



Supreme Court of Georgia

Aimee Hadden, Public Information
Associate
330 Capitol Ave, SE
Atlanta, Georgia 30334
404-463-1884
haddena@gasupreme.us



SUMMARIES OF OPINIONS

Published Monday, June 29, 2020

Please note: *Opinion summaries are prepared by the Public Information Office for the general public and news media. Summaries are not prepared for every opinion released by the Court, but only for those cases considered of great public interest. Opinion summaries are not to be considered as official opinions of the Court. The full opinions are available on the Supreme Court website at www.gasupreme.us.*

FRANZEN ET AL. V. DOWNTOWN DEVELOPMENT AUTHORITY OF ATLANTA ET AL. (S20A0328)

In today's unanimous opinion authored by **Chief Justice Harold Melton**, the Court has affirmed the trial court's finding that certain bonds issued by the Downtown Development Authority of the City of Atlanta for redevelopment of an area of downtown Atlanta commonly referred to as "The Gulch" are "sound, feasible, and reasonable." In doing so, the Court has rejected arguments from four Atlanta residents who intervened in this case and filed multiple objections to the bond's issuance.

The record shows that, in order to partially fund the redevelopment of The Gulch, The Downtown Development Authority and the City of Atlanta devised the bond mechanism at issue in this case. Pursuant to this plan, in highly simplified form: (1) the Development Authority will issue revenue bonds in incremental amounts (capped at \$1.25 billion) tied to progress in redevelopment of The Gulch; (2) the revenue bonds proceeds will be available only to the developer of the redevelopment project, Spring Street, LLC; (3) Spring Street, LLC, will “earn” proceeds from the bonds with development and construction work completed within The Gulch using the Developer’s own money; (3) the debt service for the bonds will be funded exclusively by infrastructure fees (which are fees the City is allowed to collect from certain qualified businesses operating within The Gulch pursuant to the Enterprise Zone Employment Act, OCGA § 36-88-1 et seq.); (4) the City will collect these infrastructure fees from businesses within The Gulch and pass them along to the Development Authority for payment of the bonds; and (5) Spring Street, LLC, has certain strictly limited rights to enforce the transfer of collected infrastructure fees to it, but has no right whatsoever to any other funds of the public entities involved in The Gulch project.

Prior to the issuance of bonds such as those involved in this case, Georgia’s Revenue Bond Law requires a hearing regarding the issuance, and, ultimately, a determination by the trial court that issuance of the bonds will be “sound, feasible, and reasonable.” Such a hearing was held in this place, and the trial court approved the issuance of the bonds. In today’s opinion, after considering the evidence made available to the trial court in the proceedings below, Chief Justice Melton writes, “With regard to the validation of the Bonds, the job of this Court is simply to determine whether there was any evidence supporting the trial court’s determination that the issuance of the Bonds was sound, feasible, and reasonable. In this case, there was.” The opinion also recognizes that, “[w]hile not all Atlantans, including the Intervenors in this case, share the City’s vision for The Gulch, that does not mean that the project is illegal. As the trial court pointed out, the job of the courts is not to question the advisability or estimate the popularity of the City’s decisions regarding the development of The Gulch.”

Attorney for Appellant (Franzen): John Woodham, Carranza Pryor.

Attorneys for Appellee (Downtown Development Authority of Atlanta, State): Matthew Calvert, Robert Highsmith, Paul Howard, Alvin Kendall, Douglass Selby, Laura Wagner, Keith Wiener.

BOWDEN et al. v. THE MEDICAL CENTER, INC. (S19G0494)

THE MEDICAL CENTER, INC. v. BOWDEN et al. (S19G0496)

The Georgia Supreme Court has concluded in a 7-0 decision authored by **Chief Justice Harold D. Melton** (with Boggs, J., NP, and Peterson, J., DQ), that the Superior Court of Muscogee County erred by certifying a class action lawsuit against The Medical Center, Inc. (“TMC”), initiated by class representatives Danielle Bowden, Jaqueline Pearce, Karla Jasper, and Christian Sprouse. The class representatives are uninsured patients who were injured in car accidents caused by at-fault third parties and who received medical treatment from TMC for their injuries.

The class representatives claimed, among other things, that TMC committed fraud, negligent misrepresentation, and violations of Georgia's Racketeer Influenced and Corrupt Organizations Act (RICO), by charging them unreasonable rates for their medical care, which rates TMC then used as a basis for filing hospital liens against any potential tort recovery by the uninsured patients against the at-fault third parties

TMC billed the uninsured patients at the hospital's standard "chargemaster rates" for each of the services provided, which were the same rates that the hospital charged to all of its patients, regardless of whether or not the patients were insured. The chargemaster rate is much "like the sticker price of a new car," and the rate is calculated by factoring in the cost of a service to a patient as well as the overall costs of operating the hospital. While all patients are charged the chargemaster rate for each medical service, very few patients actually pay the full amount because insurance companies, including Medicare, Medicaid, and other third-party payers, negotiate a reduced reimbursement rate. Ultimately, 98.84 percent of all of TMC's patients pay less than the chargemaster rate, and TMC collects, on average, about 33 percent of the chargemaster rate.

