No. A24A1078

In the
Court of Appeals of Georgia

State of Georgia,

Appellant,
v.

Decatur County-Bainbridge Industrial Development Authority and Safer Human Medicine, Inc.

Appellees.

On Appeal from the Superior Court of
Decatur County, Civil Case No. 23CV00260

BRIEF OF THE APPELLANT THE STATE OF GEORGIA

Joseph Mulholland
Georgia Bar No. 527912

Attorney for Appellant the State of Georgia

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTRODUCTION

This appeal arises out of the Superior Court of Decatur County's order validating a bond transaction under Georgia's Revenue Bond Law, O.C.G.A. § 36-82-60 *et. seq*. To incentivize Safer Human Medicine, Inc. ("SHM"), a startup company, to locate a primate breeding facility of unprecedented size in Decatur County (the "County") within the city limits of Bainbridge (the "City"), the Decatur County-Bainbridge Industrial Development Authority (the "Authority"), without input or approval of the taxpayers who would bear the risk and pay the cost of the project, structured a deal with SHM that included a significant capital infrastructure package to be paid through tax dollars as well as egregious property tax incentives that would essentially eliminate SHM's property taxes for more than 10 years.

The tax incentive structure was a "bonds-for-title" transaction, which is a common economic development tool in the State of Georgia (the "State") that follows statutory procedures. However, the processes and procedures followed by the appellees in this case were anything but typical. Votes and approvals by multiple government entities were carried out in secrecy and in clear violation of the Georgia Open Meetings Act, O.C.G.A. § 50-14-1 *et seq*., and the District Attorney, acting on behalf of the State, was asked to affirm that certain required acts were lawfully completed, when in fact such acts had not taken place at all. Further still, the bond

validation hearing itself was not properly noticed as required under Georgia's Revenue Bond Law, O.C.G.A. §§ 36-82-76 and 36-82-100.

The trial court's validation order also ignored binding precedent of this Court when it found that the incentive contracts created a bailment for hire in personal property, notwithstanding that this Court recently analyzed the same contract language in *Joint Development Authority of Jasper County v. McKenzie*, 367 Ga. App. 514, 528 (2023), and found that no bailment for hire relationship was created. Additionally, the validation order found that the primates to be raised in the facility qualify for the Freeport Exemption, which is a finding inconsistent with the bond validation petition. Indeed, the petition never mentioned, and no facts were presented, to support application of that exemption.

The trial court erred in its failure to meet its obligations under O.C.G.A. § 36-82-77(a) "to hear and determine all questions of law and of fact in the case," and instead relied on material misrepresentations of fact. Also, the trial court erred because it made findings in its validation order that were either never requested in the petition, or that are not allowed under Georgia law. Accordingly, the trial court should be reversed and its order should be vacated.

JURISDICTIONAL STATEMENT

This Court has jurisdiction over this matter pursuant to O.C.G.A. § 5-6-34(a)(1) because the trial court's validation order issued on January 2, 2024 (the

"Validation Order") is an appealable final judgment. This Court also has jurisdiction under O.C.G.A. §§ 5-6-34(a)(1), 5-6-34(a)(4), and 36-82-77(a) because appeals from orders granting or denying validation of revenue bonds will proceed "under the procedure provided by law in cases of injunction."

Jurisdiction is properly with this Court because the appeal does not present issues within the Georgia Supreme Court's exclusive jurisdiction. *See* Ga. Const. art. VI, § VI, ¶ 2; O.C.G.A.§ 15-3-3.1(a).

This appeal is timely because the Validation Order was entered on January 2, 2023, and the State filed its Notice of Appeal on January 31, 2024, in accordance with O.C.G.A. § 5-6-38(a).

ENUMERATION OF ERRORS

(1) The trial court erred in validating the bonds, and finding that certain security was pledged and that contracts are enforceable against the Authority, because the Authority did not follow the procedures required by the Georgia Bond Revenue Law, O.C.G.A. § 36-82-60, *et seq*., including holding open meetings under the Georgia Open Meetings Act, O.C.G.A. § 50-14-1 *et seq*.

(2) The trial court erred because the Validation Order found that the notice of hearing, required by O.C.G.A. § 36-82-76, was sufficient for all purposes and was sufficient to exempt the expenditure of bond proceeds from compliance

with the performance audit or review and periodic reports required by O.C.G.A. § 36-82-100.

