COURT OF APPEALS
STATE OF GEORGIA

COLUMBUS, GEORGIA BOARD OF TAX ASSESSORS, et al. Appellants-Defendants, v. THE MEDICAL CENTER HOSPITAL AUTHORITY, Appellee-Plaintiff.	Appeal No. A23A0373 Trial Ct No. SU07CV-1467

APPELLEE-PLAINTIFF'S RESPONSE BRIEF

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INTRODUCTION

Appellants urge this Court to apply the wrong legal test to the wrong set of facts, hoping that the volume of innuendo and rancor they shower on Spring Harbor will distract from what is at the core a simple and straightforward inquiry. The Supreme Court instructed the trial court and this Court to assess whether Appellee the Medical Center Hospital Authority ("the Authority") "holds the leasehold interest" in a continuing care retirement community called Spring Harbor "for public purposes in furtherance of the legitimate functions of the hospital authority rather than for private gain or income." *Columbus Bd. of Tax Assessors v. Med. Ctr. Hosp. Auth.*, 302 Ga. 358, 362 (2017) (quotation and citations omitted and alteration adopted) ("*Columbus Bd. II*"). The record conclusively establishes that Spring Harbor both serves the Authority's public purposes and functions and that the Authority uses all income from Spring Harbor for its mission, either of which would suffice under well-settled authority to establish that the leasehold furthers the Authority's functions. Those undisputed facts require affirmance.

Rather than engage in this simple inquiry, Appellants repeatedly and misleadingly argue that the Authority's leasehold interest in Spring Harbor shouldn't qualify for a tax exemption as public property because Spring Harbor "provides no services … to anyone" but "the wealthiest retirees." Appellants' Brief at 32. Even were that caricature true, Appellants purposely ignore

controlling authority and the fact that all net income from Spring Harbor each and every year goes to support the statutory mission of the Authority, including funding multiple Columbus-area hospitals and providing millions of dollars for indigent care. The bottom line is that Appellants seek to divert millions of dollars from community medical care throughout Columbus towards general, non-health care purposes by unlawfully taxing the Authority's interest in Spring Harbor.

Decades' worth of Supreme Court and Court of Appeals cases have rejected the arguments asserted by Appellants. This Court should affirm the trial court.

PART ONE: STATEMENT OF THE CASE

The Authority is public body corporate and politic organized under the Georgia Hospital Authorities Law, O.C.G.A. § 31-7-70 et seq. V4-478 (Def.'s Resp. to Pl.'s Stmt. Facts). The IRS deems it a tax-exempt 501(c)(3) nonprofit organization. *Id.* It has no shareholders, nor does it distribute income to private entities or individuals. V4-411–14 (Second Thacker Aff.). It devotes its resources to supporting nonprofit hospitals and indigent care in Columbus. V4-412–15. In 2010 and 2011, for example, the Authority gave millions on behalf of three nonprofit Columbus hospitals to programs that support indigent care. *Id.* Those contributions to indigent care meant that Columbus hospitals received far more in state indigent care funding. *Id.*

The Authority also holds title to the facilities at Spring Harbor, a continuing care retirement community, pursuant to a ground lease with Columbus Regional Healthcare System, Inc. ("Columbus Regional"), a 501(c)(3) nonprofit corporation. V4-478, V4-482 (Def.'s Resp. to Pl.'s Stmt. Facts). A continuing care retirement community provides room and board and nursing care or personal services to the elderly for a fee. V4-478-79.

Spring Harbor offers wraparound services for the aged: independent living units, an assisted living center, a 40-unit skilled nursing center providing 24-hour nursing care, and a 30-room Alzheimer's care center. V2-438–39 (Spring Harbor brochure); V3-479 (2007 Audit). Residents who need additional services transition to assisted living, the nursing center, or the Alzheimer's care center for no additional fee. V2-442. Residents must be over 62, and the average age is 75. V2-402 (Elder Aff.). Spring Harbor also offers amenities: restaurants, a swimming pool, a library, a post office, a salon, and a pharmacy. V4-438 (Spring Harbor brochure). Residents must pay fees to cover these services and facilities, including an entrance fee and a monthly fee. V2-439–40.

The Authority uses any net income from Spring Harbor to support its mission to provide healthcare throughout Columbus – no income is distributed to

private investors or employees, since the Authority has neither.[1] "[A]ll net income associated with the Authority's operation of" Spring Harbor "has been and is necessarily kept and applied to further the Authority's purposes under the Georgia Hospital Authorities Law." V4-411 (Thacker Aff.).

I. Spring Harbor's Ownership and Operation.

The Authority holds title to the Spring Harbor facilities, which it operates through management companies, because the Authority has no employees.

The Authority financed Spring Harbor's construction with revenue bonds. V2-403–04 (Elder Aff.); V3-11–13 (Thacker Aff.). An initial round of bonds in 2004 raised $74.6 million. V3-11 (Thacker Aff.). The Authority refinanced the 2004 bonds in 2007 with $41.4 million of fixed-rate bonds. *Id.* Interest payments to the bondholders from both rounds are tax exempt. V3-11–12 (Thacker Aff.). The Authority uses "a portion of collected entry fees" to Spring Harbor to redeem the bonds. V3-481 (2007 Spring Harbor Audit).

Some years Spring Harbor generates net income for the Authority; others it runs a deficit. V3-480 (2007 Spring Harbor Audit); V3-516–17 (2011 Spring Habor Audit). When it generates income, all "net income associated with the Authority's operation of" Spring Harbor "has been and is necessarily kept and

[1] The lack of employees is not unusual; hospital authorities are run by boards of uncompensated volunteers, appointed by their local governments. *See* O.C.G.A. § 31-7-72(a), 74.

applied" to the Authority's purposes. V4-411 (Thacker Aff.). The Authority has consistently operated Spring Harbor in compliance with the Hospital Authorities Law. *See* O.C.G.A. § 31-7-70 *et seq.*; V4-411–12 (Thacker Aff.). Spring Harbor's auditors have recognized that Spring Harbor is "an operating segment of the Authority and is reported as such in the Authority's financial statements." V3-523 (2011 Audit).

