IN THE COURT OF APPEALS
STATE OF GEORGIA

COLUMBUS, GEORGIA, BOARD OF TAX ASSESSORS; COLUMBUS, GEORGIA; and LULA LUNSFORD HUFF, TAX COMMISSIONER OF MUSCOGEE COUNTY,	)	CASE NO. A23A0373
Appellants/Defendants,	)	
v.	)	
THE MEDICAL CENTER HOSPITAL AUTHORITY,	)	
Appellee/Plaintiff.	)	

BRIEF OF APPELLANTS

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I. INTRODUCTION

This case presents the question whether a gated, resort-style neighborhood for retirees healthy and wealthy enough to pay its six-figure entrance fees and four-figure monthly fees is exempt from ad valorem property taxation. The Medical Center Hospital Authority ("the Authority") claims that the improvements consisting of Spring Harbor at Green Island ("Spring Harbor") are tax-exempt "public property" on grounds that the Authority owns them through a ground lease from Columbus Regional Healthcare System, Inc. ("Columbus Regional") and Spring Harbor's income supports only the Authority. Columbus disagrees because the facts refute those claims. The Spring Harbor improvements, which include luxurious housing and numerous extraordinary amenities, should be subject to property taxation.

The ownership structure underlying this case differs fundamentally from any other hospital authority case decided by Georgia's appellate courts. In direct contrast to the other Georgia hospital authority cases decided by both the Supreme Court of Georgia and this Court, once the bonds are repaid all ownership interest in Spring Harbor will revert to a private entity, Columbus Regional, and the Authority will retain no interest at all. Underlying Spring Harbor is a circular structure designed to benefit Columbus Regional with both tax-exempt bond financing and property tax exemption.

The Supreme Court has directed that the Spring Harbor at Green Island retirement village ("Spring Harbor") cannot be tax-exempt "public property" if there exists "private gain or income" to Columbus Regional. *Columbus Bd. of Tax Assessors v. Med. Ctr. Hosp. Auth.*, 302 Ga. 358, 362 (2017) (quoting *Hosp. Auth. of Albany v. Stewart*, 226 Ga. 530, 537 (1970)). The financial benefits this structure provides to Columbus Regional proscribe any legal conclusion that Spring Harbor's improvements are "public property," because there is no doubt that Columbus Regional enjoys "private gain or income." Even the Columbus Regional senior executives behind Spring Harbor admit this structure is "unique" and not the "typical scenario." In deciding the prior appeal in this case on other grounds, this Court noted that an operational and financial structure such as exists here seems "at some remove from the wellspring of its constitutional legitimacy." *Columbus, Ga. Bd. of Tax Assessors v. Med. Ctr. Hosp. Auth.*, 338 Ga. App. 302, 307 n.1 (2016). The Supreme Court raised even more doubt whether the Authority can obtain summary judgment given the "factual determinations regarding the ownership, control, and management of the property" that a Muscogee County Superior Court judge made during 2007 validation bond proceedings, in which that judge stated that "clear and convincing evidence" shows the Authority transferred and delegated its rights and duties to Columbus Regional; Spring Harbor is owned, managed, and controlled by Columbus Regional; and one "cannot rule as a matter

of fact and as a matter of law" that Spring Harbor "only benefit[s] the Authority and the public" or that the Authority "own[s]" it. (V3-318.[1]) *Columbus Bd. of Tax Assessors*, 302 Ga. at 360, 362.

The public benefit required for property tax exemption does not exist in this case. To allow Columbus Regional to use the Authority's shell to escape property taxes would extend the "public property" exemption to a far-reaching place no Georgia appellate court has ever approved. This Court should not exempt from taxation luxurious facilities which are available only to a wealthy few and which exemption would benefit a private entity, shield it from its civic responsibility to pay for fire, police, schools, and other local government services, and consequently shift the tax burden to all other property taxpayers.

II. JURISDICTIONAL STATEMENT

This is a direct appeal of a final judgment permitted by O.C.G.A. § 5-6-34(a)(1). *See also* O.C.G.A. § 5-6-35(a)(1) (stating that discretionary appeals do not apply "to cases involving ad valorem taxes"). This Court has jurisdiction because the case does not fall within the types of cases reserved to the Supreme Court, and it also involves this Court's equity jurisdiction. *See* Ga. Const. art. VI,

[1] The Clerk's office confirmed to Columbus' counsel that the record is electronic. Accordingly, the record cites are to the PDF page number within a volume, not the trial court's stamped page number. *See* Ga. Ct. App. R. 25(d)(2).

§ 5, ¶ 3; O.C.G.A. § 15-3-3.1(a)(2) & (6); *see also* Ga. Const. art. VI, § 6, ¶¶ 2-3 (addressing Supreme Court jurisdiction).

This appeal is timely. The superior court granted summary judgment to the Authority on October 23, 2020. (V1-4-23.) *See* O.C.G.A. § 9-11-56(h) (stating that an order granting summary judgment shall be subject to review by appeal). Columbus filed its Notice of Appeal from that decision on November 19, 2020. (V1-1-3.) *See* O.C.G.A. § 5-6-38(a).

III. ENUMERATION OF ERRORS

The sole enumeration of error in this appeal is as follows: the superior court erred in concluding that the Spring Harbor improvements are "public property" exempt from property taxation. (V1-4-23.)

Following remand from the Supreme Court on the prior appeal, the superior court entered a new order granting summary judgment to the Authority on grounds that the Spring Harbor improvements are tax-exempt "public property." (V1-4-23.) Columbus seeks appellate review of that summary judgment order. (V1-1-3.)

IV. STATEMENT OF THE CASE

A. Material Facts

1. Spring Harbor's Development, Financing, and Oversight

a. Conception, Development, and Ongoing Management and Oversight

Spring Harbor was conceived and developed by Columbus Regional, not the

Authority. (Elder Dep. 24, 37-38 ("I birthed Spring Harbor."); Thacker Dep. 117 ("I would say it was born out of Columbus Regional Healthcare System.").[2]) In 1999 and 2001, Columbus Regional purchased two tracts of land totaling forty acres for approximately $2,142,000. (V1-31, V3-318-19, V3-480-81; Elder Dep. 63-64.) From 1999 through 2004, Columbus Regional and Columbus Regional Senior Living, Inc. ("CRSL," an entity which Columbus Regional created in 2001 to manage Spring Harbor) undertook "typical development work" on Spring Harbor, including the hiring of leasing, marketing, environmental, architectural, design, and construction firms. (V2-44, V3-202, V3-318-20; Elder Dep. 38, 63-65 & Ex. 14.) Columbus Regional and CRSL commenced construction in February 2004. (V3-202.)

