

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court building in the City of Richmond on Thursday the 2nd day of April, 2020.

Present: Goodwyn, Mims, Powell, Kelsey, McCullough, Chafin, JJ., and Millette, S.J.

HRIP Miller & Rhoads Acquisition, LLC, Appellant,

against Record No. 190316
Circuit Court Nos. CL18-43 and CL18-44

City of Richmond, Appellee.

Upon an appeal from a judgment rendered by the Circuit Court of the City of Richmond.

Upon consideration of the record, briefs, and argument of counsel, the Court is of the opinion that the Circuit Court of the City of Richmond (“circuit court”) erred when it granted the City of Richmond’s (“the City”) motions to dismiss HRIP Miller & Rhoads Acquisition, LLC’s (“HRIP”) application for correction of erroneous assessment and complaint for declaratory judgment.

I. BACKGROUND

HRIP owns Unit H in the Miller & Rhoads Building located in the City. The City levies taxes on real estate annually on January 1. City Code § 26-361(a) permits taxpayers to divide their real estate taxes into two installment payments, with the first payment due on or before January 14 and the second due on or before June 14. In 2017, HRIP was entitled to a tax exemption of \$524,584.43 under the City’s Tax Abatement for Rehabilitated Real Estate Program. HRIP applied half of the tax exemption to the amount of real estate taxes it owed and timely paid the January 14th installment. The remaining installment, due on or before June 14th, was \$72,580.50. HRIP failed to timely pay its second installment.

In April 2017, the City adopted a tax amnesty ordinance, City Code § 26-29, that provided, in pertinent part:

(a) *Tax Amnesty Program for the tax year beginning January 1, 2017.* For the tax year beginning January 1, 2017, the Director of Finance shall administer the Tax Amnesty Program in accordance with this article and other applicable law, for delinquent local taxes . . . owed as of February 1, 2017.

(b) *Tax amnesty period for the tax year beginning January 1, 2017.* For delinquent local taxes described in subsection (a) owed as of February 1, 2017, the period within which eligible persons may receive Tax Amnesty Program benefits for the tax year beginning January 1, 2017, shall be from August 15, 2017 to October 15, 2017.

. . . .

(e) *Waiver of penalties.* For the tax year beginning January 1, 2017, and for delinquent local taxes described in subsection (a) owed as of February 1, 2017, in accordance with this article and other applicable law, the Director of Finance shall waive, upon receipt of the payment of the amount of taxes and interest owed on or before the last day of the tax amnesty period established by this section, all of the civil penalties assessed or assessable and the interest, either or both, as provided for in Code of Virginia, Title 58.1 (Code of Virginia, § 58.1-1 et seq.) which are the result of nonpayment, underpayment, nonreporting or underreporting of local tax liabilities described in subsection (a).

The City asserted that HRIP's failure to timely pay its June 14th installment forfeited the entire 2017 tax exemption credit of \$524,584.43, including the portion already applied to the January 14th installment. Thereafter, HRIP paid, under protest, the full amount of taxes, penalties, and interest it owed to the City on October 9, 2017.

HRIP filed for amnesty under City Code § 26-29 in the amount of the forfeited rehabilitation tax exemption, penalties, and interest which totaled \$528,640.67. The City determined that HRIP did not qualify for amnesty because the June 14th installment payment was not due prior to February 1st and was, therefore, not delinquent as of February 1st as required by the tax amnesty ordinance.

HRIP filed companion cases in the circuit court for an application for correction of erroneous assessments and a complaint for declaratory judgment. The City moved to dismiss both matters. The circuit court consolidated the cases on July 1, 2018. The circuit court heard

argument on the motions to dismiss on October 9, 2018. The court took the matter under advisement and issued a memorandum opinion and order dismissing the cases.

