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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

H.W. Funderburk, Jr., Administrative Law Judge

Appellate Case Number: 2020-001462

Aiken Golf Club, Inc.,

Appellant-Respondent,

v.

Aiken County Assessor,

Respondent-Appellant.

FINAL BRIEF OF APPELLANT-RESPONDENT

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STATEMENT OF THE CASE

This appeal arises from an ad valorem real property tax valuation performed by the Aiken County Assessor (Respondent) of Aiken Golf Club, Inc. (Appellant-Respondent), a golf course in Aiken County, South Carolina. In arriving at its valuation, the Aiken County Assessor (Respondent) utilized the capitalized income approach method, which is recognized by statute. S.C. Code Annotated §12-43-365 (2014). Appellant-Respondent appealed the initial valuation for the tax year 2016, for which the Administrative Law Court (ALC) ultimately determined a value of $1,067.960.00.

Notably contrary to what is stated in the ALC's Order Granting Summary Judgment, Appellant-Respondent Taxpayer disputes that the proper valuation date at issue is December 31, 2015. Consequently, the ALC's assertion that there is no issue of material fact is unfounded.

After receiving a Notice of Assessed Value for Ad Valorem Tax Purposes for Tax Year 2018, Appellant-Respondent elected to challenge that value as well. After the Assessor refused to modify the value for the Tax Year 2018, the Aiken County Board of Assessment Appeals (Board) disagreed. After reviewing Appellant-Respondent's income figures for 2016, 2017, and 2018, the Board found that there was an 8% decrease in income from 2016 to 2018, and exercised its authority accordingly to adjust the value to $986,011.00—a decision issued on October 4, 2019. Importantly, as noted by the ALC, Respondent-Appellant did not appeal this decision to the ALC. (R. p. 10 Footnote 2)

Appellant-Respondent appealed in a timely manner and requested a contested case hearing before the ALC. Respondent-Appellant then filed a motion for summary judgment on the ground that no reassessment could occur until the next countywide assessment. Following briefs

alone and no hearing, the ALC granted Respondent-Appellant summary judgment, but left in place the valuation of $986,011.00 arrived at by the Board. The ALC explained in a footnote that the decision of the Board would remain in effect because the Respondent-Appellant did not appeal the Board's decision. (R. p. 10 Footnote 2)

Consistent with the cited authority and the argument of Appellant-Respondent, the ALC ruled that 12-43-215 does not apply to the case at hand because it is limited to owner-occupied residential property. (R. p. 11)

STANDARD OF REVIEW

"Tax appeals to the ALC are subject to the Administrative Procedures Act." CFRE, LLC v. Greenville Cnty. Assessor, 395 S.C. 67, 73, 716 S.E.2d 877, 880 (2011). "The decision of the [ALC] should not be overturned unless it is unsupported by substantial evidence or controlled by some error of law." Taylor v. Aiken Cnty. Assessor, 402 S.C. 559, 561, 741 S.E.2d 31, 32 (Ct. App. 2013) (quoting Original Blue Ribbon Taxi Corp. v. S.C. Dep't of Motor Vehicles, 380 S.C. 600, 604, 670 S.E.2d 674, 676 (Ct. App. 2008)). "Questions of statutory interpretation are questions of law, which [appellate courts] are free to decide without any deference to the court below." CFRE, 395 S.C. at 74, 716 S.E.2d at 880.

In reviewing the grant of a summary judgment motion, an appellate court must apply the same standard that governed the trial court under Rule 56(c) of the South Carolina Rules of Civil Procedure. White v. J.M. Brown Amusement Co., Inc., 360 S.C. 366, 601 S.E.2d 342 (2004); Redwend Ltd. Partnership v. Edwards, 354 S.C. 459, 468, 581 S.E.2d 496, 501 (Ct. App. 2003) (citation omitted). Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. White at 370, 601 S.E.2d at 344; Redwend at 467, 581 S.E.2d at 501.

Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Redwend at 467-68, 581 S.E.2d at 501. In determining whether any issues of material fact exist, the evidence and all inferences which can be reasonably drawn therefrom must be construed in the light most favorable to the nonmoving party. Vermeer Carolina's, Inc. v.