Columbus Regional Senior Vice President Donald Elder, who testified that he "was responsible for the development of the project, the construction of the project, the financing of the project, and [pre-opening] sales," said he remained responsible for Spring Harbor's development, construction, bond financing, "oversight," and "management" for years after Columbus Regional entered into a 2004 lease with the Authority. (Elder Dep. 24, 35, 37-38, 40, 59-60, 90, 98-99, 101-02, 153, 164 (brackets added); *accord* Thacker Dep. 69, 72-73, 108, 159; *see*

[2] Depositions cited in this brief are included in the appellate record. Each one was submitted as a separate PDF file. Accordingly, Columbus cites to depositions by deponent's name and page number.

also V1-333 (stating in marketing materials that Spring Harbor has been "developed and sponsored" by Columbus Regional).) Elder was only an officer and employee of Columbus Regional entities, not an officer of the Authority. (Elder Dep. 24, 38, 40.) The Authority's independent accountants and auditors have also stated that "[t]he development, construction and operation of the Facility has been overseen and managed by" a Columbus Regional entity. (V2-167; *accord* V2-523.)

b. Ground Leases, Bond Financing, and Management Agreements

Though born from and developed by Columbus Regional, the Authority alleges it took over control and ownership of Spring Harbor's improvements in June 2004 when the time came to finance the construction costs, with Columbus Regional purportedly retaining an interest in only "the dirt." (T. 8; *accord* V1-31-32, V1-60, V1-512-13; Elder Dep. 110.) This alleged ownership change resulted from Columbus Regional signing a "ground lease" with the Authority. (V1-31-32.)

On June 1, 2004, Columbus Regional as landlord and the Authority as tenant entered into a Ground Lease Agreement for $10.00. (V3-32-60.) The ground lease stated that the Authority desired "to construct, own, and operate" Spring Harbor on land owned by Columbus Regional. (V3-32.) At the conclusion of the ground lease, all of Spring Harbor would become the "absolute property" of Columbus

Regional, "free and clear of any liens and encumbrances." (V3-38, V3-43.) The lease term was forty years, but "early termination" could occur at Columbus Regional's sole election just as soon as bonds the Authority issued to finance Spring Harbor's construction were retired, "without any further obligation" from Columbus Regional to the Authority, except for an indemnity. (V3-37.)

Two Columbus Regional senior executives deposed in this litigation, Mr. Elder and Chief Financial Officer Roland Thacker, both admitted that this structure with Columbus Regional as landlord and the Authority as tenant—instead of the normal reverse structure, with the Authority as landlord and Columbus Regional as tenant—is "unique," not the "typical scenario," and unlike any other structure they have entered into with the Authority:

> Q. Is this a typical scenario for the Hospital Authority to lease land from Columbus Regional?
>
> A. I wouldn't call it typical. I mean, if it's done one time, I wouldn't put a label of typical on it or frequent or—
>
> Q. Okay. Well, let's—the one time is what we have here, Spring Harbor. Has it been done a second time?
>
> A. Not that I'm aware of.
>
> Q. As Senior Vice President of Columbus Regional Healthcare System, do you know of any other circumstances in which Columbus Regional is—owns the real estate and is leasing it to the Hospital Authority?
>
> A. No.

(Elder Dep. 110-11).

> Q. Columbus Regional owning the land, Hospital Authority owning the building and improvements, is that a structure or an ownership scenario that is typical for The Medical Center Hospital Authority?
>
> A. I think Spring Harbor is unique to the Medical Center Hospital Authority as far as other things the Hospital Authority has done.

(Thacker Dep. 116-17.) Mr. Thacker also admitted, "I don't think the purpose of the Ground Lease was to do a market-based rent on it." (Thacker Dep. 138.) Instead, Columbus Regional created the ground lease as a basis to obtain tax-exempt bond financing and then asserted that the Spring Harbor facilities are also exempt from property taxes on grounds that the Authority "owns" them. (V1-31-32, V1-60, V1-74-75, V2-29 & 36 (consecutive pages in the underlying document but misnumbered in the record), V2-110, V2-148, V3-202; Thacker Dep. 78, 82-83, 85, 87, 159; Elder Dep. 38, 151, 153; *see* T. 51-52 (Jan. 28, 2013); Thacker Dep. 138-39 ("Q. And by putting the Ground Lease in place with the Authority, the Authority can claim ownership of the improvements and claim they're property tax exempt? A. That's correct.").)

Accordingly, the ground lease was executed in connection with the Authority's issuance of $75 million in 30-year revenue bonds to finance Spring Harbor's construction. (V1-31, V2-11, V2-27-87.) The bonds were issued in the second half of 2004 following bond validation proceedings before Judge Frank Jordan of the superior court. (V2-64, V3-153-56.) The bond validation authorized the bonds' issuance and exempted them from Georgia income taxation. (V3-155.)

The bond validation proceedings did not make any findings that the Authority owns the Spring Harbor improvements or resolve property tax issues. (V3-153-56.) The income derived from operating Spring Harbor is used to repay the bonds. (V1-34.) Proceeds from the 2004 bond sale were also used to "[p]ay [Columbus Regional] for a portion of the Project-related assets such as construction in progress, deferred marketing fees, and other such items, that have been incurred as of the closing date." (V3-202.) This amount was estimated at $3.3 million, not including the land cost. (V3-225; *accord* V3-323.)

On the same day Columbus Regional and the Authority entered into the 2004 ground lease, the Authority also entered into a Management Agreement with Columbus Regional's CRSL subsidiary to develop, market, and manage the operation of Spring Harbor.[3] (V3-94-123.) So at the same time Columbus Regional leased Spring Harbor to the Authority, the Authority transferred its operation right back to Columbus Regional's CRSL affiliate. (V3-32-60, V3-94-123, V3-330.)

Both an Amended and Restated Ground Lease Agreement and an Amended and Restated Management Agreement were executed in 2007 as part of refinancing the bonds from variable to fixed rates, with final repayment no later than July 1,

[3] The Management Agreement also included a Submanagement Agreement dated the same day between CRSL and CRSA Management, LLC, a for-profit entity. (V3-115-23.)

