

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
IN THE COURT OF COMMON PLEAS

CASE NUMBER: 2011CP4006542

Dennis M #16472171 Gallipeau

Richland County

Board of Assessment Control for Richland County

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: \_\_\_\_\_

Attorney for :  Plaintiff  Defendant or  Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  Affirmed;  Reversed;  Remanded;  Other \_\_\_\_\_

RICHLAND COUNTY  
FILED  
2013 APR 15 AM 10:54  
JENNIFER G. W. MCBRIDE  
CLERK

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

**ORDER INFORMATION**

This order  ends  does not end the case.

Additional Information for the Clerk : \_\_\_\_\_

**INFORMATION FOR THE PUBLIC INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of (List name(s) below) | Judgment Against (List name(s) below) | Judgment Amount To be Enrolled |
|---|---------------------------------------|--------------------------------|
|   |                                       | \$                             |
|   |                                       | \$                             |
|   |                                       | \$                             |

If applicable, describe the property, including tax map information and address, referenced in the order: \_\_\_\_\_

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge \_\_\_\_\_ Judge Code \_\_\_\_\_ Date \_\_\_\_\_

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this 15 April 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Dennis M #16472171 Gallipeau

Bradley Truman Farrar

Dennis M #16472171 Gallipeau  
ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter \_\_\_\_\_

Clerk of Court \_\_\_\_\_

*Jeanette W McBride*

**RECEIVED**  
APR 26 2013

SC Court of Appeals

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

IN THE CIRCUIT COURT FOR THE  
FIFTH JUDICIAL CIRCUIT

Dennis M. Gallipeau, )  
 )  
Plaintiff, )  
 )  
vs. )

Civil Action Number 11-CP-40-6542

**FINAL ORDER**

Richland County; Board of Assessment )  
for Richland County; John Cloyd, Tax )  
Assessor for Richland County; )  
Karen Roof, Homestead Exemption )  
Officer for Richland County, )  
 )  
Defendants. )

RICHLAND COUNTY  
FILED  
2013 APR 15 AM 10:52  
JEANETTE W. MCBRIDE  
C.C.P. & G.S.

**Procedural History**

This matter came before the Court on March 15, 2012, on a Motion For Extension Of Time, dated December 1, 2011, by Plaintiff, and on a Motion To Dismiss, filed November 17, 2011, and a Motion For Protective Order, filed December 20, 2011, by Defendants.

Present at the hearing was Bradley T. Farrar, Deputy Richland County Attorney, representing the Defendants. The Plaintiff, *Pro se*, upon information and belief is incarcerated in a Federal Correctional Complex in Yazoo, Mississippi, and did not attend the hearing. However, prior to the call of the case, Plaintiff sent to the Honorable Jeanette W. McBride, Richland County Clerk of Court, a letter dated February 21, 2012, regarding this matter. Plaintiff also sent a letter, dated March 1, 2012, to the Court wherein he advised:

If you require my 'presence' in order to rule on the pending motions, I would ask that you allow me to appear by telephone. Otherwise, I would rest on my pleadings in defense of the pending motions.

**RECEIVED**

APR 26 2013

**SC Court of Appeals**

**SCANNED**

Those letters are attached to and made a part of this Order, as is the Court's Form 4 Order, dated March 16, 2012.

After reviewing the motions, any memoranda or responses thereto, and considering the argument of counsel, the Court finds and concludes as follows.

### **Findings of Fact and Conclusions of Law**

The Court finds and concludes that:

1. The South Carolina Supreme Court in *DEMA v. Tenet Physician Services-Hilton*, 383 S.C. 115, 678 S.E.2d 430 (2009), held:

Generally, in considering a motion to dismiss, the trial court must base its ruling solely upon the allegations set forth on the face of the complaint. *Doe v. Greenville County Sch. Dist.*, 375 S.C. 63, 66-67, 651 S.E.2d 305, 307 (2007). The motion may not be sustained if the facts alleged in the complaint and the inferences that can be drawn therefrom would entitle the plaintiff to relief under any theory. *Id. Dema*, 383 S.C. at 120.

