

THE STATE OF SOUTH CAROLINA

In the Court Appeals

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SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative law Judge

Appellate Case No. 2019-001867

Denis Yeo

Appellant,

v.

Lexington County Assessor

Respondent

BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

Whether the Administrator Law Judge properly determined that the property designated as 224 Newpark Place (Tax Map Number: 001947-01-057) does not qualify for tax assessment of four percent of the fair market value of the property pursuant to S.C. Code Section 12-43-220(c)(1).

STATEMENT OF THE CASE

Appellant purchased the subject property on October 12, 2011, and the deed was recorded in book 15122 page 196 on October 21, 2011. The subject property is located at 224 Newpark Place, Columbia, SC 29212. The Tax Map Number is 001947-01-057. On October 17, 2018 the Appellant Applied for the Special Assessment as Legal Residence for the property located at 224 Newpark Place Columbia, SC 29212. TMS#001947-01-057. On November 13, 2018 a letter was sent to the Appellant denying the Application for Legal Residence. Appellant & Swee Choo Yeo had previously purchased the property, next door, located at 228 Newpark Place Columbia, SC 29212, TMS#001947-01-056 on July 16, 2010 and the deed recorded in book 14365 page 185 on July 28, 2010. The application for the Special Assessment as Legal Residence was made on December 15, 2010 and legal residence (4%) Assessment was granted.

Appellant appealed the Assessor's denial of the 4% legal residence assessment for 224 Newpark Place to the Lexington County Assessment Appeal Board ("The Board"). The Board heard the appeal on March 27, 2019. The Board denied the Appellant's application for Legal Residence assessment and notified the Appellant of its decision by letter dated April 5, 2019. The Appellant appealed the Board's decision to the Administrator Law Court and served the County Assessor by mail on April 23, 2019. A contested case hearing was held by the Administrative Law Judge in September 24, 2019. The Administrative Law Judge issued an order dated October 17, 2019. Appeal from the Administrative Law Judge's Order was made to this Court by Notice of Appeal dated and served by mail on November 7, 2019.

STATEMENT OF FACTS

The appellant and Lexington County Assessor Stipulated to the following facts for the Administrative Law Court hearing.

1. Appellant owns two adjoining lots in Southwell subdivision and both lots have a house on it.
2. The TMS numbers for the two adjoining lots are 001947-01-056 (purchased in 2010) and 001947-01-057 (purchased in 2011). TMS 001947-01-056 is owned by Appellant and his wife, Swee Choo Yeo. TMS 001947-01-057 is owned solely by Appellant.
3. TMS 001947-01-056 is receiving the legal residence classification. TMS 001947-01-057 is not receiving the legal residence classification.
4. The TMS in question is 001947-01-057.
5. TMS 001947-01-057 is not used for business purposes and is not being leased. It is used as storage for TMS 001947-01-056.
6. No other immediate family member of Appellant occupies TMS 001947-01-057, Stipulation of Facts R. p.51.

Further, testimony from Appellant was that the subject property (224 Newpark Place) was purchased with the intent for Appellant's daughter to live there but the daughter has not moved there, R. p.18, lines 13 - 22. Further, Appellant rented the property for a year and a half or two years, R. pp. 18, line 23- p.19, line 17.

STANDARD OF REVIEW

“Tax Appeals to the Administrative Court (ALC) are subject to the Administrative Procedure Act (APA)” *CFRE, LLC v Greenville County Assessor*, 395 S.C. 67, 73; 716 SE. 2d 877, 880 (2011). According, the Appellate Court reviews the decision of the ALC for errors of law. *S.C. Code Ann. 1-23-380(5)(d)*, *Id* at 74, 716 SE. 2d at 881. Question of Statutory interpretation are question of law which this Court is free to decide without any deference to the ALC. *Id*.

ARGUMENT

THE ADMINISTRATIVE LAW JUDGE PROPERLY DETERMINED THAT THE PROPERTY, 224 NEWPARK PLACE (TAX MAP NUMBER 001947-01-057) DOES NOT QUALIFY FOR TAX ASSESSMENT OF FOUR (4%) PERCENT OF THE FAIR MARKET OF PROPERTY PURSUANT TO S.C. CODE ANN. SECTION. 12-43-220 (C)(1).

The issue for this Court to decide is whether a person can own two residential lots with a house on each lot in a residential subdivision and claim both properties as the person's legal residence for purposes of receiving the four (4%) percent assessment set forth in S.C. Code Ann, Section 12-43-220(c)(1).

The Administrative Law Judge ("ALJ") correctly stated the statutory law as it relates to the decision in this case. The ALJ order included the following statutory law:

The Statute at issue in this matter is found at S.C. Code. Section 12-43-220(c)(1):

The legal residence and not more than five acres contiguous thereto, when owned totally or in part in fee or by life estate and occupied by the owner of the interest, and additional dwellings located on the same property and occupied by immediate family members of the owner of the interest, are taxed on an assessment equal to four percent of the fair market value of the property.

S.C. Code Ann. Section 12-43-220(c)(1) (Supp. 2018). Section 12-43-220(c)(1) also states "For purposes of the assessment ratio allowed pursuant to this item, a residence does not qualify as a legal residence unless the residence is determined to be the domicile of the owner-applicant."