2037. (V2-11, V2-89, V3-61-90 V3-124-52; *accord* V2-167; Elder Dep. 82.) This refinanced issuance was for only $41 million because $34 million of the 2004 bonds had already been redeemed from Spring Harbor entrance-fee income. (V2-98, V2-112; *accord* V3-332.) The amended ground lease extended the term to sixty years (thus expiring in 2064), but the total rent remained $10.00. (V3-66.) Additionally, although the Authority was to "pay or cause to be paid" all real estate taxes, including property taxes, under the 2004 ground lease, the 2007 amended lease changed that provision to place that tax burden on Columbus Regional.[4] (V3-35-36, V3-41, V3-64-65, V3-70; *accord* V2-535 (stating that Columbus Regional is "contractually obligated" to pay any property taxes for the Spring Harbor improvements); Comp. Dep. Exs. 210, 212; Williams Dep. 118.) Spring Harbor residents do not pay any real property taxes. (V1-337, V3-190.)

Other provisions from the original 2004 ground lease remained the same in

[4] Currently, Columbus Regional is paying taxes only on the land. (V1-60, V1-62 ("CRHS-Land Only"), V1-63, V1-64 ("Land Valuation Only"), V2-473; Elder Dep. 78-79, 146; Thacker Dep. 86; Williams Dep. 100.) *It has not paid any tax on a reversionary interest in the improvements.* Also, to correct an inaccurate presumption from this Court's prior opinion, the reason why the Board of Tax Assessors sent separate tax bills for the land and improvements is because Columbus Regional asked the Board to do so. (V1-60 ("If possible we would like to have the assessments separated."); T. 73, 107 (Jan. 28, 2013).) *See Columbus, Ga. Bd. of Tax Assessors*, 338 Ga. App. at 305 (stating that the Board "assessed Columbus Regional's interest in the property separately, implying that the Hospital Authority and Columbus Regional each have a separate interest in Spring Harbor").

the 2007 amended lease, including Columbus Regional's (1) right to early termination as soon as the bonds are retired and (2) the reversion of all interest in Spring Harbor to Columbus Regional upon termination of the lease—even though the fair market value exceeds $53 million. (V2-467-68, V3-66-67, V3-71-72; *accord* V2-533 ("[Columbus Regional] may terminate the Lease Agreement at any time after the Series 2007 Bonds are retired. Upon expiration of the Lease Agreement, the Authority will be required to surrender to [Columbus Regional] the leased property including title to all improvements.").) The Management Agreement between the Authority and CRSL was similarly amended to provide that the agreement remains in effect for 30 more years until June 30, 2037—one day before the bonds must be repaid—but it will terminate upon the bonds' earlier repayment or the ground lease's termination, if either occurs before 2037. (V2-90, V3-136.) The Management Agreement, as amended, permits CRSL to take 5% of Spring Harbor's annual operating revenues, in addition to its reimbursable expenses for managing Spring Harbor. (V2-151, V3-135-36.)

The bonds refinanced in 2007 were issued following bond validation proceedings.[5] (V2-141, V3-157-61.) As with the 2004 bond validation, the 2007

[5] Referencing the two bond validations, the Supreme Court stated in its decision on the prior appeal, "The trial courts' bond validation rulings were not appealed, and we express no opinion on their merits." *Columbus Bd. of Tax Assessors*, 302 Ga. at 360 n.3.

bond validation authorized the bonds' issuance and exempted them from Georgia income taxation. (V3-160.) It did not find that the Authority owns the Spring Harbor improvements or resolve property tax issues. (V3-157-61.) In fact, the 2007 bond validation proceedings included findings by Judge Bobby Peters of the superior court which contradict the Authority's contention that the Spring Harbor improvements are owned, managed, and controlled the Authority. (V3-309-36.)

Noting this validation was just a refinance of already existing facilities, Judge Peters validated the bonds. (V3-157-61, V3-335-36 ("[T]hese and other concerns were issues which would have best been discussed" in 2004, and to deny validation of the refinance "would be detrimental" to holders of those bonds.).) Judge Peters, however, also entered a separate 27-page order detailing his numerous concerns with the Spring Harbor structure and refuting Columbus Regional and the Authority's representations that the Authority owns, controls, and is the real beneficiary of Spring Harbor. (V3-309-36, *cited in Columbus Bd. of Tax Assessors*, 302 Ga. at 359 (referencing Judge Peters' "detailed, 27-page order").)

As to ownership and control, Judge Peters found that "clear and convincing evidence" shows that the Authority transferred and delegated its rights and duties to Columbus Regional and thus concluded that one "cannot rule as a matter of fact and as a matter of law" the Authority owns Spring Harbor. (V3-310, V3-318.) Instead, "it is apparent Columbus Regional has acquired the site, built Spring

Harbor, prepared all the legal documents and financial transfers, and will own, manage and control Spring Harbor." (V3-311; *accord* V3-331-32 ("the entire project is owned, managed, and controlled by" CRSL); *see also* V3-313-33 (listing facts supporting the Court's finding that Columbus Regional and CRSL own Spring Harbor).)

As to both ownership and control, as well as identifying the real beneficiary, Judge Peters noted the "maze of Corporate structures" and circular transactions among the Authority, Columbus Regional, and CRSL, and "each time the same individuals are executing all the documents for all the parties and all the Corporations, all owned by Columbus Regional"—with one Columbus Regional officer signing for both it and the Authority, the Authority's other signer also being a Columbus Regional senior officer, and both "controlling the bond proceeds." (V3-310-11, V3-315, V3-318-23; *see* V1-322, V1-347, V2-10, V3-57, V3-87, V3-93, V3-112, V3-139-40, V3-408.)

As to the real beneficiary, Judge Peters emphasized the reversion to Columbus Regional, noting that only entrance fees and/or future rents will retire the bonds, and "[w]hen the bonds are paid off, the land, buildings, improvements, fixtures, furniture, personal property, everything located on the site will be totally owned by Columbus Regional [ ]. The value of said improvements is $53,000,000, not including the value of the land." (V3-314 (brackets added); *accord* V3-332

("once the bonds are paid, the Authority has agreed that Columbus Regional [ ] will take possession and will own everything on site . . . all property of every kind, real or personal") (brackets added).) Thus, Judge Peters concluded, "without any financial risk, Columbus Regional [ ] has been simply using the proceeds of a line of credit to build and construct Spring Harbor." (V3-332 (brackets added).) For these reasons, Judge Peters stated he "cannot rule as a matter of fact and as a matter of law" that Spring Harbor "only benefit[s] the Authority and the public" or that "the Authority will **'own'**" it. (V3-318 (emphasis in original and brackets added).)