(3) The trial court erred in finding that the rental agreement through which personal property is leased and used by SHM creates a bailment for hire as to such personalty, and that such property is not subject to *ad valorem* taxation pursuant to O.C.G.A. § 48-5-3.

(4) The trial court erred because the Validation Order found that the primates to be bred at the Project qualify under the Freeport Exemption from taxation under O.C.G.A. § 48-5-48.2.

STATEMENT OF THE CASE

I. Material Facts and Procedural History.

In or about 2023, the Authority offered SHM an economic incentive package to finance a primate breeding facility of unprecedented size, which if constructed, will house up to 30,000 primates within the City directly adjacent to residential properties and farmland (the "Project"). V3-243. So that SHM can avoid paying *ad valorem* taxes, the incentive package included the issuance of the Authority's taxable revenue bonds in an aggregate principal amount of up to $300 million (the "Bonds"). V2-5, 141. The package included significant capital contributions that would be made at taxpayer expense. *Id.*

To facilitate financing for the Project, and in an attempt to establish certain agreements and obligations, the City and the Authority prepared a Bond Resolution, Project Agreement, Rental Agreement, and a PILOT Agreement, among other documents. V2-29, 130, 176. The Project Agreement and the PILOT Agreement were to be executed by SHM, the Authority, the City, the County, the Decatur County Board of Tax Assessors ("BOTA"), the Decatur County Tax Commissioner, and the Decatur County School District. V2-130, 176.

To situate the Project, a different development authority was to sell approximately 200 acres of land (the "Project Site"), valued at approximately $2 million, to SHM for total cost of $10.00. V2-6, 133; V3-243. Under the Project Agreement, SHM would construct the Project on the Project Site, and then convey the Project Site, along with all furniture, equipment, and machinery installed at the Property Site (the "Equipment") to the Authority, which is an entity not subject to *ad valorem* taxes. V2-6, 133. The Authority would then issue its validated Bonds, which would be purchased by SHM, and SHM would then lease the Project back from the Authority through the Rental Agreement, pursuant to which the Project Site would constitute a usufruct, and as to the personal property, the Rental Agreement was to create a nontaxable bailment for hire. V2-6, 179. In exchange for the benefits, SHM was to make certain payments in lieu of taxes to the Authority under the Rental Agreement, as further agreed to in the "PILOT Agreement." V2-147, 179.

Additionally, under the Project Agreement, the Authority would reimburse SHM—through the public funds—for certain costs to conduct surveys and environmental studies at the Project Site; clear the Project Site; and design, permit, and install certain curb cuts. V2-141. Also under the Project Agreement, the City would use public funds to design, permit, construct and install new water infrastructure and an expansive wastewater treatment system to service the Project. *Id*. And, the City would install new natural gas infrastructure and electrical and telecommunication lines to service the Project. *Id*.

To commence proceedings to validate the Bonds (the "Bond Validation Proceedings"), on the morning of December 11, 2023, counsel for the Authority, Tom Conger, presented only the Petition and Complaint ("Petition") to Joseph Mulholland, the District Attorney for the South Judicial District (the "District Attorney"). V4-340. The Petition did not include the referenced exhibits, including the Bond Resolution, and the District Attorney was told only that the Bonds were for an animal husbandry project and the Petition needed to be executed quickly. *Id*. Consistent with his obligations under O.C.G.A. § 36-82-75, the District Attorney signed the Petition. *Id*. In doing so, the District Attorney represented and affirmed that all procedures necessary for the commencement of the Bond Validation Proceedings had been duly, properly, and lawfully completed. V2-11-12. However, such statements were not true. In fact, the Authority had not yet voted on or executed

the required Bond Resolution, the Project Agreement, or the PILOT Agreement in an open meeting, as required by the Open Meetings Act, O.C.G.A. § 50-14-1 *et seq*. V3-236-239, V4-341-343.

