

*All official duties should be faithfully performed, and whenever, from any cause, a defect of legal justice would ensue from a failure to perform or from improper performance, the writ of mandamus may issue to compel a due performance if there is no other specific legal remedy for the legal rights,” GA Code § 9-6-20 (2022)*

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Ben and Steve hope that the high visibility of our mandamus lawsuit filing will cause Camden County to voluntarily attempt to obtain the mandatory contractual agreement with the Camden County Public Services Authority (“PSA”). Evidence shows that St Marys, Kingsland and Woodbine likely have the same necessity. In preparing for Court, we prepared the following information:

- 1) Contrary to Defendant’s (Camden County) claims, Plaintiffs (Weinkle and Goff) have standing to bring this Writ of Mandamus.
  - a) Plaintiffs are residents and registered voters of unincorporated Camden County, Georgia. As such, the Georgia Constitution affords them *“the inherent right of regulating their internal government. Government is instituted for the protection, security, and benefit of the people; and at all times they have the right to alter or reform the same whenever the public good may require.”*<sup>1</sup>
  - b) The Camden County Board of Commissioners is the governing authority *“that exercises the power to levy ad valorem taxes to carry out the governing authority's purposes”* directly affecting the Plaintiffs.<sup>2</sup>
  - c) Plaintiffs are subject to an Unincorporated Tax District providing more than \$500,000 annually to the PSA<sup>3</sup>
  - d) The 2018 intergovernmental Agreement between the Camden County Board of Commissioners and the Camden County Public Service Authority (“Authority” also “PSA”) states that the service funded by Camden County and the cities is the “PSA Consolidated Leisure Services Program.”<sup>4</sup> Plaintiff has been unsuccessful using the Georgia Open Records Act in obtaining a document detailing the properties served,

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<sup>1</sup> GA. CONST. art I, §II, para. 1.

<sup>2</sup> O.C.G.A. §48-5-32.1(a)(3)

<sup>3</sup> Substantiated in Camden County annual budgets. “Unincorporated Tax District Fund - ... The fund also collects additional revenues that are used to reduce the millage required for the fire services, the County’s portion of the PSA (recreation) services, and public works right-of-way mowing.” Camden County FY2024 Adopted Budget.

<sup>4</sup> Item 6 of the December 20, 2018 intergovernmental Agreement between the PSA and Camden County Board of Commissioners and cities.

Summary of Issues Regarding the Writ of Mandamus Page 2 of 10  
services provided, or mutual responsibilities of the parties included in the “PSA Consolidated Leisure Services Program.”

- e) Plaintiffs have been denied the use of various Camden County park facilities and features they are entitled to use because the Camden County Board of Commissioners do not have the required enforceable contractual agreement that would provide accountability and responsibility for park operations, accessibility, safety, and maintenance.<sup>5</sup>
- 2) The Camden County Board of Commissioners<sup>6</sup> is the proper Defendant in this case. The Enabling legislation creating the Camden County Public Service Authority states in Section 2(d): *“The corporative purpose and objective of the Authority is to provide the legal, political, developmental, financing, and operational structure and authorization for those projects, public services, and facilities deemed necessary for the public health and welfare that may be undertaken through the cooperative efforts of the **Board of Commissioners of Camden County** or one or more of the municipal corporations within said county or such other agencies or organizations authorized to undertake such cooperative activities or projects. Participation of any governmental entity or agency or the inclusion of the residents of a political subdivision into the sphere of services and functions of said Authority and the charging and taxing of such entities or residents for such services and functions **shall only occur through contractual agreement between the Authority and the respective political subdivision or agency.**”*<sup>7</sup>
- a) The Camden County Board of Commissioners is comprised of 5 elected officials whose terms expire in alternating biennial elections. Only two current Commissioners were in office when the 2018 intergovernmental Agreement was signed. Three current Commissioners must primary in May, 2024. The named Defendant in this action will remain the same throughout the period of all appeals.
- b) No single Commissioner can implement the required contractual agreement. In every decision of the Camden County Board of Commissioners, a majority of a quorum of the five Commissioners must vote affirmatively to approve a contract between the PSA and the Camden County Board of Commissioners. The Board Chairperson, irrespective of their voting position in the matter, is the representative of the Board who signs the

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<sup>5</sup> See Exhibits in Original Complaint

<sup>6</sup> The “Board of Commissioners of Camden County” mentioned in various documents identifies the same elected Board also commonly known as the “Camden County Board of Commissioners.”