> The public Authority has transferred all the bond proceeds, acquisition, construction, management, and total control of this Project to a private company, Columbus Regional Healthcare System Inc. and/or "affiliates." According to the bond documents, the Medical Center Hospital Authority will be responsible for the repayment of the bonds but the Management and Control and Ownership of the project will be vested with Columbus Regional Healthcare System Inc. and/or "Affiliates."

(V3-313-14, *quoted in Columbus Bd. of Tax Assessors*, 302 Ga. at 360.) To Judge Peters, the circularity of this structure and the reversion to Columbus Regional, a private entity, reveal how Columbus Regional is both the actual owner and the real beneficiary receiving private gain and income. (V3-310-11, V3-313-14, V3-326-27, V3-330-32.) *See also Columbus Bd. of Tax Assessors*, 302 Ga. at 359-60, 361 n.4, 362 (addressing Judge Peters' order).

2. Spring Harbor's Restrictive Admissions and Luxurious Amenities

The high net worth and income required for admission to Spring Harbor make residency unattainable for most of the Columbus community. (V3-219, V3-228-33 (stating asset and income requirements and calculating the low percentage of "income eligible" Columbus-area households).) Also, no one who needs a lot of healthcare can move to Spring Harbor. To gain admission, one must possess "significant resources," enjoy "good health," and be able to "live independently" with no "diagnosed medical conditions" that would risk "premature transfer from independent living." (V1-326-27, V1-333, V1-442, V3-180, V3-219, V3-242, V3-312-13.) Spring Harbor typically rejects applicants for not meeting its "financial criteria" or its "medical criteria for independent living." (Elder Dep. 120-21.)

The record reflects that, as of 2011, the entrance fee for Spring Harbor ranged from $100,205 to $514,547, with additional fees ranging from $18,795 to $31,470 for a second person. (V1-427-29.) Additional monthly fees ranged from $1,956 to $4,376—or $23,472 to $52,512 annually. (V1-427-29.) Both to qualify for admission and remain at Spring Harbor, one must submit documentation that he or she has, and will continue to have, income that equals at least 160% of the monthly fee, after payment of the entrance fee. (V1-326, V3-181.) If a resident fails to pay the monthly fee or any other charges, Spring Harbor can terminate the agreement. (V3-184-85, V3-187.) The Authority claims that no one has been

evicted for failure to pay, but it says the reason is "careful screening" of prospective residents' finances. (V3-371.) A financial feasibility study conducted for Spring Harbor when construction began in 2004 estimated that only 27.5% of households in the "primary market area" for Spring Harbor were "income eligible" for its independent living units.[6] (V3-233.) No one who is indigent resides at Spring Harbor. (V1-326, V3-181, V3-371; Elder Dep. 120-21.)

For those fortunate enough to live at Spring Harbor, "[e]very day is about exciting choices and limitless possibilities" for enjoying luxurious amenities and services. (V1-412.) Most of Spring Harbor's facilities are devoted to "village-style" housing and resort-style amenities for independent retirees with active lifestyles and not for assisted living or nursing home care. (V1-411.) The "scenic 40-acre campus" offers 196 "residential dwelling" "independent living units" (160 studio to three-bedroom apartments and 36 two- and three-bedroom "villas"), while "[a]bout half a block" away 28 rooms are for assisted living, 30 rooms are for an Alzheimer's center, and 40 rooms are for a "skilled nursing center" with no admission to anyone "from the outside." (V1-31, V1-333-34, V1-339, V2-179-80, V3-216-17; Elder Dep. 123.) The independent living units "are not subject to

[6] The study also appears to have excluded from its calculations some of Columbus-Muscogee County's less economically affluent neighborhoods, concluding that they were not in the "primary market area" for Spring Harbor, based on such factors as the Zip Codes of "current depositors." This exclusion means that far less than 27.5% of households in the area are likely income-eligible. (V3-228.)

licensing or certificate of need requirements." (V2-163.)

The luxurious services and amenities provided to Spring Harbor's wealthy residents within their gated community include formal and informal dining venues serving alcohol, a putting green, movie theatre, club and game room, computer/business center, library, woodworking shop, ballroom, music and reading room, exercise facility, indoor pool and hydro-therapy center, arts and crafts room, parlor, market shoppe, onsite branch of a local bank, barber and beauty salon, post office, pharmacy delivery services, outdoor fireplace, gazebos, walking trails, concierge services, transportation, 24-hour security, and weekly housekeeping and laundry service. (V1-417, V1-422, V1-424-25, V1-438, V2-92-94, V3-312, V3-317, V3-331; T. 8 (Jan. 28, 2013); Elder Dep. 164.) As Spring Harbor boasts in its marketing materials, many of these amenities are what one finds at a resort, not a health care facility: (V1-412, V1-417 ("While you're enjoying a carefree life, we're doing the chores . . . ."); *see also* V2-155 (Spring Harbor "features classic Georgian architecture in a residential, campus-style setting, with a tree-lined entrance boulevard leading through two residential clusters of garden villas to the impressive two-story porte-cochere of the commons building.").)

B. Prior Proceedings

In 2015 the superior court granted summary judgment to the Authority on

grounds the Spring Harbor improvements are tax-exempt "public property." (V4-533-42.) In that same order, the Court denied summary judgment to the Authority on grounds that Spring Harbor is tax-exempt as a "home for the aged." (V4-539-41.) Both parties appealed. (V5-1-10.)

On appeal, this Court decided the case on threshold grounds related to the bond validations. *See Columbus, Ga. Bd. of Tax Assessors*, 338 Ga. App. at 307. The Court concluded that "the bond validation proceedings conclusively established that Spring Harbor furthers a legitimate function of the Hospital Authority" and, therefore, held that the Authority's leasehold interest in the Spring Harbor improvements is tax-exempt "public property." *Id*. at 307. Even as it affirmed the Court's decision on the "public property" exemption, the Court of Appeals included a footnote to its opinion stating that it did not "reach the question whether Georgia law authorizes an institution dedicated to serving wealthy individuals to be deemed a public project," "[b]ut if so, the practice of hospital authorities entering lease agreements with private entities is now at some remove from the wellspring of its constitutional legitimacy." *Id*. at 307 n.1. Given its decision affirming summary judgment on the "public property" exemption, the Court did not reach the issue of whether the Spring Harbor improvements are tax-exempt as a "home for the aged." *See id.*, 338 Ga. App. at 308.

