

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

No. 2009-CA-00292

**3545 MITCHELL ROAD, LLC
d/b/a TUPELO TRACE APARTMENTS
and PINECREST/TUPELO, L.P.
d/b/a TUPELO SENIORS APARTMENTS**

APPELLANTS

V.

**BOARD OF SUPERVISORS
OF LEE COUNTY, MS
and MARK WEATHERS, LEE
COUNTY TAX ASSESSOR**

APPELLEES

APPEAL FROM THE CIRCUIT COURT OF LEE COUNTY, MISSISSIPPI

BRIEF FOR APPELLANTS

ORAL ARGUMENT NOT REQUESTED

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V.

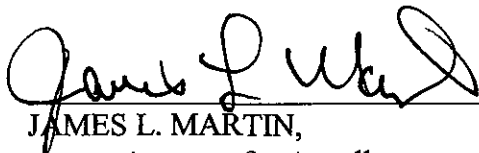
**BOARD OF SUPERVISORS
OF LEE COUNTY, MS
and MARK WEATHERS, LEE
COUNTY TAX ASSESSOR**

APPELLEES

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

- | | | |
|----|--|-------------------------|
| 1. | 3545 Mitchell Road, LLC | Appellant |
| 2. | Pinecrest/Tueplo, L.P. | Appellant |
| 3. | James L. Martin, Esq. | Attorney for Appellants |
| 4. | Board of Supervisors of Lee County, MS | Appellee |
| 5. | Mark Weathers, Lee County Tax Assessor | Appellee |
| 6. | Gary Carnathan, Esq.
Carnathan Malski & McAuley | Attorney for Appellees |



JAMES L. MARTIN,
Attorney for Appellants

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STATEMENT OF ISSUES

1. Whether the Lee County Board of Supervisors properly changed the 2007 assessments for Appellants' property pursuant to §27-35-147(4) *Miss. Code Ann.*
2. Whether the valuation methodology specified in §27-35-50(4) *Miss. Code Ann.* is an exemption.
3. Whether subject properties were incorrectly classified on the 2007 assessment roll as contemplated by §27-35-143(11) *Miss. Code Ann.*
4. Whether the Assessor and Board of Supervisors followed applicable law in reassessing subject properties after the 2007 assessment roll was finalized.

STATEMENT OF THE CASE

I.

NATURE AND COURSE OF PROCEEDINGS

These cases involve two (2) multi-unit apartment complexes situated in Lee County, Mississippi, and the proper determination of true value of each of the complexes on which the ad valorem taxes for the year 2007 were assessed by the Lee County Board of Supervisors. These cases originated with appeals to the Lee County Circuit Court from the August 22, 2008 order of the Lee County Board of Supervisors denying Appellants' requests for reduction in taxes pursuant to §11-51-77 *Miss. Code Ann.* (R. Vol. 1, pp. 2, 34). A trial was held on January 16, 2009 on the Stipulation of Facts which resulted in an Order dated February 4, 2009, affirming the actions of the Board of Supervisors. (R. Vol. pp. 17, 87; RE. p. 2). Appellants seek refund of overpayment of ad valorem taxes for 2007 in the sums of \$91,744.27 and \$9,669.23, respectively, resulting from the unlawful increase in true value by the Lee County Tax Assessor in violation of applicable law.(R. Vol. 1, p. 49, ¶19).

II.

STATEMENT OF FACTS

Appellant, 3545 Mitchell Road, LLC d/b/a Tupelo Trace Apartments, ("Tupelo Trace") owns and operates Tupelo Trace Apartments located in Tupelo, Lee County, Mississippi. Appellant, Pinecrest/Tupelo, L.P., ("Pinecrest") owns and operates Tupelo Seniors Apartments also located in Tupelo, Lee County, Mississippi.(R. Vol. 1, p. 45, ¶1, 2).

Tupelo Trace and Tupelo Seniors are residential apartment complexes consisting of 200 and 40 units, respectively, which are "affordable rental housing" properties as that term is defined by §27-35-50(4)(d)(i) *Miss. Code Ann.* (R. Vol. 1, p. 46, ¶5).

