

Circuit Court for Cecil County  
Case No. C-07-CV-20-000404

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 290

September Term, 2021

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TORTILLA WERKS, INC.

v.

TOWN OF ELKTON

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Graeff,  
Friedman,  
Eyler, Deborah S.,  
(Senior Judge, Specially Assigned),  
JJ.

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Opinion by Eyler, Deborah, S., J.

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Filed: January 21, 2022

\*This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

The Town of Elkton (“Town”), the appellee, is a municipal corporation. The Town assessed taxes on certain manufacturing equipment owned by Tortilla Werks, Inc., the appellant. In the Circuit Court for Cecil County, Tortilla Werks brought a declaratory judgment action against the Town, seeking to have the Town of Elkton Charter and related State laws construed as exempting its equipment from taxation. Tortilla Werks moved for summary judgment, which the Town opposed. Following a hearing, the circuit court denied the motion for summary judgment and dismissed the complaint for declaratory relief.

Tortilla Werks noted this appeal, asking whether the circuit court erred as a matter of law in its ruling. We shall affirm the judgment.

#### **STATE STATUTES AND TOWN OF ELKTON CHARTER**

In § 6-203(a) of Maryland Code (1985, 2019 Repl. Vol.), Tax Property Article (“TP”), the General Assembly granted municipalities the power to impose property taxes. Specifically, it states: “the governing body of a municipal corporation may impose municipal corporation property tax on those classes of property that it selects to be subject to municipal corporation property tax.”

With respect to certain types of property, including manufacturing property, the General Assembly has created exemptions from State and County taxation. TP § 7-225, entitled “Personal Property – Manufacturing Property” states a subsection (a), in relevant part:

*General exemption. - - Except as provided in § 7-109 of this title and in subsection (b) of this section, if used in manufacturing, the following*

personal property, however operated and whether or not in use, is not subject to property tax: ... (4) manufacturing apparatus or engines.<sup>[1]</sup>

(Emphasis added.) To qualify for this exemption, “a person claiming the exemption must apply for and be granted the exemption by the [State Department of Assessments and Taxation (“the SDAT”)].” TP § 7-225(d).

TP § 7-109 governs personal property that is subject to taxation by municipal corporations. At subsection (a), it states that personal property described in TP § 7-225 (as well as property described in some other sections<sup>2</sup>) “is subject to the municipal corporation property tax *unless exempted in full or in part by the governing body of the municipal corporation by law.*” (Emphasis added.) A municipal corporation must report to the SDAT any “action” taken under TP § 7-109(a) by providing a copy of the law enacted by the municipality. If the SDAT receives the report by May 1, it will be “effective for the taxable year following the date the law is enacted.” TP § 7-109(c).

Section C8-14 of The Town of Elkton Charter, entitled “Taxable property,” states:

*All real property and all tangible personal property within the corporate limits of the town, or personal property which may have a situs there by reason of the residence of the owner therein, is subject to taxation for municipal purposes, and the assessment used shall be the same as that for state and county taxes. No authority is given by this section to impose taxes*

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<sup>1</sup> Subsection (b) excepts certain personal property from the general exemption with respect to property tax imposed by counties. Cecil County is not among them.

<sup>2</sup> Property described in TP § 7-222(a) -- “stock in business of a person engaged in a manufacturing or commercial business” and in TP § 7-226 -- “raw materials and manufactured products in the possession of a manufacturer” -- also are included.

*on any property which is exempt from taxation by any act of the General Assembly.*<sup>[3]</sup>

Charter, Art. VIII, § C8-14 (emphasis added).

### **FACTS AND PROCEEDINGS**

Tortilla Werks is a Maryland corporation in the business of manufacturing and distributing tortillas. It occupies the premises at 801 Elkton Boulevard, in the Town of Elkton. At that location, Tortilla Werks maintains the equipment it uses to manufacture tortillas. Acting under authority conferred by § C8-14 of its Charter, the Town assessed business personal property taxes on Tortilla Werks’s manufacturing equipment.