It was only after the District Attorney executed the Petition, and later in the day on December 11, 2023, that the Authority and the other public entities, including the City, the County, and the BOTA, participated in a Special Called Meeting to consider the Bond Resolution, Project, and PILOT Agreements (the "Special Called Meeting"). V3-236-239; V4-341-343. However, the Special Called Meeting was shrouded in secrecy to avoid the risk of the public learning about the controversial Project. V3-236-239. Notwithstanding that the Special Called Meeting was planned as early as December 5, 2023, the Authority neither provided notice of the meeting, nor published an agenda, as required by O.C.G.A. § 50-14-1(b)(1).[1] V3-238-239. The Authority also failed to properly record the presence of its board members in the meeting minutes, and did not properly record any votes.

[1] Although not in the record for this Appeal, Appellant notes that a lawsuit has been separately filed in the Superior Court of DeKalb County against the County, the City, the BOTA, and the Decatur Board of Education and School District alleging that these entities also did not comply with the Georgia Open Meetings Act. *See Dollar v. City of Bainbridge*, Case No. 24CV00046 (filed Feb. 15, 2024). Notably, the County and the BOTA have filed answers admitting that the Open Meeting Act requirements were not followed and have admitted that the Project and PILOT Agreements are not valid as to these entities.

II. Procedural History

The Bond Validation Proceedings commenced December 14, 2023, through the filing of the Petition. V2-3. None of the documents attached to the Petition were provided to the District Attorney, and the copies filed with the clerk were not signed or attested to by the Authority. V4-433. The form of investment letter and other documents also were not signed or sealed. V4-434-438.

Notices of the Bond Validation Proceeding and the hearing were published in the legal organ, the Post-Searchlight, on December 20 and 27, 2023. V2-207. But the notices contained fatal errors, including that they failed to notify the public with the requisite conspicuousness that the Authority was dispensing with important audit and oversight protections related to the use of the bond proceeds. *Id*. The Authority and SHM filed answers to the Petition on December 28, 2023, admitting the allegations of the Petition. V2-200-205, 211-214.

Neither the Authority nor SHM made any attempt in their answers to correct the errors in the Petition or the notices, and therefore both the State and the trial court were unaware of the Petition's misstatements and the pervasive procedural defects throughout the Bond Validation Proceedings when the Superior Court entered the Validation Order on January 2, 2024. V2-200-205. 211-214. Moreover, the State was not provided a copy of the Validation Order before it was entered, and so the

State and the trial court were not made aware of numerous factual and legal errors in the Validation Order, which had been prepared and submitted by the Authority.

On January 29, 2024, multiple citizens of the City and County filed a motion to intervene in the Bond Validation Proceeding, questioning the validity of the Validation Order based on procedural defects. V3-232. Consequently, the State became aware of the fatal defects and flaws that were pervasive in the Bond Validation Proceedings, and first learned of the false statements in the Petition. Accordingly, the State filed a Motion for Reconsideration or in the Alternative to Set Aside the Validation Order ("State's Motion for Reconsideration") on January 30, 2024. V4-339. The State, a party to the Bond Validation Proceeding, then filed a timely Notice of Appeal as to the Validation Order on January 31, 2024.[2] V2-1. Notwithstanding the filing of an appeal, on February 2, 2024, the Authority filed a Response to the State's Motion for Reconsideration, which stated that, although the Authority disagreed with the State's characterization of facts, the Authority had voted to revoke its approval of the Bond Resolution and consented to the recission of the Validation Order, among other relief.[3] V6-7-9. The trial court scheduled an

[2] The State, represented by the District Attorney, was the party that commenced the Bond Validation Proceeding. O.C.G.A. § 36-82-77.

[3] Even if the Bonds are validated, there is no obligation to issue them or proceed with the Project. Section 1.7 of the PILOT Agreement states that "[p]rior to the issuance of the Bonds and the consummation of the transactions required to implement the structure as set forth herein ("Closing"), it is acknowledged that the Company and the Authority each have the right to elect not to proceed with the

evidentiary hearing to consider the Motion for Reconsideration, but the trial court had no jurisdiction to hold that hearing because the State's timely appeal divested the trial court of jurisdiction. V4-585. On February 29, 2024, as the appeal was pending, the Project Agreement terminated on its own terms because the Bonds had not issued.

SUMMARY OF ARGUMENT

The trial court should be reversed, and the Validation Order should be vacated for four primary reasons.