As required by §27-35-81 *Miss. Code Ann.* the Assessor submitted the 2007 Land Roll to

the Board of Supervisors at its meeting held on July 3, 2007. (R. Vol. 1, p. 46, ¶6, p. 50). The Assessor recommended to the Board the true value of all real and personal property situated in Lee County, Mississippi for 2007. The 2007 Roll included, among other things, recommended true values for Tupelo Trace and Tupelo Seniors in the sums of \$2,862,210.00 and \$317,420.00, respectively. (R. Vol. 1, p. 47, ¶ 9, p. 60). The Board accepted and adopted the 2007 Land Roll as presented by the Assessor at its meeting held on August 13, 2007. (R. Vol. 1, p. 46, ¶8, p. 57).

On or about September 25, 2007, Tupelo Trace and Pinecrest, by and through their authorized representative, submitted a written request to the Assessor asking for confirmation of the 2007 true values assessed to Tupelo Trace and Pinecrest. (R. Vol. 1, p. 47, ¶10, p. 62).

In response to said request, the Assessor confirmed and represented to Tupelo and Pinecrest that their tax assessments for 2007 would be based on a true value assessment of \$2,862,210.00 and \$317,420.00, respectively. (R. Vol. 1, p. 47, ¶11, p. 63).

On or about November 8, 2007, the Assessor, without notice to Tupelo Trace or Pinecrest, changed the 2007 true value assessment for Tupelo Trace and Tupelo Seniors to \$8,896,620.00 and \$951,073.00, respectively. (R. Vol. 1, p. 47, ¶12).

The Assessor and Board's actions resulted in Tupelo Trace and Pinecrest being assessed \$135,304.25 and \$14,512.90, respectively, in taxes for 2007 which amounts were paid in protest on or about January 17, 2008. (R. Vol. 1, p. 48, ¶14). The true value assessments of Tupelo Trace and Tupelo Seniors approved and confirmed by the Board at its August 13, 2007 meeting would yield tax assessments for Tupelo Trace and Pinecrest in the amounts of \$43,529.98 and \$4,843.67. (R. Vol. 1, p. 48, ¶16). Accordingly, Tupelo Trace and Pinecrest overpaid their 2007 ad valorem tax assessment in the sums of \$91,774.27 and \$9,669.23, respectively. (R. Vol. 1, p. 49, ¶19).

On or about August 6, 2008 Appellants submitted a written objection to the Lee County Board of Supervisors objecting to the unlawful increase in true value of Appellants' properties. (R. Vol. 1, p. 48). The Board of Supervisors issued an Order dated August 22, 2008 denying the objections of Appellants. Thereafter, Appellants filed their Petitions For Appeal in the Circuit Court of Lee County, Mississippi on August 28, 2008. (R. Vol. 1, pp. 2, 34, 49).

The parties filed an agreed Stipulation of Facts with exhibits in the Court below on December 5, 2008. (R. Vol. 1, p. 45). By agreement of the parties these cases were tried on the Stipulation of Facts before the Honorable Jim S. Pounds, Circuit Judge on January 16, 2009. (R. Vol. 1, p. 87, R. Vol. 2, p. 2). On February 4, 2009, Judge Pounds entered an Order denying Appellants' appeals. (R. Vol. 1, p. 17; RE. p. 2).

SUMMARY OF THE ARGUMENT

For the year 2007 the Assessor recommended to the Board of Supervisors true values of Tupelo Trace and Tupelo Seniors in the sums of \$2,862,210.00 and \$317,420.00, respectively. The Board adopted these values at its meeting in August, 2007 at which time the 2007 Land Roll became final.

Once the Land Roll becomes final the Assessor and/or the Board can change the assessments only upon certain specific circumstances enumerated in §§27-35-143, 145, 147 and 149 Miss. Code Ann. In November, 2007, the Assessor arbitrarily increased the true values of Tupelo Trace and Tupelo Seniors to \$8,896,620.00 and \$951,073.00, respectively, thus increasing by 300% the taxes paid by Tupelo Trace and Pinecrest for 2007.

Neither the Assessor nor the Board of Supervisors followed the law in increasing the assessments after they became final because there authority to make changes is governed by §§27-35-143, 145, 147 and 149 Miss. Code Ann. The trial court was manifestly in error in ruling

that the special methodology for valuing affordable rental housing is an exemption and thereby holding that Appellees properly reassessed subject properties under §27-35-147 (4) *Miss. Code Ann.* Accordingly, Appellants are entitled to a reduction in the 2007 Assessments and a refund of overpayment of taxes in the sums of \$91,774.27 and \$9,669.23, respectively.

ARGUMENT

I.