S.C. Code Ann. Section 12-43-220(c)(2)(iv)(Supp. 2018) makes clear, "the burden of proof for eligibility for the four (4%) percent [residential] assessment ratio is on the owner-occupant." Further, South Carolina courts have consistently held that exemptions from generally applicable tax statutes, such as the four (4%) percent residential exemptions at issue here, must be narrowly construed. The South Carolina Supreme Court discussed this principle of

construction at length in Southeastern-Kusan, Inc. v South Carolina Tax Commission, 276 S.C. 487 S. E. 2d 57 (1981):

As a general rule, tax exemption statutes are strictly construed against the taxpayer. This rule of strict construction simply means that constitutional and statutory language will not be strained or liberally construed in the taxpayer's favor. It does not mean that we will search for an interpretation in the [tax collector's] favor where the plain and unambiguous language leaves no room for construction. Only when the literal application of a statute produced an absurd result will we consider a different meaning.

Id. At 489-90,280 S.E. 2d at 58

Our Supreme Court has held that where "the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Hodges v Rainey, 341 S.C. 79, 85,533 S.E. 2d 578, 581 (2000). In addition to the statutory law cited by the ALJ, the case law of Ravenel v. Dekle, 265 S.C. 364, 218 SE 2d 521 (1975) defined domicile as follows:

And the term 'domicile' means the place where a person has his true, fixed and permanent home and principle establishment, to which he has, whenever he his absent, an intention of returning. A person may have more than one residence but cannot have more than one domicile. id. at 379, 218 SE 2d at 529.

The Appellant brief lists six issues on appeal, but it is submitted that the decision in the case is determined simply by the interpretation of S. C. Code Ann, Section 12-43-220(c)(1).

SAME PROPERTY

The ALJ based her decision on the fact that the two houses are not **located on the same property** (emphasis added) and, therefore do not meet the requirements to qualify for legal residence pursuant to 12-43-220-(c)(1). (Court Order) R. p. 2-4. There is no issue as to the property being contiguous but they are separate lots in a residential subdivision with two separate tax map numbers. Appellant argues that contiguity within 5 acres makes the property the same

property for the purpose of S.C. Code Ann. Section 12-43-220(c)(1). This clearly is not the intent of the statute.¹ Instead, the Respondent contends that the intent of the statute was for a property owner to have another dwelling on his single tract of property where a family member may reside as is allowed pursuant to 12-43-220(c)(1). The stipulation of facts state that no other immediate family member of the Appellant occupies the subject property.

SINGLE RESIDENCE AND ONE DOMOCILE

Appellant argues that he may have more than one legal residence as long as the additional dwelling is contiguous. The Respondent presented to the ALJ a prior ALC Court Order of the *Guthrie v. Orangeburg County Assessor, No. 01-ALJ-17-0173-CC, 2001 WL 1107822, at *4 (S.C. A.L.J. Div. Sept. 5, 2001)* for the holding that a “legal residence” as used in 12-43-220(c)(1) means a single dwelling and that it would be a strained and liberal definition of “legal residence” for it to include two separate dwellings on two separate lots whether contiguous or not. (Exhibit 5 ALC). Therefore, the ALJ in Guthrie reached the same conclusion as the ALJ in the case.

As the Court held in Ravenel Supra, a person can only have one domicile. Pursuant to S.C. Code Ann. Section 12-43-220(c)(1) a residence does not qualify as a legal residence unless the residence is determined to be the domicile of the owner-applicant. Clearly the domicile of the applicant is 228 Newpark Place (Tax Map Number 001947-01-056), that is next door to the subject property. Appellant is attempting to stretch his domicile to another residential lot and house.

¹ [The Appellant’s argument would mean that a builder could build a house in which he resides and then build/develop as many houses as he can that are within 5 acres and contiguous to that house and claim legal residence on all the houses if the builder/developer stores some clothes in all of the houses.]

IMMEDIATE FAMILY MEMBERS

The testimony by the Appellant was that the 224 Newpark Place property was purchased with the intent that the Appellant's daughter would move to live there. (R. p. 18, lines 13-19) However, this has not occurred. Therefore, in addition to not being on the same property and not being a single dwelling, Appellant cannot meet the additional requirements of 12-43-220(c)(1) that the additional dwelling located on the same property must be occupied by immediate family members. Instead, Appellant contends that the house at 224 Newpark Place is an extension of his house at 228 Newpark Place.

CONCLUSION

The Appellant does not meet the statutory requirements for 224 Newpark Place (TMS 001947-01-057) to receive the legal residence classification of S.C. Code Ann. Section 12-43-220 (c)(1). The additional house is on a separate platted residential lot and not on the “same property”. The additional house is a separate residence and does not meet the single dwelling requirement as determined in the Guthrie ALC decision. Finally, no other immediate family member resides at the house on 224 Newpark Place. This is an unusual case where a person purchased a house adjoining his property and is attempting to extend the interpretation of S.C. Code Ann. Section 12-43-220(c)(1) to give the four (4%) percent legal residency classification to a second house. It is submitted that the facts of the case do not meet the statutory requirements for the subject property to receive the four (4%) percent legal residence classification.

For all of the above reasons, it is submitted that the decision of the ALJ should be affirmed.

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