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A Lottery Ticket is an Express Written Contract and the General Assembly Waived Their Own Instrumentality from Sovereign Immunity!*

by Forrest F. Schrum IV

I. INTRODUCTION

The creation of an express written contract occurs every day. These are contracts documented on an instrument where two parties agree to performing certain actions or preventing a party from performing, and they allow these parties to be liable to the other if one were to breach the contract. For an express written contract, the right to sue for breach of contract is so vital that when the General Assembly created the Georgia Constitution, a clause was added that precludes Georgia and all entities/instrumentalities within, to use sovereign immunity to avoid litigation.¹ If Georgia or the entities/instrumentalities of the state could use sovereign immunity to avoid liability for breaching a contract, the entire purpose of an express written contract would be destroyed.

Generally, parties understand when they enter into these express written contracts, but that is not always the case, especially for the Georgia Lottery Corporation in the case at hand. In *Georgia Lottery Corporation v. Patel*,² Patel won \$5,000,000 on a scratch off lottery ticket. When Patel requested the money, the Georgia Lottery Corporation (GLC) denied her ticket and refused to give the money

*A sincere thank you to Professor Michael Sabbath and the Mercer Law Review members for inspiration and guidance throughout the drafting and editing process. Additionally, thank you to my family and friends for their constant support and love during my journey in law school and future career.

1. GA. CONST. art. I, § 2, para. 9(c).
2. 349 Ga. App. 529, 826 S.E.2d 385 (2019).

over. In frustration, Patel sued GLC for breach of contract. GLC, as a government instrumentality, raised sovereign immunity to deny Patel's claim. All hope seemed lost that Patel would never recover her life changing \$5,000,000.³ However, the Court of Appeals found, on first impression, that a lottery ticket is an express written contract, which means GLC may not implement sovereign immunity.⁴ Thankfully, Patel's dreams, like many Georgia citizens who play the lottery, are still alive and Patel can have a proper trial in pursuit of recovering the \$5,000,000 won from the lottery ticket.

II. FACTUAL BACKGROUND

On June 12, 2016, a large number of lottery tickets were purchased at the Neighborhood Food Mart in Dublin, Georgia. Specifically, 34 packs or 460 lottery tickets were bought within a two-minute time frame. Over the next three days, the tickets were scanned in multiple areas including: Decatur; Scottdale; Clarkston; Lilburn; Macon; and Dublin. A camera at one of the gas stations showed that Patel's son, who is not old enough to play the lottery, was scanning some tickets at the Neighborhood Food Mart. However, Patel's son denies scanning the ticket that held the \$5,000,000 cash prize.⁵

Patel's daughter, of legal age to play the lottery, testified that she had drove down to Dublin on June 12, 2016 and bought seven packs of lottery tickets. The daughter's reasoning for buying the excessive amount of tickets was to give the tickets as a gift to Patel for her birthday. The whole family drove to Atlanta on June 13, 2016 to celebrate Patel's birthday. On the way to Atlanta, Patel's daughter gave Patel five packs of lottery tickets and Patel's daughter testified that she gave the remaining two packs to Patel at the actual birthday dinner.⁶ The lottery tickets contained GLC as the party to contact. In addition, each ticket contained the price of \$20 to buy the ticket, a statement of how to play the ticket, instructions for certain bonuses that could be won, the odds of winning prizes, a disclaimer for ticket purchasers to be at least 18 years old, and how to claim a winning ticket over \$600.⁷

After Patel had allegedly scanned the ticket, Patel submitted the ticket on June 28, 2016. Since the reward of \$5,000,000 is of significant weight, GLC conducted an investigation to validate the ticket. GLC

3. *Patel v. Georgia Lottery Corporation*, 350 Ga. App. 883, 830 S.E.2d 393, 394 (2019).

4. *Ga. Lottery Corp.*, 349 Ga. App. at 533–34, 826 S.E.2d at 390.