<sup>7</sup> 1990 No. 887 (HB No. 2031) as amended

- 3) Plaintiffs contend that the Camden County Board of Commissioners is their sole avenue for redress, and that Mandamus is the only method available for Plaintiffs to compel Defendant to adhere to their contractual requirements.
- 4) Defendant states that “A petition for mandamus must name a public officer.”<sup>8</sup> By naming the Camden County Board of Commissioners rather than naming each Commissioner separately, Plaintiffs may have created a technical fault in the Writ of Mandamus.
  - a) Supporting Plaintiffs’ interpretation, the Georgia Appeals Court has decided that “*Mandamus is the remedy to compel a public officer **or a county board** to perform a duty imposed by law.*”<sup>9</sup>
  - b) *Smith v. Maynard*<sup>10</sup> affirms the Plaintiff’s naming the Camden County Board of Commissioners as Defendant is correct, “*Since a county board of education is not a natural person, a partnership, or a body corporate which can be sued, **mandamus is not only an appropriate remedy, but it is the only remedy available to the plaintiffs** by which they can obtain performance of the contracts.*”
  - c) If Superior Court finds that all Commissioners should have been named individually in this action, the Court has the authority to add them as Defendants. “*Should it appear that indispensable parties were not joined, **the remedy would not be dismissal but corrective action as provided by O.C.G.A. § 9-11-19.***”<sup>11</sup>
- 5) Plaintiffs believe it is a matter for the Court to decide if extant documents meet the requirements of the Enabling Legislation for the Camden County Public Service Authority (“PSA”) and Georgia laws governing contracts and contractual obligations. Plaintiffs find several instances in the Enabling Legislation where a controlling contract is a requirement:
  - a) “Participation of any governmental entity or agency or the inclusion of the residents of a political subdivision into the sphere of services and functions of said Authority and the charging and taxing of such entities or residents for such services and functions **shall only occur through contractual agreement** between the Authority and the respective political subdivision or agency.”<sup>12</sup>
  - b) “To recommend to the Board of Commissioners of Camden County for creation and

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<sup>8</sup> Item 1 of Defendant’s argument and Citation to Authorities.

<sup>9</sup> *City of Dalton v. Smith*, 158 Ga. App. 356, 280 S.E.2d 138 (1981).

<sup>10</sup> *Smith v. Maynard*, 214 Ga. 764, 107 S.E.2d 815 (1959)

<sup>11</sup> “*Should it appear that indispensable parties were not joined, the remedy would not be dismissal but corrective action as provided by O.C.G.A. § 9-11-19.*” *Applied Ecological Sys. v. Weskem, Inc.*, 212 Ga. App. 65, 441 S.E.2d 279 (1994), and “*The Court Failure to name the proper parties is an amendable defect, correctable by the parties or upon the court’s own motion.*” *Hanson v. Wilson*, 257 Ga. 5, 354 S.E.2d 126 (1987).

<sup>12</sup> 1990 No. 887 (HB No. 2031) as amended

Summary of Issues Regarding the Writ of Mandamus Page 4 of 10  
implementation of special service tax districts, the purpose of which shall be provide, in whole or in part, funding for the operation, administration, and maintenance of public services and facilities undertaken within the corporative purpose of the Authority and **obligated by contract with the several municipal corporations and the county.**"<sup>13</sup>

- c) "Said moneys received by the Authority **pursuant to contract** shall be held in trust as provided in Section 7 of this Act."<sup>14</sup>
- d) "The creation of any special service tax district and levy of any taxes there within **shall be in accordance with the contractual provisions within Section 2(d)** of this Act;"<sup>15</sup>
- 6) In Georgia, not all Agreements are enforceable as Contracts. Neither the Defendant nor the PSA can provide a contract or contracts that include all of the components required in a contract in Georgia. Genuine factual issues exist as to whether the contract's subject matter is established and the parties' mutual assent to all terms is complete. (Bedsole v. Action Outdoor Adver. JV, LLC, 325 Ga. App. 194, 750 S.E.2d 445 (2013))
  - a) The current operating Agreement between Camden County and the PSA references the "PSA's Consolidated Leisure Services Program."<sup>16</sup> However, the Agreement does not contain any elaboration of what comprises the "PSA's Consolidated Leisure Services Program" specified in that Agreement. Plaintiffs requested a copy of the "PSA's Consolidated Leisure Services Program" in a Georgia Open Records Act request to the PSA which returned only the 2018 intergovernmental Agreement without elaboration or attachments.
  - b) Item 4 of the 2018 intergovernmental Agreement states "The policies of said [Leisure Services Department] shall be determined and established by a majority vote of the members of the board of the PSA with the prior advice and consent of the County and the Cities."
    - i) There is no evidence of Camden County being asked for, or it having provided "prior advice and consent" regarding policies of the PSA.
  - c) The Camden County Board of Commissioners voted unanimously on February 5, 2019 to approve the 2018 intergovernmental Agreement with the PSA.
  - d) The 2018 intergovernmental Agreement states "WHEREAS, from November 11, 2009 through November 11, 2014, the County, the PSA, and the Cities operated within a

