THE STATE OF SOUTH CAROLINA

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SC Court of Appeals

In the Court of Appeals

Appeal from the Administrative Law Court

The Honorable S. Phillip Lenski

Case No. 2014-ALJ-17-0602-CC; 2014-ALJ-17-0601-CC

Fairfield Waverly, LLC, Respondent,

v.

Dorchester County Assessor, Appellant.

GS Windsor Club, LLC, Respondent,

v.

Dorchester County Assessor, Appellant.

PETITION FOR REHEARING

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PETITION FOR REHEARING

Appellant, Dorchester County Assessor, petitions for rehearing of the Opinion filed in this matter on August 26, 2020. Appellant respectfully argues that the Opinion overlooks or misapprehends the following points.

I. "Current market value" is a dynamic term that changes with the passage of time, consistent with the plain meaning of its statutory definition; and as a tax exemption statute, the same should be strictly construed.

In reaching its decision, the Court misapprehends the operation of "current fair market value" in a manner contrary to the plain meaning defined in § 12-37-3135, as well as the overall statutory scheme for determining whether the partial ATI Exemption is allowed. Under the statutory scheme within which the ATI Exemption statute operates, the "current fair market value" of real property necessarily changes over time, thereby dictating the timeframe within which a taxpayer may avail itself squarely within the parameters of the statute granting the exemption. Exemption statutes are narrowly construed, and taxpayers bear the burden of bringing themselves squarely within the parameters of the statute which grants the exemption. *See Owen Indus. Prods., Inc. v. Sharpe*, 274 S.C. 193, 262 S.E. 2d 33 (1980); *S. Soya Corp. of Cameron v. Wasson*, 252 S.C. 484, 167 S.E. 2d 311 (1969); *S. Weaving Co. v. Query*, 206 S.C. 307, 34 S.E. 2d 51 (1945).

The statutory definition of "Current FMV" clearly provides that it is the fair market value that is reflected on the books of the property tax assessor for the current property tax year. Furthermore, the definition of "fair market value" makes it clear that the property tax assessor shall reappraise the value of real property either after an ATI or periodically under § 12-43-217 (the five-year countywide reappraisal). The fair market value following an ATI (the "ATI Fair Market Value") is then entered in the assessor's books as the "current fair market value." This designation is *mandated* by S.C. Code §12-37-3140(A)(1) (2014) which states that "the fair market value of real property ***is*** its fair market value applicable for the later of: ... (b) December thirty first of the year in which an assessable transfer of interest has occurred." (Emphasis added). The issue misconstrued in the Court's decision is how the timing of the taxpayer's application/notice to the tax assessor for eligibility for the exemption effects which Current FMV the assessor can use in calculating whether the exemption can be granted.

The Opinion effectively adds an operational limitation to the phrase "current property tax year" that does not exist in the statute, and freezes Current FMV to the year of the ATI. Thus, even in successive tax years after the ATI when, by operation of law, the fair market value reflected on the books of the assessor has necessarily changed for those particular "current

property tax years", the assessor is forced to disregard what is then on its books and must instead look back to the Current FMV as it existed when the ATI occurred. This misapprehends or overlooks the overall statutory scheme imposed on the tax assessor in the timeline of how property taxes are assessed, billed, and paid, and misconstrues the legislature's intent.

To that end, the Court concludes that the ATI Exemption statute contemplates that a taxpayer might not claim the exemption immediately, and that it is not an affirmative requirement that a taxpayer claim the exemption in its first year of eligibility. The Court bases its rationale on the phrase within 12-37-3135(C) that states the exemption does not apply unless the county has notice "before January thirty-first for the tax year for which the owner first claims eligibility for the exemption," and then looks to the effect of such timing upon a taxpayer depending upon when, during a calendar year, they buy property.

