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Jayo Development, Inc. v. Ada County Bd. of Equalization Respondent's Brief Dckt. 41668

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COPY

IN THE SUPREME COURT OF THE STATE OF IDAHO

JAYO DEVELOPMENT, INC.,)

Appellant,)

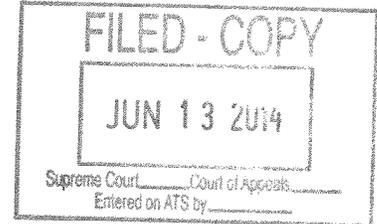
vs.)

ADA COUNTY BOARD OF)
EQUALIZATION,)

Respondent.)

Supreme Court Case No. ~~41688~~

411668
Fourth Dist. Case No. CV OC 2103-7673



RESPONDENT'S BRIEF

Appeal from the District Court of the Fourth Judicial District
Of the State of Idaho, in and for the County of Ada

Honorable Eric J. Wildman, District Judge, presiding

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I.

STATEMENT OF THE CASE

This is an appeal from the district court's interpretation of Idaho Code § 63-602W(4) to Jayo Development, Inc.'s 2012 applications for property tax exemption for site improvements on its forty-one (41) parcels. The district court, on summary judgment, affirmed the Ada County Board of Equalization's denial of the exemption on all of the Parcels. The district court read the plain language of the statute, in particular use of the definite article, "the," to refer to the land developer who makes the site improvements. Jayo Development, Inc. was not the land developer but was a successor corporation to Jayo Construction, Inc., which made the site improvements. As an alternative basis for its affirmance of the denial, the district court applied Idaho State Tax Commission Rule 620 to hold that the site improvements exemption in this case could only accrue to Jayo Construction, Inc., and would have been lost when Jayo Construction, Inc. conveyed away title to the parcels.

A. Course of Proceedings.

Appellant's recitation of the Course of Proceedings is accurate and complete for purposes of the appeal.

B. Statement of Facts.

The parcel owner that made all of the site improvements in 2008 on the forty-one (41) parcels that are the subject of this appeal was Jayo Construction, Inc. R., p. 017. The parcel owner that claimed the 2012 site improvements exemption on the forty-one (41) parcels was Jayo Development, Inc., R. p. 016, which had acquired the parcels as a result of conveyances from Jayo Construction, Inc., Jayo Construction LLC, and Doug Jayo. R., pp. 017-020.

The relevant exemption statute reads as follows:

63-602W. Business inventory exempt from taxation – Business inventory that is a component of real property that is a single family dwelling. – The following property is exempt from property taxation: business inventory. For the purpose of this section, “business inventory” means all items of personal property or other property described as:

(4) Site improvements, that are associated with land, such as roads and utilities, on real property held by the land developer for sale or consumption in the ordinary course of the land developer’s business until other improvements such as buildings or structural components of buildings, are begun or title to the land is conveyed from the land developer.

Idaho Code § 63-602W(4) (2012). The statute was amended in 2013. The Amendment was declared an emergency and made retroactive to January 1, 2013.

The original denial of the exemption by the Ada County Assessor in May of 2012 relied in part on Rule 620 and on the conveyance made after installation of the site improvements by Jayo Construction, Inc. Agency Record. The Ada County Board of Equalization (“BOE”), on appeal, did not alter the decision denying the exemption. Agency Record. The Board of Tax Appeals, which affirmed the BOE, concluded that “While appellant may be a land developer in the common sense of the term, Appellant is not the type of land developer referenced in the statute.” Agency Record.

Pursuant to the district court’s Order on Motions for Summary Judgment, the district court entered its Judgment on September 12, 2013. R., p. 136-137. In the Order, the district court found that the statute was not ambiguous and concluded that the Legislature’s choice of “the land developer” was intended to refer to the land developer that installed the site improvements on the various parcels. R., p. 129. Alternatively, the district court concluded that even if the statute were deemed ambiguous, under Rule 620 of the Idaho State Tax Commission Rules, the exemption could only accrue to Jayo Construction, Inc. and would have been lost when Jayo Construction, Inc. conveyed away title to the parcels. R., p. 132.

II.