In his complaint, Plaintiff raises a number of causes of action stemming from the classification of certain real property he owns in Richland County, and whether or not such interest would qualify him for legal residency, homestead exemption, or both, for *ad valorem* real property tax purposes pursuant to S.C.Code Ann. §§ 12-37-10 *et seq.* and 12-43-210 *et seq.* (Supp.2010).

2. Defendant has raised subject matter jurisdiction as a bar to this Court's consideration of Plaintiff's case. Issues involving subject matter jurisdiction may be raised at any time, including on appeal. *Arnal v. Fraser*, 371 S.C. 512, 517 n. 2, 641 S.E.2d 419, 421 n. 2

(2007). *Normandy Corp. v. S.C. Dept. of Transp.*, 386 S.C. 393, 688 S.E.2d 136 (S.C.Ct.App. 2009) *Slate v. Downs*, 361 S.C. 141, 604 S.E.2d 377 (2004).

3. Jurisdiction for the subject matter at issue in this case is provided for by statute. The cardinal rule of statutory interpretation is to determine and effectuate the legislature's intent. *Chem-Nuclear Sys., LLC v. S.C. Bd. of Health and Env'tl. Control*, 374 S.C. 201, 205, 648 S.E.2d 601, 603 (2007); *Dreher*, 370 S.C. at 80, 634 S.E.2d at 648; *Strother v. Lexington County Recreation Comm'n*, 332 S.C. 54, 62, 504 S.E.2d 117, 121 (1998); *Peake v. S.C. Dep't of Motor Vehicles*, 375 S.C. 589, 597, 654 S.E.2d 284. 375 S.C. 589, 654 S.E.2d 284, 289 (Ct.App. 2007); *Shealy v. Doe*, 370 S.C. 194, 199, 634 S.E.2d 45, 48 (Ct.App. 2006); *Bass*, 365 S.C. at 469, 617 S.E.2d at 377.

4. Ascertaining the legislature's intent begins by determining whether the statute's meaning is clear on its face. *Peake*, 375 S.C. at 597, 654 S.E.2d at 289 [citing *Wade v. Berkeley County*, 348 S.C. 224, 229, 559 S.E.2d 586, 588 (2002); *Eagle Container Co., L.L.C. v. County of Newberry*, 366 S.C. 611, 622, 622 S.E.2d 733, 738 (Ct.App. 2005)]. Clear and unambiguous statutes require no statutory construction and should be applied by the court according to their literal meaning. *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007); *Croft v. Old Republic Ins. Co.*, 365 S.C. 402, 412, 618 S.E.2d 909, 914 (2005); *Carolina Power & Light Co. v. City of Bennettsville*, 314 S.C. 137, 139, 442 S.E.2d 177, 179 (1994); *Grinnell Corp. v. Wood*, 378 S.C. 458, 467, 663 S.E.2d 61, 66 (Ct.App. 2008); *White v. State*, 375 S.C. 1, 8, 649 S.E.2d 172, 176 (Ct.App. 2007) [citing *Univ. of S. Cal. v. Moran*, 365 S.C. 270, 276, 617 S.E.2d 135, 138 (Ct.App. 2005)].

The Court in *Normandy Corp. v. S.C. Dept. of Transp.*, 386 S.C. 393, 688 S.E.2d 136

(S.C.Ct.App. 2009) opined:

Subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong." *Dema v. Tenet Physician Services-Hilton Head, Inc.*, 383 S.C. 115, 120, 678 S.E.2d 430, 433 (2009). The jurisdiction of a court over the subject matter of a proceeding is determined by the Constitution and the laws of the state. *Duckett v. Goforth*, 374 S.C. 446, 456, 649 S.E.2d 72, 77 (Ct. App. 2007). Issues involving subject matter jurisdiction may be raised at any time, including on appeal. *Arnal v. Fraser*, 371 S.C. 512, 517 n. 2, 641 S.E.2d 419, 421 n. 2 (2007).

