

STATE OF SOUTH CAROLINA) IN THE ADMINISTRATIVE COURT
) FOR THE CITY OF FOLLY BEACH
COUNTY OF CHARLESTON) BUSINESS LICENSE APPEAL

Cary Fitchner-Vu and Victor T. Vu,)
)
Appellants,)
)
v.)
)
The City of Folly Beach,)
)
Respondent.)
_____)

FINAL ORDER

This matter comes before me pursuant to § 110.16 of the Folly Beach Code of Ordinances by Appellants Cary Fitchner-Vu and Victor T. Vu appealing the decision of the License Official of the City of Folly Beach (“City”) denying their application to renew the Investment Short Term Rental (“ISTR”) business licenses for their properties located at 116 W. Cooper and 115 W. Erie (known as 107 Cooper Street) (collectively “Properties”).

The City’s License Official issued her letter of denial on September 22, 2023. (*City Ex. 10.*) Appellants emailed the City with notice of an appeal of the License Official’s denial on October 22, 2023. (*App. Ex. 9.*)

The parties participated in a pre-hearing conference held on October 31, 2023, at which Appellant Cary Fitchner-Vu (“Fitchner-Vu”) appeared *pro se* and the City was represented by City Attorney, Joseph C. Wilson, IV, Esquire. When the parties appeared at the hearing scheduled for November 6, 2023, Fitchner-Vu requested a continuance to retain counsel. The City consented to the request, thus waiving the requirement that the hearing be held within 30 days after receipt of a request for appeal, pursuant to § 110.16(C). Accordingly, I granted the continuance.

Counsel for the parties, including Eli E. Lachenman, Esquire, as counsel for Appellants, participated in a second pre-hearing teleconference on November 30, 2023. The parties exchanged exhibits on December 4, 2023, pursuant to the applicable Amended Order in this matter.

The parties and counsel appeared at the hearing on December 7, 2023. Appellants presented testimony by Fitchner-Vu, who appeared in person, and of Appellant Victor Vu (“Vu”) via affidavit.¹ The City presented testimony by License Official Stacey Ritchie (“Ritchie”). Each party was given the opportunity to cross-examine the witnesses appearing in person. Appellants entered into evidence *Appellants Exhibits 1-16*, without objection by the City. The City entered into evidence *City Exhibits 1-12*, without objection by Appellants.

FINDINGS

Having carefully considered all evidence and arguments presented, taking into account the credibility of the witnesses and the accuracy of the evidence, and having reviewed all of the parties’ submissions, I make the following findings by a preponderance of the evidence:

1. Pursuant to § 117.03 of the Folly Beach Code of Ordinances, “[a]ny owner wishing to operate a short term rental must maintain a current business license, comply with rental registration permit requirements, and make proper payment of local, county, and state taxes.” Business licenses and rental registration permits “must be obtained and renewed annually by the submittal” of the appropriate forms and paying the required fees. *Id.*
2. Prior to 2022, the City’s business license renewals were due on December 31st, but the South Carolina Business License Tax Standardization Act (“Standardization Act”) became effective on January 1, 2022, making the business license renewal process uniform for all counties and municipalities. (*City Ex. 3.*)

¹ Vu was unable to attend the hearing due to his recovery from recent surgery. (*App. Ex. 10, ¶4.*)

3. Pursuant to the Standardization Act, business licenses are issued for “a twelve-month period beginning May first and ending April thirtieth. Each business license issued must expire April thirtieth The business license must be renewed before May first of the year in which it expires.” S.C. Code Ann. § 6-1-400(B)(1). (*City Ex. 3.*)
4. As a result, in 2022, the City’s 2021 business licenses were extended an extra 5 months until April 30, 2022.
5. Following the City’s receipt of a citizen petition to limit the number of ISTRs to 800, and upon the acknowledgement that the City had issued 1,112 ISTRs for the 2022 business license year as of that date, the City enacted Ordinance 32-22 on October 18, 2022. (*City Ex. 12.*)
6. Ordinance 32-22 stated that “the City desires to limit further increase in the number of short term rental licenses until the question posed by the petition is settle [sic] by vote of Council or general referendum.” (*City Ex. 12.*)
7. In furtherance of that stated desire, Ordinance 32-22 contained a moratorium on the issuance of new ISTRs within the City for residential dwellings taxed at a 6% property tax rate, but contained exceptions for “[r]enewals of short term rental licenses for properties that were legally licensed as of October 18th, 2022” (*City Ex. 12.*)
8. The moratorium in Ordinance 32-22 had an expiration date of January 11, 2023. The moratorium was extended by Ordinance § 34-22, which passed on December 13, 2022, and extended the expiration date to April 15, 2023, or five business days after any special election called to adopt the petition for a cap on short term rentals.
9. The City held a special election on the referendum on February 7, 2023, in which a majority of the registered voters of Folly Beach voting in the election voted in favor of the cap.