First, the trial court's findings are not supported by the facts. The Petition was executed with numerous misrepresentations that the Authority and SHM could have corrected in their answers, but did not. For example, the Bond Resolution, the Project Agreement, and PILOT Agreement are not binding on the Authority because they were not voted on or approved in a meeting that was properly conducted under the Open Meetings Act. Accordingly, the Bond Resolution necessary for the validation of the bonds was never authorized, and the requirements necessary to bring the Bond Validation Proceeding were never met. Thus, the Validation Order validating the Bonds is in error. Moreover, the Validation Order's conclusions that

---

Project and to terminate the Rental Agreement in the event certain conditions precedent to the Closing set forth in the Rental Agreement are not satisfied." The Authority voted to revoke its participation in the Project and elected not to proceed before the Bond was issued.

the Project and PILOT Agreements shall each constitute, or will constitute, the legal, valid, binding, and enforceable obligations of the Authority are error.

Second, the Validation Order ordered and adjudged "that the Rental Agreement will create in [SHM] a usufruct on the property comprising part of the Project and a bailment for hire as to the personal property comprising part of the Project which interests are not subject to ad valorem property taxes." For the reasons set forth herein, as well as this Court's ruling in *McKenzie*, the trial court erred because the Rental Agreement does not establish a bailment for hire.

Third, the Validation Order also ordered and adjudged that the "notice of validation [was] sufficient for all purposes, as required by O.C.G.A. § 36-82-76, and [was] sufficient to exempt the Authority from compliance with the performance audit or review and periodic reports with respect to the expenditure of Bond proceeds as set forth in the O.C.G.A. § 36-82-100." However, the trial court erred because the published notice was fatally defective in that it was not identical to the hearing notice executed by the trial court, and the notice did not include "in a legal advertisement in **bold print** . . . [the] requisite public notice soliciting public preapproval of the applicable bond issue which expressly states that no performance audit or performance review shall be conducted with respect to such bond issue." *See* O.C.G.A. § 36-82-100(d) (emphasis added).

Fourth, the Validation Order further ordered and adjudged that the primates housed at SHM's facility constitute "tangible personal property" and "inventory of goods in the process of manufacture or production" under O.C.G.A. § 48-5-48.2(c)(1), and that such inventory should be exempt from *ad valorem* taxation under the Freeport Exemption, as described in the Project Agreement. However, that finding was not requested in the Petition and there were no facts in the record to support the Court's Validation Order as to the Freeport Exemption.

Finally, even if this Court were to uphold the Validation Order despite the significant factual and legal issues infecting it, the Court should hold that the Validation Order is now moot because: 1) the Authority has already revoked its participation in the Project and expressed its intent not to issue the Bonds; and 2) the Project Agreement terminated on its own terms since the transaction did not close and the Bonds were not issued by the February 29, 2024 deadline established in the Project Agreement.

STANDARD OF REVIEW

The trial court's legal analysis is subject to de novo review. *See, e.g.*, C*rystal Farms, Inc. v. Rd. Atlanta, LLC*, 302 Ga. App. 494, 494 (2010).

Although a trial court's fact findings ordinarily will not be disturbed if there is any evidence to sustain them, "the court's judgment must be reversed where it is apparent that it rests on erroneous reasoning or on an erroneous legal theory." *Cotto*

L. Grp., LLC v. Benevidez, 362 Ga. App. 850, 853 (2022) (quotation omitted); *see also Rafac v. Jiangsu Linhai Power Mach. Grp. Corp*., 357 Ga. App. 551, 555-56 (2020) (findings based on legal error from improperly shifting the burden of proof are clearly erroneous and thus fail the "any evidence" test). Even without legal error, fact findings cannot be based on mere speculation and conjecture. *See*, *e.g*., *In re Sharee Baps Corp*., 346 Ga. App. 434, 439 (2018) ("[M]ere conjecture does not constitute evidence upon which findings may be based.") (citation omitted). Moreover, the "any evidence" test refers to "any evidence sufficient under the applicable standard." *Kodadek v. Lieberman*, 247 Ga. App. 606, 610 (2001).