STANDARD OF REVIEW AND APPLICABLE LAW

Since there are no disputed facts in this case the standard of review for application of the law is de novo, and the scope of the review is plenary. *Mississippi State Tax Commission v. Medical Devices, Inc.*, 624 So.2d 987 (Miss. 1993). As will be shown herein below the trial court erred in its interpretation and application of certain tax statutes to the undisputed facts.

There are four (4) questions which will determine the outcome of these appeals:

- a. Once a tax roll becomes final can the Assessor and Board of Supervisors increase the assessment of a particular parcel of property?
- b. If the answer is yes, what is the basis on which the Assessor and Board of Supervisors can exercise this authority?
- c. Is the valuation methodology for affordable housing set forth in §27-35-50 (d)(4) *Miss. Code Ann.* an exemption?
- d. Were Tupelo Trace and Tupelo Seniors properly classified on the 2007 Land Roll?

Tupelo Trace and Pincrest acknowledge that the Assessor and the Board have the authority to change an assessment after it has become final. However, this authority is not without limitations. The Board's authority to assess property is derived from the laws of Mississippi. The statutes authorizing ad valorem tax assessment must be strictly followed. *Ops Atty Gen*, 1993-35, p. 61.

The Board's authority to change an assessment after it becomes final is governed by §§27-35-143, 145, 147 and 149 Miss. Code Ann. (R. Vol. 2, p. 26, lines 26, 27, p. 27. lines 1 - 3; R. Vol. 2, p. 26, lines 28-29, p. 27, lines1-3). Unless the Board's action is covered by one or more of the referenced sections, then the increase in Tupelo Trace and Pinecrest's assessments is unlawful and should be rescinded.

A close reading of referenced statutes clearly suggest only §27-35-147 Miss. Code Ann. is applicable to this case. §27-35-143 states upon application of an interested party or by the Assessor on behalf of the interested party the Board has the power to change, cancel or decrease an assessment after the assessment roll becomes final under fourteen (14) separately numbered circumstances and no other. (emphasis added). Perusal of the 14 circumstances suggest this statute is intended for taxpayers to obtain the removal or reduction of an improper assessment. The facts in the case sub judice do not fit any of the 14 circumstances.

§27-35-145 specifies the manner in which a person desiring a change provided by §27-35-143 must apply. §27-35-149 specifies the procedure the Board should follow once a change is made in accordance with §§27-35-143 and 145.

§27-35-147 specifies five (5) distinct circumstances under which the Board, upon its own motion or upon notice from the Assessor, can increase an assessment after the assessment roll is closed which are:

1. When lands have been assessed and buildings and improvements thereon have been omitted from the roll.
2. When the value of lands, assessed according to the number of acres or as an entire tract, has increased because actually subdivided into lots or smaller tracts, on or before the preceding tax lien date.

3. When the value of the lands has been increased by reason of changes or improvements made in or on adjacent lands before the preceding tax lien date, and the lands have been assessed without taking into consideration the changed conditions.
4. When lands or improvements thereon have been listed as exempt from taxation, but were subject to assessment and taxation on the preceding tax lien date.
5. When the property is liable for a special district levy tax but has not been assessed for the benefit of such district.”

Under the facts of this case §27-35-147 is the code section which is dispositive of this case. (R. Vol. 2, p. 30, lines 27-29, p. 31, line 1). Unless one of the circumstances enumerated in §27-35-147 Miss. Code Ann. is present in the case sub judice, the Board does not have the authority to increase the true value of subject properties. This argument is supported by *Hancock v. Simmons*, 86 Miss. 302, 38 So. 337 (1905).

In *Hancock* the Board of Supervisors increased the true value of Simmons’ property because of a railroad which had been constructed not on, but in the vicinity of Simmons’ property, after the acceptance and approval of the land roll. In ruling in favor of Simmons the Court held that

“After the land rolls thus prepared have been examined by the board of supervisors, the valuation of the property equalized, in the doing which the board “may increase or diminish the valuation of any property so that property of the same value shall be assessed for an equal sum, and the rolls approved as required by law, this assessment becomes, until the next general assessment of land,..., the fixed and determined valuation for purposes of taxation of the lands of the county. These assessments can only be changed for the causes and in the specified cases enumerated by Code 1892, §3799...” (Emphasis added) 86 Miss. p. 310.

In so holding the *Hancock* court stated that the enumerated causes are restrictions on the power of the board of supervisors, and no assessment of real estate after having once been duly and formally approved and adopted can be changed, unless the individual case clearly constitutes

one of the stated exceptions.