Wood/Chuck Chipper Corp., 336 S.C. 53, 518 S.E.2d 301 (Ct. App. 1999). "Once the moving party carries its initial burden, the opposing party must, under Rule 56(e), do more than simply show that there is some metaphysical doubt as to the material facts but must come forward with specific facts showing there is a genuine issue for trial." Hedgepath v. American Tel. & Tel. Co., 348 S.C. 340, 354, 559 S.E.2d 327, 335 (Ct. App. 2001) (internal quotation marks omitted).

Summary judgment is not appropriate if further inquiry into the facts of the case is desirable to clarify the application of the law. Vermeer at 59, 518 S.E.2d at 305. Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. Hall v. Fedor, 349 S.C. 169, 173-74, 561 S.E.2d 654, 656 (Ct. App. 2002). "Moreover, summary judgment is a drastic remedy which should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues." Redwend at 469, 581 S.E.2d at 501 (citations omitted). "However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." Hedgepath at 355, 559 S.E.2d at 336.

ARGUMENTS

I. THE ALC ERRED IN DETERMINING, AS A MATTER OF LAW, THAT A GOLF COURSE, WHICH HAS BEEN VALUED BY THE ASSESSOR USING THE CAPITALIZED INCOME APPROACH, DERIVES ITS ESSENTIAL VALUE FROM REAL PROPERTY

Boiled down to its essence, the ALC's conclusion and reasoning in its Amended Order Granting Summary Judgment hinges primarily on one key finding, made as a matter of law—that a "golf course derives its essential value from real property." (R. p. 14) The ALC has erred in determining this and has failed to acknowledge the unique standing of the South Carolina golf industry and the General Assembly's intended approach in taxing golf courses.

The capitalized income approach in valuing golf courses, which is recognized by statute and is the approach used by the Assessor Respondent-Appellant in this matter, clearly acknowledges the unique characteristics of golf courses.

In its Amended Order Granting Summary Judgment, the ALC makes much of honoring the legislative intent of the General Assembly. When in fact, the General Assembly acknowledged the unique standing of South Carolina golf courses in its findings following debate of the passage of SC Code Annotated §12-43-365, stating, "The golf industry contributes significantly to the economic well-being of this State, particularly in the tourism sector of its economy, and brings with it a much needed infusion of capital and employment, as well as property tax revenues into local governments." SC General Assembly, S. 589 (2005). Golf courses are uniquely valuable to this state. They are not simply pieces of land to be taxed, but are vehicles for the success of South Carolina's leading industry, and, recognizing that to be the case, the General Assembly has chosen that they be assessed and taxed according to this unique role in the economy.

The capitalized income approach determines a golf course's value based off of the income that a course earns from its green fees. The valuation is not determined based off of the land nor the neighboring property values, but is valued based off the course's own economic success. By definition, when a golf course is assessed based upon the capitalized income approach, the golf course does not derive its essential value from the real property on which it sits, but from the income that it is able to earn off of the use of said property. This is a very clear distinction.

The counties benefit from this approach as much, if not more, than the golf courses. While this approach may limit the tax liability of less successful golf courses on one hand. On the other, highly successful courses would pay more in property taxes. Take for example, a golf course that occupies land in a less affluent area with lower property values, but that golf course stays busy due to its popularity among golfers. Such a course might actually pay more in property taxes than a course located in an affluent area that is not as popular, but would ordinarily have higher property tax liability due to its location. This distinction shows that it is clearly inequitable to rule as a matter of law that a golf course derives its essential value from ***real property***, because it does not. The capitalized income approach, utilized in this case, makes clear that a golf course derives its essential value based upon its economic success, and not the value of the land on which it sits.

For the foregoing reasons, the ALC erred in determining, as a matter of law, that a golf course derives its essential value from real property.

II. WHEN A GOLF COURSE IS VALUED USING THE CAPITALIZED INCOME APPROACH, A DEMONSTRABLE CHANGE IN THAT GOLF COURSE'S EARNINGS AND EARNING POTENTIAL CONSTITUTES A CHANGE IN CONDITION

This appears to be a novel issue in front of this Court. Long Cove Homeowners Association v. Beaufort County Tax Equalization Board examined circumstances which would authorize the assessor to reassess properties in a non-reassessment year. The case states the following, which has been reformatted by Appellant-Respondent for clarity:

> The statute only allows an assessor, without direction from the Department, to reassess properties under the following limited circumstances:
>
> - if done on a county-wide basis in a legal assessment year, S.C. Code Ann. §12-43-210(B) (Supp.1995);
>
> - if the property was omitted property, S.C. Code Ann. §12-41-120 (1976); or
> - if there was a change in conditions on the property, S.C. Code Ann. §12-37-90 (Supp.1995).

