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CASE SUMMARIES

Anti-Landfill Corporation, Inc. v. North American Metal Company, Inc., No. A09A1113 (August 4, 2009). In 1989, voters in Ware County, Georgia approved a 1% special purpose local option sale tax (SPLOST) for acquisition and construction of a landfill. The landfill was

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constructed and operated until 1996 when Ware County determined it was no longer economically feasibly to operate. North American Metal Company approached Ware County in December, 2004 with a plan to renovate, lease, and operate the landfill and share revenue with Ware County. The Ware County Board of Commissioners published a notice of a December 28, 2004 public hearing for the purpose of discussing North American Metal Company's proposal. The Board then held a one-hour meeting the following day and voted unanimously to sign the lease agreement, and executed the lease the following day. No notice of the December 29 meeting was published. In August, 2006, the Board of Commissioners amended the agreement with North American Metal Company to allow the company to build a railroad to the landfill and increase the landfill's capacity. Later, in November of 2006, the Board issued in excess of \$45 million in revenue bonds to fund the landfill. On April 20, 2007, plaintiff, a concerned citizens' group, filed suit seeking damages, injunction, and declaratory relief. Plaintiff primarily argued that the Board of Commissioners' actions were void and ultra vires because the Board failed to provide 24 hours notice of the December 29, 2004 meeting in violation of the Georgia Open and Public Meetings Act. The trial court granted defendants' motion for summary judgment because plaintiff failed to commence its suit 90 days after the Board's action, as required by statute. The Court of Appeals agreed. Plaintiff further argued that defendants' actions were an abuse of discretion and a violation the SPLOST referendum, which only allowed the establishment of a landfill, not for its private operation. The trial court disagreed, and granted defendants' motion for summary judgment. The Court of Appeals agreed with the trial court, and found no abuse of discretion because the SPLOST funds were actually used for construction of the landfill, and altering the original landfill plans was not inconsistent with the purpose of the SPLOST, to operate a landfill.

Board of Regents of the Univ. Sys. of Georgia v. Ambati, No. A09A1385 (August 21, 2009). A former assistant professor at a medical college brought action against the Board of Regents of the University System of Georgia for breach of his employment contract. The suit was based on the college's alleged violation of its rules and procedures for responding to allegations of research misconduct. The professor sought injunctive relief, compensatory damages and attorneys' fees, and won the jury verdict and a judgment of \$650,000.00. On appeal, the Court of Appeals held that the employment contract entered into by the professor explicitly incorporated all rules and regulations of the medical college. Additionally, the Court of Appeals held that the trial court properly excluded improper witness testimony attempting to impeach the credibility of the professor because the impeaching witness was not able to definitely say whether he would believe the professor under oath. Furthermore, when this evidence was stricken from the record at trial, counsel for the Board of Regents acquiesced to the ruling. In that instance and several others, counsel later tried to revive an objection on appeal. In all instances, the Court of Appeals stood by the trial court's original ruling. Finally, the Court of Appeals held that the violation of the medical college's rules was sufficiently related to the breach of contract argument that evidence supporting a claim for attorneys' fees, including that where the medical college continued to violate its own rules after the initiation of the lawsuit, was appropriately admitted to the record.

Boyd v. Robinson, No. A09A1681 (August 20, 2009). Plaintiff originally filed a lawsuit in Cobb County Superior Court against Defendants on February 22, 2002, within the two year statute of limitations period set forth for personal injury actions in O.C.G.A. § 9-3-33. Service of process, however, was not perfected until February 2007. Within four days after serving the Defendants, Plaintiff voluntarily dismissed the Cobb County action and re-filed it in Fulton County Superior Court, within the applicable limitation period for renewal actions under O.C.G.A. § 9-2-61(a). Both Defendants were served with the Fulton County lawsuit on August 20, 2007. The trial court granted Defendants' motion for summary judgment and found that Plaintiff's renewal action was barred by the doctrine of laches due to Plaintiff's five year delay in pursuing his claims. Citing Hobbs v. Arthur, 264 Ga. 359 (1994), the Georgia Court of Appeals stated it was constrained to reverse the trial court because a plaintiff's "diligence in perfecting service is measured only from the time he filed the renewal action, and the reasonableness of the service in the original action cannot be attacked in the renewal action." Because Plaintiff voluntarily dismissed the original action after service was perfected in February 2007, and before the trial court dismissed it for failure to exercise reasonable diligence in serving the Defendants, Plaintiff was entitled to bring a renewal action with the statutory six month period. The appellate court, however, also suggested that the Georgia Supreme Court reconsider the ruling in Hobbs in order to remedy such unjust results and reconsider the rule prohibiting the reasonableness of service in the original action to be attacked in the renewal action.

