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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable Edgar W. Dickson

Case No. 2018-CP-18-01505

Appellant Case No. 2021-000177

Summerville Retail Investment, LLC.,Appellant,

v.

Montebello JTA Group, LLC.....Respondent.

APPELLANT'S FINAL REPLY BRIEF

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STATEMENT OF ISSUE ON APPEAL

I. THE CIRCUIT COURT ERRED IN FAILING TO GRANT A FULL REFUND OF IMPACT FEES PAID TO DORCHESTER COUNTY BY SUMMERVILLE RETAIL INVESTMENT, LLC WHERE THE SOUTH CAROLINA IMPACT FEE ACT AND THE DORCHESTER COUNTY ORDINANCE CLEARLY STATE THAT THE FEES SHALL BE REFUNDED TO THE RECORD OWNER OF PROPERTY FOR WHICH THE IMPACT FEES WERE PAID AND SUMMERVILLE RETAIL INVESTMENT, LLC PAID THE IMPACT FEES AND WAS THE RECORD OWNER OF THE PROPERTY FOR WHICH THE IMPACT FEES WERE PAID

ARGUMENT

I. THE RESPONDENT FAILED TO ADDRESS THE LANGUAGE IN THE STATUTE AND FOCUSED ON ISSUES NOT IN THE RECORD REGARDING THE PROCESS FOR SELLING COMMERCIAL PROPERTY

The Respondent's argument about false premises for selling real estate have nothing to do with the matter before Judge Dickson and before this Court. In its first argument, the Respondent makes no reference to any Order, Motion, Statute regarding the status of the "real world of developing and selling property." (Respondent's Brief, p. 10)

There is no citation anywhere in the Respondent's Brief or in the record that indicates the Appellant's payment of the impact fee is recouped by the payment of the purchase price of the property. (Respondent's Brief, pp. 10-24; RoA pp. 1 -245) That the Respondent is trying to inject an argument not heard or ruled upon by Judge Dickson and not before this Court is a ruse. The language in the statute clearly states that the fees should be returned to the "record owner for which it was paid" and describe the money as a "refund". (RoA p. 238; RoA p. 242) There was NOTHING submitted to Judge Dickson that would provide any support for this spurious argument that a windfall would somehow be coming to the Appellant. The Respondent has no references regarding the way sales of commercial property actually function e.g. the seller sells commercial property for the highest price the market will bear. The Respondent also ignores realities of single

tenant assets, returns on purchase price, recovery of costs versus profits. But, again, none of those issues are before this Court and not part of anything presented to Judge Dickson or in the Record on Appeal.

II. THIS COURT'S *DE NOVO* REVIEW OF THE ORDINANCES AT ISSUE DO NOT PRECLUDE ARGUMENTS REGARDING INTERPRETATION OF THE STATUTE OF PREEMPTION BY THE GENERAL ASSEMBLY

All statutory interpretation by this Court is governed by *de novo* review so that this Court should consider all issues regarding the Ordinance at issue. *Rhame v. Charleston County Sch. Dist.*, 412 S.C. 273, 712 S.E.2d 159 (2015) In fact, the Respondent also cites the South Carolina Development Impact Fee Act (the "Act") S.C. Code Ann. §§ 6-1-910 *et seq.*, in its own Brief (Respondent's Brief, p. 7) Then, incredulously, states that the Appellant is barred from discussing the enabling statute that gave rise to Dorchester County's Ordinance at issue which is under *de novo* review by this very Court. The leap in logic is astounding. The logic, or lack thereof, would be that only the Respondent may make reference to the enabling legislation. For page after page, the Respondent ignores the clear language in the Act (Brief, pp. 11-24) The Act was at issue and ruled upon by the trial court because a governmental entity may not impose an impact fee "except as provided in this article" S.C. Code Ann. §6-1-930(A)(1) which is the language that preempts the County's Ordinance.

These issues were preserved for review by this Court. The South Carolina Supreme Court has ruled that "a party is not required to use the exact name of a legal doctrine in order to preserve the issue." *Herron v. Century BMW*, 395 S.C. 461, 719 S.E.2d 640 (2011), *cert. den.* "Nonetheless, the issue must be sufficiently clear to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the judge." *Id.* When a question of issue preservation is subject to multiple interpretations, any doubt should be resolved in favor of preservation. *Atlantic Coast*

Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 333, 730 S.E.2d 282, 287 (2012)(Toal, C.J., concurring in part and dissenting in part). The Act was inherently at issue. As state, he Respondent even cited it in their Brief to this Court.

Instead of focusing on the language in the Act, the Respondent makes conclusory statements that the Appellant's argument has no merit, then proceeds to cite the Act. (Brief, p. 12) Again, this ignores the clear language of the statute which was badly drafted by Dorchester County and not in compliance with the General Assembly's directives. *See* Ordinance No. 18-2. Dorchester County repealed Ordinance 10-24 accordingly. (RoA p. 245)

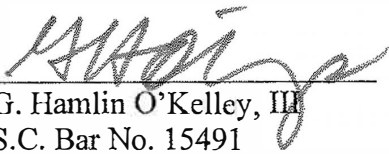
The Seller/Appellant did in fact pay the impact fee. The argument that it did not makes no sense. *See* Check No. 4661 to Dorchester County (RoA p. 198). The Record shows that SK Investments is an affiliate of the Seller *Id.* If the County wishes to pay SK Investments, the Appellant would be fine with that. SK Investments made the payments on behalf of the Seller. However, this issues is now only being raised by the Respondent in its Brief and is not properly before this Court. *See Dunes West Golf Club, LLC v. Town of Mt. Pleasant*, 737 S.E.2d 601 (S.C. 2013).

The Respondents remaining arguments rehash and regurgitate the same statements, literally *ad nauseum*. Again, the party who paid the fee should be returned the fee. It's as simple and equitable as that.

CONCLUSION

For the reasons stated herein and in the Appellant's Initial Brief, Summerville Retail should be refunded its impact fees with interest so that the Dorchester County Clerk of Court should issues its check in the amount of \$326,895.15 to Summerville Retail Investments, LLC, and the decision of the Circuit Court should be REVERSED.

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**CERTIFICATION OF COUNSEL
PURSUANT TO RULE 211(b) SCACR**

I certify that I have served the Appellant's Final Reply Brief and the Appellant's Final Brief and that they are in compliance with Rule 211(b) SCACR in that no changes were made excepting references to the Record on Appeal and correction of typographical errors and misspellings.

October 21, 2021



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