

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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Sep 28 2020

Appeal from the Administrative Law Court

SC Court of Appeals

The Honorable S. Phillip Lenski

Case No. 2014-ALJ-17-0602-CC; 2014-ALJ-17-0601-CC
Appellate Case No.: 2017-000569

Fairfield Waverly, LLC,

Respondent,

v.

Dorchester County Assessor,

Appellant.

GS Windsor Club, LLC,

Respondent,

v.

Dorchester County Assessor,

Appellant.

RETURN TO RESPONDENT'S PETITION FOR REHEARING

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Attorneys for Appellant

RETURN TO RESPONDENT'S PETITION FOR REHEARING

Pursuant to the September 18, 2020, request of the Court to serve and file a return to the Respondent's Petition for Rehearing, Appellant, Dorchester County Assessor, submits the following.

INTRODUCTION

Respondents request the Court either remove the final two paragraphs of the August 26, 2020, decision, in full, or clarify the same to eliminate what Respondents' deem considerable confusion for both taxpayers and assessors. Respondents assert that varying interpretations of the paragraphs at issue appear to the Respondents' as inequitable and inconsistent with the Court's decision as a whole, and otherwise severely limit the applicability of the ATI Exemption dependent upon the timing of a purchase within a county's reassessment cycle.

Appellant does not concede its original positions or those reiterated in its Petition for Rehearing, but for purposes of argument and to the extent the Court's decision should be affirmed following further review, Appellant agrees that property owners cannot claim the ATI Exemption years or decades after the assessable transfer of interest occurs.

ARGUMENT

In its decision, the Court concludes that the five-year countywide reassessment mandated by Section 12-43-217(A) triggers the end-point for when a property owner may first claim the ATI Exemption. The Court states: “Allowing the ATI Exemption to override an appraised value set in the five-year reassessment scheme would defeat the legislature's intent of providing counties with a uniform mechanism of reappraising properties to determine their fair market values and assessing taxes accordingly.” Respondents argue through various hypotheticals that such a limitation creates confusion, primarily focusing on situations where assessable transfers of interest occur in years immediately preceding countywide reassessment, or where the initial claim for the ATI Exemption is also made between January 1 and January 30 of the same year that a countywide reassessment occurs.

Respondents seem unclear as to whether the fair market value determined by the countywide reassessment will simply override the ATI Exemption valuation process if an ATI Exemption claim is also made before January 31 of the same year as a countywide reassessment. However, this confusion seems misplaced if the Respondents agree with the Court's rendering of the definition of Current Fair Market Value under the ATI Exemption statute as being static and not dynamic.

If the definition of Current Fair Market Value under the ATI Exemption statute is indeed static in the manner and form the Court opined in its August 26, 2020, decision, then a claim for the Exemption—if made prior to January 31 of the countywide reassessment year—would dictate that assessors utilize the static definition of current fair market value in making the calculation necessary to determine if an ATI Exemption applies. In other words, if we accept the Court’s reasoning, any value determined by the countywide reassessment would simply not be considered by the assessors so long as the ATI Exemption claim is made before January 31 of that same year. The Court’s decision establishes an operational limitation on the phrase “current property tax year” in § 12-37-3135(A)(2) thereby freezing “current fair market value” to the year of the ATI on a prospective basis such that when a claim for the ATI Exemption is made before January 31 of subsequent tax years, the assessors are to ignore the otherwise dynamic changes in current fair market value that have occurred on their books by operation of other provisions of Title 12. Although Appellant continues to maintain that such a limitation is a forced construction and that a property owner may only claim eligibility for the ATI Exemption before January 31 of the year immediately following the ATI, Appellant would argue for purposes of this return, that the

Court's construction and reasoning would seem to render the confusion of the Respondents moot.

Section 12-37-3140(A)(1) directs that for property tax years beginning after 2006, 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;

(c) as determined on appeal; or

(d) as it may be adjusted as determined in a countywide reassessment program conducted pursuant to Section 12-43-217, but limited to increases in such value as provided in subsection (B) of this section.