In 2019, Tortilla Werks applied to the SDAT for a manufacturing exemption under TP § 7-225(a). By letter dated October 25, 2019, the SDAT granted Tortilla Werks such an exemption,<sup>4</sup> effective January 1, 2019. Importantly, the letter directed Tortilla Werks to “note that the exemption is not applicable in the Town of Elkton.”

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<sup>3</sup> The Charter has been amended since the filing of the complaint in this case. We quote the version as it existed when Tortilla Werks filed its complaint. As amended, Charter § C8-14 now states:

All real property and all tangible personal property which may have a situs there by reason of the residence of the owner therein, is subject to taxation for municipal purposes, and the assessment used shall be the same as that for state and county taxes. No authority is given by this section to impose taxes on any property which is exempt from taxation by any act of the General Assembly.

In any event, as will be apparent from our discussion, the amendment to the first sentence of this section has no bearing upon our analysis.

<sup>4</sup> The letter from the SDAT states that the exemption is for “personal property used in research and development” pursuant to TP § 7-225. “Manufacturing” is defined  
(Continued...)

On December 8, 2020, Tortilla Werks filed this declaratory judgment action. It alleged that the Town wrongly “refuse[d] to grant [Tortilla Werks] an exemption regarding the personal property tax assessed . . . for the manufacturing equipment used and operated by [it].” Tortilla Werks asked the court to declare that the Town was prohibited from assessing personal property taxes against Tortilla Werks’s manufacturing equipment under § C8-14 of the Charter because that property was exempt from taxation under TP § 7-225. The Town filed an answer denying liability and raising several affirmative defenses.

Tortilla Werks filed a motion for summary judgment, attaching the pertinent provisions of the Charter and the Tax Property Article discussed above, and its October 25, 2019 letter from the SDAT. It argued that the Town had refused to grant it an exemption from property taxes on its manufacturing equipment and in doing so had acted contrary to its own Charter. The Town filed an opposition, arguing, among other things, that the Town Charter does not afford the exemption from property tax Tortilla Werks was claiming.

On March 5, 2021, the court held a hearing, denied the motion for summary judgment, and, at the Town’s request, dismissed the complaint for declaratory judgment. The court ruled that, as a matter of law, the Town was empowered to assess taxes on

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elsewhere in the Tax Property Article to include “research and development activities[.]” TP § 1-101(r)(2)(iii).

Tortilla Werks’s manufacturing equipment. It entered an order to that effect on March 11, 2021.

This timely appeal followed.

### STANDARD OF REVIEW

In this case, we are being asked to decide whether the circuit court erred in its interpretation of the relevant sections of the Tax Property Article and the Town of Elkton Charter. The issue is purely one of law and therefore our standard of review is *de novo*. See *75-80 Props., L.L.C. v. RALE, Inc.*, 470 Md. 598, 621 (2020) (appellate courts review “issues of statutory interpretation *de novo*”); *Mayor & City Council of Ocean City v. Bunting*, 168 Md. App. 134, 141 (2006) (“Charters are subject to the ‘same canons of statutory construction that apply to the interpretation of statutes.’”) (quoting *O’Connor v. Baltimore Cnty.*, 382 Md. 102, 113 (2004)).

“When we interpret a statute [or charter], our goal is to ascertain and effectuate the actual intent of the [legislative body].” *Johnson v. Md. Dep’t of Health*, 470 Md. 648, 674 (2020) (citing *Lockshin v. Semsker*, 412 Md. 257, 274 (2010)). We begin with a review of the plain meaning of the language, “read as a whole so that ‘no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless or nugatory[.]’” *Koste v. Town of Oxford*, 431 Md. 14, 25-26 (2013) (quoting *Doe v. Montgomery Cnty. Bd. of Elections*, 406 Md. 697, 712 (2008)). “We neither add nor delete language so as to reflect an intent not evidenced in the plain and unambiguous language of the statute [or charter], and we do not construe a statute [or charter] with ‘forced or subtle

interpretations’ that limit or extend its application.” *Lockshin*, 412 Md. at 275. Rather, “we seek to reconcile and harmonize the parts of a statute [or charter], to the extent possible consistent with the statute [or charter]’s object and scope.” *Id.* at 276.