The Court in *Dema* held:

South Carolina trial courts are vested with general original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts. S.C. Const. art. V, Page 121 § 11. In determining whether the Legislature has given another entity exclusive jurisdiction over a case, a court must look to the relevant statute. *See Unisys Corp. v. South Carolina Budget and Control Bd. Div. of Gen. Servs. Info. Mgmt. Office*, 346 S.C. 158, 175, 551 S.E.2d 263, 273 (2001) (examining the language of the statute to determine the legislative intent regarding exclusive jurisdiction). *Id.* at 120.

S.C.Code Ann. § 12-60-80 (Supp.2010) prescribes:

(A) Except as provided in subsection (B), there is no remedy other than those provided in this chapter in any case involving the illegal or wrongful collection of taxes, or attempt to collect taxes.

(B) Notwithstanding subsection (A), an action for a declaratory judgment where the sole issue is whether a statute is constitutional may be brought in circuit court. This exception does not include a claim that the statute is unconstitutional as applied to a person or a limited class or classes of persons. (Emphasis supplied herein).

5. S.C.Code Ann. § 12-60-80 is a clear and unambiguous statute that requires no statutory construction and should be applied by the court according to its literal meaning. *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007); *Croft v. Old Republic Ins. Co.*, 365 S.C. 402, 412, 618 S.E.2d 909, 914 (2005); *Carolina Power & Light Co. v. City of Bennettsville*, 314 S.C. 137, 139, 442 S.E.2d 177, 179 (1994); *Grinnell Corp. v. Wood*, 378 S.C. 458, 467, 663 S.E.2d 61, 66 (Ct.App. 2008); *White v. State*, 375 S.C. 1, 8, 649 S.E.2d 172, 176 (Ct.App. 2007) [citing *Univ. of S. Cal. v. Moran*, 365 S.C. 270, 276, 617 S.E.2d 135, 138 (Ct.App. 2005)].

6. Since Plaintiff's complaint does not involve a challenge to the constitutionality of any statute, there is no remedy available to Plaintiff in this case apart from those prescribed in Title 12, Chapter 60, Code of Laws of South Carolina. Those remedies do not include Circuit Court relief.

7. Rather, the South Carolina Legislature has devised a jurisdictional scheme for review that is exclusive to those entities set forth in the South Carolina Revenue Procedures Act. *See Unisys Corp. v. South Carolina Budget and Control Bd. Div. of Gen. Servs. Info. Mgmt. Office*, 346 S.C. 158, 175, 551 S.E.2d 263, 273 (2001). Specifically, S.C.Code Ann. § 12-60-2510 *et seq.* (2000) sets forth the administrative and judicial remedies for taxpayers who desire to pursue, "Appeals, Protests, and Refunds for Property Valued by County Assessors" (Title 12, Chapter 60, Subarticle 9, Code of Laws of South Carolina).

8. S.C.Code Ann. § 12-60-2510(A) (Supp.2010) provides:

(4) In years when there is no notice of property tax assessment, the property taxpayer may appeal the fair market value, the special use value, the assessment ratio, and the property tax assessment of a parcel of property at any time. The appeal must be submitted in writing to the assessor. An appeal submitted before the first penalty date applies for the property tax year for which that penalty would apply. An appeal submitted on or after the first penalty date

applies for the succeeding property tax year. (Emphasis supplied herein).

S.C.Code Ann. § 12-60-2520 (2000) sets forth further administrative review procedures, including the “assessor’s conference,” where the taxpayer and assessor’s official(s) may discuss the taxpayer’s protest.