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<sup>13</sup> Ibid

<sup>14</sup> Ibid

<sup>15</sup> Ibid

<sup>16</sup> Intergovernmental Agreement Between The Camden County Board of Commissioners, The City of Kingsland, The City of St. Marys, The City of Woodbine, And The Camden County Public Service Authority dated December 20, 2018, Item 6

Summary of Issues Regarding the Writ of Mandamus Page 5 of 10  
written agreement which set forth the mutual and reciprocal rights, duties, obligations,  
and performances for each,”<sup>17</sup>

- i) The aforementioned ‘written agreement’ is not included in the 2018 intergovernmental Agreement.
- e) Item 12 of the 2018 intergovernmental Agreement states **“This Agreement supersedes all prior negotiations, representations or agreements, either written or oral.”** Item 12 negates any documents not in evidence as part of the 2018 intergovernmental Agreement. Consider that only two of the current Camden County Board of Commissioners held office in 2018, yet all five approve annual spending and assume unknowable liabilities based on vacuous agreements.
- 7) It will be difficult for Camden County to establish that the 2018 intergovernmental Agreement meets the requirements of a legal contract. Plaintiff can prove that significant issues of fact and strident ambiguity exist in the agreement between Camden County Board of Commissioners and the PSA that cannot exist in legally constructed contracts. OCGA § 13-3-1 states "To constitute a valid contract, there must be parties able to contract, a consideration moving to the contract, the assent of the parties to the terms of the contract, and a subject matter upon which the contract can operate." Georgia Courts have addressed contract validity issues many times. The cases mentioned below apply as to whether this case should be dismissed without considering the legal issues involved, including whether or not a valid, enforceable contract exists between Camden County and the PSA. In 507 S.E.2d 477 (1998), 234 Ga. App. 528, the Georgia Court of Appeals wrote about construing oral and written contracts: “the court should apply the appropriate three-step process of contract construction discussed in *Duffett v. E W Prop.*, 208 Ga. App. 484, 486 (2) ( 430 S.E.2d 858) (1993). *Jones v. Destiny Indus.*, 226 Ga. App. 6 (2) ( 485 S.E.2d 225) (1997). **First, if no ambiguity appears**, the trial court enforces the contract according to its terms irrespective of all technical or arbitrary rules of construction. Thus, where the terms of the contract **are clear and unambiguous, the court looks only to the contract to find the parties' intent. Ambiguity, the potential for ambiguity appears, the existence or non-existence of an ambiguity is itself a question of law for the court**, unless an ambiguity remains even after the court has applied the pertinent rules of contract construction. Finally, issues of contract construction will be submitted to the jury only when there appears to be an ambiguity in the contract which cannot be resolved by the court's application of the statutory rules of construction.”

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<sup>17</sup> Ibid, 2018 Agreement

