

The Supreme Court of South Carolina

Pee Dee Land Company, LLC
and on behalf of its wholly-
owned subsidiary Waverly
Woods at Claussen, LLC, Petitioner,

v.

Florence County, Dean C.
Fowler, Jr., in his official
capacity as Florence County
Treasurer, and H. Wayne Joye,
in his official capacity as
Florence County Auditor, Respondents.

ORDER

Petitioner filed an Emergency Petition for Writ of Temporary and Permanent Injunction and for Writ of Mandamus and a Motion to Certify and Expedite Related Appeal. By order dated September 30, 2011, we granted the request to enjoin the County and its officials from proceeding with the sale of petitioner's property until we had an opportunity to further consider petitioner's request for a permanent injunction and for a writ of mandamus. In addition, we granted petitioner's request to certify the appeal in James W. Peterson, Jr., as Receiver for Pee Dee Land Company, LLC and on behalf of

its wholly –owned subsidiary Waverly Woods at Claussen, LLC, v. Florence County, Dean C. Fowler, Jr., in his official capacity as Florence County Treasurer, and H. Wayne Joye, in his official capacity as Florence County Auditor, from the Court of Appeals to this Court.

Petitioner asks the Court to enjoin (1) respondent Dean C. Fowler, Jr. and the Florence County Delinquent Tax Office from selling petitioner's property for non-payment of taxes; (2) the unlawful acts of Fowler and respondent H. Wayne Joye in preventing the payment and acceptance of property taxes by petitioner; (3) interference by Fowler and Joye with the efforts of respondent Florence County and its assessor to comply with the circuit court order of September 30, 2009, directing the assessor to apply a multi-lot discount to the taxes; and (4) Fowler and Joye from undertaking any further litigation in this or any related litigation. Petitioner also seeks a writ of mandamus directing Fowler to perform his statutory duties and accept payment of property taxes by petitioner in the amount set by the circuit court in its September 30, 2009 order, and directing Joye to perform his statutory duties necessary for Fowler's collection of the taxes. Finally, petitioner asks this Court to impose sanctions on Fowler and

Joye and to hold them in civil contempt. Respondents have filed returns to the petition and motion.

This Court has the power to issue writs or orders of injunction and mandamus. S.C. Const. art. V, § 5; S.C. Code Ann. § 14-3-310 (1976); Rule 245(b), SCACR. The writ of mandamus is the highest judicial writ known to the law. Sanford v. S.C. State Ethics Comm'n, 385 S.C. 483, 685 S.E.2d 600 (2009). The "principal function" of mandamus "is to command and execute, and not to inquire and adjudicate; therefore, it is not the purpose of the writ to establish a legal right, but to enforce one which has already been established." Willimon v. City of Greenville, 243 S.C. 82, 132 S.E.2d 169 (1963); see also Porter v. Jedziniak, 334 S.C. 16, 512 S.E.2d 497 (1999) ("The primary purpose of a writ of mandamus is to enforce an established right and to enforce a corresponding imperative duty created or imposed by law.").

To obtain a writ of mandamus requiring the performance of an act, the petitioner must show: (1) a duty to perform the act; (2) the ministerial nature of the act; (3) the petitioner's specific legal right for which discharge of the duty is necessary; and (4) a lack of any other legal remedy. Wilson v. Preston, 378 S.C. 348, 662 S.E.2d 580 (2008). Mandamus is based on the

theory that an officer charged with a purely ministerial duty can be compelled to perform that duty in case of refusal. Id.

The duties of public officials are generally classified as ministerial and discretionary (or quasi-judicial). Id. The character of an official's public duties is determined by the nature of the act performed. Id. The duty is ministerial when it is absolute, certain, and imperative, involving merely the execution of a specific duty arising from fixed and designated facts. Id. It is ministerial if it is defined by law with such precision as to leave nothing to the exercise of discretion. Id. In contrast, a quasi-judicial duty requires the exercise of reason in the adaptation of means to an end, and discretion in determining how or whether the act shall be done or the course pursued. Id.

As the County and petitioner have repeatedly asserted, and the applicable sections of Title 12 of the South Carolina Code clearly establish, the assessor, auditor and treasurer have distinct duties. It is the assessor's duty to assess the value of real property, including applying the multi-lot discount when applicable, it is the auditor's duty to accept that valuation and issue a tax bill based on that value, and it is the treasurer's duty to collect the amount set forth on the tax bill. These are ministerial duties. The circuit

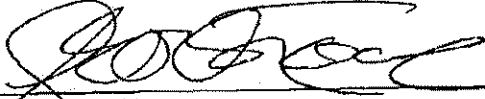

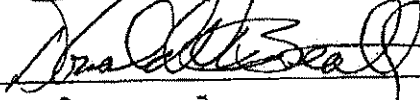
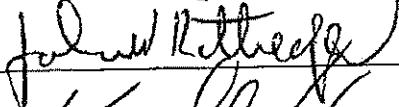

court ordered the assessor to apply the multi-lot discount to petitioner's property. Once the assessor did so, Joye was required to issue a new tax bill based on that value, as he was requested to do on two occasions by the assessor, but has refused to do so. Joye does not have the authority to question the assessment or to refuse to issue a tax bill based on that assessment. Likewise, Fowler has a duty to accept the amount set forth on the bill issued by Joye as a result of the assessor's valuation and not to continue to insist that Pee Dee pay a higher amount.

While Fowler and Joye are correct that they have sole authority to assess and waive penalties for non-payment of taxes, the circuit court directing the assessor to remove any penalties assessed against petitioner, and Fowler and Joye failed to take the proper steps to assert that authority at the time of hearing on the rule to show cause or in a timely manner after the order was issued. Accordingly, that ruling, right or wrong, is the law of the case, as it was never properly contested.

We therefore conclude a writ of mandamus is warranted and hereby issue a writ of mandamus compelling Joye to issue a revised tax notice in accordance with the September 30, 2009 order of the circuit court which reflects the multi-lot discount as applied by the assessor to the property

at issue and eliminates any penalties or interest and compelling Fowler to accept petitioner's payment of the amount set forth in the revised tax notice as full payment of the taxes at issue, which shall preclude a tax sale of petitioner's property and end all litigation concerning payment of the taxes at issue. The issuance of this writ of mandamus renders moot the request for an injunction. Petitioner's requests for sanctions and for Fowler and Joye to be held in contempt are denied.

IT IS SO ORDERED.

	C.L.
	J.
	J.
	J.
	J.

Columbia, South Carolina

December 19, 2011