9. If the conference prescribed in § 12-60-2520 (2000) does not resolve the matter, a taxpayer may then appeal to the “County board of assessment appeals” pursuant to § 12-60-2530 (2000). If the taxpayer is not satisfied with the findings of the County board of assessment appeals, pursuant to § 12-60-2540(A) (2000) he may then exercise his judicial remedy “by requesting a contested case hearing before the Administrative Law Judge Division in accordance with the rules of the Administrative Law Judge Division.”

10. Judicial review of a final decision of an Administrative Law Judge is available pursuant to S.C.Code Ann. § 1-23-610 (Supp.2009), with the notice of appeal served and filed with the South Carolina Court of Appeals. There is no Circuit Court role in the judicial review process of a tax challenge under South Carolina law for cases that do not involve the constitutionality of a statute.

11. The Court has consistently affirmed the exclusivity of the remedies prescribed in the RPA. In *B & A Development v. Georgetown County*, 361 S.C. 453, 605 S.E.2d 551 (Ct.App. 2004), the Court held:

Taxpayers first argue the RPA (Revenue Procedures Act) does not apply to their cause of action for illegal taxation against the County. We disagree.

The RPA prescribes the procedures for resolving claims for the wrongful collection of taxes in our state. The language of its operative provisions signals the Act's broad and comprehensive application. Specifically, section 12-60-80 of the RPA provides

"there is no remedy other than those provided in this chapter *in any case* involving the illegal or wrongful collection of taxes, or attempt to collect taxes." S.C. Code Ann. § 12-60-80(A) (Supp. 2003) (emphasis added). The only exception to this mandate is for "action[s] for a declaratory judgment where the sole issue is whether a statute is constitutional." § 12-60-80(B); *see also Evans v. State*, 344 S.C. 60, 543 S.E.2d 547, 550 (2001) ("Recognizing the separation of powers doctrine prohibits an agency and ALJ from ruling on the constitutionality of a statute, [the court] concluded § 12-60-3390 was inapplicable where the sole issue [was] whether a statute or other legislative action is constitutional.") (quoting *Ward v. State*, 343 S.C. 14, 20, 538 S.E.2d 245, 248 (2000)). *Id.* at 456. (Emphasis in original).

The Court in *B & A Development* further held:

The (Revenue Procedures) Act provides that a taxpayer may contest real property taxes assessed by the county assessor by filing a claim for refund with the assessor and provides a right of appeal to the Administrative Law Judge Division. S.C. Code Ann. § 12-60-2560 (2000). The same basic procedures for taxpayers contesting a county's personal property tax assessment are also provided for under the RPA. *See* S.C. Code Ann. § 12-60-2940 (2000).

Our supreme court further clarified the scope of the administrative remedies available to taxpayers under the RPA in *Brackenbrook North Charleston, LP v. County of Charleston*, 360 S.C. 390, 602 S.E.2d 39 (2004). In that case, the plaintiff taxpayers brought an action in circuit court alleging Charleston County levied an excessive millage rate on real property. The circuit court allowed the taxpayers' judicial action, finding the taxpayers had no administrative remedies under the RPA because the Act did not cover taxpayer challenges to the county's millage rate determination. The circuit court concluded the RPA's mandated administrative remedies only applied to taxpayer challenges to a county's "property tax assessment" (PTA). Because the taxpayers in *Brackenbrook* did not dispute any component of their PTA, the circuit court held the taxpayers had an immediate right of judicial action. The supreme court reversed, holding that:

While the Act contains many specific procedures for taxpayers challenging their PTAs, relief under the Act is not limited to these types of protests. Section 12-60-2530(A) specifically provides the board of assessment appeals may rule on any PTA dispute "and

also other relevant claims of a legal or factual nature except claims relating to property tax exemptions."

