



Georgia Appellate Court Overturns Lower Court's Denial of Bond Incentives for Rivian Investment

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On April 28, 2023, the Georgia Court of Appeals reversed the ruling of the Morgan County Superior Court and approved \$15 billion in bonds for Project Tera, a 2,000-acre Rivian Horizon LLC (“Rivian”) electric truck plant across four Georgia counties. The Georgia appellate court held that the trial court incorrectly denied a petition to validate taxable revenue bonds in connection with Rivian’s proposed development and construction of Project Tera.

Rivian’s Agreement

In 2022, the Joint Development Authority of Jasper County, Morgan County, Newton County, and Walton County (the “JDA”) entered numerous agreements with Rivian to attract the company’s reported \$5 billion investment in the State of Georgia. First, the JDA adopted a Bond Resolution and agreed to issue taxable revenue bonds of up to \$15 billion. Each bond held an interest rate of 6 percent annually and would mature in December 2047. Rivian, the JDA, and the State also entered into an economic development agreement (“EDA”), whereby Rivian agreed to construct an electric vehicle manufacturing plant that would create 7,500 new jobs. Rivian also pledged a capital investment of at least \$5 billion in the State of Georgia. In exchange, Rivian gained access to the project site, which was owned by the State of Georgia, leased to the JDA, and rented out to Rivian. The EDA specified that Rivian would be responsible for the project bonds. Moreover, based on the terms of the EDA, Rivian was not required to pay ad valorem taxes. Finally, the entities entered into a rental agreement, which required Rivian to make payments towards the bonds as its rent.

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In order to validate the bonds, incentives, and other aspects of the project, the State of Georgia filed a validation petition in the Morgan County Superior Court. Many residents in the affected counties, however, intervened in the action and opposed aspects of the project. The intervenors argued that the revenue from Rivian's agreements did not adequately cover the anticipated costs associated with the project and that the project would not improve the general welfare of the area. Ultimately, the Morgan County Superior Court found the project to be "economically infeasible." Specifically, the lower court considered "cautionary representations" in Rivian's filings with the Securities and Exchange Commission ("SEC"). Furthermore, the intervenors argued that Rivian had spent a large amount of the capital it had initially raised. Accordingly, the Morgan County Superior Court sided with the intervenors and denied the validation of the bonds.

The Georgia Court of Appeals Ruling

The Georgia Court of Appeals reversed three main holdings in the Morgan County Superior Court's decision. First, the Georgia Court of Appeals found that the lower court erred where it improperly considered the project's economic feasibility. Georgia law requires the trial court to determine whether a bond proposal is "sound, feasible, and reasonable." *Berry v. City of East Point*, 627 S.E.2d 391 (Ga. Ct. App. 2006). The appellate court, however, reasoned that "economic feasibility" is not a required element. The appellate court concluded that the State of Georgia and the JDA made a prima facie case that the project was "sound, feasible, and reasonable" because the lower court did not find anything unlawful about the project and its funding was legally possible. The appellate court also concluded that the lower court improperly conflated Rivian's financial standing with its ability to support the bond and the project.

Second, the Georgia Court of Appeals found that the lower court erred where it found that the State of Georgia and the JDA did not establish a prima facie case that the project would promote the general welfare of the local communities. The appellate court determined that the project would promote the general welfare by developing trade, commerce, industry, and employment opportunities because of the new jobs and investment from Rivian. Further, Georgia law requires that appellate courts should defer to local development authorities regarding public benefits, particularly where such findings are not unreasonable and intervenors have presented no actual evidence to the contrary. The intervenors were required to prove the project would not benefit the community because the State of Georgia had met its burden. However, according to the appellate court, the group did not meet their burden to overcome the showing made by the State of Georgia.

Third, the Georgia Court of Appeals found that the trial court erred in determining the rental agreement gave Rivian an estate for years, subjecting the company to ad valorem taxes. The appellate court held that a "lease for 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." Per the rental agreement, the lease's term was five years and would automatically renew for five year terms until 2047, unless earlier terminated. The appellate court used a five-factor test to determine if it was a usufruct: (i) the terms in the agreement; (ii) provisions regarding liability for ad valorem taxes; (iii) the grantor's retention of dominion or control over the property; (iv) which party has retained duties to maintain the premise; and (v)

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whether the grantee may assign the lease or allow the premise to be used by another party. After analyzing each factor, the appellate court concluded the rental agreement gave Rivian a usufruct; thus, Rivian was not subject to ad valorem taxes.

The appellate court did uphold the lower court's finding that the rental agreement did not create a bailment for hire. The appellate court highlighted that a bailment simply awards the right of use to a party. Rivian's rental agreement, however, went beyond. Per the rental agreement, Rivian had complete dominion over the personal equipment (as they could remove equipment) and retained control over title to the equipment. The rental agreement also permitted Rivian to demand that the JDA quit claim its title. Based on these factors, the appellate court determined that Rivian had control over more than just the use of the equipment.

Judge Christopher J. McFadden, Chief Judge of the Georgia Court of Appeals, dissented in part, finding that the project's equipment rental agreement created a bailment for hire. Judge McFadden reasoned that the parties did not consider the disposal of property a primary concern; thus, requiring the parties to renegotiate this portion based on a minor perceived flaw was unnecessary. Judge McFadden also expressed concern over the ambiguities created by the majority's holding, noting that the majority muddled the line where a bailment becomes title and created difficulties for drafting future agreements.

Conclusion

The decision reached by the Georgia Court of Appeals ushers in a manufacturer-friendly policy in Georgia by establishing the "sound, feasible, and reasonable" standard of review as applied favorably to manufacturers. *Joint Development Authority of Jasper County v. McKenzie* demonstrates that when courts find that a manufacturing project promotes the general welfare, the opposition will likely struggle to demonstrate that the project's costs on affected communities outweigh the public benefit. This decision emphasizes the State of Georgia's commitment to manufacturing development within the state and a welcoming of economic growth.