The Muscogee County Superior Court validated both rounds of bonds. The 2004 Order found that "the purposes for which the Bonds are being issued … are in furtherance of the public purposes for which the Defendant Authority was established." V2-173 (2004 Bond Order). The 2007 Order likewise found that "the purposes for which the Bonds are being issued … are in furtherance of the public purposes for which Defendant Authority was established." V2-223 (2007 Bond Order). The validation orders are incontestable, including the repeated determination that Spring Harbor served a "public purpose" the Authority was statutorily authorized to undertake. *See* Ga. Const. art. IX, § VI, ¶ IV.

In connection with the 2007 validation proceedings, the same superior court judge also issued an "Order Concerning Bond Validation Proceedings." V4-309–36. That order, which was separate from the actual bond validation order, expressed the judge's personal policy/political opinions about Spring Harbor. The order admitted the project was "a wonderful community asset … which does

address a public need of an identifiable class of citizens, the elderly." V4-313. And though the judge felt "the project does not address the needs of the poor and the indigent," he recognized that "with the broad powers of the Authority outlined in Georgia law, the Court cannot say such is a legal impediment to prevent the project." *Id.* Indeed, he found "as a matter of law and as a matter of fact this 'residential retirement community' is a project contemplated under the Hospital Authorities Law." *Id.* And he "encouraged" the Authority "to contest the payment" of any real estate taxes, indicating that he did not view the property as taxable. V4-315.

The Authority leases the land for Spring Harbor from Columbus Regional, which holds the fee to the real estate. V4-32–60 (2004 Lease); V4-61–93 (2007 Lease). Columbus Regional acquired 40 acres for the project. V2-403 (Elder Aff.). The original 40-year lease gave the Authority the right to use the land for any purpose, including the right to "construct, maintain, alter, reconstruct, demolish, build, and replace any Improvements on the Land." V4-37–38. The Authority also had the right to encumber the land with a leasehold mortgage. V4-39–41. An amended 2007 lease, which remains operative, includes those same rights but gives the Authority a 60-year lease term (through 2064). V4-66 (2007 Lease). At the end of the lease term, any remaining improvements on the property revert to Columbus Regional (assuming no lease extensions). V4-67. During the

lease term, "[t]itle to all Improvements, furniture, furnishings, fixtures, trade fixtures and personal property of Tenant … shall be and remain in Tenant throughout the Lease Agreement Term." V4-72.

At Spring Harbor's outset, the Authority "had no experience in the operation or management of continuing care retirement communities," and it "had and has no employees." V2-404 (Elder Aff.). The Authority thus contracted with Columbus Regional Senior Living, Inc. ("CRSL"), a tax-exempt nonprofit 501(c)(3) entity and affiliate of Columbus Regional, to manage Spring Harbor. V2-404 (Elder Aff.). That is entirely proper; the Hospital Authorities Law allows the Authority to "contract for the management and operation of [a] project by a professional hospital or medical facilities consultant or management firm." O.C.G.A. § 31-7-75(23). CRSL manages Spring Harbor on the Authority's behalf, subject to the Authority's oversight. V4-404–05. The Authority may terminate the management agreements if CRSL fails to meet the Authority's expectations. V4-405; V4-109 (Mgmt. Agmt.); V4-119 (Submgmt. Agmt.).

In short, the Authority retains ultimate ownership and control of Spring Harbor. Under the 60-year lease from Columbus Regional, "[t]itle to all Improvements, furniture, furnishings, fixtures, trade fixtures and personal property of Tenant … shall be and remain in Tenant throughout the Lease Agreement Term." V4-72 (2007 Lease). The Authority has "complete[] … control" over the

facility. V4-67. The Authority could, if it so desired, raze Spring Harbor without consulting Columbus Regional. The Authority financed the construction of Spring Harbor and receives all net income from its operation. V4-411 (Thacker Aff.).

II. Appellants' Efforts to Tax Spring Harbor.

Beginning in 2005, Appellants started issuing ad valorem tax bills on Spring Harbor to the Authority. V4-484-85 (Def.'s Resp. to Pl.'s Stmt. Facts). In 2007, for example, Appellants sent the Authority two bills totaling nearly $900,000 (including penalties), one for the improvements at Spring Harbor and one for personal property at Spring Harbor. V3-467, 470 (Ad Valorem Tax Bills). Appellants continued issuing tax bills to the Authority through this litigation. V4-484–85 (Def.'s Resp. to Pl.'s Stmt. Facts). At the same time, Appellants taxed Columbus Regional's reversionary interest in Spring Harbor, which Columbus Regional duly paid. V4-485 (Def.'s Resp. to Pl.'s Stmt. Facts); *see also* V3-473 (Ad Valorem Tax Bill).

III. History of these Proceedings.

Appellants' massive tax bills left the Authority no choice but to seek a declaration that its interest in Spring Harbor is exempt from taxation. The Authority filed this action in June 2007. V2-28–56 (Complaint). The trial court initially granted the Authority summary judgment, holding that Spring Harbor is tax-exempt public property. V5-533–41 (Ord. on Cross-Mots. for Summ. J.). This

Court affirmed, *see Columbus Board of Tax Assessors v. Med. Ctr. Hosp. Auth.*, 338 Ga. App. 302 (2016) ("*Columbus Bd. I*"), but the Supreme Court vacated and remanded with instructions that the lower courts should not treat bond validations' determination of whether a project served a "public purpose" as automatically conclusive of the related question of whether it constituted tax-exempt "public property." *Columbus, Ga. Bd. of Tax Assessors v. Med. Ctr. Hosp. Auth.*, 345 Ga. 358, 363 (2017) ("*Columbus Bd. II*").

