IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-809

Filed: 6 October 2020

Property Tax Commission, No. 18 PTC 0222

IN THE MATTER OF THE APPEAL OF: SHEA WOODLANDS LLC

Appeal by Union County from Final Decision entered 29 April 2019 by Chairman Robert C. Hunter of the Property Tax Commission sitting as the State Board of Equalization and Review. Heard in the Court of Appeals 19 February 2020.

Perry, Bundy, Plyler & Long, L.L.P., by Ashley J. McBride, for Union County-appellant.

C.B. McLean Jr. for Shea Woodlands, LLC-appellee.

MURPHY, Judge.

To have standing to appeal the denial of an application for a tax exemption or exclusion under N.C.G.S. § 105-282.1(b), a party must be an owner of the relevant property. Where a party has no ownership interest, legal or equitable, it has no standing to appeal any denial of an application for a tax exemption or exclusion.

BACKGROUND

On 1 September 2016, Shea Woodlands, LLC ("Shea Woodlands") entered into an "Option Agreement" ("Option Agreement") with Jen North Carolina 9 LLC ("Jen")

that granted Shea Woodlands "the exclusive right and option . . . to acquire" certain real property located in Union County, including the real property at issue in this appeal, in exchange for Shea Woodlands' monetary consideration, covenants, and obligations. The Option Agreement also required Shea Woodlands to pay Jen consistent additional "option consideration" payments, calculated in a manner similar to interest payments, along with all additional expenses including taxes, insurance payments, repair and maintenance costs, and indemnification of Jen.

The Option Agreement included the following language: "[the] Agreement shall constitute an option and not an agreement obligating [Shea] Woodlands to purchase all or any number of the Lots";

> [t]he Parties acknowledge and agree that [Shea] Woodlands'[] interest in the Lots shall be strictly limited to the option interests expressly described herein and it is the intent of the Parties that, unless and until [Shea] Woodlands exercises its rights to purchase the Lots as described herein, [Shea] Woodlands shall have *no fee interest in the Lots, equitable or otherwise*, and that fee title to the Lots shall be held by Owner[;]

and

> if this Agreement or the transaction described herein is ever characterized as a financing transaction such that [Shea] Woodlands is deemed to have equitable title to the Lots held by Owner[, Jen,] and Owner[, Jen,] is deemed to have only a security interest therein, [Shea] Woodlands hereby grants, transfers and assigns to Owner[, Jen,] . . . all of [its] respective equitable interest in such Lots . . .

> subject to [Shea] Woodlands'[] option to purchase such Lots in accordance with provisions of this Agreement.[1]

(Emphasis added).

In January 2018, Shea Woodlands applied for the Builder Property Tax Exemption under N.C.G.S. § 105-277.02 ("Builder's Exemption") for 32 parcels of land all within Oldenburg Subdivision as "Owner" of the parcels. As of 1 January 2018, the relevant date for the application, Shea Woodlands was the property owner for only 8 of the 32 parcels, while Jen was the owner of the remaining 24 parcels, although these parcels were the subject of the above described Option Agreement. The Union County Tax Administrator's Office ("Union County") granted the exemption for the 8 parcels owned by Shea Woodlands, and denied the exemption for the remaining 24 parcels ("the property") owned by Jen based on Shea Woodlands' lack of an ownership interest in the property. Only the denial of the Builder's Exemption for the property is at issue in this appeal.

Shea Woodlands appealed this denial to the Union County Board of Equalization and Review ("the Board"). Shea Woodlands contended that it was entitled to the Builder's Exemption as the taxpayer and due to special rights on the lots resulting from its Option Agreement with Jen, including that Shea Woodlands was "the [sole] Builder developing the lots [within the subdivision] . . . for its exclusive

[1] Along with the Option Agreement, Jen and Shea Builders, LLC, a separate entity, and not a party to this matter, entered a "Construction Agreement" to construct a subdivision on the property.

benefit." After a hearing, the Board upheld Union County's decision not to grant Shea Woodlands the Builder's Exemption to the property.

