

Pursuant to Tax Court Rule 50(f), orders shall not be treated as precedent, except as otherwise provided.

UNITED STATES TAX COURT
WASHINGTON, DC 20217

ORC PARTNERS, LLC, FIVE RIVERS)
CONSERVATION GROUP, LLC, TAX)
MATTERS PARTNER,)
)
Petitioner) **ALS**
)
v.) Docket No. 1041-16.
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent)

ORDER

We deny the motion for partial summary judgment filed by respondent (the IRS) on September 22, 2016.

Background

The facts set forth below are based on our examination of the parties' pleadings, moving papers, responses, and attachments.

ORC Partners, LLC, is a limited liability company that is treated as a partnership for federal-income-tax purposes.

In December 2011, ORC granted a conservation easement on 374.135 acres of land to the Atlantic Coast Conservancy.

On April 15, 2012, ORC filed a partnership return for its first tax year, which began on September 9, 2011 and ended December 31, 2011. On the return, ORC claimed a \$5,570,000 charitable-contribution deduction for the grant of the easement.

On October 6, 2015, the IRS issued a notice of final partnership administrative adjustment regarding ORC's first tax year. The notice of final partnership administrative adjustment disallowed the deduction for the easement. It also determined that a section-6662 penalty should be imposed.

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Five Rivers Conservation Group, LLC, the tax matters partner of ORC, filed a timely petition for readjustment of partnership items. See sec. 6226(a). (Unless otherwise indicated, all references to sections are to sections of the Internal Revenue Code of 1986, as amended.)

When the petition was filed, Five Rivers and ORC had their principal places of business in Georgia. Five Rivers is a party to this case. Sec. 6226(c)(1); Tax Ct. R. Pract. & Proced. 247(a). Another party is the Commissioner of Internal Revenue, whom we refer to as the IRS. Tax Ct. R. Pract. & Proced. 247(a).

We have jurisdiction under section 6226(f).

Discussion

I. Standards for granting motions for summary judgment

A party may move for summary judgment on all or any part of the legal issues in controversy. Tax Ct. R. Pract. & Proced. 121(a). Full or partial summary judgment may be granted only if it is demonstrated that there is no genuine dispute as to any material fact and that a decision may be rendered as a matter of law. Id. at (b). When a motion for summary judgment is made and supported, the adverse party's response must be made by affidavits or declarations, or other papers, setting forth specific facts showing that there is a genuine dispute for trial. Id. at (d).

II. Qualified conservation contributions

A deduction is generally allowed for a charitable contribution, sec. 170(a)(1), including a charitable contribution of property, sec. 1.170A-1(c)(1), Income Tax Regs. With certain exceptions, no deduction is allowed for a charitable contribution of an interest in property which consists of less than the taxpayer's entire interest in such property. Sec. 170(f)(3)(A). It is undisputed that the easement granted by ORC to the Atlantic Coast Conservancy consisted of less than ORC's entire interest in the 374.135 acres. (ORC still owned the underlying land.) Therefore, the partial-interest rule described above would bar ORC from taking a charitable-contribution deduction unless one of the exceptions to the rule is applicable. It is undisputed that the only exception that would conceivably cover the easement is the exception for a qualified conservation contribution. See sec. 170(f)(3)(B)(iii).

A qualified conservation contribution is defined as a contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes. Sec. 170(h)(1). A contribution is not considered to be exclusively for conservation purposes unless the conservation purposes are protected in perpetuity. Sec. 170(h)(5)(A).

A qualified real property interest is defined as any of three interests in real property, one of which is “a restriction (granted in perpetuity) on the use which may be made of the real property.” Sec. 170(h)(2). It is undisputed that the conservation easement granted by ORC is a qualified real property interest only if it is “a restriction (granted in perpetuity) on the use of which may be made of real property.”

III. The parties’ summary-judgment papers

A. The IRS’s motion for partial summary judgment

The IRS contends that the easement is not a qualified conservation contribution for two reasons.

First, the IRS contends that under the terms of the easement and Georgia statutory law, the easement can be extinguished if both the easement and the land come under the ownership of the same person. The Georgia statute relied on by the IRS provides: “[i]f two estates in the same property shall unite in the same person in his individual capacity, the lesser estate shall be merged into the greater.” Ga. Code Ann. sec. 44-6-2. The IRS contends that paragraph 23.13 of the easement evidences the intent of ORC and the Atlantic Coast Conservancy that the easement could be extinguished under this merger statute. Paragraph 23.13 of the easement provides: “Unless the Parties [ORC and the Atlantic Conservation Conservancy] expressly state that they intend a merger of estates or interests to occur, no merger shall be deemed to have occurred hereunder or under any document executed in the future affecting this grant.”