Code 1892, §3799 was codified in *§27-35-147 Miss. Code Ann.* The holding of *Hancock* is just as applicable today as it was in 1909. Re-enactment of a statute which has been judicially construed is an adoption of the construction, unless intention to the contrary appears. *Hammer v. Yazoo Delta Lumber Co.*, 100 Miss. 349, 56 So. 466 (1911).

In consideration of the predecessor of *§27-35-147 (1)* this court previously held that when an assessment has in fact been made, although the assessment may be defective, such property cannot be said to have escaped taxation. *Adams v. Luce*, 87 Miss. 220, 39 So. 418 (1905).

The correctness *vel non* of the assessment of Tupelo Trace and Pinecrest was the duty of the Board to determine in July and August, 2007. It did in fact determine the value and assessment evidenced by its Order dated August 13, 2007. (R. Vol. 1, pp. 46, 57). Once that determination was made it became final and conclusive against the public and the property owners. Thus, the Assessor and Board were without authority to go back and increase the assessment. *Gully v. Mississippi Valley Co.*, 181 Miss. 669, 180 So. 745 (1938); *Robertson v. Bank of Yazoo City, et al.*, 123 Miss. 380, 85 So. 177 (1920); *Yazoo, etc., Investment Co. V. Suddoth*, 70 Miss. 416, 12 So. 246 (1892); *State v. Simmons*, 70 Miss. 485, 12 So. 477 (1892); *Adams v. Bank*, 108 Miss. 346, 66 So. 407 (1914); *Darnell v. Johnston*, 109 Miss. 570, 68 So. 780 (1915).

There is nothing in the record which indicates how the Assessor calculated the values which were applied to subject properties in the 2007 Land Roll. (R. Vol. 1, pp. 45-86). The trial court mistakenly held that "The properties...due to the Plaintiffs' failure to meet the requirement to retain the exemption, were properly reassessed by the board". (R. Vol. 1, p. 18; RE. p. 2).

What is shown by the record is that the Assessor increased the true values of both Tupelo

Trace and Tupelo Seniors 300% of the values contained in the 2007 Land Roll which was finalized and approved by the Board of Supervisors. (R. Vol. 1, p. 47). Once the Assessor realized Tuple Trace and Pinecrest had not submitted income information prior to April 1, 2007 the Assessor unilaterally changed the values and in turn the assessments after the 2007 Land Roll had become final. (R. Vol. 1, p. 47).

This is analogous to situations where after the assessments have become final the assessor attempts to increase the assessment because he determines he has under-assessed a certain parcel. This cannot be done. *1993 WL 669100 (Miss. A.G.)*.

None of these circumstances is present in the case sub judice. The Court must read §27-35-147 *Miss. Code Ann.* in conjunction with the legislative intent and must look to the statute as a whole to ensure its meaning is not taken out of context. This honorable Court must give this statute a practical application consistent with its wording. *32 Pit Bulldogs and Other Property and Wilson Dalton Watkins v. Prentiss County, et al.*, 808 So.2d 971 (Miss. 2002); *Ladner v. Hancock County*, 899 So.2d 899 (Miss. 2004). Further, if there is any doubt or ambiguity in the application of relevant statutes to the facts of this case, such doubt or ambiguity must be resolved in favor of Appellants. *Blount v. Eco Res., Inc.*, 986 So.2d 1052 (Miss. 2008).

As hereinafter set out in detail it is the position of Appellant that the valuation methodology for affordable housing set forth in §27-35-50 (d)(4) *Miss. Code Ann.* is not an exemption. Accordingly, the Assessor and Board of Supervisors were without authority to reassess subject properties after the 2007 Land Roll was final.

II.

ASSESSOR AND BOARD OF SUPERVISORS' ACTIONS VIOLATE APPLICABLE LAW AND VALUATION METHODOLOGY SET FORTH IN §27-35-50 (d)(4) IS NOT AN EXEMPTION

A major source of revenue to fund governmental operations in Mississippi has always

been ad valorem taxation of real and personal property. The Mississippi Constitution mandates that all property throughout the state, not exempt, shall be taxed equally and uniformly based on its assessed value. *Miss. Const. Art. 4, §112 Ann.* Assessed value is to be calculated as a percentage of true value according to class. All property subject to taxation is divided into five (5) classes:

Class I. Single-family, owner-occupied, residential real property, at ten percent (10%) of true value.