STANDARD OF REVIEW

Review by the Supreme Court of a district court's ruling on a motion for summary judgment is the same as that required of the district court when ruling on the motion. *Friel v. Boise City Hous. Auth.*, 126 Idaho 484, 887 P.2d 29 (1994). If the evidence reveals no disputed issues of material fact, what remains is a question of law, over which this court exercises free review. *Id.* Because both parties moved for summary judgment based on the same stipulated facts and on the same theories and issues, they effectively stipulated that there is no genuine issue of material fact. *Kromrei v. AID Ins. Co.*, 110 Idaho 549, 716 P.2d 1321 (1986).

The appellate court exercises free review over the application and construction of statutes. *State v. Reed*, 154 Idaho 120, 294 P.3d 1132 (2012), citing *State v. Reyes*, 139 Idaho 502, 505, 80 P.3d 1103, 1106 (Ct. App. 2003). The interpretation of a statutory provision must begin with the literal words of the statute, giving the language its plain, obvious and rational meaning. *Crawford v. Dep't of Correction*, 133 Idaho 633, 991 P.2d 358 (1999). When interpreting the meaning of statutory language, the Court is to give effect to the legislative intent and the purpose of the statute. *Id.*, citing *Allen v. Blaine*, 131 Idaho 138, 953 P.2d 578 (1997). The legislature's intent in enacting a statute may be implied from the language used or inferred on grounds of policy or reasonableness. *Id.*, quoting *Black v. Reynolds*, 109 Idaho 277, 280, 707 P.2d 338, 391 (1985), *overruled on other grounds by Stewart v. Rice*, 120 Idaho 504, 817 P.2d 170 (1991).

Statutes granting tax exemptions are strictly construed against the taxpayer and in favor of the state. *Evangelical Lutheran Good Samaritan Soc'y v. Bd. of Equalization*, 119 Idaho 126, 804 P.2d 299 (1990). The burden is on the taxpayer to clearly establish a right of exemption, and

the exemption cannot be sustained unless it is within the spirit as well as the letter of the law. *Id.* The courts are bound by the statute and cannot create or extend by judicial construction an exemption not specifically authorized. *Id.*

III.

ISSUES ON APPEAL

1. Whether the district court erred in affirming the denial of the site improvements exemption of Idaho Code § 63-602W(4) for the 2012 tax year to Jayo Development, Inc.
2. Whether the 2013 amendment to Idaho Code § 63-602W(4) is relevant to determining the legislative intent of the 2012 exemption statute.
3. Whether Ada County Board of Equalization is entitled to attorney fees on appeal pursuant to Idaho Code § 12 -117.

IV.

ARGUMENT

I.

The primary issue on appeal is whether the district court's interpretation of Idaho Code § 63-602W(4) was in error. Appellant argues that the district court went beyond the words of the statute, which it was precluded from doing once it found the statute to be unambiguous. Appellant also argues, whether interpreting the unambiguous language of the statute or analyzing the statute as ambiguous where the court looked to Rule 620, the district court should have been guided by the "clarifying" 2013 amendment and should not have relied on Rule 620 that had been allowed to expire by the time of the district court's rulings.

A. "The land developer" in the statute is the one who made the site improvements.

Examining the words of the statute, the district court concluded:

Had the legislature intended the exemption to apply to all land developers holding property with site improvements, irrespective of whether that developer made the site improvements, it would have used the term “a land developer” in the statute. However, the legislature’s use of the term “the land developer” connotes its intent to grant the exemption to a single entity – the land developer that makes the site improvements.”

R., p. 129. Despite the lack of a definition of “the land developer” in the statute, the court did not infer or imply into the statute language (the land developer who made the site improvements) that is not apparent on the face of the statute. Rather, the court engaged in a grammatical analysis with respect to the legislature’s choice of the definite article “the,” which is limiting or specifying; referring to a specific or previously identified person, thing, etc. *See Webster’s New World Dictionary* 362 (3d ed. 1988). The specific entity entitled to the exemption, therefore, is deemed to be the land developer that makes the site improvements.

A court is to construe a statute in light of the purpose and intent of the legislature in enacting the statute:

In construing a statute, it is the duty of this court to ascertain the legislative intent, and give effect thereto. In ascertaining intent, not only must the literal wording of the statute be examined, but also account must be taken of other matters, “such as the context, the object in view, the evils to be remedied, the history of the times and the legislation upon the same subject, public policy, contemporaneous construction, and the like.”