Shea Woodlands then appealed to the North Carolina Property Tax Commission ("the Commission"). At the Commission hearing, both parties agreed only two legal questions were at issue—if Shea Woodlands had standing to appeal and if Shea Woodlands was entitled to the Builder's Exemption for the property. On the first issue, the Commission found Shea Woodlands had standing to request the tax exemption due to its obligation to pay property taxes on the property. On the second issue, the Commission found Shea Woodlands was an owner of the property "entitled to the benefits of the [Builder's Exemption] for [the property]" for the 2018 tax year due to Shea Woodlands' obligation to pay property taxes on the property, the responsibility to develop and sell the property, and the exclusive option to purchase the property. Union County timely appealed the Commission's decision.

ANALYSIS

A. Standard of Review

When we review the Commission's decisions, "[q]uestions of law receive *de novo* review, while issues such as sufficiency of the evidence to support the Commission's decision are reviewed under the whole-record test." *In re Appeal of Greens of Pine Glen Ltd.*, 356 N.C. 642, 647, 576 S.E.2d 316, 319 (2003) (citing N.C.G.S. § 105-345.2(b)). "Under a *de novo* review, the court considers the matter

anew and freely substitutes its own judgment for that of the Commission." *Id*. Here we conduct a de novo review because, as both parties agreed before the Commission, the only issues presented are legal questions.

Under N.C.G.S. § 105-282.1, "[e]very *owner* of property claiming exemption or exclusion from property taxes under the provisions of this Subchapter has the burden of establishing that the property is entitled to it." N.C.G.S. § 105-282.1(a) (2019) (emphasis added).

> If an assessor denies an application for exemption or exclusion, the assessor must notify the owner of the decision and *the owner* may appeal the decision to the board of equalization and review or the board of county commissioners, as appropriate, and from the county board to the Property Tax Commission.

N.C.G.S. § 105-282.1(b) (2019) (emphasis added).

Under the plain language of this statute, Shea Woodlands must have been an owner to have standing to appeal. Owner is not defined in the statutory scheme. "Having no statutory definition, not having acquired a technical meaning, and a different meaning not being apparent from the statute, [the term 'owner'] must be construed in accordance with its common and ordinary meaning, . . . which can be gained from dictionaries." *McCullough v. Branch Banking & Trust Co., Inc.*, 136 N.C. App. 340, 348, 524 S.E.2d 569, 575 (2000) (internal citations omitted). Black's Law Dictionary defines "owner" as "[s]omeone who has the right to possess, use, and convey something; a person in whom one or more interests are vested. [] An owner

may have complete property in the thing or may have parted with some interests in it (as by granting an easement or making a lease)." *Owner*, Black's Law Dictionary (11th ed. 2019). Shea Woodlands is not an owner as it had no right to possess or convey the property. Shea Woodlands' interest in the property allowed them to use and change the property, but its "ownership" was not in effect until the option was exercised. For these same reasons, it had no vested interest.

However, Shea Woodlands argues it has standing due to its equitable ownership interest in the property resulting from its Option Agreement with Jen, which Shea Woodlands argues is properly characterized as a land installment contract under *Boyd v. Watts*, 316 N.C. 622, 342 S.E.2d 840 (1986). In *Boyd*, our Supreme Court found that a contract we characterized as an option contract, was in reality a land installment contract. Our Supreme Court reasoned:

> Under the contract the defendant agreed to buy and the plaintiffs' predecessor in interest agreed to sell the realty. The defendant agreed to make monthly payments toward the purchase price, to pay the taxes and to pay for insurance. In turn, the plaintiffs' predecessor retained title to the property but agreed to execute and deliver a general warranty deed to the defendant upon the defendant's payment of the full purchase price, taxes, and insurance. Also, the plaintiffs' predecessor gave the defendant the right to "live in and use said premises" so long as the contract "remains in full force and effect . . . ." The contract was an installment land contract.