Looking first to the Act, as we must, we hold that Taxpayers' remedy is not this direct circuit court refund suit, but rather an administrative refund pursuant to § 12-60-2560. *Id.* at 398, 399, 602 S.E.2d at 44 (footnote omitted). As interpreted by our supreme court, therefore, the RPA's administrative procedures and remedies are not limited to a narrow class of taxpayer suits. Rather, the Act's provisions are sufficiently expansive to include any "relevant claims of a legal or factual nature." The RPA therefore vests county administrative bodies with jurisdiction to hear and decide in the first instance a broad range of taxpayer suits.

Accordingly, section 12-43-285 does not supplant the remedial scheme of the RPA. Had the Legislature intended to allow for direct action in circuit court — in contravention of the broadly defined scope of the RPA — it could have expressly provided for such immediate judicial review. *Id.* at 459. (Emphasis supplied herein).

12. The Court finds and concludes that subject matter jurisdiction to determine legal residency and homestead exemption for tax classification purposes lies exclusively with those officials and entities prescribed in S.C.Code Ann. §§ 12-60-10 *et seq.*, The Revenue Procedures Act.

13. Defendants also raise as bases for dismissing this action insufficiency of process pursuant to Rule 12(b)(4) of the South Carolina Rules of Civil Procedure in the naming and designation of the defendants, insufficiency of service of process pursuant to Rule 12(b)(5) of the South Carolina Rules of Civil Procedure in that the summons and complaint were not served in accordance with Rule 4 of the South Carolina Rules of Civil Procedure, and failure to state a cause of action against Defendant Richland County. As to that basis for dismissal, Defendants assert that "Richland County" does not assess real property for *ad valorem* tax purposes, but that assessors in South Carolina are provided for and have duties that are separate and apart from

counties and county governing bodies. Specifically, S.C.Code Ann. Section 12-37-90 (2000) provides in relevant part that all assessors are to be full-time, and that the assessor is responsible for the operations of his office and shall:

\*\*\*\*

(h) be the sole person responsible for the valuation of real property, except that required by law to be appraised and assessed by the department, and the values set by the assessor may be altered only by the assessor or by legally constituted appellate boards, the department, or the courts; (Emphasis supplied herein).

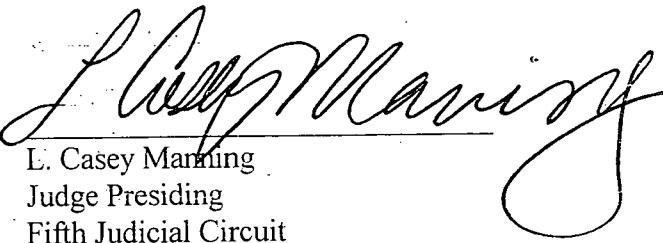
Conversely, Richland County acts through its governing body in the Council-Administrator form of government as provided for in S.C.Code Ann. § 4-9-30 *et seq.* (2000). Specifically, the corporate Richland County does not have the authority to assess property on behalf of the assessor, nor does it have the right to approve, disapprove or modify an appraisal, assessment, classification or any other decision made by the assessor, those rights having been exclusively reserved by the legislature for assessors. Therefore, Defendants contend that even if Plaintiff had filed this case in the proper court, it would be subject to dismissal for failure to state a cause of action against Richland County pursuant to Rule 12(b)(6), South Carolina Rules of Civil Procedure.

14. Having determined the absence of subject matter jurisdiction in this case, the Court need not rule on the remaining bases for dismissal.

15. Finally, as to Plaintiff's Motion For Extension Of Time, Defendants do not oppose such a motion. However, that motion is mooted by the lack of subject matter jurisdiction over this cause, as is Defendants' Motion For Protective Order.

**NOW, THEREFORE, IT IS ORDERED** that Defendants' Motion to Dismiss is  
**GRANTED** and this case is **DISMISSED**.

**AND IT IS SO ORDERED** in Columbia, South Carolina this 11 day of  
April, 2013.

  
E. Casey Manning  
Judge Presiding  
Fifth Judicial Circuit