ARGUMENT

It has long been held that if the issuance of the bonds would be illegal, they cannot be validated. *Savage*, 297 Ga. 627, 632 (2015) (*citing Nations v. Downtown Dev. Auth. of the City of Atlanta*, 255 Ga. 324, 328 (1986) (invalidating two provisions of a bond resolution because they violated the Georgia Constitution). The Authority failed to follow the statutory requirements for validation, and therefore the Validation Order must be vacated. However, even if the Court determines that the procedures were satisfied, and that the Validation Order is not already moot, there are still material provisions of the Validation Order that must be struck.

I. The trial court erred by issuing the Validation Order because the Revenue Bond Law procedures were not satisfied.

In Georgia, all revenue bonds are to be issued in the superior court in the manner set forth in Sections 36-82-74 through 36-82-83 of the Bond Revenue Law. *See* O.C.G.A. §§ 36-82-73. One of the steps in that process is to require the State, represented by the district attorney, to execute a petition affirming that certain procedures were followed and completed in accordance with law. Here, the District Attorney met his obligation, only to determine later, but before the expiration of the appeal period, that the statements he affirmed were, unknowingly to him, false.

Under Georgia's Open Meetings Act, O.C.G.A. § 50-14-1, the Authority is an "agency" subject to the requirements of the Act. Pursuant to the Act, all Authority "meetings shall be open to the public. All votes at any meeting shall be taken in public after due notice of the meeting and compliance with the posting and agenda requirements of this chapter." O.C.G.A. § 50-14-1(b)(1). Also "[a]ny resolution . . . or other official action" of any of the Defendants "adopted, taken, or made at a meeting which is not open to the public as required by the Act shall not be binding." O.C.G.A. § 50-14-1(b)(2).

Here, the Authority purportedly held a special called meeting on December 11, 2023, to adopt the Bond Resolution, the Project Agreement, and the PILOT Agreement. V3-236. However, the Authority failed to notice the meeting under O.C.G.A. § 50-14-1(d)(2). V3-236-237. Further still, the Authority did not post an

agenda for the meeting as required under O.C.G.A. § 50-14-1(e)(1). V3-237-238. And, the Authority did not, as O.C.G.A. § 50-14-1(e)(2)(A) of the Open Meetings Act requires, within two days of adjournment of the meeting, prepare for public inspection a summary of the subjects acted on and identify all members of the agency present at the meeting as required under O.C.G.A. § 50-14-1(e)(2)(A) Likewise, the Authority never prepared meeting minutes that included the names of the members present at the meeting, a description of each motion or other proposal made, the identity of the persons making and seconding the motion or other proposal, and a record of all votes, as required under O.C.G.A. § 50-14-1(e)(2)(B). *Id*. Indeed, there is no record of any vote on the PILOT Agreement at all. Most significantly, the Authority was required to adopt the Bond Resolution at an open meeting as a condition to commencing the Bond Validation Proceeding, and most certainly there was no approval of a resolution prior to the State's execution of the Petition because the Authority had not yet held any vote on the resolution at the time it presented the Petition to the State for signing. *See* O.C.G.A. § 36-82-63.

The procedural defects in this case are pervasive and fatal. Therefore, the trial court erred when it found in the Validation Order that the Bond Resolution, Project Agreement, and the PILOT Agreement are binding on the Authority and that the obligations within those agreements are enforceable. The trial court further erred

when it concluded that that the Bonds were validated and that the Authority had complied with all requirements of the Bond Revenue Laws.

Accordingly, the findings of the trial court and the entry of the Validation Order were plain error, and the Validation Order should be vacated.

II. The trial court erroneously validated the bonds because the hearing was not properly noticed, and the statutory requirements for waiving the performance audit and review requirements of O.C.G.A. § 36-82-100 were not met.

Under Georgia law, "[w]hen bonds are issued by a county, municipality, or local authority in the amount of $5 million or more, the expenditure of bond proceeds shall be subject to an ongoing performance audit or performance review as provided in [O.C.G.A. § 36-82-100]." O.C.G.A. § 36-82-100(b). The Authority is authorized by statute to waive the audit requirement, but to do so, the Authority must include a "specific waiver of public accountability . . . in a legal advertisement **in bold print** contained within the requisite public notice soliciting public preapproval of the applicable bond issue which expressly states that no performance audit or performance review shall be conducted with respect to such bond issue." O.C.G.A. § 36-82-100(d) (emphasis added); *cf. McKenzie*, 367 Ga. App. at 524.