Messenger v. Burns, 86 Idaho 26, 29, 382 P.2d 913, 916 (1963). The Statement of Purpose to the bill that became the 2012 amendment of Idaho Code § 63-602W, which added section (4) site improvements, seems to explain the legislative intent. It reads in relevant part,

In the proposed bill, that portion of value created by the site improvements in the course of a land developer’s business is exempt from property tax until a building begins or the title is conveyed from the land developer.

Accordingly, it is the creation of the site improvements that enhances the value of the raw land, and it is the value associated with the installation of the site improvements that is temporarily exempted. The benefit of the statute which is to reduce the tax obligation then, is to the

developer who installs the site improvements, until such time as title is conveyed. The exemption was not made available to *any* land developer holding property containing site improvements, such that, as the district court found, “[t]he exemption did not run with the land to the Petitioner [Jayo Development, Inc.]” R. p. 0129.

Had Jayo Construction, Inc., which constructed the site improvements, been holding the property containing the site improvements when the statute was enacted in 2012, Jayo Construction, Inc. likely would have applied for and been granted the exemption. However, transfer of title from Jayo Construction, Inc. into other entities including Jayo Development, Inc., for whatever purposes, had the unintended consequence of losing the site improvements exemption made available by Idaho Code § 63-602W(4).

Indeed, the statute in the first instance describes the entitlement to the exemption and secondly, how it is lost when, for example, the land is conveyed. The statute is concerned with the conveyance not with who becomes the new title holder or the relationship between the transferor and the transferee. In the event *any* land developer holding the site improvements is entitled to the exemption until the property is sold, then when does the value of the site improvements ever become taxable?

To read the statute as urged by Appellant would be not only unreasonable but would significantly enlarge the scope of the exemption. Interestingly, a review of the Minutes from the Senate Local Government and Taxation Committee of March 19, 2013, *see Exhibit E of Affidavit of Michael R. Jones, R.*, p. 064, underscores this point:

Chairman Siddoway asked about the transfer of ownership. He said it seemed that last year one of the big selling points of the bill was when the land, regardless of what “stage” it was in, was transferred to another entity, it would lose the exemption. He said now it appears that has gone by the wayside. **Mr. Wills** said Chairman Siddoway is correct about last year. He said the language says “title to the land is conveyed from the land developer.” **Mr. Wills** explained the developer

is the company that develops the land, invests the money and is able to carry it as business inventory. . .

Therefore, the district court was correct in its interpretation of “the land developer” as the land developer who made the site improvements so as to affirm the denial of the exemption to Jayo Development, Inc. In so ruling, the district court did not read language into the statute

B. The District Court’s Reliance of Rule 620 was not only authorized but well-reasoned.

The only challenge Appellant asserts with regard to the district court’s alternative basis for affirming the denial of the exemption relates to the district court’s reliance on Rule 620, which was no longer in effect when the district court decided the case.

State Tax Commission Rule 620, *see* Idaho Admin. Code R. 35.01.03.620 (2012), was adopted to aid in the implementation of the newly enacted Idaho Code § 63-602W(4). Rule 620 was in place in 2012 and was the applicable law in effect when the Ada County Board of Equalization denied Jayo Development Inc.’s tax exemption applications. Rule 620, however, was allowed to expire by operation of law, as temporary agency rules expire at “the conclusion of the next succeeding regular session of the legislature unless the rule is approved, amended or modified by concurrent resolution....” Idaho Code § 67-5226(3).

A statute or regulation that is amended or enacted between the initial and the appellate decision is only to be applied by an appellate court if there is clear legislative intent to that effect. *See Atencio v. Joint Jerome Sch. Dist. #261*, 837 F. Supp.2d 1158, 1163-64 (D. Idaho 2011) (holding that the ADA Amendments Act of 2008 did not apply retroactively, in part, “because of the absence of congressional intent to give the amendments retroactive effect”) (citations omitted). Appellant has not cited any case law holding that appellate courts are to take into account the *expiration* of an administrative regulation when making a decision on appeal.

Moreover, Appellant has failed to cite any expression of legislative intent indicating that the Idaho Legislature intended for the expiration of Rule 620 to have any retroactive effect on decisions regarding exemptions for tax year 2012. Appellant's argument, which was rejected by the district court should also be rejected by this Court. In Rule 620, the Tax Commission construed the statute to mean that the developer applying for the exemption must have "made or caused to be made the site improvements on the land..." Idaho Admin. Code R. 35.01.03.620.03.c. The district court duly relied on Rule 620 to conclude that "the land developer" in the statute was the land developer that made the site improvements. The district court's review of the statute as ambiguous was not in error.

