



Supreme Court of Georgia

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SUMMARY OF CASE DUE FOR ORAL ARGUMENT**

Please note: *This summary is prepared by the Office of Public Information to help news reporters determine if they want to cover the arguments and to inform the public of upcoming cases. The summaries are not part of the case record and are not considered by the Court at any point during its deliberations. For additional information, we encourage you to review the case file available in the Supreme Court Clerk's Office (404-656-3470), or to contact the attorneys involved in the case. Most cases are decided within six months of oral argument.*

Tuesday, February 3, 2015

2:00 P.M. Session

SAVAGE V. STATE OF GEORGIA ET AL. (S15A0277)

PELLEGRINO V. STATE OF GEORGIA ET AL. (S15A0278)

HOBGOOD V. STATE OF GEORGIA ET AL. (S15A0279)

In this high-profile case, three **Cobb County** residents are appealing a superior court judge's ruling authorizing up to \$397 million in bonds to build a new Braves baseball stadium.

FACTS: In 2013, representatives of Cobb County, the Cobb-Marietta Coliseum and Exhibit Hall Authority, and the Atlanta National League Baseball Club, Inc. began discussing plans to build a 41,500-seat stadium for the Braves. On May 27, 2014, the Cobb County Board of Commissioners approved the issuance of the bonds by the Authority, and the parties signed four agreements which are the basis of the project. The new stadium will be built on land acquired by the Authority and will be a public-private partnership with an estimated cost of \$622 million. The Authority will issue up to \$397 million in bonds to pay the public share of building the new stadium, which will be located in the Cumberland area near the interchange of I-75 and I-285 in northwest Atlanta. The new "SunTrust Park," as it has been named, will replace Turner Field located in downtown Atlanta. In addition to borrowing up to \$397 million to cover \$368 million in construction costs plus borrowing costs and interest on the debt, the County plans to raise \$14 million for transportation improvements and \$10 million from businesses in the Cumberland Community Improvement District. The Braves will contribute \$230 million. As

issuer of the bonds, the Authority will retain title to the stadium, the stadium site and certain parking areas until the bonds are fully retired and then it will convey title to the County. Under the agreements, the Braves have an exclusive license to use the stadium for 30 years, with the option to renew for an additional five. At the end of that period, the Braves would have an option to purchase the stadium at 50 percent of fair market value. Total debt service for the bonds is estimated to be about \$25 million annually. For the first 30 years, the Braves will pay \$6.1 million each year in licensing fees, which will be contributed to bond payments.

Three Cobb residents – attorney T. Tucker Hobgood, Larry Savage, and Richard Pellegrino – opposed the authorization of the bonds and were permitted to intervene in the bond validation hearing. They argued a number of things, including that authorization of the bonds first required approval by taxpayers. Following a July 7, 2014 bench trial – before a judge with no jury – the Cobb County Superior Court validated the bonds, finding that a referendum was not a prerequisite to the Authority’s issuance of the bonds and that the bond proposal was sound, feasible and reasonable, which is the standard to be met in a bond validation proceeding. Hobgood, Savage, and Pellegrino now appeal to the Georgia Supreme Court.

ARGUMENTS: The residents argue the trial court erred in validating the bonds. Each has submitted briefs enumerating various errors, but their primary contentions are that the agreement in which the County agrees to pay for the bonds and the Authority agrees to issue the bonds is not a valid intergovernmental agreement; that validating the bonds violates the debt clause and gratuity clause of the Georgia Constitution; that the project is an improper use of public tax money for a private facility; and that the bonds cannot be authorized without a public referendum. “The power of local government bodies to bind their constituents to long-term debt without ‘the assent of a majority of qualified voters’ for a non-public project like this professional baseball stadium is at the heart of this case,” Hobgood and another attorney write in their brief. “There are not only statutory prohibitions against ‘any county, municipality, or political subdivision’ incurring debt, bonded or not, without an election, but also a constitutional one.” The stadium is not a public project, and the debt incurred by the County is barred by the Constitution’s debt clause, they contend. This non-public project also is not authorized by other provisions of the Constitution. “The Braves stadium, which is not public in any normal sense of the word, does not qualify as the type of ‘facility’ related to ‘parks, recreational areas, or programs,’” the residents argue. Black’s Law Dictionary defines “park” as “an enclosed pleasure-ground in or near a city, set apart for the recreation of the public.” “There is no sense in which ‘parks and recreational areas’ can be stretched to include a facility (professional baseball stadium) run and controlled exclusively for profit by private parties.” The trial court also erred in refusing to admit into evidence documents and testimony regarding the negotiations between the government parties and the Braves parties, the residents contend.

Attorneys for the County and Cobb-Marietta Coliseum and Exhibit Hall Authority argue the trial court properly validated the bonds because the bonds “are secured by a pledge of payments under a valid intergovernmental contract, and neither the bonds nor the intergovernmental agreement payments constitute debt for purposes of the debt clause.” While the Constitution generally requires the approval of a majority of voters before a political subdivision can incur a “new debt,” the state Supreme Court “has repeatedly held that the intergovernmental contracts clause provides an exception to the debt clause.” In its 1986 decision in *Nations v. Downtown Development Authority of City of Atlanta*, the state Supreme Court said:

“It is clear a [county] may enter into a contract authorized by the intergovernmental contracts clause for the future expenditure of funds without violating the [debt clause].” The intergovernmental agreement is a “legal and valid intergovernmental contract” under the intergovernmental contracts clause of the Constitution,” the County’s attorneys argue. In response to the residents’ argument that the stadium project is not a park, they point out that the Merriam-Webster Dictionary includes in its definition of park: “an enclosed arena or stadium used especially for ball games.” “Regardless of the dictionary used, if the word ‘park’ is reasonably defined, it will encompass a facility exactly like the project at issue here,” the lawyers argue. Furthermore, the bonds and the payment obligations under the intergovernmental agreement do not violate the gratuity clause and do not involve the use of public money to improve private property. The trial court also did not err in refusing to admit into evidence documents and testimony regarding the negotiations among the Authority, the County and the Braves parties. “The purpose of a validation proceeding is to determine whether the proceedings for the issuance of bonds were lawfully conducted and whether there is adequate security for the payment of such bonds,” the attorneys for the County and Authority argue. “Only if a contract is ambiguous may a court seek extrinsic evidence to ascertain the intent of the parties.” Here, “the intergovernmental agreement is clear and unambiguous.”

Attorneys for Appellants (Hobgood, Savage, Pellegrino): T. Tucker Hobgood, David Rutherford, Larry Savage (representing himself “pro se”), Gary Pelphrey

Attorneys for Appellees (County, Authority): Thomas Curvin, Matthew Nichols, J. Kevin Moore, John Moore, Deborah Dance, Linda Brunt, Blake Sharpton, Lesly Murray

** Please note that 12 cases are due to be argued before the Supreme Court of Georgia on Monday, Feb. 2 and Tuesday, Feb. 3, 2015. However, due to the press of court business, this will be the only summary provided of cases to be argued this month.