and to remand the case to the Circuit Court with the instructions that Circuit Court conduct a trial in which the Appellant may present its facts and citations of the applicable law.

Respectfully submitted

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