STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

Shred with Us, LLC,

Appellant,

vs.

Steffanie Dorn, City of Greenwood Business License Official,

Respondent.

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

Civil Action No. 2017-CP-24-00097

ORDER

This case is an appeal from the Order of the Greenwood City Council (the City) requiring Appellant Shred with Us, LLC (Shred with Us) to obtain a business license for its business activities within the City that are separate and distinct from the business activity of the transportation of freight. The City's written Order was issued following an evidentiary hearing before the City Council. A transcript of that hearing, as well as the City's Order and the documents considered by the City Council, are included in the Record filed by the City in connection with this appeal.

The Court held a hearing on the appeal on February 17, 2017, with arguments by the attorneys for the City and Shred with Us. Following review of the Record and the memoranda submitted, as well as consideration of the hearing arguments of the attorneys, the Court, on February 22, 2017, issued a Form 4C Order affirming the Order of the City and ending the appeal. The Court now issues this more formal Order. For the reasons set out in the Form 4C Order, and in this Order, the Court affirms the findings and conclusions of the City Council in its Order, and ends this appeal with judgment in favor of the Respondent.

FACTUAL AND PROCEDURAL BACKGROUND

Succinctly stated, Shred with Us does business within the city limits of the City of Greenwood by collecting paper from the offices of regular customers on a schedule, shredding the paper in its truck while at the customer sites, and then transporting the shredded paper in its truck to its home office in West Columbia. The principal of Shred with Us, Eric Ragsdale, testified at the hearing before the Council. (Record, pages 16-25). He described his business as "document destruction." (Record, page 16). He testified that his business provides paper receptacles of varying sizes for his customers (some bins are rented to customers and some are provided without charge), picks up the receptacles from customers on a predetermined schedule, empties the receptacles in his truck, shreds the paper in its truck (for some 98% of customers), and then returns in the truck to the home office where the collected paper is sold for recycling as pulp. (Record, pages 17, 19, 20, 22, 23 and 24). In response to questions from his own attorney, he testified that "primarily, we do destruction" and then get the destroyed paper back to West Columbia by "transportation." (Record, page 18).

According to Mr. Ragsdale's testimony, the business has approximately 11 or 12 customers in the City. (Record, page 21). City Business License Officer David Price testified, at the hearing, that he personally observed the business (and Mr. Ragsdale) empty containers into the business truck and shred at a location in the City in 2016, giving rise to this case. (Record, pages 32-33).

Shred with Us is the holder of a Class E-L Certificate of Compliance for the Operation of Motor Vehicle Carriers issued by the South Carolina Department of Public Safety in 2003. (Record, page 48). On its face, the Certificate provides that Shred with Us "is hereby authorized

to transport freight other than household goods and hazardous waste for disposal over irregular routes between points and places in South Carolina." (Record, page 48).

Shred with Us contended to the City (and contends in this appeal) that S.C. Code section 58-23-620 precludes a municipal business license for any business activity of a Certificate holder. That Code section, which is part of a chapter and article dealing with applications and fees for motor vehicle carriers, provides:

> No city, town, or county in this State shall impose a license fee or license tax upon a holder of a certificate A or a certificate B, and no city, town, or county shall impose a license fee or license tax on the holder of a certificate E or certificate F, Certificate of Compliance, or a common or contract motor carrier of property, except the city or town of such carrier's residence or the location of his principal place of business. However, the fee required of a holder of a certificate C is in addition to any license tax or license fee charged by a municipality.

The City, through its Business License Official, determined that Shred with Us was not required to pay a City business license tax for its freight transportation activity within the City but was required to pay a business license tax for its in-City business activity of collecting paper from its customers and shredding paper. Shred with Us appealed this requirement of the City Business License Official to the City Council pursuant to Section 10-83 of the City Code. (Record, page 71).