The Supreme Court emphasized that the questions were obviously overlapping, explaining that "in many cases – perhaps even most cases – facts establishing that bonds have a public purpose also will tend to show that property associated with those bonds is public property, but it is not inevitably so." *Id.* Following *Columbus Bd. II*, this Court remanded to the trial court for proceedings consistent with the Supreme Court's opinion. *Columbus, Ga. Bd. of Tax Assessors v. Med. Ctr. Hosp. Auth.*, 302 Ga.App. 544, 45 (2018) ("*Columbus Bd. III*").

On remand, after extensive briefing and argument, the trial court again granted summary judgment to the Authority. V2-4–23 (Ord. on Summ. J.). The trial court's thorough 2020 order held that the Authority, through Spring Harbor, provides an important healthcare service to elderly residents of Muscogee County and that the Authority receives all income from Spring Harbor and that income "is properly devoted to the furtherance of the legitimate functions of the Authority,"

i.e., support of multiple Columbus hospitals and the indigent care those hospitals provide to the Columbus region. V2-23. The trial court emphasized:

> Throughout this case, there has never been any claim … nor has any evidence been produced that the Authority has committed any malfeasance with respect to the monies it has received from the bond issuance or any other monies it has received from the operation of Spring Harbor. Indeed, **it is an undisputed fact that the income from Spring Harbor will be applied to further the Authority's purpose**.

V2-22 (Trial Court Order) (emphasis added).

Per the Supreme Court's direction, the trial court acknowledged that "the bond validation judgments are not conclusive on the question of taxability." V2-8. The trial court did not address any other tax exemptions, given its ruling for the Authority, but it noted that the Authority once again raised its alternative argument that Spring Harbor was tax exempt as a home for the aged. V2-4. Appellants timely appealed.

PART TWO: ARGUMENT AND CITATION OF AUTHORITY

In Georgia, public property "shall be exempt from all ad valorem property taxes." O.C.G.A. § 48-5-41(a)(1)(A). Property "of a nonprofit home for the aged" is likewise tax exempt. *Id.* § 48-5-41(12)(A). Both exemptions apply here. The Authority owns and operates Spring Harbor through its leasehold interest for the furtherance of the Authority's legitimate public purposes, and all Spring Harbor's income flows to the Authority. Spring Harbor is thus tax-exempt public property. The Court should affirm the trial court on that basis.

The Court should also affirm on the alternative ground, not reached by the trial court in 2020 but briefed, argued, and supported by undisputed facts, that Spring Harbor is a nonprofit home for the aged. The Authority and Columbus Regional are both tax-exempt nonprofit corporations, so their interests in Spring Harbor are tax exempt.

I. Spring Harbor is tax-exempt public property.

Spring Harbor exists to provide residential services and medical care to Columbus-area retirees. All the income it generates flows to the Authority for furtherance of the Authority's mission. Those undisputed facts qualify Spring Harbor for the public-property tax exemption under the standard the Supreme Court instructed the trial court and this Court to use. Appellants' contrary arguments are red herrings, and this Court should affirm.

A. The proper question is whether the Authority holds its interest in Spring Harbor for public purposes rather than private gain or income.

In its prior opinion in this case, the Supreme Court left no doubt about the question presented. It plainly instructed that "the question in this case is whether the 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." *Bd. of Tax Assessors II*, 302 Ga. at 362. The Supreme Court further instructed that "the standard to be applied in order to determine whether a hospital

authority's property interest qualified as 'public property' is set forth in our decisions in *Stewart*[2] and *Sigman*.[3]" *Id.* at 363.

That test of what constitutes tax-exempt public property "in the furtherance of the legitimate functions of the hospital authority" is straightforward, as this Court recently recognized in a case involving the same parties but not the Spring Harbor facility. In *Columbus Board of Tax Assessors v. Medical Center Hospital Authority* ("*Columbus Bd. IV*"), this Court held "real property owned by a hospital authority that produces income used to further the authority's mission is exempt from ad valorem taxes." 336 Ga. App. 746, 749 (2016) (cert denied). In so ruling, this Court applied *Stewart*, where the Supreme Court held that "several city lots, some pecan groves and some farming acreage" were tax exempt even though they had no medical use, because the income supported the hospital authority. *Columbus Bd IV*, 336 Ga. App. at 750 n.1.

Appellants' brief does not reference this case, save in a pair of incomplete quotations of <u>*one half*</u> of the rule it established. Appellants understandably like the line they repeatedly quote – Clearly, "'the mere fact that property is owned by a Hospital Authority does not exempt it from property taxes,'"[4] but Appellants <u>omit</u>

[2] *Hosp. Auth. of Albany v. Stewart*, 226 Ga. 530 (1970).

[3] *Sigman v. Brunswick Port Auth.*, 214 Ga. 332 (1958).

[4] *See* Appellants' Brief at 23, 31.

the second sentence, i.e., the rest of the test. Here's the complete test, both the part Appellants quote and the part they omit:

> Clearly, the mere fact that property is owned by a Hospital Authority does not exempt it from property taxes. Also clearly, under *Stewart*, the property need not actually contain a healthcare facility to be exempt [as public property], as long as the use of the property or its income furthers "the legitimate functions of the hospital authority."

Id. at 752 (citation omitted). In other words, while property is not exempt simply because it is owned by a hospital authority, property that is a) used by the authority for authority purposes or b) generates income for the authority for authority purposes is exempt. Applying that test, this Court held that a multi-level parking deck, some parking lots, and a wooded parcel owned by the Authority were tax exempt, as the properties' respective use and/or income-generation each "further[ed] the legitimate function[s] of the hospital authority." *Id.*

As discussed *infra,* here, both possible prongs are satisfied. The Authority uses its leasehold and the improvements it built and paid for at Spring Harbor to perform an essential medical/community health function and Spring Harbor's excess revenues – if any – are used by the Authority elsewhere in the system for the Authority's legitimate functions. Spring Harbor's tax exemption thus has the effect of increasing the amount of money the Authority can and does distribute to the region's hospitals, particularly for indigent care. The converse is true as well –

if Spring Harbor was taxed, the Authority would have less money to distribute for indigent care in Columbus. *See* V3-467, 470 (Ad Valorem Tax Bills).