The Court's decision has construed the ATI Exemption statute in a manner that provides that when a property owner claims the ATI Exemption prior to January 31 of any tax year following an ATI, the "current fair market value" for purposes of calculating whether the ATI Exemption will apply is the "current fair market value" that existed at the time the ATI occurred, and that it is this value that the assessors shall use in making their calculations instead of the "book up" in value that occurs when no claim for the ATI Exemption is initially made by the property owner.

The last two paragraphs of the Court's decision appear to have simply expanded the prospective applicability of the ATI Exemption statute to also

include a claim that is made prior to January 31 of a tax year wherein a countywide reassessment also occurs, but extending it no further. The Court seizes on the definition of fair market value under § 12-37-3140 that establishes fair market value as the value determined the *later of* an ATI or the countywide reassessment. The reasonable interpretation of the Court's analysis is that if the property owner has not claimed the exemption before January 31 of the year that the county must apply a countywide reassessment, the prospective freeze on the definition of current fair market value must necessarily end because a new, mandated fair market value will then be in effect for successive tax years.

To the extent the same is not inconsistent with the Appellant's position as previously argued to the Court, Appellant agrees with the Court's determination that "Allowing the ATI Exemption to override an appraised value set in the five-year reassessment scheme would defeat the legislature's intent of providing counties with a uniform mechanism of reappraising properties to determine their fair market values and assessing taxes accordingly." Appellant would reiterate to the Court that the narrow construction of the ATI Exemption statute as argued 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

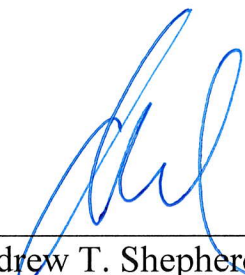
also renders moot the matters raised by Respondents. To that end, should the Court elect not rehear, alter or amend its decision to embrace the Appellant's arguments, the Court should not completely abandon or delete the final two paragraphs of the August 26, 2020 decision as the same would defeat the legislative intent stated by the Court therein.

CONCLUSION

For these reasons set forth above, Appellant respectfully requests the Court to render its decision accordingly

Respectfully submitted,

September 28, 2020



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The Honorable S. Phillip Lenski

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PROOF OF SERVICE

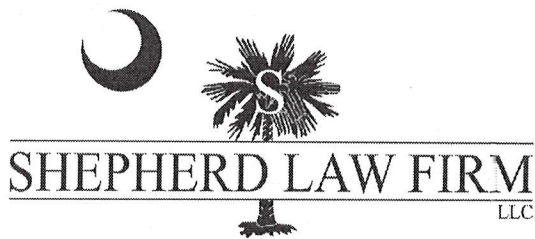
I, Andrew T. Shepherd, of Shepherd Law Firm, LLC, counsel for the Appellant above named, do hereby certify that I have served the **Return to Respondent's Petition for Rehearing and Proof of Service** on Respondents and to the South Carolina Department of Revenue and to the South Carolina Association of Realtors by depositing a copy of the same in the United States

Mail, postage prepaid, on September 28, 2020, addressed to their Counsel of Record, Burnet Rhett Maybank, III, Esquire and James Peter Rourke, Esquire, P.O. Drawer 2426, Columbia, SC 29202, Marcus D. Antley, III, Esquire and Jason P. Luther, Esquire, Post Office Box 12265, Columbia, SC 29211, and to Scott Y. Barnes, Esquire, Post Office Box 340, Charleston, SC 29401.

September 28, 2020



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September 28, 2020

VIA E-MAIL & U.S. MAIL

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

RECEIVED
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SC Court of Appeals

**Re: Fairfield Waverly, LLC v. Dorchester County Assessor
Windsor Club, LLC v. Dorchester County Assessor
Appellate Case No.: 2017-000569**

Dear Madam Clerk:

Enclosed for filing, please find enclosed the original plus eight copies of the Appellant's **Return to Respondent's Petition for Rehearing** as requested by your correspondence of September 18, 2020. Also enclosed is the original plus two copies of the **Proof of Service**.

By copy to all Counsel of Record as indicated on the Proof of Service, as well as via e-mail to each, I have copied the same.

Sincerely,

Andrew T. Shepherd

ATS/
Enclosures as stated

Cc: Burnett R. Maybank
James Peter Rourke
Marcus D. Antley
Jason P. Luther
Scott Y. Barnes