Class II. All other real property, except for real property included in Class I or IV, at fifteen percent (15%) of true value.

Class III. Personal property, except for motor vehicles and for personal property included in Class IV, at fifteen percent (15%) of true value.

Class IV. Public utility property, which is property owned or used by public service corporations required by general laws to be appraised and assessed by the state or the county, excluding railroad and airline property and motor vehicles, at thirty percent (30%) of true value.

Class V. Motor vehicles, at thirty percent (30%) of true value. *Miss. Const. Art. 4, §112 Ann.*

Tupelo Trace and Tupelo Seniors are both Class II properties. In accordance with the constitutional mandate Mark Withers, Lee County Tax Assessor is required to assess all lands in his county based on true value. *§27-35-49 Miss. Code Ann.*

§27-35-50 Miss. Code Ann. instructs the Assessor on the determination of true value.

During the 2004 legislative session *§27-35-50* was amended to include a specific methodology for determining true value of affordable rental housing. *§27-35-50 (4)(d) Miss. Code Ann.*

As required by *§27-35-81 Miss. Code Ann.* the Assessor submitted the 2007 Land Roll to the Board of Supervisors at its meeting held on July 3, 2007. The Assessor recommended to the Board the true value of all real and personal property situated in Lee County, Mississippi for 2007. The 2007 Land Roll included, among other things, recommended true values for Tupelo

Trace and Tupelo Seniors in the sums of \$2,862,210.00 and \$317,420.00, respectively, as evidenced by Resolution of the Board dated July 3, 2007. (R. Vol. 1, pp. 46, ¶6, p.50 - 53).

Thereafter, the Board, as required by §27-35-83 *Miss. Code Ann.*, closed the public hearing for objections to the 2007 Assessments at the Board's August 8, 2007 meeting as evidenced by Order of the Board dated August 8, 2007. (R. Vol. 1, p. 46, ¶7, pp.54 - 56).

The Board accepted and adopted the 2007 real and personal property tax assessment rolls at its meeting held on August 13, 2007. (R. Vol. 1, p. 46, ¶8, pp. 57 - 58).

The 2007 real property assessment roll accepted and adopted by the Board included the true value of Tupelo Trace in the sum of \$2,862,210.00 and the true value of Tupelo Seniors in the sum of \$317,420.00 as evidenced by the 2007 Land Roll. (R. Vol. 1, p.47, ¶9, pp. 60, 61).

On or about November 8, 2007, the Assessor, without notice to Tupelo Trace or Pinecrest, changed the 2007 true value assessment for Tupelo Trace and Pinecrest to \$8,896,620.00 and \$951,073.00, respectively. The Assessor's actions were taken after the 2007 Land Roll had become final and because the Assessor discovered that Tupelo Trace and Pinecrest had not submitted income information prior to April 1, 2007. (R. Vol. 1, p. 47, ¶12).

The Assessor and Board's actions resulted in Tupelo Trace and Pinecrest being assessed \$135,304.25 and \$14,512.90, respectively, in taxes for 2007 which amounts were paid in protest on or about January 17, 2008. (R. Vol. 1, p. 48, ¶14).

The true value assessments of Tupelo Trace and Tupelo Seniors approved and confirmed by the Board at its August 13, 2007 meeting would yield tax assessments for Tupelo Trace and Pinecrest in the amounts of \$43,529.98 and \$4,843.67, respectively. (R. Vol. 1, p. 48, ¶16).

The lower court held that "...the Lee County Board of Supervisors properly changed the assessments pursuant to Mississippi Code Section 27-35-147(4)" (R. Vol 1, p. 18; RE. p. 2). It is noted

is clear that subsection (4) applies to situations where property has been shown as exempt on the land roll but was in fact subject to taxation.

The Court's finding is erroneously based on the theory that "the properties enjoyed an 'exemption' on the preceding tax lien date (2006) but, due to the Plaintiff's failure to meet the requirement to retain the exemption, were properly reassessed by the board." (R. Vol. 1, pp. 18; RE. p. 2).

With deference to the lower court the 2007 Land Roll clearly shows on the fourth line from the bottom that no exemption has been applied to subject properties. (R. Vol. 1, pp. 47, 60, 61).