Boyd v. Watts, 316 N.C. 622, 627, 342 S.E.2d 840, 843 (1986). Installment land contracts are subject to the same rules as those governing mortgages. *Id.* at 628, 342

S.E.2d at 843. With mortgages, the mortgagor retains an equity of redemption. *See e.g., Banks v. Hunter*, 251 N.C. App. 528, 531-33, 796 S.E.2d. 361, 365-66 (2017). This rule, applied to land installment contracts, makes land installments contracts subject to N.C.G.S. § 105-302(c)(1), which states "[t]he owner of the equity of redemption in real property subject to a mortgage or deed of trust shall be considered the owner of the property . . . ." N.C.G.S. § 105-302(c)(1) (2019).

The Option Agreement here requires Shea Woodlands to pay insurance and taxes on the property. Additionally, Shea Woodlands must make consistent special option consideration payments in addition to the initial $3,750,000.00 consideration payment, all of which are non-refundable. According to the Option Agreement, the initial consideration is applied to the "Takedown Price" and the special option consideration payments are to reimburse expenses attributable to the property. In exchange for these obligations, Jen granted Shea Woodlands a license to "enter upon and use the Property for purposes of inspecting, making surveys and tests, staking, obtaining topographical information, installing the Subdivision Improvements in accordance with the Construction Agreement, marketing the Lots for sale to prospective retail purchasers of homes on the Lots . . . ."

Despite the above facts, the present case is distinguishable from *Boyd*. Unlike the agreement in *Boyd*, in this case there was no agreement that Shea Woodlands was to buy the property. The clear terms of the Option Agreement indicate "[the]

Agreement shall constitute an option and not an agreement obligating [Shea] Woodlands to purchase all or any number of the Lots." Although other aspects of the Option Agreement here are similar to the land installment contract in *Boyd,* the absence of an obligation to purchase the property is fatal to characterizing the Option Agreement here as a land installment contract as Shea Woodlands' obligations under the Option Agreement simply permit it to retain its option.

Furthermore, even assuming, *arguendo*, that an equitable interest satisfies the statutory requirement, Shea Woodlands' argument that it has an equitable interest is rebutted by the very terms of the Option Agreement. The Option Agreement states,

> [t]he Parties acknowledge and agree that [Shea] Woodlands'[] interest in the Lots shall be strictly limited to the option interests expressly described herein and it is the intent of the Parties that, unless and until [Shea] Woodlands exercises its rights to purchase the Lots as described herein, [Shea] Woodlands shall have no fee interest in the Lots, *equitable or otherwise*, and that fee title to the Lots shall be held by Owner[, Jen].

(Emphasis added). Additionally, the Option Agreement states,

> if this Agreement or the transaction described herein is ever characterized as a financing transactions such that [Shea] Woodlands is deemed to have equitable title to the Lots held by Owner[, Jen] and Owner[, Jen,] is deemed to have only a security interest therein, [Shea] Woodlands hereby grants, transfers and assigns to Owner[, Jen,] . . . all of [its] respective equitable interest in such Lots . . . subject to [Shea] Woodlands'[] option to purchase such Lots in accordance with the provisions of this Agreement.

The Option Agreement disclaims the very thing that Shea Woodlands asserts—that the Option Agreement is anything more than an Option Agreement.

Additionally, Shea Woodlands contends that it has standing under *In re Appeal of: Novartis Vaccines and Diagnostics, Inc.*, 2012 WL 6737761, 735 S.E.2d 634 (Table) (2012) (unpublished). In addition to being unpublished, and therefore nonbinding, in *Novartis* we held Novartis had standing to appeal because it owned 60 percent of the property, and therefore was an owner under the statute. *In re Appeal of: Novartis Vaccines and Diagnostics, Inc.*, 2012 WL 6737761, *3, 735 S.E.2d 634 (Table) (2012) (unpublished). Unlike in *Novartis*, here Shea Woodlands has no ownership interest of any kind in the property.