It is beyond dispute that, even if the Authority published the required notice for the bond validation hearing, the Authority **did not publish the waiver of the performance audit or performance review in bold print**, as specifically required

by O.C.G.A. § 36-82-100(d). V2-207. Accordingly, it was plain error for the trial court to find in the Validation Order that the audit requirement had been waived.

III. The trial court erroneously held that the Rental Agreement between the Authority and SHM creates a bailment for hire.

As a matter of law, the Rental Agreement does not create a bailment for hire with respect to personal property, and therefore the Validation Order's finding that the "Rental Agreement will create in [SHM] . . . a bailment for hire as to the personal property comprising part of the Project, which interests are not subject to ad valorem property taxes" is error. *See McKenzie*, 367 Ga. App. at 528.

As this Court has explained:

> As applied to personalty, an estate for years differs from a contract of hiring, which is a bailment conveying no interest in the property to the bailee but merely the right of use." (Emphasis supplied.) OCGA § 44-6-101. "A bailment is a delivery of goods or property upon a contract, express or implied, to carry out the execution of a special object beneficial either to the bailor or bailee or both and to dispose of the property in conformity with the purpose of the trust." OCGA § 44-12-40. "[A] bailment relationship is created when one party is involved in an undertaking for a consideration to safeguard the personal property of another and exercises complete dominion at all times over the property." *Park 'N Go of Georgia, Inc. v. U.S. Fid. & Guar. Co*., 266 Ga. 787, 790 (1996).

McKenzie, 267 Ga. App. at 525-26.

In *McKenzie*, this Court found that a rental agreement between a car manufacturer and a joint development authority that purported to result in a bailment for hire for personal property, did not actually create such an interest, despite the

parties' express written intent. In reaching this conclusion, this Court noted that the manufacturer's interest in the equipment comprising the personal property went beyond mere use, was inconsistent with a lack of ownership, and actually deprived the authority of rights that were consistent with its ownership. *McKenzie*, 367 Ga. App. at 526. The language between the rental agreement in *McKenzie* and the Rental Agreement at issue here are virtually identical.

As in *McKenize*, the Rental Agreement permits SHM to dispose of equipment owned by the Authority, with or without title first being transferred to SHM, and does not require SHM to even report any such activity to the Authority until it has disposed of $5,000,000 worth of equipment.[4] V2-450-451. The contract language also makes clear that SHM has no obligation to compensate the Authority so long as the cumulative book value of any equipment that is removed and not replaced is less than $5,000,000. *Id*. As this Court found in *McKenzie*, SHM's arrangement is fundamentally inconsistent with a bailment, as it demonstrates an interest beyond the mere use of the property. *McKenzie*, 367 Ga. App. at 527.

Moreover, the Rental Agreement allows SHM, as the bailee, to act in a way that disregards the Authority's superior interest in the equipment. As this Court has held, this is impermissible in a bailment relationship. *See McKenzie*, 367 Ga. App.

[4]The only difference between the Rental Agreement and *McKenzie* is that the stated limit in *McKenzie* was $15 million. *See McKenzie*, 367 Ga. App. at 527.

at 528 (*citing Farkas v. Farkas*, 235 Ga. App. 491, 492 (1998) ("[T]he rule is well settled that a bailee cannot dispute or deny the title of his bailor. By the acceptance of the bailment the bailee impliedly admits the title of [its] bailor, and [it] is estopped thereafter from disputing it.") (citation and punctuation omitted)).

Therefore, because SHM's interest in the personal property transcends mere use of the property, and the terms of the Rental Agreement are nearly identical to the terms that this Court rejected in *McKenzie*, the Validation Order violates *McKenzie* and Georgia's longstanding law on bailments. Accordingly, the trial court erred by finding that the Rental Agreement creates a bailment for hire for personal property pursuant to O.C.G.A. § 44-6-101.

IV. The trial court erroneously ordered and adjudged that the primates to be bred at the Project are subject to a Freeport Exemption under O.C.G.A. § 48-5-48.2.

In the Validation Order, the trial court also erred in finding that SHM's inventory, consisting of primates, shall at all times be subject to the Freeport Exemption for purposes of *ad valorem* taxation as described in the Project Agreement, under O.C.G.A. § 48-5-48.2, and other generally applicable law.