The court's holding appears to have been based on the false assumption that §27-35-50(4)(d) Miss. Code Ann. provides a lower tax rate to owners of affordable housing, and therefore, is an exemption. (R. Vol. 1, p. 111). Appellants agree that their properties are "affordable housing" as that term is defined in §27-35-50(4)(d)(i) Miss. Code Ann. (R. Vol. 1, p. 46, ¶5). However, Appellants disagree that the special methodology of establishing true value for affordable housing properties is tantamount to an exemption or that it provides a lower tax rate.

Every property, not exempt, within the same classification is taxed at the same rate. Miss. Const. Ann. Art. 4, §112; §27-39-317 Miss. Code Ann.. In determining true value for all properties the Assessor is required to consider three methods of valuation: 1. Income capitalization approach; 2. Cost approach; and 3. Market data approach. §27-35-50(2) Miss. Code Ann.

The legislature amended §27-35-50 in 2005 by adding subsection (d)(4) which specifies that the Assessor must utilize the income capitalization approach to determine the true value of low income housing that are subject to federal statutes which restrict the use and rent of the units.

(*Miss. Laws, 2005, ch 480*). Subsection (d)(4) requires the assessor to use the income capitalization approach based on the previous year's income to the exclusion of any other valuation method. This is one of the three prescribed methodologies for determining true value, not an exemption. The methodology prescribed in §27-35-50(4)(d) *Miss. Code Ann.* is designed to take into account the encumbrances placed on this type of property.

Years prior the U.S. Congress passed laws which created programs designed to provide affordable housing for low income people. These units are highly regulated by the statutes which restrict the rental rates based on the income of the occupants. *26 U.S.C. §42; Home Investment Partnership Program under the Cranston-Gonzalez National Affordable Housing Act 42 U.S.C. §12741, et seq.*

Similar to affordable housing §27-35-50(4)(b) *Miss. Code Ann.* requires the Assessor to use the income capitalization approach in valuing agricultural land. Neither the methodology for affordable housing nor that for agricultural land is an exemption.

§27-35-50(4)(d) requires owners of affordable housing to submit the previous year's income information to the assessor on or before April 1 of the current tax year. Tupelo Trace and Pinecrest did not submit income data on or before April 1, 2007 because the valuation proposed by the Assessor for 2007 was acceptable to Plaintiffs. (R. Vol.1, p. 47, ¶12).

Regardless of whether Tupelo Trace or Pinecrest submitted 2006 income information before April 1, the Assessor was still required to consider the income, cost and market data approaches to value. There is nothing in the record which indicates what method, if any, the Assessor utilized in assessing subject properties, either before or after the 2007 Land Roll became final. However, it is undisputed that the Assessor arbitrarily increased the tax assessments on Tupelo Trace and Pinecrest 300%. (R. vol. 1, pp. 45-86).

The court's reference to *Better Living Services, Inc. v. Bolivar County, Mississippi and the City of Cleveland, Mississippi*, 587 So2d 914, 917 (Miss. 1991) does not support the court's erroneous findings. *Better Living Services, Inc.* involved an interpretation of §27-31-1(d) Miss. Code Ann. which provides an exemption for religious, charitable and non-profit organizations.

All property in this state is subject to taxation unless it is exempt. The Mississippi legislature has the authority to exempt "particular species of property from taxation". Miss. Const. Art. 4, §112 Ann. The term "exemption" is defined as "Freedom from a general duty or service; immunity from a general burden, tax, or charge." *Black's Law Dictionary 4th Ed. p. 681.*

Miss. Const. Art. 4, §112 also authorizes the legislature to determine special modes of valuation for particular species of property. The powers to exempt and to determine special modes of valuation are separate and complimentary and not the same. The methodology for determining true value for affordable housing properties set forth in §27-35-50(4)(d) Miss. Code Ann. is an example of the authority granted to the legislature to provide for special modes of valuation of particular species of property. §27-31-1(d) Miss. Code Ann. is an example of the exercise by the legislature to exempt certain property by general laws.

Chapter 31 of the Mississippi Code provides express provisions for several different types of exemptions. §27-31-1 et seq. Miss. Code Ann. All property is taxed unless specifically exempted. *Teche Lines, Inc. v. Board of Supervisors*, 165 Miss. 594, 617, 142 So. 24 (1932). Chapter 33 of the Code contains homestead exemption statutes. §27-33-1 et seq. Miss. Code Ann. The statutes contained in these two chapters set forth the general policy of this state with regard to exemptions which is, all property within the territorial limits of the state is taxed, except such as shall be specifically exempted. *Barnes v. Jones*, 139 Miss. 675, 103 So. 773 (1925).