Shea Woodlands also relies on *In re Property Located at 411-417 West Fourth Street in Forsyth County*, 282 N.C. 71, 191 S.E.2d 692 (1972), to support the claim it has standing. In that case, a lessee who operated a shop within a building had standing to appeal as "a taxpayer who both owned and controlled taxable property assessed for taxation in the county." *In re Property Located at 411-417 West Fourth Street in Forsyth County*, 282 N.C. 71, 77, 191 S.E.2d 692, 696 (1972). However, that case is also distinct, as our Supreme Court relied on statutes, which have since been repealed, that granted standing to appeal to the State Board of Assessment to "*any and all* taxpayers who own[ed] *or control[led]* taxable property," and to "*[a]ny* property owner, *taxpayer* or member of the board of county commissioners [who]

except[ed] to the order of the board of equalization and review and appeal[ed] . . . ." *Id*. at 76, 77, 191 S.E.2d at 696 (quoting N.C.G.S. § 105-327(g)(2) (1968) and N.C.G.S. § 105-329 (1968)).

The grant of standing to appeal based on "control" does not appear anywhere in the relevant statutes here. Although "taxpayer" does appear in N.C.G.S. § 105-282.1(b), it refers only to appeals from the denial of a tax exemption or exclusion *by the Department of Revenue*; whereas, only "owner" is referred to for appeals from the denial of a tax exemption or exclusion *by an assessor*, the relevant provision to the facts here. N.C.G.S. § 105-282.1(b) (2019). Further, "taxpayer" is defined as "[a] *person whose property* is subject to ad valorem property taxation by any county or municipality and *any person who, under the terms of this Subchapter, has a duty to list property* for taxation." N.C.G.S. § 105-273(17) (2019) (emphasis added). Even this definition requires ownership of property or an obligation to list property for taxation. Shea Woodlands lacks any ownership interest in the property, and, despite its contractual obligation to pay taxes on the property, there is no statutory obligation for Shea Woodlands to list the property for taxation.

Shea Woodlands had no standing to appeal Union County's denial of its application for a Builder's Exemption for the property due to its lack of an ownership interest. We therefore reverse the contrary decision of the Commission. Even assuming, *arguendo*, Shea Woodlands had standing to appeal the denial of the

Builder's Exemption for the property, Shea Woodlands is not a builder and not entitled to the Builder's Exemption due to its lack of an ownership interest, as articulated above. N.C.G.S. 105-273(3a) ("'Builder' means a taxpayer engaged in the business of buying real property, making improvements to it, and then reselling it."). *See Jones v. Weyerhaeuser Co.*, 141 N.C. App. 482, 485, 539 S.E.2d 380, 382 (2000) ("Nonetheless, even assuming[,] *arguendo*[,] that [the] defendant does have standing to assert a constitutional challenge to N.C.G.S. § 97-61.5, we agree with the Commission that the statute is not unconstitutional.") (citing *Roberts v. Durham Cty. Hosp. Corp.*, 56 N.C. App. 533, 539, 289 S.E.2d 875, 878-79 (1982)).

CONCLUSION

The plain language of N.C.G.S. § 105-282.1(b) requires ownership to appeal a decision of an assessor. Similarly, the applicable caselaw does not provide the right of appeal to anyone less than an owner. Shea Woodlands lacks any ownership interest in the property, and therefore has no standing to appeal under N.C.G.S. § 105-282.1(b). Even assuming, *arguendo*, Shea Woodlands did have standing, its lack of ownership interest means it cannot qualify as a builder entitled to the Builder's Exemption. We reverse the decision of the Commission to the contrary.

REVERSED.

Judge COLLINS concurs.

Judge DIETZ concurs with separate opinion.

Report per Rule 30(e).

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DIETZ, Judge, concurring.

I agree with the majority's judgment but would resolve the case on the merits (through the majority's analysis that Shea Woodlands is not the owner or taxpayer) rather than finding that Shea Woodlands lacked legal standing to appeal the case to the property tax commission.

The language of the applicable statutes does not anticipate that sophisticated construction projects might involve multiple, separate legal entities with the entity that performed the construction work being separate from the one holding the properties until they are sold for residential use. If this oversight in the plain language of the statutes is unintentional, it is the role of the legislature, not the courts, to correct it.