The circuit court found, as pertinent to this appeal, that (1) HRIP forfeited the entire exemption for the 2017 tax year by failing to pay its real estate taxes by June 30 under City Code § 26-405(c); (2) City Code § 26-29 did not provide tax amnesty for the untimely June installment; and (3) that the City appropriately limited the application of the Tax Amnesty Program and that the limitation did not lead to an absurd result.

II. ANALYSIS

Application of the City’s Tax Amnesty Program “is a question of statutory interpretation, which this court reviews de novo.” *Miller & Rhoads Building, L.L.C. v. City of Richmond*, 292 Va. 537, 541 (2016) (citing *Renkey v. County Bd. of Arlington*, 272 Va. 369, 373 (2006) (holding that municipal ordinances are interpreted in the same manner as statutes)).* “In interpreting [a] statute, courts apply the plain meaning . . . unless the terms are ambiguous or applying the plain language would lead to an absurd result.” *Id.* (citations and quotation marks omitted).

City Code § 26-361(a) states that “[t]axes levied on real estate shall be due and payable on the first day of the tax year for which they are levied.” City Code § 26-29(b) provides the amnesty program dates “[f]or delinquent local taxes described in subsection (a) owed as of February 1, 2017.” The City Code does not define “owed,” but defines “delinquent” as “[w]hensoever an installment of such taxes is not paid on or before the due date, such unpaid taxes on the following day shall be deemed to be delinquent.” City Code § 26-361(d).

The circuit court found that the language of City Code § 26-29(b) was clear and unambiguous in that it applied only to taxes that were both “owed” and “delinquent” as of February 1, 2017. On appeal, the City argues that the circuit court did not err because the words “delinquent” and “owed” are both modified by “as of February 1, 2017.” HRIP, however, contends that “as of February 1, 2017” only modifies the word “owed.”

The circuit court and the City’s “construction of the statute ‘contravenes the rule of the last antecedent.’” *Virginia Educ. Ass’n v. Davison*, 294 Va. 109, 120 (2017) (citation omitted).

“Under that rule, referential and qualifying words and phrases, where no contrary intention appears, refer solely to the last antecedent. The last antecedent is the last word, phrase, or clause

* We only granted the assignment of error questioning the circuit court’s ruling regarding the application of the City’s Tax Amnesty Program to HRIP.

that can be made an antecedent without impairing the meaning of the sentence.” [Butler v. Fairfax Cnty. Sch. Bd., 291 Va. 32, 37 (2015)] (quoting Newberry Station Homeowners Ass’n v. Board of Supervisors, 285 Va. 604, 615 (2013) (internal quotation marks and alteration omitted)). See also Scott v. Commonwealth, 292 Va. 380, 384 & n.2 (2016) (“An ‘antecedent’ is defined as a ‘preceding thing,’ or ‘any group of words replaced or referred to by a substitute.’” (citations omitted)).

Id. Applying the rule of the last antecedent to the tax amnesty ordinance, “as of February 1, 2017” only applies to “owed,” the word immediately preceding it. See *Newberry Station*, 285 Va. at 615. We can find no evidence of a “contrary intention” in the wording of the ordinance that would make this rule inapplicable. Because the phrase “as of February 1, 2017” does not modify “delinquent,” real estate taxes need not be delinquent as of that date to be eligible for tax amnesty under City Code § 26-29(b). Here, HRIP’s June 14th installment was owed as of February 1st as taxes are levied and “due and payable” on January 1st. City Code § 26-361(a). However, the installment was not delinquent until June 15, 2017. The circuit court erred in finding that the 2017 tax amnesty program under City Code § 26-29(b) only applied to real estate taxes that were both “owed” and “delinquent” as of February 1, 2017.

Finding that the circuit court erred in granting the motions to dismiss, this Court will reverse the judgment of the circuit court and remand for further proceedings.

This order shall be certified to the Circuit Court of the City of Richmond.

A Copy,

Teste:

A handwritten signature in blue ink, appearing to read "John B. R. H.", written in a cursive style.

Clerk