In its Order after its evidentiary hearing, the City Council determined, as a finding of fact, that the business operations of Shred with Us within the City consisted of the separate, distinct, and independent business activities of (1) the collecting and shredding of paper and (2) the transportation of paper. In its Order, the City Council then concluded, as a matter of law, that, by reason of S.C.Code section 58-63-620, Shred with Us, as a holder of a freight hauler certificate issued by the State Department of Public Safety (a Certificate E-L), was not subject to

a business license tax for its business activity of freight transportation or hauling but was subject to a business license tax for its other business activity of paper collection and shredding within the City. Shred with Us appealed from the City Council Order to the Circuit Court contending, by four listed grounds, that Section 58-63-620 provides a blanket exemption from business license taxes for all business activities by Shred with Us within the City because the company is the holder of the freight hauler certificate.

STANDARD OF REVIEW

Under Rules 74 and 75 of the SCRCP, the Court, in this case, is acting in its appellate capacity based on the record of proceedings below. In this context, findings of the City Council should not be disturbed on appeal unless they are without evidentiary support or against the clear preponderance of the evidence. Gay v. City of Beaufort, 364 S.C. 252, 254, 612 S.E.2d. 467, 468 (Ct. App. 2005), citing Bob Jones University, Inc. v. City of Greenville, 243 S.C. 351, 363, 133 S.E. 2d 843, 848 (1963). An issue regarding statutory interpretation is a question of law. University of Southern California v. Moran, 365 S.C. 270, 274, 617 S.E. 2d 135, 137 (Ct. App. 2005). An appellate court reviews questions of law de novo. Town of Summerville v. City of North Charleston, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008).

PRINCIPLES OF STATUTORY INTERPTRETATION

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." Lambries v. Saluda County Council, 409 S.C. 1, 10, 760 S.E.2d 785, 789 (2014). "All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute." Broadhurst v. City of Myrtle Beach Election Commission, 342 S.C. 373, 380, 537 S.E. 2d 543, 546 (2000). "A statute as a whole

must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers." Lambries v. Saluda County Council, 409 S.C. at 10, 760 S.E.2d at 790-791. "In interpreting a statute, the language of the statute must be read in a sense that harmonizes with its subject matter and accords with its general purpose." Id. The real purpose and intent of the lawmakers will prevail over the literal import of the words. Browning v. Hartvigsen, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992). The Court should reject statutory interpretation that would lead to a result so plainly absurd that it could not have been intended by the legislature. Lexington County Health Service District v. S.C. Department of Revenue, 384 S.C. 647, 653, 682 S.E.2d 508, 510 (Ct. App. 2009).

DISCUSSION

The Record in the appeal establishes that the City's Business License Ordinance (Record, pages 65-73) clearly contemplates situations of multiple business activities or multiple business operations by a single business within the City. Under the Business License Ordinance, all businesses (resident and nonresident) that do business within the City are required to pay an annual business license tax for the privilege of doing business within the City. (Section 10-50, Record, page 66). The business license tax is based on rate classifications. (Section 10-52(a), Record, page 66).

> A separate license shall be required for each place of business and for each classification or business conducted at one place. If gross income cannot be separated for classifications at one location, the license tax shall be computed on the combined gross income for the classification with the highest rate.
> Section 10-52(b), Record, page 66. (Emphasis supplied).

The Ordinance further provides that:

> No person shall be exempt from the requirements of this article by reason of the lack of an established place of business within the city, unless

> exempted by state or federal law. The license official shall determine the appropriate classification for each business in accordance with the latest issue of the North American Industry Classification System (NAICS) for the United States published by the Office of Management and Budget. Section 10-54(b), Record, page 68. (Emphasis supplied).