HD Supply, Inc. v. Garger, No. A09A1295 (Aug. 18, 2009). The Plaintiff's husband was killed in a car accident with a drunk driver, who had become intoxicated at a company function. Plaintiff sued

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HD Supply, Inc., who she believed was the drunk driver's employer, in Fulton County under O.C.G.A. § 14-2-510(b)(3) because the accident occurred in Fulton County, and HD Supply had an office and conducted business there. During discovery, Plaintiff discovered her husband had actually been employed by Williams Bros. Lumber Co., LLC d/b/a HD Supply Lumber & Building Materials, a subsidiary of HD Supply, Inc. Plaintiff amended her complaint to add Williams Bros. as a defendant. HD Supply and Williams Bros. moved to transfer venue to Cobb County because although Williams Bros. had an office and conducted business in Fulton County at the time the lawsuit was filed, by the time Plaintiff amended her complaint to add Williams Bros. as a party, it had closed its Fulton County office. The trial court denied the Defendants' motion to transfer venue, and Defendants appealed. The Court of Appeals unanimously affirmed the trial court's ruling, holding that under the relation back provision of O.C.G.A. § 9-11-15(c), venue for Williams Bros. was properly determined based on facts as they existed at the time the lawsuit was filed, not at the time Williams Bros. was added as a party. Thus, because Williams Bros. had an office and transacted business in Fulton County when the lawsuit was filed, venue was proper in Fulton County for Williams Bros. under O.C.G.A. § 14-2-510(b)(3).

Laidlaw Transit Services, Inc. v. Young, A09A1525 (August 20, 2009). Next friend of a disabled adult brought this action against a bus company and its driver alleging the bus driver assaulted the disabled adult after transporting her on the bus. At issue in this appeal was whether the trial court erred in denying Laidlaw's motion for summary judgment on Young's "absolute liability" claim. The Court held that because Georgia law provides a common carrier of passengers is not liable as an insurer of its passengers' safety, the trial court erred in finding Laidlaw could be found liable on a claim of "strict or absolute liability" for the injuries sustained by Young. Under Georgia law, "[a] carrier of passengers must exercise extraordinary diligence to protect the lives and persons of his passengers but is not liable for injuries to them after having used such diligence." O.C.G.A. § 46-9-132. The Court noted this "extraordinary diligence" standard for common carriers of passengers, while a stricter standard than ordinary negligence, is not as strict as the standard for common carriers of goods as defined in O.C.G.A. § 46-9-132.

Order Homes, LLC et al. v. Iverson, A09A0931 (August 19, 2009). The Iversons sought redress in court for construction defects in their new home. The Iversons had a building contract with Order Homes, LLC, and their contract had an arbitration provision which read as follows: "Buyer and Seller agree that any construction defect claim not resolved after following the procedure described in O.C.G.A. § 8-2-38 and **all other claims between the parties** shall be settled by arbitration . . ." Order Homes and the other defendants moved to compel arbitration. The trial court granted the motion to compel arbitration as to the contract claims, but denied the motion as to the Iversons' claims for equitable rescission of contract, violation of the Fair Business Practices Act, and various other tort claims. The Court of Appeals held that all the claims must be arbitrated because the Georgia General Assembly has established a clear public policy in favor of arbitration and the arbitration provision included "all other claims between the parties." Faulty construction of the Iversons' home formed the basis for the entire lawsuit and as such, must be arbitrated. Any exceptions for "consumer transactions" did not apply in this case.

Additionally, the Court decided that defendants who were not signatories to the contract could also compel arbitration under the doctrine of equitable estoppel. In this case, all of the Iversons' claims arose under and relied upon the contract between the Iversons and Order Homes, and the gist of their lawsuit concerned the damage they suffered as a result of the defective construction of their home. The Court of Appeals held that equitable estoppel applied to prevent the Iversons from avoiding arbitration with the nonsignatory appellants.