Second, the IRS contends that the easement can be amended in such a way that one of the conservation purposes that the easement purports to serve could be harmed. Paragraph 20 of the easement allows the easement to be amended upon the consent of both parties if the amendment “would be appropriate to promote the Purposes of the Easement”, the amendment is “in accordance with the Policies” of the Atlantic Coast Conservancy, the amendment is approved by the Georgia Department of Natural Resources, and the amendment is “consistent with the

Purposes of the Easement and the aggregate Conservation Values.” Under section 1.170A-14(e)(2), Income Tax Regs., a conservation easement that would accomplish one of its enumerated conservation purposes but that would permit the destruction of other significant conservation interests is not exclusively for conservation purposes.

B. Five Rivers’ response

Five Rivers responded to the motion for partial summary judgment. We discuss only the three aspects of the response that are relevant to our decision to deny the motion.

First, in addressing the IRS’s argument regarding the merger statute, Five Rivers relies in part on sec. 1.170A-14(g)(3), Income Tax Regs., which provides that a contribution is not disallowed as a qualified conservation contribution “merely because the interest which passes to, or is vested in, the donee organization may be defeated by the performance of some act or the happening of some event, if on the date of the gift it appears that the possibility that such act or event will occur is so remote as to be negligible.” Five Rivers contends that there is a genuine factual dispute as to the likelihood that the Atlantic Coast Conservancy would acquire title to the underlying land and that both ORC and the Atlantic Coast Conservancy would agree to extinguish the easement pursuant to the merger statute.

Second, Five Rivers argues that the Atlantic Coast Conservancy would not agree to an inappropriate amendment for several reasons, including its “policies”.

Third, Five Rivers contends that the Atlantic Coast Conservancy is an eligible donee. An eligible donee is defined as a qualified organization having a commitment to protect the conservation purposes of the donation and having the resources to enforce the restrictions. Sec. 1.170A-14(c)(1), Income Tax Regs.

C. The IRS’s reply to Five Rivers’ response

The IRS filed a reply to Five Rivers’ response. In the reply, the IRS does not deny that the Atlantic Coast Conservancy is an eligible donee. For purposes of resolving the motion for partial summary judgment, we consider the IRS to have conceded that the Atlantic Coast Conservancy is an eligible donee.

In its reply, the IRS does not deny that its argument about extinguishment of the easement through merger would be defeated if the possibility the easement would be extinguished by merger is so remote as to be negligible.

In its reply, the IRS does not deny that it would be relevant if the “policies” of the Atlantic Coast Conservancy would prevent it from agreeing to an inappropriate agreement.

D. Analysis

The IRS has made two arguments why the easement is not a qualified conservation contribution.

The IRS’s first argument is that the easement can be extinguished if both the easement and the land come under common ownership. Five Rivers’ response to this argument is that the possibility that the Atlantic Coast Conservancy would agree to extinguish the easement is negligible. The IRS does not contest that its first argument fails if the possibility that the Atlantic Coast Conservancy would agree to extinguish the easement is negligible. The relevant question therefore is whether Five Rivers has shown there is a genuine dispute about whether there is only a negligible possibility that the Atlantic Coast Conservancy would agree to extinguish the easement. We conclude that it has raised a genuine dispute. In its response, Five Rivers’ contends that the Atlantic Coast Conservancy is an eligible donee (and therefore has a commitment to protect the conservation purposes of the easement and the resources to enforce the restrictions in the easement). Sec. 1.170A-14(c)(1), Income Tax Regs. That Atlantic Coast Conservancy has a commitment to protect the conservation purposes of the easement and the resources to enforce the restrictions of the easement is relevant to the possibility that it would agree to extinguish the easement.

The IRS’s second argument is that the easement could be amended in such a way that one of its purported conservation purposes would be harmed. One of Fiver Rivers’ responses to this argument is that the Atlantic Coast Conservancy’s policies would cause it not to agree to an amendment that would harm one of the purported conservation purposes of the easement. The IRS does not deny that the Fiver Rivers’ policies are relevant to the question of whether it would approve a harmful amendment. The question therefore is whether Fiver Rivers has shown that there is a genuine dispute about the Atlantic Coast Conservancy’s policies. We conclude it has raised a genuine dispute. That the Atlantic Coast Conservancy has a commitment to protect the conservation purposes of the easement and the

resources to enforce the restrictions of the easement is relevant to its policies applicable to approving an amendment to the easement. Five Rivers has raised a genuine factual dispute about the two arguments the IRS has made in favor of partial summary judgment.

IV. Conclusion

It is

ORDERED that respondent's motion for partial summary judgment, filed September 22, 2016, is denied.

**(Signed) Richard T. Morrison
Judge**

Dated: Washington, D.C.
June 15, 2017