The superior court denied summary judgment to TMC on the class representatives' claims for fraud, negligent misrepresentation, and violations of Georgia RICO, and it certified the class, defining the class as

[a]ll persons who have had a hospital lien filed pursuant to OCGA § 44-14-470 et seq., by TMC for the years 2007 to present against a cause of action they possessed and which lien was filed in an amount in excess of what is a reasonable charge for the care and treatment rendered.

TMC appealed the superior court's decision to the Court of Appeals, and, in a divided opinion, the Court of Appeals majority concluded that (1) although the trial court's stated definition of the class was overbroad, the court's decision to certify the class was nevertheless proper; (2) the trial court properly denied summary judgment for TMC on the fraud and negligent misrepresentation claims; and (3) contrary to the superior court's conclusion, TMC was entitled to summary judgment on the RICO claim.

The class representatives and TMC appealed to the state Supreme Court, and, in today's 31-page opinion, the high Court reversed the Court of Appeals' conclusion that class certification was proper and reversed the conclusion that TMC was not entitled to summary judgment on the fraud and negligent misrepresentation claims, but the high Court affirmed the Court of Appeals' conclusion that TMC was entitled to summary judgment on the RICO claim.

With respect to class certification, the Supreme Court noted that class actions are permitted "only in . . . limited circumstances," and noted that a plaintiff must first meet every one of the threshold requirements of OCGA § 9-11-23. In this case, the high Court concluded that the threshold requirement of commonality is lacking.

The state Supreme Court said that “[d]issimilarities within the proposed class . . . impede the generation of common answers” to the common question raised about the reasonableness of TMC’s chargemaster rates. Specifically, the high Court noted that “the class as defined is overbroad in several respects, because it includes both insured and uninsured people, those whose liens were removed, and those who never settled their lawsuits and thus paid nothing.” Furthermore, the answer to the question of what specifically constitutes a reasonable charge in each class member’s case would “require[] an individual analysis of each medical service provided each class member” and a comparison of factors like the market rate for the same services at other hospitals, TMC’s internal costs for those particular services, and the prices TMC charged for those services to patients with health insurance or other benefits. Stated another way, the Court concluded, “while the question of what is a reasonable charge is common to the class, the answer to that question still varies from class member to class member and is not subject to being resolved ‘in one stroke’ for the entire class, which defeats commonality, and which in turn undermines the animating purpose of a class action lawsuit.” Accordingly, the Court of Appeals erred in affirming the decision of the superior court to certify the class.

With regard to the plaintiffs’ claims for fraud and negligent misrepresentation, the Court determined that “because TMC’s filing of a lien at its chargemaster rate in compliance with Georgia’s lien statutes does not amount to making a false representation, [those claims] fail as a matter of law.” In this regard, OCGA § 44-14-471 (a) (2) (A) allows for some flexibility in a hospital’s initial filing to perfect a lien for its “reasonable charges.” Thus, although the initial amount “claimed to be due” by a hospital might vary from the ultimate “reasonable” amount that a hospital is able to collect, so long as there is some basis for the amount that a hospital “claim[s] to be due,” there is no evidence of fraudulent intent in the filing of the lien. Here, because “the standardized chargemaster rate used by TMC as a basis for the lien was based on real world factors such as the cost of TMC’s services to its patients and the hospital’s overall costs[. . .] it cannot be said that TMC has no basis for using its chargemaster rates to come up with an ‘amount claimed to be due’ for purposes of securing a lien for whatever its ‘reasonable charges’ may ultimately be determined to be.” Accordingly, “there is nothing ‘fraudulent’ about TMC using its standard chargemaster rates as ‘the amount claimed to be due for the hospital’ to perfect its lien for its ‘reasonable charges,’” and the Court of Appeals erred in affirming the trial court’s denial of summary judgment to TMC on [the plaintiffs’] fraud and negligent representation claims.”

Finally, the high Court concluded that the Georgia RICO claims here fail as a matter of law for the same reasons that the fraud and negligent representation claims fail. As the Court pointed out in a footnote, because the fraud and negligent representation claims are predicates for the RICO claim, summary judgment in favor of TMC on the fraud and negligent representation claims dictates that “a ruling in favor of TMC on the RICO claim follows as a matter of law.”

Attorneys for Appellant (Bowden): Charles Gower, Charles Gower, Frank Lowrey, Michael Terry, Michael Baumrind.

Attorney for Appellee (The Medical Center): Paul Ivey, Lindsey Mann, Robert Martin, Miller Robinson, William Withrow, Lauren Dimitri.