Long Cove Homeowner's Association v. Beaufort County Tax Equalization Board 327 (S.C. 135 488 S.E.2d 857 (1997).

The Appellant-Respondent would note that the description of the final circumstance appears to be an oversimplification of the statute, which states the Assessor **shall**:

> (c) when values change, reappraises and reassess real property so as to reflect its proper valuation in light of changed conditions, except for exempt property and real property required by law to be appraised and assessed by the department, and furnish a list of these assessments to the county auditor.

S.C. Code Ann. §12-37-90 (Supp.1995).

It is important to note that this particular statute acknowledges that a change in value constitutes a change in condition. Appellant-Respondent's request for a reassessment of its golf course is based on a change in value because of a loss of income, the sole basis of the course's assessed value as determined in the previous ALC case between these parties.

Although the sole factor in determining the value of Appellant-Respondent's golf course is the income that the golf course derives from its economic success, the ALC determined, again as a matter of law, any changes to that income "can only change the real property's value for the upcoming assessment," meaning that such a change does not constitute a change in condition, which would trigger §12-37-90(c). The ALC states as a matter of law that only such income changes caused by assessable transfers, natural disasters, or fires can change past value. As noted above, since the valuation Appellant-Respondent's golf course has been made based on the capitalized income approach, income is the sole condition upon which valuation is made, and therefore any demonstrable change in that income, like in the case at hand, should constitute a change in condition, as required by §12-37-90(c).

The ALC relies upon S.C. Code Ann. §12-37-3150 and S.C. Code Ann. §12-39-250 (B) as being dispositive of the argument above. This is not the case because these two statutes do not contemplate the capitalized income approach to valuing golf courses. While, yes, as the ALC states in its Order, "merely an increase or decrease in value" of a standard parcel may not provide an opportunity for reassessment, that is not the case here. We are examining a change in the sole condition upon which the Assessor Respondent-Appellant arrived at its valuation. The only logical conclusion is that such changes should constitute a change in condition.

For the foregoing reasons, when a golf course is valued utilizing the capitalized income approach method, a demonstrable change in its income

constitutes a change in condition, and requires that an Assessor reassess the property pursuant to S.C. Code Ann. §12-37-90(c).

III. THE ALC ERRED IN GRANTING SUMMARY JUDGMENT IN FAVOR OF THE ASSESSOR RESPONDENT-APPELLANT BECAUSE ITS RULING IS INCONSISTENT GIVEN THAT RESPONDENT-APPELLANT DID NOT FILE A TIMELY APPEAL OF THE DECISION OF THE AIKEN COUNTY BOARD OF ASSESSMENT APPEALS

Perhaps most important to the decision at hand, in a total contradiction of its own argument, the Aiken County Board of Assessment Appeals had already reassessed Respondent-Appellant's property in between quadrennial assessments, which is what led to Taxpayer Appellant-Respondent's appeal to the ALC. In fact, the amount upheld by the ALC was actually the amount arrived upon by that interim assessment, because the Assessor Respondent-Appellant did not appeal the decision. Having not appealed the issue to the ALC, Assessor Respondent-Appellant would now argue to this Court, as it did to the ALC in its Motion for Summary Judgment, that the actions that its own Board took were a violation of law. The ruling by the ALC is clearly inconsistent because it acknowledges that the Respondent-Appellant did not appeal the decision of its Board, and ultimately rules that the Board's decision will stand. Yet, in the same breath, the ALC finds in favor of Respondent-Appellant's argument that the Board's reassessment was in violation of the law.

Having abandoned the issue by not filing its own appeal with the ALC, the Assessor is preempted from arguing that it is not authorized to reassess the

Appellant-Respondent's property.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the Administrative Law Court.

Respectfully submitted,

January 8, 2020

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