First, the Petition did not request any such finding by the trial court, and there are no such facts alleged or admitted in the Petition or any answer, and there is no any evidence whatsoever in the record, to support the broad and conclusory findings of the Validation Order as to application of the Freeport Exemption.

Second, even if there was any evidence to support the trial court's findings, the Freeport Exemption would not, as a matter of law, encompass the primates at the Project. Under O.C.G.A. § 48-5-48.2(c), the governing authority of any county or municipality may, subject to the approval of the electors of such political subdivision, exempt from ad valorem taxation certain types of tangible personal property. However, the exemption only applies, in relevant part, to: (1) "Inventory of goods in the process of manufacture or production"; and (2) "Inventory of finished goods." *See* O.C.G.A. § 48-5-48.2 (authorizing Georgia's Freeport Exemption). And the Freeport Exemption applies only to "tangible personal property which is substantially modified, altered, combined, or changed in the ordinary course of the taxpayer's manufacturing, processing, or production operations in [Georgia]." O.C.G.A. § 48-5-48.2(c). Tangible property contemplated under the statute does not include living primates born in captivity, no matter how SHM would like to categorize them as modified, altered, or changed by the fact that such primates are fed and watered.

Therefore, the trial court erred in finding that the Freeport Exemption applies to primates.

V. The Deadline to Issue the Bonds Has Expired.

For the reasons set forth herein, the Validation Order should be vacated. However, even if this Court upholds the Validation Order, it is now moot.

Pursuant to Section 1.7 of the PILOT Agreement, "[p]rior to the issuance of the Bonds and the [Closing on the bond transaction], . . . the Authority [has] the right to elect not to proceed with the Project and to terminate the Rental Agreement in the event certain conditions precedent to the Closing set forth in the Rental Agreement are not satisfied." On January 2, 2024, the Authority, before the bonds were issued and consistent with its rights under the PILOT Agreement, voted to revoke its participation in Project Liberty, and even specifically voted "to revoke its approval of the Bond Resolution, which Defendant Authority had adopted on December 11, 2023 (including all related documents)." V6-8. Accordingly, this Court may find that the Validation Order is moot and is of no further force and effect.

Further still, neither the Bonds nor the contracts supporting the bond transaction are viable because the Project Agreement terminated on February 29, 2024, by its own terms because the Bonds had not been issued.[5] *See* Project

[5] Section 12.2 of the Project Agreement, relating to "Contingencies" states:

> Notwithstanding anything in this agreement to the contrary, all of the Parties' rights obligations and liabilities under this Agreement are subject to the satisfaction of the following contingencies (collectively, "Contingencies") . . . (2) [SHM's] closing on the acquisition of the fee simple interest in any portion of the Project Site under the terms of the PSA, and . . . (4) the issuance and delivery of the Bond and the execution and delivery of the Bond Documents. If the Contingencies are not satisfied (or waived in writing by all of the Parties) on before February 29, 2024, then notwithstanding anything herein to the contrary: (i) this Agreement shall automatically terminate, be null and void, and none of the Parties shall have any further rights, obligations or liabilities to the other Parties hereunder, and (ii) each Party shall be

Agreement § 12.2. V4-523-524. Indeed, absent closing occurring prior to February 29, 2024, which indisputably did not occur, the Project Agreement terminated automatically, is null and void, and no party has any continuing obligation or liability thereunder. *Id*. On these grounds, this Court may find that the Validation Order is moot and is of no further force and effect.[6]

VI. Remand of the Case.

Assuming arguendo that this Court finds there isn't sufficient evidence to find the Trial Court erred in issuing the Bond Validation, this Court should remand the case back to the Trial Court to determine if there was factual discrepancies as alleged by the State. The Trial Court filed a Rule Nisi to do as such on January 30th, 2024, and set a date for reconsideration for February 15th.[7] In addition, in abundance of caution given the conflicting statutes of O.C.G.A. 9-11-60 and O.C.G.A. 36-82-77 and 36-82-78, et. seq., the Trial Court ordered another Rule Nisi for the notice of appeal filed by the State for February 15, 2024.[8] The Trial Court obviously felt there was a compelling reason to hear newly discovered evidence and information in

---

responsible for paying all the fees costs and expenses of its counsel(s), consultants and contractors. V4-523-524.

