

SUPREME COURT OF GEORGIA

Café Risque/We Bare All Exit 10, Inc. v. Camden County, 273 Ga. 451

542 S.E.2d 108 (2001) · No. S00A1900 · Decided February 16, 2001

SUMMARY

The Supreme Court of Georgia affirmed dismissal of a mandamus petition seeking an occupational license and reinstatement of a special use permit. The court held that the permit for a warehouse in an Interchange Commercial zoning district was void from inception because the county zoning ordinance did not authorize warehouses there, and therefore the permit could not be transferred or support estoppel. The county properly denied the occupational license because the proposed use was unlawful under the zoning code.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Sears, Justice
JURISDICTION	Georgia
DECIDED	February 16, 2001
DOCKET	S00A1900
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appellant appealed the trial court's dismissal with prejudice of its petition for mandamus relief seeking an occupational license and reinstatement of a revoked special use permit.
STANDARD OF REVIEW	The Supreme Court reviewed the dismissal of the mandamus petition and affirmed because the petitioner was not entitled to relief under any conceivable set of facts; it also applied the rule that a judgment right for any reason will be affirmed.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Georgia; precedential.
PARTIES	Café Risque/We Bare All Exit 10, Inc. v. Camden County

TOPICS

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PRACTICE AREAS

zoning and land use

municipal law

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QUESTIONS PRESENTED

1. Whether the County's special use permit for a warehouse in an Interchange Commercial zoning district was void because the zoning ordinance did not authorize that use.
2. Whether the permit could be transferred to Café Risque or support an occupational license.
3. Whether Café Risque was entitled to mandamus relief compelling reinstatement of the permit and issuance of an occupational license.

HOLDINGS

1. A special use permit issued for a warehouse in a zoning district where warehouses were not authorized by the county zoning ordinance was an ultra vires act and was void from its inception.
2. The County properly revoked the void permit, and the purported transfer of special-use rights to Café Risque conveyed no enforceable rights.
3. Café Risque was not entitled to mandamus relief compelling reinstatement of the special use permit or issuance of an occupational license.

KEY QUOTATIONS

"Therefore, the County's issuance of a special use permit to I-95 Management, Inc., for the construction and operation of a warehouse was an ultra vires act, rendering the special use permit null and void from its inception." (273 Ga. at 451; 542 S.E.2d at 110)

"Not even estoppel can legalize or vitalize that which the law declares unlawful and void." (273 Ga. at 451; 542 S.E.2d at 110)

"Under no set of circumstances would Café Risque be entitled to mandamus relief in this matter, and the trial court's dismissal of the petition for relief is therefore affirmed." (273 Ga. at 451; 542 S.E.2d at 110)

FACTUAL BACKGROUND

Camden County issued I-95 Management, Inc. a special use permit to construct and operate a warehouse in an Interchange Commercial zoning district, even though the county zoning ordinance did not authorize warehouses in that district. I-95 Management obtained an occupational license, erected a portable building and billboard, and then subleased the premises to Café Risque. The County denied Café Risque's occupational-license request and revoked I-95 Management's permit after determining that the proposed use did not comply with the permit and that Café Risque could not piggyback on I-95 Management's permit.

PROCEDURAL HISTORY

I-95 Management, Inc. obtained a special use permit for a warehouse in a Camden County district zoned Interchange Commercial and later subleased the premises to Café Risque. After the County denied Café Risque's occupational-license request and revoked I-95 Management's permit, Café Risque petitioned for mandamus. The

trial court dismissed the petition with prejudice, concluding that Café Risque was not entitled to mandamus relief under any conceivable set of facts, and the Supreme Court of Georgia affirmed on the ground that the permit was void from inception.

DISPOSITION

affirmed

CASES CITED

- Corey Outdoor Advertising v. Board of Zoning Adjustments City of Atlanta, 254 Ga. 221, 227, 327 S.E.2d 178 (1985)
- Matheson v. DeKalb County, 257 Ga. 48, 49, 354 S.E.2d 121 (1987)
- Jackson v. Delk, 257 Ga. 541, 543, 361 S.E.2d 370 (1987)
- State of Ga. v. Cafe Erotica, 270 Ga. 97, 101, 507 S.E.2d 732 (1998)

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