At the Council hearing, the City Business License Official Dorn offered into evidence copies of the NAICS entries for the two classifications of transportation of property (NAICS 484) and document shredding services (NAICS 561990). (Record, pages 55-58, an attachment to the City's Memorandum of Points and Authorities). Ms. Dorn testified concerning the City's classification of businesses based on the NAICS system, and the circumstance that some businesses have multiple business activities or multiple business operations that require separate NAICS classifications to determine license tax rates. (Record, pages 25-27). She testified that the NAICS code classification for document shredding services is 561990, that the NAICS code classification for transportation is 484, and that the NAICS system treats the two activities as "completely separate" categories of business. (Record, pages 27-28). Her determination was that the two business activities are separate and not necessarily related, and that while a Certificate E, generally, protects the business from a license tax on the transportation business activity, it does not protect from a license tax on the collection and shredding business activity. (Record, pages 28-29 and 30-31). Apportionment of income for the two business activities would be determined, in the first instance, by the business. (Record, page 29). Other shredding companies that operate in the City do pay business license taxes and had not, to her knowledge, claimed Certificate E exemption. (Record, page 29).

As part of its argument and presentation at the Council hearing on the issue of multiple business operations or multiple business activities, the City cited the case of Wood-Mendenhall Co. v. City of Greer, 88 S.C.249, 70 S.E. 724 (1911). (Record, pages 49-50 and 52-53). An early

business license case, Wood-Mendenhall recognized that, while some business activities undertaken by a business may be incidental (or related or subsidiary) to other of its business activities, some are not. Business activities that are not incidental to the activity for which the license was issued, determined the Court, would be subject to a separate business license. The particular activities involved in Wood-Mendenhall were blacksmithing (for which a business license had been issued) and painting. The Court observed:

> It is true that the painting which is merely incidental to the finishing job of blacksmithing might properly be included in and covered by a license to carry on the business of "blacksmithing"; but it appears that plaintiff did painting outside of and not connected with the business of "blacksmithing." That was a business separate from and independent of that of "blacksmithing," and was not covered by the license.
> 88 S.C. at 249, 70 S.E. 2d at 725.

In its Order, the City Council also cited Wood-Mendenhall (and the quotation set out above) to support its findings of facts concerning the separate and distinct and independent nature of the Shred with Us business activities. (Record, pages 2 and 4).

Shred with Us does not contest that it did business, and does business, within the City. It also does not contest, in its listed Notice of Appeal grounds, that it engages in the multiple business operations or multiple business activities of transportation and collection/shredding that are separate and distinct business activities. Although Shred with Us argued at the Council hearing that all of its business activities involved transportation or were incidental to transportation (Record, pages 33-34 and 39), that argument was not re-stated as a ground in the Notice of Appeal to this Court. Accordingly, Shred with Us has waived any argument of error below based on those findings of Council. However, to the extent any such argument was not waived, the evidence presented to the City Council fully supports the City's finding of fact that

the activity of collecting and shredding paper is separate and distinct from the transportation activity for which the Class E-L Certificate was issued.

Shred with Us contends in this appeal that, as a holder of a Certificate E-L from the State Department of Public Safety (Record, page 48), it is exempt from all City business license taxes for all of its business activities. At the Council hearing, the attorney for Shred with Us relied upon the text of Section 58-23-620 (Record, page 43) and a 1989 Attorney General's Opinion (Record, pages 44-47). The 1989 Opinion essentially restated portions of the text of Section 58-23-620 and did not address a factual situation of multiple business operations or multiple business activities by the Certificate holder. No background facts concerning the business at issue were provided in the Opinion. Because the Opinion did not address a situation of multiple business operations or multiple business activities by a Certificate holder, it provides no interpretative guidance in our situation and is distinguishable on its facts (or lack of facts) from our situation.