10. Accordingly, Chapter 117 of the Folly Beach Code of Ordinances was amended to set a cap of ISTRs at 800 and include an exception, which states: “Any existing [ISTR] business license issued prior to February 7, 2023 which remains in good standing may continue to be renewed annually, even if the number of [ISTR] business licenses exceeds the cap.” This language was codified in § 117.02(C)(2). (*City Ex. 1.*)
11. Upon renewal of a business license, the City issues a hard copy of the license which includes the owner’s name and address and the license’s expiration date. (*City Ex. 5.*)
12. Appellants purchased the property at 116 W. Cooper in 2011 and the 115 W. Erie property in 2013 and have used them as a rental properties and for their personal use since that time.
13. Appellants had 2021 ISTR business licenses for the Properties, which expired on May 2, 2022. (*City Ex. 5.*)
14. Fitchner-Vu testified Appellants received a letter in or around December of 2021 advising them the renewal date for the 2021 business licenses would be moved from December 31, 2021, to the end of April 2022, but did not thereafter receive bills or invoices for the renewals for the Properties.
15. Appellants did not timely renew their 2021 ISTR business licenses for the Properties by May 2, 2022, the first business day following the April deadline.
16. Appellants testified they spent considerable time dealing with personal illnesses and surgeries, as well as care issues for a family member, in late 2021 and continuing into 2022, which occupied their attention. They were also traveling throughout much of September, October, and November of 2022, and were not home to receive mail during that time. (*App. Ex. 10.*)

17. The County of Charleston (“County”) mailed Notices of Late Assessment of Business License Fees to Appellants at their home address on October 1, 2022, reminding Appellants they had failed to timely renew their business licenses for the Properties. (*App. Ex. 1; City Ex. 6.*)
18. Appellants first saw the notice of their lapsed ISTR business licenses on November 12 or 13 of 2022, after the moratorium in Ordinance 32-22 was already in place.
19. Fitchner-Vu took immediate steps to attempt to make up the late payments and renew the licenses on-line and in person, but despite several emails, telephone calls, and personal visits to both the County and City offices, her attempts were unsuccessful. During that time, some of the communications exchanged contained confusing or conflicting explanations regarding why Appellants’ payment and renewal attempts were not being accepted by the governmental entities.
20. Appellants submitted applications for renewals of the ISTR business licenses for the Properties on March 28, 2023. (*App. Ex. 11 & 12.*)
21. Ritchie, as the City’s License Official, formally denied Appellants’ renewal applications on September 22, 2023. (*City Ex. 10.*)
22. Based on the plain and ordinary meaning of the words in Ordinance 32-22, the City’s intent to exclude from renewal of ISTR licenses those businesses which did not have a valid, existing ISTR license as of October 18, 2022, is clear and unambiguous.
23. Due to Appellants failure to timely renew the business licenses, the Properties were not legally licensed by the City as ISTRs on October 18, 2022.
24. Appellants’ failure to timely renew the business licenses was not intentional.

25. Appellants could have renewed their delinquent ISTR business licenses up to October 18, 2022, with payment of late fees, until the moratorium went into place. Thereafter, Ritchie was unable to accept delinquent renewals or issue new licenses for ISTRs due the moratorium and the cap.
26. Based on the plain and ordinary meaning of the words in §117.02(C)(2), in order for an ISTR business license to be renewed in 2023, the ISTR business license must have been in place and remained in good standing since February 7, 2023.
27. Appellants did not have ISTR business licenses in good standing for the Properties on February 7, 2023.
28. Accordingly, Ritchie properly denied their renewal applications.