5. *Patel*, 350 Ga. App. at 884, 830 S.E.2d at 394.

6. *Id.* at 885, 830 S.E.2d at 395.

7. *Ga. Lottery Corp.*, 349 Ga. App. at 529–30, 826 S.E.2d at 387.

found the surveillance video of the camera that showed Patel's son was scanning lottery tickets. Since Patel's son is not of legal age to play the lottery, Joseph J. Kim, senior vice president of the Georgia Lottery Commission, sent a letter informing Patel that GLC's Prize Valuation Department invalidated the ticket and declined to pay the \$5,000,000.⁸ Since Patel claims scanning the winning ticket, herself, this ultimately led Patel to take action against GLC for breach of contract because Patel claims she was the holder of the lottery ticket.⁹

III. LEGAL BACKGROUND

To further understand the significance of *Georgia Lottery Corporation v. Patel*, it is important to review the history of prior cases, statutes, and the Georgia Constitution. These historical cases shed light on the Court of Appeal's reasoning and the overall paradox that elaborately unfolds.

A. Sovereign Immunity does not apply to Express Written Contracts

Georgia's General Assembly redrafted and ratified the Georgia Constitution in 1982.¹⁰ One section, within the Constitution, provides an outline of the uses and exceptions to sovereign immunity.¹¹ The section, Ga. Const. Art. I, § II, Para. IX(c),¹² provides, "The state's defense of sovereign immunity is hereby waived as to any action ex contractu for the breach of any written contract now existing or hereafter entered into by the state or its departments and agencies."¹³ Essentially, the Georgia Constitution states that any action against the state regarding a breach of written contract cannot use sovereign immunity.¹⁴

In 2008, the Georgia Court of Appeals explained this exception in *Watts v. City of Dillard*,¹⁵ which clarifies the extent of using an immunity for a breach of contract claim. While the Georgia Constitution is clear on the exception to sovereign immunity, some confusion was present between municipals corporations applying sovereign

8. *Patel*, 350 Ga. App. at 883–84, 830 S.E.2d at 394–95.

9. *Ga. Lottery Corp.*, 349 Ga. App. at 529, 826 S.E.2d at 387.

10. *See* GA. CONST.

11. GA. CONST. art. I, § 2, para. 9.

12. GA. CONST. art. I, § 2, para. 9(c).

13. *Id.*

14. *Id.*

15. 294 Ga. App. 861, 670 S.E.2d 442 (2008).

immunity.¹⁶ The court relied on *Precise v. City of Rossville*,¹⁷ which clarified, "[M]unicipal immunity is not a valid defense to an action for breach of contract."¹⁸ "[H]owever, sovereign immunity is waived only as to actions based on written contracts."¹⁹ Thus, this clarification shows the exception is only applicable under sovereign immunity for non-municipal corporations.

Regarding *Georgia Lottery Corporation v. Patel*, this authority demonstrates the broad significance of having sovereign immunity, not being a municipal corporation, and what exceptions apply when the suit involves a breach of contract. The Constitution and the court clearly show that the contract related to the action must be in writing for the state to waive their privilege of sovereign immunity. In other actions, sovereign immunity will still apply, and bar suit related to other matters, like oral contracts or a contract not determined to be an express written contract.

B. The Lottery Tickets initial steps to becoming a binding Express Written Contract

The Georgia Supreme Court decided, *Talley v. Mathis*,²⁰ to settle a dispute between two individuals that had made a contract centered on the lottery. In 1995, Talley and Mathis (both residents of Georgia) contracted to buy lottery tickets together in Kentucky and to split the winnings between them. Mathis won a large sum of money from one of the tickets and then refused to split the winnings with Talley. Talley then sued for breach of contract against Mathis.²¹ Under O.C.G.A. § 13-8-3,²² the trial court and the court of appeals decided that the contract was a gambling contract and void, thus dismissing the claim.²³

The court ultimately reversed the decision of the lower courts in favor of Talley for two major reasons.²⁴ First, the court reasoned that both Talley and Mathis obtained these lottery tickets lawfully, they

16. *Id.* "[W]e have never construed it as a defense to action for the breach of a valid contract. To the contrary, we have repeatedly enforced valid contracts against municipalities." (*Citing Precise v. City of Rossville*, 261 Ga. 210, 211, 403 S.E.2d 47, 49 (1991)).