- a) Neither Defendant nor the PSA could provide a “contractual agreement” identifying specific “services and functions” to be provided by the PSA.<sup>18</sup>
- b) The Camden County Board of Commissioners voted unanimously on February 5, 2019 to approve the 2018 intergovernmental Agreement with the PSA without any evidence of a contractual agreement “set(ing) forth the mutual and reciprocal rights, duties, obligations, and performances for each,”.
  - i) The 2018 intergovernmental agreement does not include any specific information about the “PSA’s Consolidated Leisure Services Program.”
  - ii) There is no public document on the PSA’s website defining the “PSA’s Consolidated Leisure Services Program” nor does the term appear in the PSA’s 2021 Comprehensive Master Plan.
  - iii) The 2018 intergovernmental agreement does not include a copy of a referenced November 11, 2009 through November 11, 2014, written agreement between the County, the PSA, and the Cities “set(ing) forth the mutual and reciprocal rights, duties, obligations, and performances for each,”.
- 8) Defendant Camden County(Ga) Board OF COMMISSIONERS correctly state in their Motion To Dismiss that “*the Plaintiffs, pro se litigants, seek the extraordinary remedy of mandamus and attorney’s fees and costs from the Defendant, Board of Commissioners of Camden County.*” Plaintiffs agree with Defendants that a “writ of *mandamus* is an extraordinary remedy to compel a public officer to perform a required duty when there is no other adequate legal remedy.” Plaintiffs maintain that Defendant pays hundreds of thousands of dollars to the Public Service Authority each year without the existence of the required contract.<sup>19</sup> Plaintiff has used the Georgia Open Records Act to request copies of such a contract. Neither the Camden County Board of Commissioners nor the PSA has provided such a contract in their responses. Whether the required contract exists or not is subject matter for Superior Court. The inability of the Camden County Board of Commissioners and the PSA to provide the requisite contract(s) is the proximate cause of the Plaintiffs’ Writ of Mandamus.
- 9) Plaintiffs further agree that “;*Mandamus* can be used to compel an official to exercise his or her discretion, but not to direct the manner in which that discretion is exercised.” (citation and punctuation omitted)). Rather, “;*mandamus* relief applies prospectively

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<sup>18</sup> Per various Georgia Open Records Act requests

<sup>19</sup> Camden County Budget FY2024 and prior years

Summary of Issues Regarding the Writ of Mandamus Page 7 of 10  
only. It will not lie to compel the undoing of acts already done and this is so even though the action taken was clearly [in violation of the Georgia Constitution]." *Atlanta Independent School System v. Lane*, 266 Ga. 657, 660 (6) (469 S.E.2d 22) (1996)

- 10) As the Defendant restates in their Motion to Dismiss, Plaintiffs demand the Camden County Board of Commissioners “*pursue an enforceable contract.*” The key word used by Plaintiffs is “pursue” which in no way implies control over the Board of Commissioners’ discretion.<sup>20</sup> The Plaintiffs agree that the purpose of Mandamus is to compel an effort to perform the required act. The consequences of Camden County Board of Commissioners and the PSA not reaching agreement on a contract is not a concern of Mandamus. But Camden County Board of Commissioners must not be allowed to fund the PSA if the required contract is not executed by the date ordered by Superior Court.
- 11) In their Motion To Dismiss, Camden County’s lawyer wrote the Court that “A brief examination of the nature of the PSA must be undertaken.” Plaintiffs agree.
- 12) “The PSA was created by local legislation in 1990. It was established by and between Camden County and the municipalities of Kingsland, St. Marys, and Woodbine to provide certain common services and functions. It is funded by each of those entities and is empowered, inter alia, ‘to undertake any service, function, or activity that is authorized by law for municipalities, counties, and resource recovery authorities, including but not restricted to the development, financing, construction, and operation of public buildings or facilities and service-related program systems such as solid waste collection and disposal services and facilities; resource recovery systems and facilities; recreational, sports and civic related services and facilities including parks, playgrounds, community centers, pools, auditoriums, stadiums, gymnasiums, and various activity and athletic fields and courts;’”<sup>21</sup>
- 13) The Camden County continues: “As such, the duties erroneously assumed to exist by the Plaintiffs requiring the Camden County to enter into a contract **are within the purview of the PSA. The Camden County has no duty with regard to those items pursuant to the existence of the 2018 interlocal Agreement attached to Plaintiffs’ Complaint as Exhibit C.** The plaintiffs’ complaint is rendered nugatory (meaningless) by the existence of the 2018 interlocal agreement.”<sup>22</sup>

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<sup>20</sup> www.merriam-webster.com/dictionary/pursue: (2) : to find or employ measures to obtain or accomplish : to seek