LEGAL STANDARDS

I have applied the following legal standards in evaluating the evidence and arguments. A municipal business license ordinance should be interpreted based on the general rules of statutory construction. Olds v. City of Goose Creek, 424 S.C. 240, 246, 818 S.E.2d 5, 9 (2018). Similarly, § 10.02 of the City's Ordinances instructs "[u]nless otherwise provided herein, or by law or implication required, the same rules of construction, definition and application shall govern the interpretation of this code as those governing the interpretation of state law."

"The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the [enacting body]." Sloan v. Hardee, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). "When interpreting an ordinance, legislative intent must prevail if it can be reasonably discovered in the language used." City of Myrtle Beach v. Juel P. Corp., 344 S.C. 43, 47, 543 S.E.2d 538, 540 (2001) (citing Charleston County Parks and Rec. Com'n v. Somers, 319 S.C. 65, 459 S.E.2d 841 (1995)). In addition, "the [ordinance] must be read as a whole and sections which are a part of the same

general statutory law must be construed together and each one given effect.” S.C. State Ports Auth. v. Jasper County, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006). Similarly, the ordinance should be read “in a manner consonant and in harmony with its purpose.” CFRE, LLC v. Greenville County Assessor, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (citing State v. Sweat, 379 S.C. 367, 376, 665 S.E.2d 645, 650 (Ct. App. 2008), *aff’d as modified*, 386 S.C. 339, 688 S.E.2d 569 (2010)).

The terms in the ordinance should be given their “plain and ordinary meaning without resort to subtle or forced construction to limit or expand the [ordinance’s] operation.” Sloan, 371 S.C. at 499, 640 S.E.2d at 459. Where the words in an ordinance are unambiguous, the court should apply their literal meaning. Id. at 498, 640 S.E.2d at 459. Under the plain meaning rule, a court may not employ the rules of statutory interpretation where an ordinance is plain and unambiguous and conveys a clear and definite meaning. In re Vincent J., 333 S.C. 233, 235, 509 S.E.2d 261, 262 (1998). If an ordinance is ambiguous, however, the courts must construe its terms by following the “settled rules of construction.” Grant v. City of Folly Beach, 346 S.C. 74, 79, 551 S.E.2d 229, 231 (2001).

“The construction of a[n ordinance] by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons.” Brown v. S.C. Dep’t of Health & Env’t Control, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002) (quoting Denton v. S.C. Bd. of Examiners in Optometry, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987)). On the other hand, a business license fee is a tax on the privilege of doing business within a county or municipality. Town of Hilton Head Island v. Kigre, Inc., 408 S.C. 647, 648, 760 S.E.2d 103, 103 (2014); City of Columbia v. Niagara Fire Ins. Co., 249 S.C. 388, 391, 154 S.E.2d 674, 675 (1967). “It is a well-established principle of law that tax statutes cannot be extended by

implication beyond the clear import of the language used, and in case of doubt, such doubt must be resolved against the government, and in favor of the taxpayer.” Hadden v. S.C. Tax Com’n, 183 S.C. 38, 190 S.E. 249, 251 (1937); Triplett v. City of Chester, 209 S.C. 455, 40 S.E.2d 684 (1946).

DISCUSSION

Appellants testified that although they were aware the renewal deadlines had changed, their health issues, surgeries, and other family matters that consumed their time and energies during 2021 and 2022 caused them to inadvertently miss the ISTR business license renewal deadline. In addition, they were traveling for several weeks in the fall of 2022 and did not open the October 1, 2022, notice regarding late penalties until mid-November, after the moratorium was in place. Although Appellants immediately contacted the County to pay the late fees and renew on-line, they were unsuccessful using the County’s business portal. Fitchner-Vu also went in-person to the County and City offices to attempt to renew the licenses to no avail. Although she checked several times with the City, she was repeatedly told that the moratorium was still in place.