The burden is on the taxpayer to clearly establish a right of exemption, and the exemption cannot be sustained unless it is within the spirit as well as the letter of the law. *Evangelical Lutheran Good Samaritan Soc'y v. Bd. of Equalization*, 119 Idaho 126, 804 P.2d 299 (1990). Appellant did not meet its burden, and the district court properly affirmed the denial of the exemption. The holding of the district court should also be affirmed.

II.

Appellant contends the 2013 amendments were "clarifying" amendments, which therefore entitle Appellant to retroactive application of the amendments. In support of its contention, Appellant relies on Committee Minutes containing various statements which purport to explain the purpose and intent of the amendments.

A. 2013 Amendments and Legislative Reasoning Behind Them are Inapplicable.

In enacting amendments to existing statutes, the legislature is presumed to have intended a meaning different from that accorded it before the amendment. *State v. Reed*, 154 Idaho 120, 123, 294 P.3d 1132, 1135 (2012), *citing Woodvine v. Triangle Dairy, Inc.*, 106 Idaho 716, 721,

682 P.2d 1263, 1268 (1984). Appellant, however, cites *Reed* for the proposition that when the legislature has acted to clarify ambiguous¹ language in a statute, then that clarifying language should be consulted by the Court to determine the legislature’s original intent in enacting the original statute. The question for the Court, then, is whether the presumption is successfully rebutted by Appellant’s claim that the 2013 amendments are a legislative clarification.

The 2013 amendments to Idaho Code § 63-602W(4) added qualifiers to “the land developer” and changed the last phrase of the original statute that read “or title to the land is conveyed from the land developer,” as shown by the italicized language:

Site improvements that are associated with land, such as roads and utilities, on real property held by the land developer, *either as owner or vendee in possession under a land sale contract*, for sale or consumption in the ordinary course of the land developer’s business until other improvements, such as buildings or structural components of buildings are begun *or the real property is conveyed to a third party*.

2013 Idaho Sess. Laws 715. The amended statute also included the following additional language:

For purposes of this subsection, a transfer of title to real property to a legal entity of which at least fifty percent (50%) is owned by the land developer, the land developer’s original entity or the same principals who owned the land developer’s original entity shall not be considered a conveyance to a third party. For purposes of this subsection, the amount of the exemption shall be the difference between the market value of the land with site improvements and the market value of the land without site improvements as shall be determined by a comparative market analysis of a similarly situated parcel or parcels of real property that have not been improved with such site improvements contemplated by this subsection. In the case the market value of land without site improvements cannot be reasonably assessed because of the absence of comparable sales, an exemption value of seventy-five percent (75%) of the market value of land with site improvements shall be granted

¹ The statute examined in *Reed* was not ambiguous; rather, *Reed* compared the original statute to the amended statute, which added a new subsection, I.C. § 18-1509A(4) which stated: “In a prosecution under this section, it is not necessary to show that an act described in chapter 15, 61 or 66, title 18, Idaho Code, actually occurred.” *Reed*’s argument that the statute before amendment must necessarily have required proof that an act described had occurred was rejected by the Court due to the plain language of Section 19-1509A(1), which specified the elements needed for a conviction. *State v. Reed, supra* at 123, 294 P.3d 1135.

to that parcel. An application is required for the exemption provided in this subsection in the first year the exemption is claimed; in subsequent consecutive years no new application is required. The application must be made to the board of county commissioners by April 15 and the taxpayer and county assessor must be notified of any decision and assessment of property by May 15. The decision or assessment of property, or both, of the board of county commissioners may be appealed to the county board of equalization no later than the fourth Monday in June. The applicant shall notify the board of county commissioners in writing of any change in eligibility for the parcel by April 15.

Id., codified as Idaho Code § 63-602W (2013).