17. 261 Ga. 210, 403 S.E.2d 47 (1991).

18. *Id.* at 211, 403 S.E.2d at 49.

19. *Watts*, 294 Ga. App. at 863, 670 S.E.2d at 443–44.

20. 265 Ga. 179, 453 S.E.2d 704 (1995).

21. *Id.* at 179, 453 S.E.2d at 705.

22. *Id.*; O.C.G.A. § 13-8-3 (2019). "Gambling contracts are void . . ." *Id.*

23. *Talley*, 265 Ga. at 179, 453 S.E.2d at 705.

24. *See id.*

both agreed to split the cost of tickets and winnings, and that this contract was not a gambling contract.²⁵ "In a gambling contract one of [the parties] is certain to lose," however in this contract both parties would win or lose together because they were splitting the costs.²⁶ Second, the court looked into enforcing the contract based on public policy.²⁷ "Where contracts are not contrary to law, the courts are bound to enforce them as made."²⁸ Since this contract was not contrary or in violation of any law, the court held this contract is enforceable and Mathis must split the winnings with Talley.²⁹

The main idea is that *Talley* introduces the courts view on lottery tickets and enforcing contracts based on public policy. The contract was about lottery tickets yet not to be considered a gambling contract.³⁰ Often times the lottery is viewed as gambling; however, playing the lottery is legal and is even an exception commonly mentioned in statutes involving gambling.³¹ In addition, the court, relying on a prior decision, introduced a very broad approach to when a contract should be considered enforceable. If the contract is not contradicting law, then the contract should be enforced. This case creates one of the essential first steppingstones leading to the present case at hand, *Georgia Lottery Corporation v. Patel*, and shows the significance that the lottery is not contradicting gambling laws in Georgia.

In addition, the Georgia Court of Appeals heard *Georgia Lottery Corporation v. Sumner*,³² involving another lottery ticket. Sumner had bought a lottery ticket and won \$50 a day for the next five years of his life. However, GLC denied Sumner's prize because the ticket contained a printing error and failed the validation and securities test. Ultimately, Sumner sued GLC to recover the denied prize against GLC.³³ The court held in favor of GLC on a motion for summary judgement because the ticket had a printing error and the back of the ticket clearly states, "[t]ickets are void if they . . . are irregular in any manner."³⁴ In

25. *Id.* at 179–80, 453 S.E.2d at 705.

26. *Id.* at 179, 453 S.E.2d at 705.

27. *Id.* at 180–81, 453 S.E.2d at 705–06.

28. *Cauthen v. Central Georgia Bank*, 69 Ga. 733, 733 (1882).

29. *Talley*, 265 Ga. 181, 453 S.E.2d at 706.

30. *Id.* at 180, 453 S.E.2d at 706. The court explains that both parties were purchasing lottery tickets in Kentucky, which is not a crime. Therefore, there is nothing unlawful within the contract. *Id.* at 180, 453 S.E.2d at 705–06.

31. O.C.G.A. § 16-12-35(j). "This part shall in no way prohibit communications between persons in this state and persons involved with such legal lotteries . . ." *Id.*

32. 242 Ga. App. 758, 529 S.E.2d 925 (2000).

33. *Id.* at 759–60, 529 S.E.2d at 925–26.