On March 28, 2023, Fitchner-Vu submitted renewal applications for the Properties, which were denied by the License Official on September 22, 2023. Appellants filed this appeal, asserting they should have been able to renew their 2022 licenses up through February 2023, but that option was never offered either in person, by email, or by notification by the City or County. They further seek to have their delinquency excused because they “had every intention” to pay their renewal fees as they had in the past, but were late in doing so due to “[i]llnesses, the politics of Folly Beach, and the constant faulty correspondence.” (*App. Ex. 10*, ¶12.)

As the undisputed facts demonstrate, Appellants’ ISTR business licenses for the Properties expired on May 2, 2022. Therefore, Appellants’ ISTR business licenses were neither “existing” nor “in good standing” when the moratorium was put in place on October 18, 2022, or on February

7, 2023, when the cap was instituted following the referendum. Accordingly, the Licensing Official correctly followed the law in September of 2022 in denying Appellants' ISTR business license renewal applications for the Properties.

While the court is not without sympathy for Appellants' position and family health matters, nonetheless, "citizens are presumed to know the law and are charged with exercising 'reasonable care to protect [their] interest[s].'" Morgan v. S.C. Budget & Control Bd., 377 S.C. 313, 320, 659 S.E.2d 263, 267 (Ct. App. 2008) (quoting Smothers v. U.S. Fidelity & Guar. Co., 322 S.C. 207, 210–11, 470 S.E.2d 858, 860 (Ct.App.1996)). Here, pursuant to § 117.03, Appellants had a duty to ensure they maintained up-to-date business licenses in order to offer the Properties for rent to paying customers. By the time Appellants' 2021 business license expired, the deadline for renewing the license was a matter of state statute. S.C. Code Ann. § 6-1-400. Moreover, Appellants admit they were aware of the change in the renewal deadline.

The duty to timely renew a business license is not based on receipt of an individual notice or invoice. Rather, it is incumbent on all business owners to know and timely comply with the law. Similarly, as set forth in the Standardization Act, "limitations in portal availability or capability do not relieve taxpayers from existing business license or business license tax obligations." S.C. Code Ann. § 6-1-400(J)(1). Further, although the County's and City's responses to Appellants' communications in November of 2022 and thereafter may have contained some confusing information, that does not alter or affect the fact that Appellants did not attempt to renew the licenses until after the moratorium was in place and it was already too late for them to do so.

While sympathetic to their plight, the Court is also not in a position to excuse Appellants' failure to comply with the law or otherwise grant equitable relief. "When providing an equitable remedy, the court may not ignore statutes, rules, and other precedent." Regions Bank v. Wingard

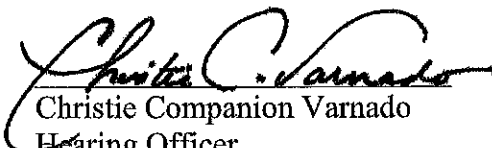
Properties, Inc., 394 S.C. 241, 254, 715 S.E.2d 348, 355 (Ct. App. 2011)(citing Lochar v. Thomas, 517 U.S. 314, 323, 116 S.Ct. 1293, 134 L.Ed.2d 440 (1996)). To the extent this court has the authority to fashion a remedy based in equity, those “powers must yield in the face of an unambiguously worded statute.” Id. (quoting Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Com’n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989)). Further, equity does not provide relief from the consequences of a mistake of law absent undue influence or fraud. Smothers, 322 S.C. at 210, 470 S.E.2d at 860 (citing 27 Am.Jur.2d *Equity* § 41).

Here, the ordinances are clear and unambiguous. Appellants did not have a existing ISTR business licenses in good standing after May 2, 2022, and, therefore, were barred by moratorium from renewals after October 18, 2022. They did not attempt to renew the expired licenses until November of 2022, and, therefore, were barred from doing so due to the moratorium. As they did not meet the exceptions to the cap in March of 2023, when they submitted their renewal applications, the City properly followed the ordinance in denying their renewal applications.

CONCLUSION

Therefore, for the foregoing reasons, the appeal is DENIED.

IT IS SO ORDERED.


Christie Companion Varnado
Hearing Officer
City of Folly Beach

December 18, 2023

Charleston, South Carolina