Bond Case Briefs

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BOND VALIDATION - GEORGIA

Joint Development Authority of Jasper County v. McKenzie

Court of Appeals of Georgia - April 28, 2023 - S.E.2d - 2023 WL 3142214

State filed petition for order validating taxable revenue bonds and other aspects of project to develop and construct electric vehicle manufacturing facility pursuant to agreements between manufacturer, State, and multi-county joint development authority (JDA).

County citizens intervened in opposition to petition. Following evidentiary hearing, the Superior Court denied petition, finding project and bonds were not sound, feasible, and reasonable, that JDA failed to demonstrate project would promote welfare of local communities, and that rental agreement created taxable estate for years and did not create bailment for hire. JDA and State appealed, and proceedings on appeal were consolidated.

The Court of Appeals held that:

- State and JDA made out prima facie case that bonds and project were sound, feasible, and reasonable;
- Citizens failed to rebut prima facie showing that bonds and project were sound, feasible, and reasonable;
- Trial court could not deny petition on basis that it was not sound, feasible, or reasonable to exempt project from public audits;
- Citizens failed to rebut prima facie showing that bonds and project would promote local community's general welfare;
- Rental agreement did not give manufacturer bailment for hire as to personal property; and
- Rental agreement gave manufacturer usufruct in real property.

State and multi-county joint development authority (JDA) made out prima facie case, in State's petition to validate revenue bonds for car manufacturing facility project, that bonds and project were sound, feasible, and reasonable; petitioners showed that manufacturer had over $21 billion in assets and $16.4 billion in cash, bonds would be privately funded and would not subject State to pecuniary liability, manufacturer promised to create 7,500 new jobs with average salary of $56,000, witnesses with background in development deals testified about benefits to local communities from jobs, tax revenue, and relocation of suppliers, and State committed to providing subsidies to defray project's costs.

In its petition to validate revenue bonds associated with project to develop and construct electric car manufacturing facility, State was not required to establish economic feasibility of bonds and project as part of its prima facie burden to show bonds and project were sound, feasible, and reasonable.

Citizens who opposed State's petition to validate revenue bonds for electric car manufacturing facility project failed to rebut State's prima facie showing that bonds and project were sound, feasible, and reasonable; citizens only presented Securities and Exchange Commission (SEC) filings containing cautionary language about manufacturer and presented evidence that manufacturer had spent a lot of the capital it initially raised, but State's witnesses testified that SEC filings did not alarm them, and no evidence supported inference that manufacturer’s financial condition would render project unsound, unfeasible, or unreasonable.

Trial court could not deny State’s petition to validate revenue bonds for project to construct electric car manufacturing facility on basis that it was not sound, feasible, or reasonable to exempt project from public audits, where multi-county joint development authority (JDA), as bond issuer, complied with statutory procedure for waiving audit requirement, namely by providing public notice soliciting public preapproval of bond issue language that expressly indicated no associated performance audit or performance review would be conducted.

Citizens who opposed State’s petition to validate revenue bonds for project to construct electric car manufacturing facility failed to rebut State’s prima facie showing that bonds and project would promote local community’s general welfare, and, thus, trial court could not deny petition based on finding that project would not benefit local community; citizens only cross-examined State’s witnesses about lack of information regarding cost community would bear in supporting project but provided no affirmative evidence about such cost, and absent such evidence, trial court was required to defer to finding by multi-county joint development authority.

Rental agreement between manufacturer and multi-county joint development authority (JDA) for equipment and other property involved with project to develop car manufacturing facility did not give manufacturer bailment for hire as to equipment, even though agreement stated parties intended to create such bailment; agreement granted manufacturer rights that were greater than mere use of property and inconsistent with lack of ownership, such as right to dispose of equipment owned by JDA at manufacturer’s discretion without transfer of title and without need to notify or compensate JDA up to specified cumulative value of non-replaced equipment, and allowed manufacturer to demand that JDA quitclaim its title to manufacturer.

A usufruct is created when the owner of real estate grants to another person the right simply to possess and enjoy the use of such real estate either for a fixed time or at the will of the grantor; in such a case, no estate passes out of the landlord and the usufruct may not be conveyed except by the landlord’s consent, nor is it subject to levy and sale.

A lease of real estate for a period of less than five years is presumed to be a non-taxable usufruct, and there is a rebuttable presumption that a lease for five years or more is a taxable estate for years.

Express description of manufacturer’s rights to land in rental agreement between manufacturer and multi-county joint development authority (JDA), which concerned land to be used in car manufacturing facility project, weighed in favor of finding that agreement merely granted usufruct to manufacturer, not taxable estate for years, where agreement specifically provided it granted only a usufruct, that manufacturer did not have a right to use project land in as absolute a manner as it could if it were owner or lessee with estate for years, and that agreement “does not grant and shall not be construed as a grant of title or leasehold estate” to manufacturer.

In agreement between manufacturer and multi-county joint development authority (JDA) concerning land for car manufacturing facility project, provisions discussing liability for ad valorem taxes weighed in favor of finding that parties intended to grant manufacturer a usufruct rather than an estate for years; agreement stated it created usufruct, which was not “taxable interest for purposes of ad valorem taxation,” and stated that, while JDA could not guarantee “any particular ad valorem tax treatment,” it would help manufacturer contest any ad valorem taxes that were levied and would credit any payments of such taxes against manufacturer’s obligations to make payment in lieu of taxes (PILOT).

In agreement between manufacturer, State, and multi-county joint development authority (JDA) concerning land for car manufacturing facility project, provisions discussing dominion or control over property weighed overall in favor of finding that agreement created usufruct, even though agreement let manufacturer engage in construction and alterations costing less than $15 million without JDA's consent, which indicated estate for years; State fully owned buildings on property, manufacturer could only use property for specified purposes, JDA could inspect property, and manufacturer was bound by specified zoning and environmental provisions, restrictions on billboards and signage, and health, environmental, safety, and anti-discrimination laws, which JDA could enforce.

In agreement between manufacturer and multi-county joint development authority (JDA) concerning land for car manufacturing facility project, provisions discussing duties to keep and maintain premises and appurtenances of property weighed in favor of finding that agreement created usufruct; agreement stated that manufacturer was required to maintain, repair, and insure project and keep conditions safe, that JDA had no obligation to do so, that manufacturer would spend at least $5 million or sum equivalent to revenue bonds in developing and improving project despite State's retention of title to buildings, improvements, and fixtures, and that JDA had certain rights and control regarding insurance.

In rental agreement between manufacturer and multi-county joint development authority (JDA) concerning land for car manufacturing facility project, provisions discussing manufacturer's ability to sublet or assign its rights weighed in favor of finding that agreement created usufruct; agreement did not allow manufacturer to create lien or encumbrance on property, convey any rights, interests, or duties in agreement, or sublet property to non-affiliate unless JDA first consented, and even with consent to subletting, which JDA could withhold unreasonably as to any subtenant other than manufacturer's suppliers, property could still be used solely for activities related to vehicle manufacturing.

State's decision not to present its own evidence at hearing on its petition to validate revenue bonds and other aspects of project to develop car manufacturing facility, instead deferring to multi-county joint development authority (JDA) to present evidence supporting petition, did not deprive State of standing to appeal from petition's denial; State retained standing to appeal as party to petition.