The Supreme Court granted certiorari to review this Court's decision. In an

opinion issued in October 2017, the Supreme Court unanimously reversed the Court of Appeals' decision that the bond validations conclusively established the Authority's leasehold interest in the Spring Harbor improvements is "public property" exempt from property taxation. *See Columbus Bd. of Tax Assessors*, 302 Ga. at 358-59, 363. According to the Supreme Court, facts which establish bonds have a "public purpose" may show the associated property is "public property, but it is not inevitably so." *Id*. at 363. "The question of whether a hospital authority's property interest qualifies for ad valorem tax exemption as 'public property' is a separate and distinct question from the issues presented in a bond validation proceeding." *Id*. Instead, the Supreme Court explained that the inquiry on remand should be whether the Authority holds its leasehold interest in Spring Harbor "only for the benefit of the State and the public" or whether there is "private gain or income" for Columbus Regional. *Id*. at 362 (quoting *Stewart*, 226 Ga. at 537).

In rendering its decision, the Supreme Court recited a number of the "lengthy factual findings" that Judge Peters made "regarding the ownership, control, and management of the property" in his "detailed, 27-page order" issued during the 2007 bond validation proceedings. *See id*. at 359-63 & nn.4 & 6. The Supreme Court instructed the superior court "to review all submitted record materials in support of and opposing the motion[for summary judgment] in order to determine whether a genuine issue of material fact existed as to the ad valorem

tax exemption." *Id*. at 363 n.6 (brackets added). Following the Supreme Court's decision, this Court vacated its decision and remanded the case to the superior court to conduct further proceedings consistent with the Supreme Court's direction. *See Columbus, Ga. Bd. of Tax Assessors v. Med. Ctr. Hosp. Auth.*, 345 Ga. App. 544, 545 (2018).

On remand, the superior court again concluded the Spring Harbor improvements are tax-exempt "public property" and granted summary judgment to the Authority in an order drafted by the Authority's counsel and adopted almost entirely verbatim by the court. (V1-4-23; *see* V5-329-62.) The court did not revisit its prior decision that the Spring Harbor improvements are not tax-exempt as a "home for the aged."[7] (V1-4-23; *see* V4-539-41 (2015 decision).) Columbus timely filed a Notice of Appeal seeking appellate review of this new summary judgment decision.[8] (V1-1-3.)

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[7] The superior court excised the "home for the aged" section from the Conclusions of Law in the Authority's proposed order. (V1-4-23; *see* V5-329-62.)

[8] After filing the Notice of Appeal and then receiving the Bill of Costs and Index of Appeal, Columbus' counsel noticed that the Bill of Costs and Index of Appeal failed to include more than two-thirds of the record. (V5-186-91.) Counsel immediately contacted the superior court clerk's office, which stated it would correct the Bill of Costs and Index of Appeal. (V5-213-14.) Because of COVID and staffing and training difficulties, the clerk's office did not complete this task quickly. (T. 45-47 (Feb. 28, 2022); *accord* V5-487.) The Authority filed a motion to dismiss the appeal, which was briefed and ultimately argued at an evidentiary hearing on February 28, 2022. (V5-193-272, V5-397-434, V5-448-83; T. 1-99 (Feb. 28, 2022.) The clerk's office did not transmit the record to this Court while

V. SUMMARY OF THE ARGUMENT

The Authority is not entitled to summary judgment because the record shows that Spring Harbor is not tax-exempt "public property." Spring Harbor is not public property because the Authority's leasehold does not exist "only for the benefit of" the Authority and the public, but rather for Columbus Regional's "private gain [and] income." *Stewart*, 226 Ga. at 537. Because the Authority cannot satisfy these requirements as a matter of both fact and law, it is not entitled to summary judgment, and summary judgment should have been entered in favor of Columbus.[9]

VI. ARGUMENT AND CITATION OF AUTHORITIES

A. The Supreme Court Has Set Forth the Test to Apply in This Case.

As the Supreme Court noted in deciding the prior appeal, "public property" is not defined in the Georgia Public Revenue Code, and the closest statement to a definition of "public property" comes from *Stewart* and its predecessor, *Sigman v. Brunswick Port Authority*. "Public property" is

> property which "is owned by the State, or some political division thereof, and title to which is vested directly in the State, or one of its

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the motion was pending. In July 2022, the superior court denied the motion. (V5-484-91.) The Authority did not file a notice of appeal from that decision.

[9] Both legal conclusions and whether the trial court correctly held no genuine issue of material fact exists are reviewed *de novo* following the grant of summary judgment. *See, e.g.*, *Saks Mgmt. & Assocs., LLC. v. Sung Gen. Contracting, Inc.*, 356 Ga. App. 568 (2020).

> subordinate political divisions, or in some person holding exclusively for the benefit of the State, or a subordinate public corporation." When property is held not by the State itself, but instead by an instrumentality such as a hospital authority, whether it is "public property" depends on whether the instrumentality "holds title only for the benefit of the State and the public."

Columbus Bd. of Tax Assessors, 302 Ga. at 362 (quoting *Stewart*, 226 Ga. at 538, and *Sigman v. Brunswick Port Auth.*, 214 Ga. 332, 335 (1958)); *accord Delta Air Lines, Inc. v. Coleman*, 219 Ga. 12, 16 (1963) ("All public property is exempt from taxation; but it is exempt only so long as it remains in public ownership.") (citations omitted); *Davis v. City of Atlanta*, 206 Ga. 652, 653-55 (1950); *Culbreth v. Sw. Ga. Reg'l Hous. Auth.*, 199 Ga. 183, 189 (1945); *Williamson v. Hous. Auth. of Augusta*, 186 Ga. 673, 691 (1938); *see also Tarver v. City of Albany*, 160 Ga. 251, 257 (1925); *Brenau Ass'n v. Harbison*, 120 Ga. 929, 933 (1904); *Bd. of Trustees v. City of Atlanta*, 113 Ga. 883 (1901).