A federal district court has provided the following analysis with respect to a clarifying amendment to a statute:

To determine whether a particular amendment clarified or changed the law, California courts consider whether the prior version of the statute “could not have been properly construed” to include the content of the amendment. *Carter*, 38 Cal.4th at 924 44 Cal.Rptr.3d 223, 135 P.3d 637. The Legislature's declaration of what they intended by the prior statute is entitled to consideration, but it is not controlling, and simply stating that an amendment “clarified” the prior statute is not determinative:

It is true that if the courts have not yet finally and conclusively interpreted a statute and are in the process of doing so, a declaration of a later Legislature as to what an earlier Legislature intended is entitled to consideration. But even then, a legislative declaration of an existing statute's meaning is but a factor for a court to consider and is neither binding nor conclusive in construing the statute. This is because the Legislature has no authority to interpret a statute. That is a judicial task. The Legislature may define the meaning of statutory language by a present legislative enactment which, subject to constitutional restraints, it may deem retroactive. But it has no legislative authority simply to say what it *did* mean. A declaration that a statutory amendment merely clarified the law cannot be given an obviously absurd effect, and the court cannot accept the Legislative statement that an unmistakable change in the statute is nothing more than a clarification and restatement of its original terms. *McClung*, 34 Cal.4th at 473, 20 Cal.Rptr.3d 428, 99 P.3d 1015 (2004) (internal citations and quotation marks omitted).

Jadwin v. County of Kern, 610 F.Supp. 2d 1129, 1146 (E. D. Ca. 2009). Accordingly, the Statement of Purpose² of the 2013 amendments and the Committee Minutes, *see* R., p. 064, which refer to the legislature’s intent to “clarify” the 2012 statute are not determinative. Furthermore, considering the scope of the 2013 amendments to Idaho Code § 63-602W(4), the changes cannot be said to be merely clarifying so as to warrant retroactive application.

B. The 2013 statute expressly states it is retroactive to January 1, 2013.

The Idaho Legislature expressly made the 2013 statutory amendments retroactive to January 1, 2013. 2013 Idaho Sess. Laws 715. The clear intent of the Legislature, then, was that the amended statute would apply from January 1, 2013 *forward*. It logically follows that the legislative reasoning behind the 2013 statutory amendments should also only be applied from January 1, 2013 forward. Because the amendments were not made retroactive to January 1, 2012, so as to affect exemption decisions that were made in 2012, the 2013 amendments and related legislative reasoning have no bearing on the interpretation of the statute as it existed in 2012.

III.

Idaho Code § 12-117(1) as amended in 2012 allows a court to award attorney’s fees, including fees on appeal, in any proceeding involving as adverse parties a political subdivision and a person, if the court finds that the nonprevailing party acted without a reasonable basis in fact or law. In the event that Respondent Ada County Board of Equalization is the prevailing party, Respondent seeks an award of costs on appeal pursuant to Idaho Code § 12-117 and Idaho Appellate Rule 41.

Although the statute in question has not previously been interpreted by an appellate

² It reads in part: “Section 63-602W(4) is being amended to provide clarification in determining eligibility for this exemption by defining land developer, when the real property is no longer eligible for the exemption and provides clarification in determining the value of the exemption.”

court, this appeal was pursued without a reasonable basis in fact or law. Appellant ignores well settled law on the authority of a court to rely on an agency regulation construing a statute and on the retroactive application of a statutory amendment. Appellant provides no support for its argument that the later expiration of an administrative regulation such as Rule 620 is relevant to the interpretation of the statute that was previously explained by the rule. The pursuit of the appeal was so unreasonable as to justify an award of fees. *Compare SE/ZConstr., L.L.C. v. Idaho State Univ.*, 140 Idaho 8, 89 P.3d 848 (2004).

V.

CONCLUSION

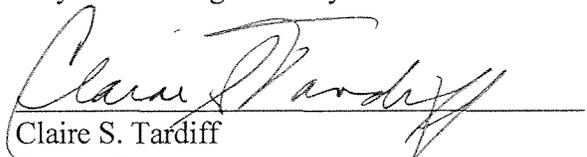
By virtue of two separate analyses, the district court correctly held that the exemption found in Idaho Code § 63-602W(4) (2012) was intended by the Idaho Legislature to be available only to the land developer that made the site improvements. The later amendments to the statute as well as the legislative reasoning behind the statute are irrelevant and wholly inapplicable to the district court's construction of the statute.

Respondent respectfully requests that the Court uphold the decision of the district court that denied the site improvements exemption to Jayo Development, Inc.

DATED this 13th day of June, 2014.

GREG H. BOWER
Ada County Prosecuting Attorney

By:



Claire S. Tardiff
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of June, 2014, I served a true and correct copy of the foregoing RESPONDENT'S BRIEF to the following people by the following method:

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Boise, Idaho 83707-7743

Hand Delivery
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