B. Spring Harbor is a legitimate Authority project serving public purposes, and the Authority's leasehold is public property. The Authority holds its leasehold interest in Spring Harbor for its public purposes rather than private gain or income.

Spring Harbor serves public purposes, not private gain, and thus is tax-exempt public property. The trial court repeatedly reached the correct holding, and this Court should affirm.

The record conclusively establishes that the Authority's interest in Spring Harbor is "in furtherance of its legitimate functions." The Authority is "deemed to exercise public and essential governmental functions" and has broad "powers necessary or convenient to carry out and effectuate [its] purposes," including "all powers now or hereafter possessed by private corporations performing similar functions." O.C.G.A. §§ 31-7-75, 75(21). It has the statutory powers to "acquire by purchase, *lease*, or otherwise and to operate projects," as well as to "construct, reconstruct, improve, alter, and repair projects." O.C.G.A. § 31-7-75(4), (5) (emphasis added). The range of authorized projects includes "health care facilities, dormitories, … housing accommodations, nursing homes," and "extended care facilities." O.C.G.A. § 31-7-71(5).

Spring Harbor falls well within these statutory powers. Providing housing and healthcare to the elderly, even those who are not indigent, is a project

permitted by the Hospital Authorities Law. Even the 2007 order on which Appellants rely so heavily held "as a matter of law and as a matter of fact this 'residential retirement community' is a project contemplated under the Hospital Authorities Law." V4-313.

Beyond that, the wealth of Spring Harbor's residents is immaterial to the tax exemption. Indeed, even in a case dealing with the charity tax exemption, this Court emphasized that "the concept of charity is not confined to the relief of the needy and destitute, for aged people require care and attention apart from financial assistance, and the supply of this care and attention is as much a charitable and benevolent purpose as the relief of their financial wants." *Peachtree on Peachtree Inn v. Camp*, 120 Ga. App. 403, 411 (1969) (punctuation omitted).

Much of Appellants' brief amounts to an improper collateral attack on whether Spring Harbor (including its financing) is a legitimate project and serves a public purpose – but those issues were conclusively resolved in the 2004 and 2007 bond validations. *Columbus Bd. I*, 338 Ga.App. at 305-06 ("both the 2004 bond validation order and the 2007 order validating the refinancing … made the constituent finding 'that the purposes for which the bonds were being issued…were in furtherance of the public purposes for which the Hospital Authority was established' … That finding is conclusive.") (punctuation omitted).

That said, Spring Harbor would serve a public purpose and be tax-exempt public property *even if* none of the above were true, and Spring Harbor simply generated income for the Authority to use for other legitimate Authority purposes. Precedent dictates as much. As this Court described *Stewart* in *Columbus Bd. IV*, a "hospital authority's use of income from property that was not part of the hospital … was 'devoted to public purposes (hospital operations) in the furtherance of the legitimate functions of the hospital authority.' … Because the income was used to operate the hospital, the property from which the income was derived was 'public property' exempt from ad valorem taxes." *Columbus Bd. IV*, 336 Ga.App. at 750.

Similarly, in *Teachers Retirement System of Georgia v. City of Atlanta*, 249 Ga. 196 (1982) ("*TRS*"), the Supreme Court explained that an apartment complex, a hotel, and an office building owned by a state retirement system were "public property." *Id.* at 198–99. The Court rejected the argument that income generation makes property taxable, holding:

> Property held by the retirement systems is not held for the benefit of private citizens; it is held for the benefit of public employees for whom the General Assembly has created retirement systems. Although the properties in question produce income, as do cabins in state parks and the hotel facilities at the continuing education center at the University of Georgia, they are nonetheless public property.

Id. at 198-99. *TRS* cited *Stewart*, emphasizing *Stewart*'s holding that "real property held by the hospital, but not a part of the hospital itself, the income of which was used for hospital purposes, is exempt 'public property.' If a hospital

authority can hold real property for income purposes consistently with this constitutional provision, then the retirement systems can also." *Id.* at 200-01.

The record also conclusively establishes that the Authority's interest in Spring Harbor does not provide private gain or income. Undisputedly, the excess revenues Spring Harbor occasionally generates are wholly used for the Authority's mission – providing health care throughout Muscogee County. There is no evidence to the contrary. Setting aside Appellants' innuendo, there is nothing inappropriate or unusual about an authority or government using revenue from part of its operation to subsidize different portions of its operations.[5] Here, the evidence proves the Authority spends millions of dollars each year on indigent care throughout Muscogee County. V4-412–15 (Thacker Aff.). To fund that high level of indigent care, which would otherwise greatly exceed the Authority's available funds, certain components of the Authority's operation, like Spring Harbor, occasionally generate more in revenue than they cost to provide. The Authority thus uses the excess funds generated at Spring Harbor, if any, to subsidize care throughout the rest of the county. Not to line the pockets of private investors, not to pay executives – since the Authority has neither investors nor employees – but

[5] Other examples include office buildings leased to tenants (*see Columbus Bd. of Tax Assessors I*, 336 Ga. App. at 750-51); camping facilities in parks (*see TRS*, 249 Ga. at 198-99), campus facilities periodically rented out to campus visitors (*Id.*); stadiums (*see Savage v. State*, 297 Ga. 627, 636-37 (2015)).

to pay for indigent and low-income care elsewhere in Muscogee County. *See Johnson v. Southern Greek Housing Corp.*, 251 Ga. 544, 548 (1983) (nonprofit land owners' property tax exemption was not lost by its generation of net income because there were no shareholders to profit and its net income was used consistent with the public purpose of the exemption).