The Supreme Court explained that the test for whether the "public property" exemption applies in this case is whether the Authority holds its leasehold interest in Spring Harbor "only for the benefit of the State and the public" or for the "private gain or income" of Columbus Regional. *Id*. at 362 (quoting *Stewart*, 226 Ga. at 537). The Supreme Court emphasized that both *Stewart* and *Sigman* state the "public property" exemption applies solely to property held "*exclusively*" or "*only* for the benefit of the State or the public." *Id*. (quoting *Sigman*, 214 Ga. at 335, and *Stewart*, 226 Ga. at 537) (emphasis added). "When the property is not

held by the State itself, but instead by an instrumentality such as a hospital authority, whether it is 'public property' depends on whether the instrumentality 'holds title *only* for the benefit of the State and the public.'" *Id*. at 362 (quoting *Stewart*, 226 Ga. at 537) (emphasis added). "Put another way, the question in this case is whether the Hospital Authority holds the leasehold interest for 'public purposes . . . in the furtherance of the legitimate functions of the hospital authority,' rather than for 'private gain or income.'" *Id*. (quoting *Stewart*, 226 Ga. at 531, 537) (ellipsis in *Columbus Bd. of Tax Assessors*).

In setting forth this inquiry for the superior court to conduct on remand, the Supreme Court cautioned against reliance on either the "mere fact" of hospital authority ownership or the mere existence of bond validations. *See id*. at 362-63. The Supreme Court's opinion stresses that "the mere fact that property is owned by a Hospital Authority does not exempt it from property taxes." *Id*. at 362-363 (quoting *Columbus, Ga. Bd. of Tax Assessors v. Med. Ctr. Hosp. Auth.*, 336 Ga. App. 746, 752 (2016)) (footnote omitted). As to the bond validations, they "[do] not specifically resolve the issue of taxation regarding Spring Harbor" and "did not conclusively establish whether the leasehold interest of the Hospital Authority is 'public property' for tax purposes." *Id*. at 362-63. While in many or most cases "facts establishing bonds have a public purpose" may show the associated property is "public property," the Supreme Court cautioned "it is not inevitably so." *Id*. at

363.

B. The Supreme Court's Instructions for Applying *Stewart* and *Sigman* Compel the Conclusion that the Spring Harbor Improvements Are Not Tax-Exempt Public Property.

The record shows the Authority does not hold the leasehold interest in Spring Harbor "only for the benefit of the State and the public." *Id*. The entire structure provides significant "private gain [and] income" to Columbus Regional. *Id*.

Columbus Regional created the ground lease as a basis to obtain the benefit of tax-exempt bond financing and to assert that the Spring Harbor facilities are also exempt from property taxes on grounds that the Authority "owns" them. (V1-31-32, V1-60, V1-74-75, V2-29 & 36 (consecutive pages in the underlying document but misnumbered in the record), V2-110, V2-148, V3-202; Thacker Dep. 78, 82-83, 85, 87, 159; Elder Dep. 38, 47, 151, 153; *see* T. 51-52 (Jan. 28, 2013); Thacker Dep. 138-39 ("Q. And by putting the Ground Lease in place with the Authority, the Authority can claim ownership of the improvements and claim they're property tax exempt? A. That's correct.").)

Proceeds from the 2004 bond sale were allowed to "[p]ay [Columbus Regional] for a portion of the Project-related assets such as construction in progress, deferred marketing fees, and other such items, that have been incurred as of the closing date." (V3-202; *accord* V3-332.) This amount was estimated at

$3.3 million, not including the land cost. (V3-225; *accord* V3-323.) The Management Agreement also permits CRSL to take 5% of Spring Harbor's annual operating revenues—in addition to its reimbursement of expenses for managing Spring Harbor. (V2-151, V3-135-36.)

Only the Authority is responsible for repayment on the bonds, and Columbus Regional has no obligation regarding the bonds, other than providing "limited" support, with Columbus Regional's obligations capped between $0 and $5 million, depending on the circumstances. (V2-53 ("The Series 2004 Bonds are not, directly or indirectly, an obligation of [Columbus Regional] or any affiliate thereof."); V2-123-24 ("Except to the extent of the Support Agreement, the Series 2007 Bonds are not, directly or indirectly, an obligation of [Columbus Regional] or any affiliate thereof.") The bond obligations total far more than this potential "limited" support: the bonds issued in 2004 totaled $75 million, and the refinanced bonds issued in 2007 totaled $41 million. (V2-11, V2-27, V2-89, V2-98, V2-112.)

The income derived from operating Spring Harbor repays the bonds. (V1-34.) The repayment of the bonds provides a substantial benefit to Columbus Regional, especially since once the bonds are repaid and the lease terminates, "everything located on the site" reverts to Columbus Regional. (V3-37, V3-43, V3-66, V3-71-72, V3-314.) *See Columbus Bd. of Tax Assessors*, 302 Ga. at 360. The record shows the fair market value of this benefit is $53 million. (V2-467-68.)

The superior court decision does not address the reversion at all, but its importance to Columbus Regional cannot be ignored or understated. (V1-4-23.) Indeed, this "unique" structure alone compels the conclusion that Columbus Regional enjoys "private gain [and] income" and the Authority's Spring Harbor interest should not be exempt from taxation as "public property." (Elder Dep. 110-11; Thacker Dep. 117.) Unlike other Georgia hospital authority cases addressed in the appellate courts, here the property reverts to a private entity. The appropriate structure recognized in Georgia case law is one in which the authority owns the property, leases it to a health care system to operate the facilities, and the property reverts to the authority at the end of the term. *See FTC v. Phoebe Putney Health Sys., Inc.*, 133 S. Ct. 1003, 1008 (2013), *rev'g* 663 F.3d 1369, 1373 & n.8 (11th Cir. 2011), *aff'g* 793 F. Supp. 2d 1356, 1360 (M.D. Ga. 2011) (referencing 40-year lease from authority to nonprofits for operation of Phoebe Putney and proposed 40-year lease for Palmyra); *Smith v. Northside Hosp., Inc.*, 302 Ga. 517, 518 (2017) (referencing authority's 40-year lease to Northside); *Richmond Cnty. Hosp. Auth. v. Richmond Cnty.*, 255 Ga. 183, 184 (1985) (referencing authority's 40-year lease of hospital); *Bradfield v. Hosp. Auth. of Muscogee Cnty.*, 226 Ga. 575, 578 (1970) (referencing authority's 22-year lease to a nonprofit); *Dep't of Human Res. v. Ne. Ga. Primary Care, Inc.*, 228 Ga. App. 130, 130-31 (1997) (referencing authority's lease of hospital and related facilities to a nonprofit); *Nw. Ga. Health Sys., Inc. v.*

Times-Journal, Inc., 218 Ga. App. 336, 338 (1995) (referencing 40-year lease and assignment of authority assets); *Clayton Cnty. Hosp. Auth. v. Webb*, 208 Ga. App 91, 91 (1993) (referencing authority's 40-year lease to nonprofit).