<sup>21</sup> Camden County Motion To Dismiss

<sup>22</sup> Ibid

- a) Camden County's interpretation of the local legislation for the purpose of their Motion to Dismiss is that the PSA has exclusive responsibility for "recreational, sports and civic related services and facilities including parks, playgrounds, community centers, pools, auditoriums, stadiums, gymnasiums, and various activity and athletic fields and courts." The Camden County state unequivocally, "***The Defendants have no duty with regard to those items pursuant to the existence of the 2018 interlocal Agreement attached to Plaintiffs' Complaint as Exhibit C.***" <sup>23</sup>
- b) Nowhere in the enabling legislation is the PSA assigned exclusive responsibility. The authors of the original legislation required that a "contractual agreement" would be required defining the responsibilities of each party. Furthermore, the Enabling Legislation plainly states the Authority's powers "*may* be undertaken" (emphasis ours) for the aforementioned projects. "May" is an expression of possibility, a permissive choice to act or not. If the legislature intended the PSA to have exclusive responsibility, they would have used the word "shall," which is generally used to indicate a mandatory provision.
- c) As stated earlier by Camden County, "The PSA was created by local legislation in 1990. It was established by and between Camden County and the municipalities of Kingsland, St. Marys, and Woodbine **to provide certain common services and functions.**"
- d) The 2018 interlocal Agreement contains no documentation of the "certain common services and functions" required of the parties other than for the funding of the Authority.<sup>24</sup>
- e) Camden County has repeatedly shown by their actions there are both shared and exclusive responsibilities for each party.
  - i) Camden County recently assigned its own personnel to perform repairs and maintenance at county parks. Should those repairs have been the responsibility of the Authority? Camden County employees repaired the screens at Harrietts Bluff Park. Should those repairs have been the responsibility of the Authority? They also cleared floor drains and restored the original building ventilation design that had been adulterated by the PSA. Should those repairs have been the responsibility of

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<sup>23</sup> Ibid

<sup>24</sup> In fact, the 1990 Enabling Legislation plainly says: "Participation of any governmental entity or agency or the inclusion of the residents of a political subdivision into the sphere of services and functions of said Authority and the charging and taxing of such entities or residents for such services and functions shall only occur through contractual agreement between the Authority and the respective political subdivision or agency." (1990 Ga. Laws, page 4276 Section 2.(d))



- ii) Camden County recently issued Contract Bid Requests for repairing/replacing the roof of the pavilion at the Satilla River Waterfront Park and for repair and replacement of “various activity fields and courts.” Neither Camden County or the PSA have provided swings at Harrietts Bluff Park for the past 10 years. Camden County wants the Court and citizens to believe that some unelected party at the PSA has decided that bathrooms should be locked at most all County parks.
- 14) Plaintiffs have demonstrated that numerous, continuing discrepancies prove the many, long-term failings of any existing agreement between Camden County and PSA are consequential (not nugatory or meaningless) and are meaningful because we are taxed for our parks.
- 15) The terms of the Enabling Legislation allow St Marys, Kingsland, or Woodbine to resign from the authority.”<sup>25</sup>
- 16) However, the Enabling legislation makes no provision allowing Camden County to resign from the Authority. However, through resignation of the cities, the County could gain control over the Authority. Camden County is the only indispensable party to the Authority but Camden County claims that the contractual agreement, the content of the contractual agreement, or the lack of the contractual agreement “are within the purview of the PSA.” It is unclear whether Camden County interprets the word “purview” as meaning: the enacting part of the enabling statute; the scope of the enabling statute; or, the range of interest or control, but the implication is that the Authority solely determines its responsibilities to Camden County and the cities.
- 17) Camden County seems to believe that the Authority is the sole adjudicator of which services, for whichever properties, for whatever standard of performance, and on whatever timetable, it will perform.
- 18) Most disturbingly, Camden County’s defense states “the General Assembly of Georgia has likewise conferred discretion upon a county government or officer in owning or maintaining parks or public land. County officials are allowed the discretion to act with regards to public parks by both Constitutional provision and statute.”<sup>26</sup> Plaintiffs believe Camden County elected officials have an obligation to provide and maintain the parks citizens have owned and sustained for generations. We believe, as do

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<sup>25</sup> Ibid. “Should one or more of said municipalities exercise the option not to participate within the Authority, said jurisdiction or jurisdictions shall yield its representation on the Authority and in such case the representation of the Board of Camden County shall be increased respectively...”

<sup>26</sup> Defendants’ (Camden County Board of Commissioners) Motion To Dismiss

Summary of Issues Regarding the Writ of Mandamus Page **10** of **10**  
most Camden County voters, that elected officials who allow diminishment of our parks and recreation facilities but believe they can provide a spaceport and airport for special interests, have abused their discretion.

**In summary, the PSA Enabling Legislation ultimately places the financial and operational risks of the Public Service Authority on the taxpayers of unincorporated Camden County who presently hold only three of nine seats on the Authority's Board, (one of the three seats is held by a person who does not live in unincorporated Camden County). The absence of the mandatory enforceable contract places unexpected risk on the Plaintiffs and all residents and taxpayers in unincorporated Camden County, and by similar circumstances, to all residents and taxpayers of Camden County.**

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