The Court is correct inasmuch the statute contemplates a taxpayer might not immediately claim the exemption *at the time of purchase*, but it misapprehends the timeline of how property taxes are assessed, billed, and paid when concluding the phrase "for the tax year for which the owner first claims eligibility" extends a taxpayer's eligibility to claim and receive the exemption beyond the tax year immediately following the ATI (i.e. the first

year of eligibility that they can claim). The plain, unforced interpretation of this portion of the ATI Exemption statute—with an understanding of its operation within the other property tax statutes and the timeline of assessing, billing and paying property taxes—simply means that the taxpayer who purchases in 2012 may first claim eligibility for tax year 2013 even though the taxpayer is still within tax year 2012 (and not responsible for the 2012 taxes), and may also have an additional thirty days in January of 2013 to first claim eligibility, which at that time is within the tax year for which they may first receive it. By doing so, the taxpayer has effectively noticed the assessor that the new ATI fair market value and the exemption amount will be calculated and compared to the Current FMV on the assessor's books. If the exemption can be granted through that comparison, the exemption value will remain in effect for that tax year and the taxpayer will not have to claim eligibility for successive tax years. If the exemption cannot be granted or—most importantly—if the taxpayer fails to notice or apply for the exemption before January 31 of the year they can first claim eligibility (i.e. the tax year immediately following the ATI), the ATI fair market value becomes the Current FMV against which any future calculations would be required. As saliently stated by the Department of Revenue's *Amicus* brief, "the fact that the Current FMV is a dynamic value that may change from year to year

underscores the importance of claiming the ATI exemption in the year immediately following the ATI."

The Opinion's addition of an operational limitation to the phrase "current property tax year" that does not exist in the statute, and freezes Current FMV to the year of the ATI on a prospective basis is a forced construction that the Court should, respectfully reconsider. When construing a statute, the cardinal rule is to ascertain the intent of the legislature. *SCANA Corp. v. South Carolina Dept. of Revenue*, 384 S.C. 388, 392, 683 S.E.2d 468, 470 (2009). "All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute." *Id.* at 23, 579 S.E.2d at 336. The words of the statute "must be given their plain and ordinary meaning without resort[ing] to subtle or forced construction to limit or expand [the statute's] operation." *Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992) (internal citations omitted). "In construing statutory language, the statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect. *Higgins v. State*, 307 S.C. 446, 415 S.E.2d 799 (1992).

Furthermore, it is well established in South Carolina that an exemption

of private property is strictly construed, that taxation is the rule and exemption is the exception. *State v. City of Columbia*, 115 S.C. 108, 104 S.E.2d 337 (1920). The statute before the Court is an exemption statute to be narrowly construed, and taxpayers bear the burden of bringing themselves squarely within the parameters of the statute which grants the exemption. *See Owen Indus. Prods., Inc. v. Sharpe*, 274 S.C. 193, 262 S.E. 2d 33 (1980). The Opinion overlooks or misapprehends this rule of construction.

Like the ALC, the Court's Opinion raises concern that taxpayers may have to rush to notice and apply for the exemption, and that the exemption could theoretically collapse on itself based upon the time of year the taxpayer purchases the property if Current FMV is dynamic. As more fully briefed, however, by way of salient example in the Department of Revenue's *Amicus* brief, pp.11-12, a plain reading of the statute in conjunction with an understanding of its operation among the other property tax statutes governing the timeline for assessment, billing, and payment of property taxes, renders such concerns as misplaced. The Appellant's construction of the statute is in accord with that of the Department of Revenue, and the Court's Opinion overlooks deference afforded to the Department as the agency charged with the statute's administration. "The construction of a statute by the agency charged with its administration will be accorded the most respectful

consideration and will not be overruled absent compelling reasons." *Dunton v. S.C. Bd. of Exam'rs in Optometry,* 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987).

Narrowly construing the exemption statute, the legislature contemplated that some sales of properties may occur late in a tax year (as it did in this case), and therefore the legislature specifically ensured that all property owners have a full month into the following tax year to apply and come squarely into the parameters of the exemption statute. *See Se.-Kusan, Inc. v. S.C. Tax Comm'n*, 276 S.C. 487, 489, 280 S.E.2d 57, 58 (1981) (constitutional and statutory language will not be strained or liberally construed in the taxpayer's favor, and it is only when the literal application of the statute produces an absurd result will the Court consider a different meaning). However, a reading of the statute that extends the taxpayers' meaningful opportunity to claim the ATI Exemption beyond the year that taxpayers are initially eligible and may first claim same, misapprehends or overlooks the plain language and operation of the statute as a whole, straining and liberally construing the same in the taxpayer's favor.