The reversion is how the public retains ultimate ownership and benefits from the transaction. Yet here, once the bonds are repaid, Columbus Regional can take over Spring Harbor with no further obligation to the Authority, except for an indemnity. (V3-66, V3-71-72 (2007 amended lease); *accord* V3-37, V3-43 (2004 original lease).) This is the opposite of what the Georgia hospital authority law intends. *See Phoebe Putney*, 663 F.3d at 1373 n.4 (noting that, upon the lease's termination or expiration, the "assets are to revert to the Authority"); *Smith*, 302 Ga. at 528 (detailing reversion provision); *Richmond Cnty. Hosp. Auth.*, 255 Ga. at 188 ("all assets of the corporations, from whatever source derived, will revert to the Authority at the end of the lease"). Avoidance of property taxes through such a structure created to benefit a private entity, in this case Columbus Regional, should not be permitted.

The Supreme Court has stressed that the typical scenario with reversion of the property to the Authority is what benefits the public and protects its interests. *See Smith*, 302 Ga. at 528 & n.6 (explaining that the reversion means "Northside stands to lose much of its efforts" at expiration or termination of the agreement, and "the Authority stands to gain"); *Richmond Cnty. Hosp. Auth.*, 255 Ga. at 187

("The Authority is protected by the reversionary clause in the lease."). Here the opposite "upside-down" structure providing the reversion to Columbus Regional means the Authority "stands to lose" at the expiration of the ground lease, and a private entity "stands to gain." *Smith*, 302 Ga. at 528. The avoidance of property taxes through such an impermissible, inverted arrangement flies in the face of Georgia hospital authority law. There is no indication the General Assembly intended to extend the "public property" exemption to the "unique" form-over-substance structure that exists in this case and directly benefits Columbus Regional. (Thacker Dep. 117, 138-39; Elder Dep. 110-11).) The ultimate beneficiary must be the public, not a private entity, for tax exemption to apply. That is not the case here. Columbus Regional used the proceeds of tax-exempt bond financing from the Authority to build and construct Spring Harbor, it still controls Spring Harbor's operations, and once the bonds are repaid Columbus Regional gets everything while the Authority will be left with nothing.

C. The Superior Court Erred Both in Fact and Law by Concluding the Spring Harbor Improvements Are Tax-Exempt "Public Property."

The superior court's order contains numerous errors regarding the ownership of the Spring Harbor improvements which are unsupported by the facts, and it also fails to address inconsistencies from its prior order compared with Judge Peters' order which the Supreme Court said the superior court should address on remand. As shown below, summary judgment is inappropriate given these failures.

The superior court order states that the Spring Harbor improvements have been "exclusively under the Authority's control and ownership for the duration of the ground lease." (V1-10-11.) The record, however, reveals substantial evidence otherwise. (*See* Statement of Facts at 4-14; *see also* V3-309-36 (Judge Peters' 2007 order).)

The superior court order also states that the bond validation judgments "definitively establish and determine the Authority's control and ownership of the Spring Harbor improvements," but neither bond validation says anything about the Authority owning and controlling the Spring Harbor improvements. (V3-153-56 (2004 validation order); V3-157-61 (2007 validation order).) In fact, the 2007 bond validation proceedings included findings in a separate order by Judge Peters contradicting any contention that the Spring Harbor improvements are owned and controlled the Authority. (V3-309-36.) *See Columbus Bd. of Tax Assessors*, 302 Ga. at 359-62 & n.4.

The Supreme Court spent multiple paragraphs quoting substantially from Judge Peters' "detailed, 27-page order," noted that the order then on appeal "does not address these inconsistencies," and said the superior court on remand "should review all submitted record materials," which specifically includes "facts found in the bond validation proceedings." *Id*. at 359-361 & n.4, 363 n.6. After the Supreme Court spent so much effort referencing the "lengthy factual findings" in

Judge Peters' order, it is telling that on remand the superior court order again ignores and "does not address these inconsistencies." (V1-4-23.) *Columbus Bd. of Tax Assessors*, 302 Ga. at 361 n.4. Granting summary judgment to the Authority is inappropriate in such circumstances. *See generally Duff v. Bd. of Regents of the Univ. Sys. of Ga.*, 341 Ga. App. 458 (2017) (directing that the facts and all reasonable inferences and conclusions must be construed against a grant of summary judgment).

The superior court order cites *Douglas County v. Anneewakee, Inc.*, 179 Ga. App. 270 (1986) as support for its decision, but *Anneewakee* does not buttress the Authority's position. *Anneewakee* involved a nonprofit hospital's lease of property from a for-profit corporation and a different tax statute than applies here. *Anneewakee* did not involve any hospital authority, the "public property" exemption, or anything like the unique, circular structure that exists here. *See Anneewakee*, 179 Ga. App. at 271. This Court did reference *Anneewakee* in its prior decision, *Columbus, Ga. Bd. of Tax Assessors*, 338 Ga. App. at 305, but the Supreme Court decision makes no mention of it—instead citing the "public property" cases of *Stewart* and *Sigman* and stating that the test is whether Authority's leasehold interest exists "only for the benefit of the State and the public" or whether there is "private gain or income" for Columbus Regional. *Columbus Bd. of Tax Assessors*, 302 Ga. at 362 (quoting *Stewart*, 226 Ga. at 537).