These exemptions have nothing to do with the determination of true value pursuant to

§27-35-50 Miss. Code Ann. Once the true value has been established for a property the assessed value is then determined by application of the appropriate percentage mandated by the Mississippi Constitution. Miss. Const. Art. 4, §112 (2009) Only after the assessed value is established can a property owner apply with the assessor for one or more exemptions for which a parcel may be qualified. §27-31-107, §27-33-7 Miss. Code Ann. If the exemption is approved, then the assessor shows the exemption on the land roll.

An exemption from taxation is never presumed. The party claiming the exemption has the burden of proof to establish unequivocally the exemption. *Barnes v. Jones*, supra. 707. The Appellees did not carry this burden.

The 2007 Land Roll does not show Tupelo Trace or Tupelo Seniors as exempt. (R. Vol. 1, p.60, 61). However, an example of property shown as exempt on the fifth and sixth lines from the bottom of the 2007 Land Roll is the First Baptist Church of Tupelo. (R. Vol. 1, p. 107, R. Vol. 2, p. 14, lines 22-29, p. 15, lines 1-29, p. 16, lines 1-24).

There is nothing in the statutes or case law of this state which remotely suggest that a methodology for determining the true value of a particular type of property is considered an exemption. Application of a specific methodology of determining true value is not “freedom from a tax”. Tupelo Trace and Pinecrest are subject to the same classification and tax rate as all other similarly situated property.

With deference to the trial court, it was manifestly incorrect in its ruling that the valuation methodology for affordable rental housing is an exemption and that §27-35-147(4) Miss. Code Ann. was applicable to Plaintiffs’ property.

III.
SUBJECT PROPERTIES WERE CLASSIFIED
CORRECTLY ON 2007 LAND ROLL

The trial court also mistakenly concluded that the Board of Supervisors could also have reassessed subject properties based on §27-35-143 (11) because subject properties were incorrectly classified on the 2007 Land Roll. (R. Vol. 1, p. 19; RE. p. 4).

As indicated above, there are five (5) property classifications authorized by the Mississippi Constitution. Affordable Rental Housing is not one of them. *Miss. Const. Art. 4, §112 Ann.* The significance of classification of real property is the percentage of true value on which an assessment is based. A perusal of the 2007 Land Roll for Lee County shows subject properties are properly designated as Class II because the Roll clearly shows each property taxed at fifteen percent (15%) of true value. (R. Vol. 1, pp. 60 and 61).

Subject properties would have been assessed at 15% of true value and taxed at the same rate regardless of whether they are recognized as affordable rental housing or not.

§27-35-143 (11) expressly pertains to property which has been incorrectly classified, ie, shown as Class I when it is Class II; or where buildings and improvements have been assessed which are not on the property; or where the buildings and improvements were exempt, but were shown as taxable. None of these situations is present in the case sub judice. Accordingly, the lower court was manifestly incorrect in its holding that Appellees could have reassessed subject properties because same were incorrectly classified. (R. Vol. 1, p.19; RE. p. 4).


CONCLUSION

Tupelo Trace and Pinecrest respectfully request this honorable court to reverse the Order of the trial court and render a decision herein directing the reduction in the 2007 true value assessments of their properties to \$2,862,210.00 and \$317,420.00, respectively and

reimbursement of overpayment of ad valorem taxes for 2007 in the sums of overpayment of \$91,774.27 and \$9,669.23, respectively, plus interest at the legal rate from and after January 17, 2008. (R. Vol. 1, p.49, ¶19).

Respectively Submitted,

3545 MITCHELL ROAD, LLC
and PINECREST/TUPELO, LLC

By: 
JAMES L. MARTIN, Their Attorney

CERTIFICATE OF SERVICE

I, James L. Martin, Plaintiff's attorney, certify that I have this day served a copy of the foregoing Brief of Appellant, via U.S. Mail, First Class, Postage Pre-Paid on the following:

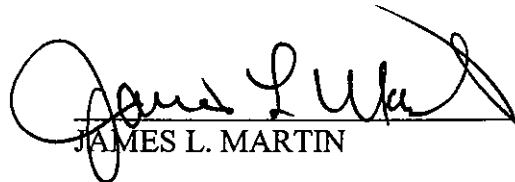
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CIRCUIT JUDGE

This 4th day of June, 2009.


JAMES L. MARTIN