As a means to circumvent or temper the potential adverse results created by a strained and liberal construction caused by the misapprehensions detailed above, the Opinion concludes with a sunset proviso for a taxpayer's

ability to claim the exemption, which endpoint comes when the county conducts a countywide reassessment pursuant to § 12-43-217(A). The Opinion graciously touches upon the legislature's intent of providing counties with a uniform mechanism of reappraising properties, determining fair market values, and assessing taxes. Appellant respectfully posits, however, that the uniform and orderly mechanism supporting the basis of the Opinion's closing paragraphs is misapprehended and overlooked among the Opinion's prior analysis of the timing and definitional provisions of the ATI Exemption statute.

The narrow construction of the ATI Exemption statute as proposed by the Appellant not only provides such a uniform and orderly mechanism for setting value and clearly defining the deadline by which a taxpayer may receive the exemption, but it also renders moot the risk posed by the Respondents' hypothetical of taxpayers having an ability to seek the exemption many years following an ATI. Although the conclusions of the final paragraphs of the Opinion appear to remedy this potential consequence, Appellant respectfully argues that the decision overlooks or misapprehends the effect of the ATI Exemption on a property's valuation in a subsequent countywide reassessment. As written, it is unclear if the Court is holding that a timely claimed and received ATI Exemption is ultimately negated and ended

upon the next countywide reassessment, or if a taxpayer who has never received the exemption prior to the countywide reassessment is rendered unable to do so upon reassessment. To the extent the same may be clarified or reconsidered by petition for rehearing, the Appellant would respectfully pray for the same, and request rehearing to remedy any misapprehensions of the practical and operative timeline of the tax assessment process bearing on these issues.

CONCLUSION

For these reasons set forth above, Appellant respectfully requests the Court reconsider or rehear this matter to resolve those items believed to be overlooked or misapprehended as detailed herein.

Respectfully submitted,

September 9, 2020

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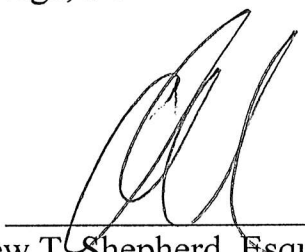
PROOF OF SERVICE

I, Andrew T. Shepherd, of Shepherd Law Firm, LLC, counsel for the Appellant above named, do hereby certify that I have served the **Petition for Rehearing and Proof of Service** on all parties of record by depositing a copy of the same in the United States Mail, postage prepaid, on September 10, 2020, addressed to their counsel of record, Burnet R. Maybank, III and James

P. Rourke, Post Office Drawer 2426, Columbia, SC 29202, and to John G. Frampton, 201 Johnston Street, St. George, SC 29477.



September 10, 2020

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VIA HAND DELIVERY

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SC Court of Appeals

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RE: Fairfield Waverly, LLC, et al v. Dorchester County Assessor
Appellate Case No.: 2017-000569

Dear Madame Clerk:

Enclosed for filing please find an original and six (6) copies of the **Petition for Rehearing**, pursuant to the above referenced appeal. Also, enclosed are two additional copies of the Petition for Rehearing for purposes of clocking. After filing the original Petition, please return the two additional copies in the self-addressed stamped envelope provided.

Additionally, enclosed please find the original and two (2) copies of the **Proof of Service**, of same. After filing the original, please return the clocked copies in the above-mentioned self-addressed stamped envelope.

Finally, enclosed please find my firm's check for **$50.00** for the required filing fee of such.

If you should have any questions, please feel free to contact my office at the number listed above.

With kind regards, I remain

Sincerely yours,

Andrew T. Shepherd, Esquire

/RKM
Enclosures- as stated

cc: Burnet R. Maybank, III, Esquire
James P. Rourke, Esq.
John G. Frampton, Esq.