The Supreme Court recognized the importance of hospital authorities seeking patient revenue so as to bolster their financial positions and their ability to provide quality community care, both to indigent Georgians and those with means. *Richmond Cnty. Hosp. Auth. v. Richmond Cnty.*, 255 Ga. 183, 191 (1985) ("A hospital must attract private paying patients or else it will become a deficit-ridden, indigent-only hospital, dependent upon tax dollars to keep its doors open. … innovative health-care delivery systems are needed to attract these patients and their dollars.").

The record is crystal clear – Spring Harbor is "an operating segment of the Authority and is reported as such in the Authority's financial statements." V3-523 (2011 Audit). "[A]ll net income associated with the Authority's operation of" Spring Harbor "has been and is necessarily kept and applied" to the Authority's purposes. V4-411 (Thacker Aff.). These facts qualify Spring Harbor for the public property tax exemption.

C. Appellants' Various Attacks on Spring Harbor are Unavailing and do not refute the Legitimacy or the Authority's Use of its Leasehold Interest in Spring Harbor in Furtherance of its Purposes.

Appellants hope that if they can make this situation seem salacious enough, the Court will overlook the well-established law rejecting their position. But the Authority does not distribute income to any private entities or individuals; it has neither employees nor shareholders. Instead, the record proves the Authority uses its available resources to support multiple nonprofit Columbus-area hospitals and the Georgia Indigent Care Trust Fund, to the tune of millions of dollars a year. V4-412–15. In other words, the tax exemption serves exactly the purpose it exists for – to prevent one arm of the government from taxing another portion of it. *See Undercofler v. Hosp. Auth. of Forsyth Cnty.*, 221 Ga. 501, 503-04 (1965).

1. Columbus Regional's reversionary interest is irrelevant.

The main thrust of Appellants' argument is that non-party Columbus Regional's long-term reversionary interest provides private gain to Columbus Regional. That erroneous argument answers the wrong question; the reversion is beside the point.

The Supreme Court remanded so the trial court could assess whether the Authority holds its *"leasehold interest*" for public purposes. *Bd. of Tax Assessors II*, 302 Ga. at 363 (emphasis added). The Court must focus on the Authority's present interest, not a non-party's future interest. Spring Harbor is tax-exempt

public property because the Authority's *present* interest in Spring Harbor supports the Authority's public purposes. Besides, Appellants appraise and tax Columbus Regional's reversionary interest separately from the Authority's interest in Spring Harbor. V4-485 (Def.'s Resp. to Pl.'s Stmt. Facts); *see also* V3-473 (Ad Valorem Tax Bill). The propriety of taxing the reversion is between Appellants and Columbus Regional. It is not before this Court.

In its focus on the long-term reversionary interest rather than the leasehold interest the Supreme Court referenced, Appellants ignore decades of precedent requiring taxing authorities to sever leasehold interests from fee simple interests and tax each separately. The Authority does not have to own the real estate to take advantage of the public-property exception. Ownership of the improvements through the leasehold is enough. *See* O.C.G.A. § 48-5-3; *see also Anneewakee, Inc.*, 179 Ga.App. 270.[6] As this Court held in *Anneewakee*, "A leasehold is an interest in the land less than the fee; it is severed from the fee and is classified for tax purposes as realty." *Id.* at 275. The status of the lessee determines the status of the leasehold interest as public or private. *See id.* Our Supreme Court recently reaffirmed as much: "the grant of an estate transfers ownership of the property to the estate holder during the term of the estate." *GeorgiaCarry.Org v. Atlanta*

[6] Further, at least some of the property at issue in *Stewart* was not owned in fee simple by the hospital authority. *See Hosp. Auth. of Albany v. Stewart*, 122 Ga.App. 497 (1970).

Botanical Garden, Inc., 306 Ga. 829, 829 (2019). The Authority has a leasehold; it therefore is the property owner for the lease term. The Supreme Court recognized as much when it instructed the trial court to ascertain the status of the leasehold interest, not the reversion.

With no support in law, Appellants criticizes the "unique" lease arrangement as "the opposite of what the Georgia hospital authority law intends." Appellant's Brief at 31, 27. But the Hospital Authorities Law expressly allows the Authority "to acquire by … *lease* … and to operate projects" such as Spring Harbor. O.C.G.A. § 31-7-75(4) (emphasis added). The General Assembly expressly authorized and intended that hospital authorities could acquire and operate projects via a leasehold. Nothing in the statute says hospital authorities have any less power to build on leaseholds than fee simple property. Appellants also string-cite a slew of cases involving different transaction structures. Appellant's Brief at 33. Those cases simply reference hospital authorities leasing property to operators. They do not dictate it. None call the Spring Harbor structure into question, or remotely hint that authorities cannot lease property to construct a project.

What's more, Appellants far overstate any "benefit" that *might* accrue to Columbus Regional at the end of the leasehold. Appellants claim Columbus Regional will receive a benefit worth $53 million. Appellant's Brief at 25. That *was* Spring Harbor's purported value—ten years ago. Appellants cherry-picked

the number from a 2011 audit. V2-467–68 (2011 Audit). That same audit indicates that Spring Harbor is depreciating at $2.2 million per year. *Id.* Thus, Spring Harbor may well be worth $22 million less by now. And by the end of the lease term (or when the bonds are retired), Spring Harbor may well be at or beyond the end of its useful life. To say that Columbus Regional will receive a benefit in the tens of millions deliberately ignores that Columbus Regional will not take title to Spring Harbor for decades, if it ever does. But again, possible benefit to Columbus Regional is a red herring. The Supreme Court directed that the focus should be *the Authority's* use of and benefit from its leasehold interest. *Bd. of Tax Assessors II*, 302 Ga. at 362.

