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Sherman v. Development Authority of Fulton County

Court of Appeals of Georgia - September 26, 2013 - S.E.2d - 2013 WL 5365169

This appeal arose from a bond validation proceeding in which the State of Georgia petitioned the Fulton County 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.

After the state filed the petition validating the issuance, Sherman filed a document entitled "Notice of Becoming Party to Bond Validation Petition Proceeding," in which he gave notice that he thereby became a party to the proceedings for purposes of stating his objections to the bond validation. DAFC moved to strike Sherman's notice on the ground that Sherman was required to follow the intervention procedures of OCGA § 9-11-24(c) in order to become a party.

The trial court denied the motion to strike, finding that under the authority of *Hay v. Dev. Auth. of Walton County*, 239 Ga.App. 803 (521 S.E.2d 912) (1999), Sherman's notice was sufficient to authorize him to participate as a party. Eventually, the trial court entered an order validating and confirming the bonds, and Sherman filed this appeal.

After the appeal was docketed, the court decided *Sherman v. Dev. Auth. of Fulton County*, 321 Ga.App. 550 (739 S.E.2d 457) (2013). Overruling the contrary holding in *Hay*, supra, 239 Ga.App. at 804-805, the court held that a person must follow the intervention procedures of OCGA § 9-11-24 in order to become a party to a bond validation proceeding.

In this appeal, the court concluded that Sherman, 321 Ga.App. at 554-555(1), should be given retroactive application because the court did not state that its decision should be applied only prospectively and the equities favor retroactive application under the three prongs of *Chevron Oil Co.*, 404 U.S. at 106-107(II). Thus, Sherman lacked standing and the court dismissed his appeal.