### DISCUSSION

As recounted above, under TP § 7-225, a person may apply for an exemption from property tax imposed by the state and a county for manufacturing equipment, among other property. As the introductory clause, “[e]xcept as provided in § 7-109” in TP § 7-225(a) makes clear, the exemption does not apply to taxation by a municipal corporation. Rather, under TP § 7-109(a), personal property described in TP § 7-225(a) is subject to taxation by a municipal corporation “unless exempted in full or in part by the governing body of the municipal corporation by law.” Thus, the general exemption for manufacturing equipment under State law does not afford Tortilla Werks an exemption from municipal property tax on manufacturing equipment. Accordingly, the exemption granted to Tortilla Werks by the SDAT did not apply to property taxation by the Town of Elkton.

To be sure, pursuant to TP § 7-109, the Town could have chosen to exempt manufacturing equipment from municipal taxation by enacting such a law. It did not do so, however, and property is not exempt from municipal taxation *unless* a municipal corporation enacts a law exempting it. Rather than acting an exemption law, the Town made clear in the first sentence of § C8-14 of its Charter that *all* real and personal property located within its corporate limits *is* subject to municipal taxation.

Nevertheless, Tortilla Werks takes the position that the second sentence of § C8-14 of the Charter creates an exemption from property tax on manufacturing equipment. That sentence, quoted above, states: “No authority is given by this section to impose taxes on any property which is exempt from taxation by any act of the General Assembly.” Tortilla Werks argues that this sentence means that the exemption from taxation in TP § 7-225(a) protects it from taxation by the Town. This argument ignores and contradicts the plain meaning of TP §§ 7-225 and 7-109(a), and of § C8-14 of the Charter.

The premise of Tortilla Werks’s argument is that it is exempt from paying municipal taxes on manufacturing equipment by virtue of TP § 7-225(a), an “act of the General Assembly.” This is incorrect, as we have explained above. It is clear from the “[e]xcept as provided in § 7-109” introductory language in TP § 7-225(a) that the general exemption that statute is creating *does not* pertain to taxes imposed by a municipality. Moreover, under TP § 7-109 - - the statute that *does* pertain to exemptions from taxes imposed by a municipality - - an exemption for a municipality must be created by a law enacted by the municipality. The Town has not enacted such a law.

The second sentence of § C8-14 thus has nothing to do with the general exemption created in TP § 7-225(a). Rather, it clarifies that the first sentence of § C8-14, stating that property is subject to taxation by the Town, does not empower the Town to tax property the General Assembly has said cannot be taxed. For example, TP §§ 7-218 provides that property owned by the Nature Conservancy and used in specified ways is “not subject to

property tax”; TP § 7-223 states that “farming implements owned or leased by a farmer are not subject to valuation or property tax”; TP § 7-224 states that “livestock of a farmer is not subject to valuation or to property tax”; and under TP § 7-229 the “working tools of mechanics or artisans that are operated exclusively by hand are not subject to valuation or property tax.” The second sentence of § C8-14 simply means that the sentence that precedes it does not grant the Town authority to tax property such as that covered by TP §§ 7-218, 7-223, 7-224, and 7-229, that the General Assembly has declared is not taxable at all.

In summary, the Town has not enacted a manufacturing exemption from municipal taxation. Its Charter at § C8-14 grants blanket authority to tax property located within the corporate limits. That Charter section does not specify any exemptions from taxation but clarifies that the Town does not have the power to tax property that the General Assembly has categorized as not taxable. Because the Town does not, by law, exempt equipment used in manufacturing from property taxes, the exemption granted to Tortilla Werks from taxation by the SDAT, under TP § 7-225(a), did not apply to the Town, and Tortilla Werks’s manufacturing property is not otherwise exempt from taxation. Accordingly, the circuit court’s ruling was legally correct.

**JUDGMENT OF THE CIRCUIT  
COURT FOR CECIL COUNTY  
AFFIRMED. COSTS TO BE PAID  
BY APPELLANT.**