Moreover, precedent establishes that *some* benefit to a third party (such as a tenant or contractor) may result from a public entity's use of its property without jeopardizing the property's tax exemption. The relevant question is how does the public entity benefit, and what happens to its benefit. For example, in *Sigman* itself, a seminal case on the public-property exemption, the Brunswick Port Authority issued bonds to build warehouses to lease to a private, presumably for-profit, gypsum company on favorable terms. 214 Ga. at 332–33. *Sigman* held that the warehouses were tax-exempt public property—even though constructed for a private party—because the buildings were to be used "for the promotion of public transportation, public commerce, and general welfare," all of which "may properly

be classified as public property." *Id*. at 335–36. The full and fair reading of *Sigman* is that a public project may provide some economic benefit to a private party so long as the authority's purposes are thereby served. Under *Sigman*, the simple fact that Columbus Regional may someday derive some indefinite benefit does not disqualify Spring Harbor as public property.

This understanding of *Sigman* is also consistent with *Stewart*, where the Court based its holding on whether the hospital authority's income from the properties served the authority's purposes, not whether the farmers/pecan growers derived profit from their use of those properties too. The same is true in *TRS* – Appellants' proposed rule here surely cannot be squared with the private benefits and uses of the various investment properties the retirement system owned.

Relatedly, in 2015, the Supreme Court roundly rejected the argument that a public authority could not contract with a private, for-profit company without eroding the public benefit determination, even where the private company's benefit was substantial. *Savage v. State*, 297 Ga. 627, 636-37 (2015) (rejecting the argument "that the private benefits conferred on the Braves parties somehow eliminate any public benefits" from the new Braves stadium deal.) The Court directly rejected arguments very similar to the ones Appellants raise here, including complaints about the stadium only being accessible to people who bought tickets and the Braves' substantial benefit from their lease of public

property. "The fact that the private contractor is paid for its services and may make a profit under such a contract does not invalidate the contract … Likewise, the fact that admission fees will be charged does not prevent the stadium from providing public benefits. Indeed, the admission fees may help fund the jobs and other economic benefits that the County and Authority expect the project to create." *Id.* at 637.

In short, the reversionary interest does not matter. The Supreme Court instructed this Court to assess the taxability of the Authority's leasehold interest, not Columbus Regional's reversion. That instruction comports with decades of precedent requiring taxing authorities to sever leases from the fee. It also comports with decades of precedent – including *Sigman*, *Stewart*, and *TRS* – permitting public property to be used in ways that involve some private benefit to others so long as the public interest is served thereby.

2. Spring Harbor's Bond Financing Doesn't Change its Status.

As Appellants say, the Authority makes bond payments out of Spring Harbor's revenue. Appellants' Brief at 25. But the bond payments are incontestably in furtherance of the Authority's purposes. First, bond payments (and the security interests held by bond holders) are irrelevant, as governments frequently use bond financing to build projects without jeopardizing those projects' public property status. In *Sigman* itself, where the Brunswick Port Authority used

"the proceeds of tax-exempt bond financing" to build warehouses for a private gypsum company, the Supreme Court held that the warehouses were tax-exempt public property. 214 Ga. at 335–36. Under *Sigman*, the fact that Spring Harbor's facilities were constructed with tax-exempt bonds does not disqualify it as public property. Relatedly, *Stewart* held that a mortgage of public property would not "have the effect of changing the status of the real property from public to private or vice versa." *Stewart*, 226 Ga. at 537.

Further, both bond validation orders found that "the purposes for which the Bonds are being issued, as described in the petition and complaint, are in furtherance of the public purposes for which Defendant Authority was established." V2-173 (2004 Bond Order); V2-223 (2007 Bond Order). *See also* O.C.G.A. § 31-7-79. While not conclusive of taxability, the bond validations are conclusive as to the project's lawful public purpose, and Appellants may not collaterally attack the project's lawfulness or public purpose now. Regardless, Spring Harbor itself serves the Authority's public purpose both as a health care facility for the aged and through the income produced, so it follows that financing the construction of Spring Harbor serves a public purpose. The Hospital Authorities Law plainly authorizes the Authority to "issue revenue anticipation certificates or other evidences of indebtedness for the purpose of providing funds to carry out the duties of the authority" and to "borrow money for any corporate

purpose." O.C.G.A. § 31-7-75(16), (17). Further, those certificates "are declared to be issued for an essential public and governmental purpose" by state law. O.C.G.A. § 31-7-79.

3. The Authority's Choice to Hire CRSL to Manage Spring Harbor doesn't make the Authority's leasehold less "public property."

The Authority pays CRSL, a 501(c)(3) non-profit, to operate Spring Harbor. Appellants wrongly insinuate impropriety. Appellants' Brief at 25. But the Hospital Authorities Law refutes Appellants' argument. The Authority may "contract for the management and operation of [a] project by a professional hospital or medical facilities consultant or management firm." O.C.G.A. § 31-7-75(23). Hospital authorities could not operate without this power. They are run by volunteers serving their community. They often have no employees, and they must contract with knowledgeable entities or individuals to operate their projects—entities and individuals who cannot be expected to work for free.

The consequence of Appellants' position appears to be that if a hospital authority, even one comprised entirely of volunteers and with no employees, contracts with an outside entity to work on a project, that project cannot be tax exempt by virtue of whatever payments or other benefit that outside entity receives. That cannot be squared with the Authority's express statutory power to "contract for the management and operation of a project." O.C.G.A. § 31-7-75 (23). Nor can it be squared with the reality that many, if not most, Georgia

hospital authorities do not have employees and routinely contract out virtually all of their operations, a fact recognized by the broad powers granted by the Hospital Authorities Law, and still are holders of tax-exempt public property. It is illogical to conclude that the Hospital Authorities Law was written to give hospital authorities the power to operate with no staff, and that their property is generally tax exempt under *Stewart* and its progeny, but that if an authority pays a contractor, they lose their tax exemption because of the contractor's payment for the work.

Appellants surely do not believe that the Authority must perform all of its work itself; but in their haste to throw mud, they disregard the Hospital Authorities Law. This Court should ignore all of the noise, and instead should answer the question the Supreme Court posed—whether the Authority's leasehold in Spring Harbor furthers the Authority's purposes—in the affirmative.