[6] Notably, SHM has filed a federal lawsuit and the deadline for the expiration of the Project Agreement was extended by the district court, but that extension would not apply to the validations under the Bond Validation Order since the power to validate is reserved exclusively for the superior court. O.C.G.A. § 36-82-75.

[7] R-585.

[8] R-588.

relation to the Bond Validation. As such, this Honorable Court should allow the Trial Court as fact finder to delve into the allegations of the State of Georgia. The State has followed all procedural guidelines per the statutes, as had the Court. However, given the time constraints of O.C.G.A. 36-82-77 and 36-82-78, et. seq., and O.C.G.A. 9-11-60 the Trial Court wasn't able to have hearing on the matter to address the factual assertions of the case. This is patently unjust and the case should be remanded to the fact-finder. The Court of Appeals is not a finder of fact. "As to the sufficiency of the evidence, this is a court for the correction of errors, and ordinarily it is within this Court's purview to review such a determination for legal error once made by the trial court, not to make the determination in the first place."[9] As such, this case should be remanded to the Trial Court for determination on the issue of reconsideration and appeal.

CONCLUSION

Even had the Authority not already revoked its participation in the bond transaction and confirmed that it would not close, and even had the deadline for issuing the Bonds not yet passed, the Validation Order never should have been issued in the first place. As noted in the State's Motion for Reconsideration and the Joint

[9] *Doe v. State*, 347 Ga. App. 246, 256-257 (5) (819 SE2d 58) (2018): *Hayes v. State*, 355 Ga. App. 213, 216 (2020).

Motion to Intervene filed by the residents of the City and County, there are factual discrepancies, including as to the State's allegations in the Petition and misleading statements made in pleadings filed during the Validation Proceeding, that were not known to the trial court.[10] Disregarding these questions of fact and the procedural irregularities, discovered after the Validation Order was issued, would be patently unjust. "As to the sufficiency of the evidence this is a court for the correction of errors, and ordinarily it is within this Court's purview to review such a determination for legal error once made by the trial court, not to make the determination in the first place." *Doe v. State*, 347 Ga. App. 246, 257 (2018): *Hayes v. State*, 355 Ga. App. 213, 216 (2020). Therefore, at the very least there are questions to be resolved by the trial court through remand or other relief.

For the reasons set forth herein, there is plain error in this case, and the trial court should be reversed and the Validation Order should be vacated.

CERTIFICATION

Appellant certifies this submission does not exceed the word count limit imposed by Rule 24.

[10] The trial court and the District Attorney are required to follow the requirements of the Bond Revenues Law. The trial court noted the concerns raised by the State in this appeal, and filed a Rule Nisi to hear the post-validation motions. But for the requirement to file the appeal and timing concerns under O.C.G.A. §§ 9-11-60 and O.C.G.A. 36-82-77 and 36-82-78 the trial court potentially could have heard the arguments as to the facts, held an evidentiary hearing on newly discovered evidence relating to the Bond Validation and reconsidered and vacated its own order.

Respectfully submitted, this 4th day of March, 2024.

/s/ Joseph Mulholland
Joseph Mulholland
District Attorney/Appellant
South Georgia Circuit
Georgia Bar No. 527912
P.O. Box 1870
Bainbridge, GA 39818

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the Brief of Appellant the State of Georgia by the Court's eFAST system and United States mail to the following:

Michael E. Kozlarek
KING KOZLAREK LAW LLC
121 N. West Street, Unit B
Bainbridge, Georgia 39817

B. Thomas Conger
Conger Law Firm
218 E. Water Street
Bainbridge, Georgia 39817

Attorneys for Decatur County-Bainbridge Industrial Development Authority

Jordan Walker
BALCH & BINGHAM, LLP
30 Ivan Allen Jr. Boulevard, N.W., Suite 700
Atlanta, Georgia 30308

Safer Human Medicine, Inc.

This 4th day of March, 2024.

/s/Joseph Mulholland
Joseph Mulholland
District Attorney/Appellant
South Georgia Circuit
Georgia Bar No. 527912
P.O. Box 1870
Bainbridge, GA 39818

Counsel for Appellant