

Bond Case Briefs

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Sherman v. Development Authority of Fulton County

Court of Appeals of Georgia - March 22, 2013 - S.E.2d - 2013 WL 1165280

Appeals court rejects sufficiency of trial court's findings of fact and conclusions of law in bond validation proceeding.

This case arose from a bond validation proceeding in which the State of Georgia petitioned a superior court for a judgment approving the issuance of certain taxable revenue bonds by the Development Authority of Fulton County ("DAFC") and validating the bonds and various bond security documents.

Mr. Sherman, a taxpayer and citizen of Fulton County appealed from the order of the trial court validating and confirming the bonds and bond security. Mr. Sherman asserting that the trial court erred by failing to set forth therein findings of fact or conclusions of law sufficient to support its ultimate holdings that: 1) the method used by DAFC to value the leasehold estate was valid under the requirements of Harris and Sherman I; 2) the structure of the bond transaction did not violate OCGA § 36-62-8; 3) the Memorandum was not ultra vires, in violation of OCGA § 36-30-3(a);9 and 4) the structure of the bond transaction did not create an unconstitutional tax exemption.

The court of appeals largely agreed with Mr. Sherman regarding the insufficiency of the findings of fact or conclusions of law. The appeals court found that the trial court labeled some of its holdings as "findings of fact." Instead of being actual factual findings, however, these statements were summary conclusions that contain no hint about the evidence or analysis the court relied on to arrive at them. Similarly, the trial court's "conclusions of law" challenged by Sherman on this appeal cite no legal authority and contain no analysis that explains them. Accordingly, these findings of fact and conclusions of law fail to satisfy the requirements of OCGA § 9-11-52(a).

The appeals court vacated the trial court's order and remanded to allow the trial court to enter a new order on the Bond Validation Petition. Such order to contain specific factual findings and conclusions of law necessary to explain any ultimate holdings of the trial court that: 1) the method used by DAFC to value the leasehold estate is valid under the requirements of Harris and Sherman I; 2) the structure of the bond transaction does not violate OCGA § 36-62-8(b); 3) the execution of the Memorandum did not violate OCGA § 36-30-3(a) and therefore did not constitute an ultra vires act; and 4) the structure of the bond transaction does not create an unconstitutional tax exemption.