The Supreme Court's opinion in *GeorgiaCarry.org, Inc. v. Atlanta Botanical Garden, Inc.*, 306 Ga. 829 (2019), likewise does not alter the analysis the Supreme Court has directed to apply in this case. The superior court order interprets *GeorgiaCarry.org* to mean that if a public entity such as the Authority has a leasehold interest in real property, the leasehold interest is necessarily "public property." This position, though, is directly contradicted by the Supreme Court's explicit instruction in this case that "the mere fact that property is owned by a Hospital Authority does not exempt it from property taxes." *Columbus Bd. of Tax Assessors*, 302 Ga. at 362-63 (quoting *Columbus, Ga. Bd. of Tax Assessors*, 336 Ga. App. at 752). Instead the Supreme Court has instructed that the correct analysis to apply in this case is whether Authority's leasehold interest exists "only for the benefit of the State and the public" or whether there is "private gain or income" for Columbus Regional. *Id*. at 362 (quoting *Stewart*, 226 Ga. at 537). The *GeorgiaCarry.org* decision says nothing to indicate the Supreme Court is retreating from its guidance in this case.[10] If the superior court were correct that a public entity's leasehold interest automatically makes it "public property" as a

[10] In addition to *GeorgiaCarry.org* not being a property tax case, it involves the "typical scenario" in which the public entity is the lessor to a private party, not the "unique" scenario here, in which the private party is the lessor and the authority is the lessee, with the reversion to the private party. (Elder Dep. 110-11; Thacker Dep. 117.)

matter of law, the Supreme Court almost certainly would have so held in its opinion in this case and not remanded the case for further proceedings.

D. A Facility That Excludes All Except the Wealthiest Citizens Should Not Be Tax-Exempt "Public Property."

Finally, it cannot be ignored that the purpose underlying hospital authorities is to help carry out the state's duty to its indigent sick. *See Phoebe Putney*, 133 S. Ct. at 1007 (quoting *DeJarnette v. Hosp. Auth. of Albany*, 195 Ga. 189, 200 (1942)) ("The purpose of the constitutional provision and the statute based thereon was to . . . create an organization which could carry out and make more workable the duty which the State owed to its indigent sick.") (ellipsis in *Phoebe Putney*). A hospital authority obviously is not limited to serving just the indigent, but exemption from taxation as "public property" when the only people who can gain admittance to Spring Harbor are neither indigent nor sick—nor even of moderate means—thwarts the law underlying hospital authorities' entitlement to property tax exemption. *See Richmond Cnty. Hosp. Auth.*, 255 Ga. at 185 (noting the nonprofit corporation lessees "assume[d] a significant indigent care burden, plus many millions of dollars in operating liabilities"), *cited in Columbus, Ga. Bd. of Tax Assessors*, 338 Ga. App. at 307 n.1. In contrast to *Richmond County*, Columbus Regional sought to use the Authority's status to reduce Columbus Regional's financial burden even though it provides no services at Spring Harbor to anyone who is remotely indigent, but rather only to the wealthiest retirees. (V1-326, V1-

427-29, V3-181, V3-184-85, V3-187.) A hospital authority's right to "exemption from taxation" exists only in return for fulfilling its "*obligation*" to serve the indigent. *Ne. Ga. Primary Care*, 228 Ga. App. at 134 (emphasis added).

A hospital authority "project" must be a "*public* health facilit[y]" and "promote the *public health* needs of the *community*." O.C.G.A. § 31-7-71(5) (emphasis added). Spring Harbor fails the test. It serves neither the "public" nor the "community."[11] By the Authority's own admission, Spring Harbor serves only a fortunate wealthy few. (V1-326, V1-427-29, V3-181, V3-184-85, V3-187, V3-219, V3-228-33, V3-371; Elder Dep. 120-21.) *See, e.g.*, O.C.G.A. § 31-7-90.1 (referencing an annual "*community* benefit report" to include the "number of indigent persons served") (emphasis added). Most of Spring Harbor's housing and much of its other facilities, amenities, and services are not even devoted to health care needs at all—and certainly not for the "public" or "community." (V1-31, V1-333, V1-339, V1-412, V1-417, V1-425, V1-438, V2-92-94, V3-217; T. 8 (Jan. 28,

[11] *See* Merriam Webster's Collegiate Dictionary 944 (10th ed. 1993) (defining "public" as "of, relating to, or affecting all the people of the whole area," "of or relating to people in general," "universal," "accessible to or shared by all members of the community," and "the people as a whole"); *id*. at 233 (defining "community" as a "unified body of individuals" such as a state or commonwealth or "the people with common interests living in a particular area" and "society at large"). Georgia courts "look to a dictionary to provide 'the plain and ordinary sense of a word.'" *Dep't of Transp. v. Meadow Trace, Inc.*, 274 Ga. App. 267, 270 (2005) (quoting *McDuffie v. Argroves*, 230 Ga. App. 723, 725 (1998)), *aff'd*, 280 Ga. 720 (2006).

2013); Elder Dep. 123.)

"[T]he law always has looked with disfavor upon tax exemptions" even when a government entity is seeking the exemption. *Collins v. City of Dalton*, 261 Ga. 584, 586 (1991). "[E]very exemption, to be valid, must be expressed in clear and unambiguous terms, and . . . will be strictly construed." *Ga. Dep't of Revenue v. Owens Corning*, 283 Ga. 489, 489-90 (2008) (quoting *Collins*, 261 Ga. at 586). We cannot forget that "exemption from taxation is exceptional, relieving one person, corporation, or class of property, and *casting a corresponding burden upon all others*; and however meritorious and deserving of encouragement the object thus attained may be, an *inequality is created* which is *repugnant to common right and inconsistent with the principles of republican government*." *Brenau Ass'n*, 120 Ga. at 935 (emphasis added). For this reason, "[a] grant of exemption from taxation, being in the nature of a renunciation of sovereignty, must, as a general rule, be construed most strongly against the grantee, and can never be permitted to extend, either in scope or duration, beyond what the terms of the concession clearly require." *Id*. The Authority, Columbus Regional, and its affiliates should not be permitted to exempt Spring Harbor from property taxation on the fiction that it is "public property" when the evidence reflects the Authority has merely been a vehicle for non-governmental enterprise. Extending the "public property" exemption to this case would take us to a far-reaching place no Georgia appellate

court has ever approved.

VII. CONCLUSION

For the reasons set forth above, Columbus respectfully requests the Court reverse the superior court's order granting summary judgment to the Authority.

VIII. CERTIFICATE OF COMPLIANCE

This submission does not exceed the word count limit imposed by Rule 24. Based on the calculation provided by the word count of the word-processing system used to prepare the brief, this brief contains 8,257 words, excluding the cover sheet, table of contents, table of citations, certificate of compliance, and certificate of service. *See* Ga. Ct. App. R. 24(f)(1) & 3.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing Brief of *Appellants* on opposing counsel by electronic mail and by depositing a copy of the same in the U.S. Mail, with adequate postage affixed, addressed as follows:

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