34. *Id.* at 762, 529 S.E.2d at 928.

furtherance, the court held that if the ticket was treated as an express written contract, the ticket is void under contract law.³⁵

Sumner shows three critical distinctions that have led to the case at present. First, tickets that are misprinted or have printing errors cannot be recovered if the disclaimer is on the back.³⁶ Second, while the court did not decide whether a lottery ticket is an express written contract, the court entertained the idea of contract law and treating the lottery ticket like an express written contract to further its reasoning for why this ticket is invalid.³⁷ Finally, GLC never contended Sovereign Immunity which could have instructed the court to decide whether a lottery ticket was an express written contract before the case at hand.³⁸

C. *The Georgia Lottery Corporation gains sovereign immunity*

In 1997, the Georgia Court of Appeals, in *Jackson v. Georgia Lottery Corporation*,³⁹ determined that GLC was not entitled sovereign immunity. The court strongly focused on interpreting the Georgia Constitution stating that sovereign immunity only applies to the state or the officers, agencies, departments, and employees.⁴⁰ GLC was determined to be only an instrumentality of the state and not an agency.⁴¹ Through paying close attention to the wording used in the Georgia Constitution, the court determined that a state instrumentality does not have the privilege of sovereign immunity, only entities deemed to be a state agency can have sovereign immunity.⁴² In addition the court also notes that the General Assembly is not responsible for GLC.⁴³

However, *Jackson* was later overturned later in *Kyle v. Georgia Lottery Corporation*,⁴⁴ when GLC brought the defense of sovereign immunity for the second time. In 2011, GLC claimed to have sovereign immunity, thus wanting to bar the trademark infringement suit. The

35. *Id.*

36. *Id.* "[T]ickets are void if they . . . are irregular in any manner. The undisputed evidence established that the ticket is irregular . . . Summer did not hold a winning ticket." *Id.*

37. *Id.* "While no Georgia case has yet considered this issue, numerous other state courts have concluded that contract law governs." *Id.* See *Hayes v. Dept. of the Lottery*, 630 So.2d 1177 (Fla. App. 1994); *Valente v. Rhode Island Lottery Comm.*, 544 A.2d 586 (R.I. 1988).

38. See *Sumner*, at 762, 529 S.E.2d at 928.

39. 228 Ga. App. 239, 491 S.E.2d 408 (1997) (overruled).

40. *Id.* at 241, 491 S.E.2d at 411.

41. *Id.* at 239, 491 S.E.2d at 410.

42. *Id.* at 242, 491 S.E.2d at 411–12.

43. *Id.* at 241, 491 S.E.2d at 411.

44. 290 Ga. 87, 718 S.E.2d. 801 (2011).

Georgia Supreme Court addressed whether GLC is an instrumentality of the state and whether they're entitled to sovereign immunity. To support its ruling, the court observed the creation of GLC and the overall purpose GLC provides.⁴⁵ In 1992, the General Assembly created GLC under the Georgia Lottery for Education Act,⁴⁶ to help fund state educational purposes and programs, like the Hope Scholarship.⁴⁷ To further the reasoning, the court noted that certain statutes hold GLC accountable to the General Assembly "through a system of audits and reports."⁴⁸ This overall purpose of benefiting the state and the accountability to the General Assembly led the Georgia supreme court to hold that GLC is a government entity and is entitled to sovereign immunity.⁴⁹

The court in *Kyle* established one of the critical points for *Georgia Lottery Corporation v. Patel*, that sovereign immunity applies to GLC in actions taken against it. This holding further rejected prior notions of who had the privilege of sovereign immunity and emphasized the idea that any instrumentalities of the state are entitled to sovereign immunity, if they possess a purpose beneficial to the state.

In comparison, the decision in *Sumner* was well before the Georgia Supreme Court heard *Kyle* which explains why GLC did not try and use the defense prior because it was not an instrumentality. It is still important to note that *Kyle* dealt with a trademark infringement and not a breach of contract. During *Sumner*, the *Jackson* holding was still in effect ruling that GLC did not have sovereign immunity because GLC was not considered an agency of the state at the time of the case. Had *Sumner* come after *Kyle*, the court would likely have decided whether a lottery ticket was an express written contract before *Georgia Lottery Corporation v. Patel*.