4. The alleged relative wealth of Spring Harbor's residents is irrelevant.

To play to prejudice and confuse the issue, Appellants claims that Spring Harbor shouldn't qualify for a tax exemption because it "provides no services at Spring Harbor to anyone" but "the wealthiest retirees." Appellants' Brief at 32–33. Spring Harbor residents, Appellants asserts, are not "the 'public' or 'community'" in Muscogee County. *Id.* at 33. Aside from the *ad hominem*'s

factual inaccuracy, Appellants offers no authority for its proposed means test on public property's uses.

To the contrary, this Court has previously refused to impose charitable-like requirements onto exemptions in which the tax statutes do not require them. In *Baptist Village*, this Court rejected similar arguments that independent living units for the aged were "somehow not 'charitable enough.'" *Bd. of Tax Assessors of Ware Cnty. v. Baptist Vill., Inc.*, 269 Ga. App. 848, 852 (2004). In *Baptist Village*, the tax authorities raised similar arguments about the prosperity of the apartments' residents, but this Court rejected them, holding that "nothing in OCGA 48-5-41 supports a limitation of tax-exempt status based on either the level of care provided … or the apparent profitability of part of a home's operation. Whether this portion of Baptist Village earns a profit or not…the concept of charity is not confirmed to the relief of the needy and destitute, for aged people require care and attention apart from financial assistance, and the supply of this care and attention is as much a charitable and benevolent purpose as the relief of their financial wants." *Id.* at 852-53. *Accord Savage*, 297 Ga. at 637 ("the fact that admission fees will be charged does not prevent the stadium from providing public benefits. Indeed, the admission fees may help fund the jobs and other economic benefits.")

Even when the Court was addressing the actual "charity" exemption, in *Fulton County Board of Tax Assessors v. Visiting Nurse Health System of*

Metropolitan Atlanta, Inc., this Court rejected the argument that charging for service and occasionally having excess revenues stripped an institution of its charitable status. 256 Ga.App. 475, 476-77 (2002). Instead, the Court noted that the institution plowed its excess revenue back into "see[ing] more patients, replac[ing] equipment, or [beginning] new programs." *Id.* at 477. ("The evidence showed that the money VNHS collected from some of its patients was used to offset expenses and pay for additional patient care.") *See also Camp*, 120 Ga. App. at 409-10 ("Charity, as used in tax exemption statutes, is not restricted to the relief of the sick or indigent…The fact that the residents are charged a rental towards the expenses of operating the inn would not destroy the charitable nature of the institution.").

Further, as above, Appellants' argument is irreconcilable with the Supreme Court's express direction here to use the tests from *Sigman* and *Stewart*, neither of which involved means testing the people who used the properties at issue in those cases. The Supreme Court in *Stewart* did not ask about the wealth of the farmers utilizing the authority's farms nor its pecan grove, nor did the *Sigman* Court remotely suggest that the gypsum dealer had to be a non-profit in order for the warehouses to be public property. Similarly, the outcome in *TRS* did not turn on the income levels of the apartment building's residents or the commercial viability of the office building's tenants or the hotel's rental rates. All that mattered in those

cases, as here, was whether the public entity's income from or use of the property was directed towards a public purpose. As in those cases, the undisputed evidence here is that any net income from Spring Harbor helps fund the Authority's Columbus-area hospitals and indigent care.

Appellants' argument is, in essence, a policy argument that Authority projects should cease to be tax-exempt public property if they charge a fee over some unspecified cap. That argument is for the General Assembly. This Court cannot recognize a "wealth" exception to the public property exemption that the General Assembly has not enacted.

II. Alternatively, the Court can affirm because Spring Harbor is tax exempt as a "home for the aged."

Even were Spring Harbor not tax-exempt public property, it is also qualified as a tax-exempt home for the aged. The trial court's 2015 ruling to the contrary was based on an obvious error about the Authority's corporate status under Georgia law. Thus, this Court may affirm Spring Harbor's tax-exempt status on this basis too.

A. Spring Harbor Provides Residential and Health Care to the Aged, and is therefore Tax Exempt as a Home for the Aged.

O.C.G.A. §48-5-40(2) defines a "Home for the aged" as "a facility which provides residential services, health care services, or both residential services and

health care services to the aged." O.C.G.A. § 48-5-41 (a)(12)(A) exempts such facilities like Spring Harbor from property taxes under certain conditions:

> Property of a nonprofit home for the aged used in connection with its operation when the home for the aged has no stockholders and no income or profit which is distributed to or for the benefit of any private person and when the home is qualified as an exempt organization under the United States Internal Revenue Code, Section 501(c)(3), as amended, and Code Section 48-7-25, and is subject to the laws of this state regulating nonprofit and charitable corporations.

This Court has been clear this exemption should be construed so as to "encourage the building and operation of homes for the aged by offering ad valorem tax exemption for nongovernmental tax-exempt nonprofit corporations, because there is a growing aging population and a need for housing for them." *See Lamad Ministries, Inc. v. Dougherty Cnty. Bd. of Tax Assessors*, 268 Ga. App. 798, 802 (2004). This Court rejected an interpretation that effectively added additional restrictions to the statutory text of § 48-5-41(12)(A). *Id.* at 801-02.

B. This Court's Review of the Trial Court's Erroneous Holding that Spring Harbor Didn't Qualify Remains Ripe.

Back in 2015, the trial court held that Spring Harbor did not qualify as a home for the aged because the Authority was not a corporation, and thus did not meet the last statutory criteria, namely that the home be "subject to the laws of this state regulating nonprofit and charitable corporations." *See* R-2096 ("Spring

Harbor is not entitled to the [home for the aged exemption], as Spring Harbor is not, nor is it held by, a Georgia nonprofit corporation.").[7] But that is just incorrect.

First, this Court has previously held that hospital authorities are "public non-profit corporation[s]." *Richmond County Hosp. Auth. v. McClain*, 112 Ga. App. 209, 210 (1965). *See also* O.C.G.A. § 31-7-71(2) ("'Authority' or 'hospital authority' means any public corporation created by this article."); §31-7-72(a) ("There is created in and for each county and municipal corporation of this state a public body corporate and politic to be known as the 'hospital authority' of such county or city."); §14-3-305(a) ("As used in this Code section, the term 'nonprofit' means any corporation which is formed, created, or operated by or on behalf of a hospital authority.")