The significance of the Council findings and conclusions on multiple business operations/multiple business activities findings is illustrated and underscored by the 1962 Attorney General's Opinion cited and argued by the City. (Record, pages 49-50 and 62). Unlike the 1989 Opinion cited by Shred with Us, the 1962 Opinion involved and dealt squarely with the situation of multiple business operations/multiple business activities and a Certificate E. The question posed to the Attorney General by the Clerk of the City of Marion was "whether a municipality may impose a business license tax on a nonresident holder of a class 'E' certificate of public convenience because of the activity of such holder in moving a building from the municipality." The Assistant Attorney General who signed the Opinion responded in two sentences:

> Section 58-1442, 1952 Code, [the predecessor statute to current section 58-23-620] prohibits the imposition of such tax on the nonresident holder of a class 'E' certificate so long as the activity in which he engages is incidental and necessary to the business of transporting property in accordance with the authority granted by the certificate. It is the opinion of this office that such business tax may not be imposed if the activity of the holder of the certificate is restricted to work related directly to transportation of the building on a highway from one point to another. (Emphasis supplied).

On its face, the Certificate E-L issued by the State Department of Public Safety (Record, page 48) is a Certificate of Compliance for the Operation of Motor Vehicle Carriers that authorizes Shred with Us "to transport freight other than household goods and hazardous waste for disposal over irregular routes between points and places in South Carolina." This is similar to the Class E certificate described in State Code section 58-23-260 (Record, page 60) that the Office of Regulatory Staff and the PSC may issue for "the property-carrying vehicles which will not operate upon any particular route or schedule." Section 58-23-620, the statute relied upon by Shred with Us for its claim of blanket exemption from business license tax, is part of the Code chapter that creates Certificate E and the other Certificates for motor carriers of property and passengers. (Record, page 60).

Section 58-23-620 does not specifically authorize or reference any business activity other than that for which the Certificate is issued and Section 58-23-620 does not expressly exempt motor carriers from business licenses for all other activities. Rather, its focus, as well as the focus of its companion statutes, is on regulation and taxation of the activities of carrying, hauling or transporting property or passengers. The 1962 Attorney General Opinion, as did the City Council Order, discerned this essential context and provided a "practical, reasonable, and fair interpretation consonant with the purpose, design, and policy" of the statute that "harmonizes

with [the statute's] subject matter and accords with its general purpose." Lambries, 409 S.C. at 10, 760 S.E.2d at 790-791.

Moreover, if construed without limitation arising from its context and purpose, Section 53-23-620 would provide a carte blanche for a freight hauler to sell retail goods from its truck or to operate a food truck without the necessity for a municipal business license for plainly unrelated business activities. Such a statutory construction and interpretation could not have been intended by the Legislature. As recognized in the McQuillin treatise, The Law of Municipal Corporations: "A business exempt from licensing as to one phase of its activities is not of necessity exempt with respect to another." 9 McQuillin Municipal Corporations section 26:50 (3rd ed.) (2017 update).

The documentary evidence and testimonial evidence before the Council at its hearing fully support the Council's findings and conclusions in its Order by the greater weight of the evidence. Additionally, the Court concludes that the Council's construction and interpretation of State Code section 58-23-620, particularly when considered in the circumstances established by that greater weight of the evidence, is appropriate and reasonable and in accord with the general purpose of the motor vehicle carrier statutes of which Section 53-23-620 is a part. The Court, after undertaking its own review of this question of law, agrees with the City's construction and interpretation of S. C. Code section 58-23-620.

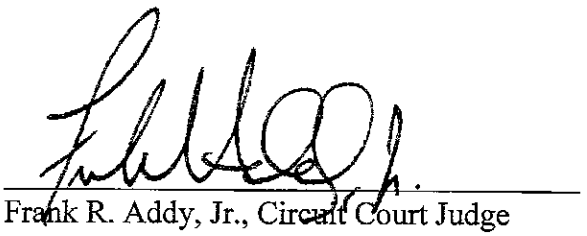
DECISION AND JUDGMENT

Based on review and consideration of the Record and the arguments of counsel, and for the reasons set out in the Form 4C Order and set out above,

IT IS ORDERED that the Order of the Greenwood City Council under appeal in this case is **AFFIRMED**.

IT IS FURTHER ORDERED that this appeal is ended with judgment entered in favor of the Respondent.

AND IT IS SO ORDERED.



Frank R. Addy, Jr., Circuit Court Judge

March 24, 2017