Second, the statute does not say that the home itself has to be a nonprofit and charitable corporation – just that it has to be subject to the laws regulating such, which Spring Harbor is, through both its owner (the Authority) and its contracted manager, CRSL, which is a Georgia nonprofit corporation operated on behalf of a

[7] The Authority appealed this ruling previously, but this Court declined to reach it as did the Supreme Court, "so the Hospital Authority is entitled to raise that argument again." *Columbus Bd. III*, 345 Ga.App. at 545. On remand, the trial court acknowledged that the Authority again raised the argument, but the trial court did not address the issue this time. V2-4. Accordingly, the issue remains ripe for the Court's resolution now. "[A] grant of summary judgment must be affirmed if it is right for any reason, whether stated or unstated in the trial court's order, so long as the movant raised the issue in the trial court and the nonmovant had a fair opportunity to respond." *Georgia-Pac., LLC v. Fields*, 293 Ga. 499, 504 (2013).

hospital authority as well as a 501(c)(3). *See* O.C.G.A. §14-3-305; V4-478, 488 (Def.'s Resp. to Pl.'s Stmt. Facts). Here, that makes particular sense, as Spring Harbor isn't being asked to foot a tax bill, the Authority is. Thus, the Authority's status as the owner of the facilities is what matters, not whether Spring Harbor itself has separate corporate form.[8]

Third, even if the hyper-technical distinction that Spring Harbor and/or the Authority had to themselves be nonprofit or charitable corporations was correct and not otherwise satisfied as set forth above, the trial court still would have erred in applying it to preclude an exemption here. As this Court held in *Lamad Ministries*, the home for the aged exemption should be construed to facilitate development of homes for the aged, not to unduly restrict or impede it. *See Lamad Ministries, Inc.*, 268 Ga. App. at 802. The trial court's apparent conclusion that only corporations could avail themselves of this exemption, but not other lawful Georgia entities that are functionally identical and also not for profit, unduly prioritizes form over substance. There is no coherent reason why Spring Harbor should be exempt from property taxes if owned by a non-profit corporation but not if by a non-profit authority. *Id.* (holding this exemption should not be construed

[8] The Supreme Court's instruction on remand was to focus on the taxability of the Authority's leasehold. During the lease, the Authority is the owner of Spring Harbor, and it is error to not evaluate the leasehold interest separately. *See Anneewakee*, 179 Ga.App. at 274.

"to do futile and useless things.") Per *Lamad Ministries*, this exemption should be read to exempt Spring Harbor from ad valorem taxes, given the Authority's satisfaction of all of the exemption's substantive criteria.

C. Appellants' Attempts to Impose Additional Regulatory Restrictions on Spring Harbor's Tax Status Are Improper.

Previously, Appellants have argued that Spring Harbor cannot qualify for this exemption because some dated regulatory guidance from the Internal Revenue Service suggests that homes for the aged should not have fee requirements. Notably, the material Appellants have previously cited is not binding even on federal authorities, nor has any court or other authority held it applicable to Spring Harbor. Further, the trial court twice declined to adopt this reasoning. Finally, Appellants' proposed additional requirement is not anywhere in the enumerated conditions for this exemption. Appellants' attempt to add verbiage to the statute should be rejected. *See Lamad*, 268 Ga.App. at 801-02 (rejecting trial court's addition to the "only five qualifications for tax exemption").

Appellants are flatly wrong – the Authority is a 501(c)(3), and this Court is the wrong venue to resolve disputes about that status. Unless and until Appellants get a ruling from a federal court, Spring Harbor is owned and managed by a 501(c)(3).

Finally, the language in O.C.G.A. § 48-5-41(12)(B) further rebuts the notion that any net income from the facility would negate the exemption – it expressly

says that only property "held *primarily* for investment purposes or used for purposes *unrelated to* providing of residential or health care to the aged" is to be excluded from the exemption. (emphasis added). Further, as discussed above, Georgia courts have regularly and consistently rebuffed efforts like Appellants' here to impose means testing on tax exemptions which do not expressly require or permit it. *See, e.g., Baptist Vill.*, 269 Ga. App. at 851. *See also supra* § I.C.4.

D. Spring Harbor will also be exempt if and when it reverts to Columbus Regional, which is itself a Georgia non-profit corporation.

There is a second reason the home for the aged exemption is relevant. If and when the improvements at Spring Harbor ultimately revert to Columbus Regional's ownership decades from now, they will be tax exempt, as Columbus Regional satisfies all of the statutory home for the aged criteria, and is a 501(c)(3) non-profit corporation. V4-480-81 (Def.'s Resp. to Pl.'s Stmt. Facts). Accordingly, all of Appellants' outrage about the reversionary interest is not relevant to the current status of the property, as the property will be tax-exempt upon reversion as well. *Baptist Vill.,* 269 Ga. App. at 851 ("a nonprofit tax-exempt corporation could be exempt under more than one provision of the Code.")

CONCLUSION

The Authority's leasehold in Spring Harbor furthers the Authority's legitimate interests both as a continuing care retirement community and by

generating resources that fund the Authority's support of Columbus hospitals and indigent care. Under well settled law, including this Court's own prior applications of the rules from *Stewart* and *Sigman*, those facts make the Authority's interest tax-exempt public property. This Court should affirm the trial court's determination, either on that ground or the alternative exemption as a home for the aged.

This submission does not exceed the word count limit imposed by Rule 24.

Respectfully submitted this 21st day of November, 2022.

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CERTIFICATE OF SERVICE

I certify that on November 21, 2022, I caused a copy of this **APPELLEE-PLAINTIFF'S RESPONSE BRIEF** to be served by U.S. mail on the following counsel for Appellant-Defendant:

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