D. Public Policies outlining Sovereign Immunity.

The decision in *Kyle* further expands upon why an instrumentality of the State can claim Sovereign immunity based on certain public policies and statutes. The Georgia Tort Claims Act,⁵⁰ "extend[s] sovereign immunity to the State of Georgia, [and] its offices, agencies, authorities,

45. *Id.* at 91, 718 S.E.2d at 804. "[I]ts main purpose is to generate net proceeds to be used to support improvement and enhancement for educational purposes and programs." *Id.*

46. O.C.G.A. § 50-27-1 (2019).

47. *Kyle*, 290 Ga. at 87, 718 S.E.2d at 802.

48. *Id.* at 91, 718 S.E.2d at 804.

49. *Id.*

50. O.C.G.A. § 50-21-22(5)–(6) (2019).

departments, commissions, boards, divisions, instrumentalities, and institutions."⁵¹ These entities, created from the General Assembly, serve specific public purposes to the state of Georgia.⁵² Since the entities provide a service that promotes benefits to the state as a whole they can enjoy the privilege of sovereign immunity.⁵³ The policy behind the idea of sovereign immunity is to allow state entities to avoid strenuous litigation, which would hinder their services to the state and citizens of the state.⁵⁴ Sovereign immunity follows a very utilitarian approach of allowing state entities to continue operations freely, which in turn, will ultimately have a strong beneficial output for the state.⁵⁵

However, the Georgia Constitution makes certain exceptions based in the Fourteenth Amendment's due process clause and equal protection clause.⁵⁶ "Protection to person and property is the paramount duty of government and shall be impartial and complete. No person shall be denied the equal protection of the laws."⁵⁷ Thus, the General Assembly drafted these exceptions to sovereign immunity based off rights to the people from the United States Constitution. While the exceptions do not apply to all types of disputes, it is inherently obvious that the General Assembly provided written contracts as one exception to ensure that the state entity understood its waiver of sovereign immunity by entering into the contract.

Finally, we reach the case at hand shifting the focus to why a lottery ticket is, now, considered an express written contract. More importantly, what authority impacted the decision and how this authority is interpreted today.

IV. COURT'S RATIONAL

A. *Opinion*

Judge Coomer delivered the opinion in *Georgia Lottery Corporation v. Patel*.⁵⁸ While Judge Barnes concurred, Judge McMillian dissented

51. *Kyle*, at 91, 718 S.E.2d at 804.

52. *Id.* at 90, 718 S.E.2d at 803.

53. *Woodard v. Laurens County*, 265 Ga. 404, 456 S.E.2d 581 (1995). "A waiver of sovereign immunity is a mere privilege, not a right, and the extension of that privilege is solely a matter of legislative grace." *Id.* at 406, 456 S.E. at 583 (quoting *Sikes v. Candler County*, 247 Ga. 115, 117(2), 274 S.E.2d 464, 466 (1981)).

54. *See Kyle*, 290 Ga. at 91, 718 S.E.2d at 804.

55. *See Id.*, at 89–91, 718 S.E.2d at 803–04. An agency or instrumentality may be entitled to raise sovereign immunity if they have a purpose that is beneficial to the state.

56. *Woodard*, 256 Ga. at 406, 456 S.E.2d at 583.

57. GA. CONST. art. I, § 1, para. 2 (2019).

58. 349 Ga. App. at 529, 826 S.E.2d at 387.

leading this case to only become physical precedent.⁵⁹ Even though this case is physical precedent and is not mandatory authority, the decision is still highly persuasive. The court reviewed de novo the trial court's finding that the lottery ticket was an express written contract and GLC was barred to use sovereign immunity.⁶⁰ GLC filed this appeal contending that Patel has not met the burden of proving that the lottery ticket is an express written contract.⁶¹ The main issue to address was, "[w]hether a Georgia lottery ticket constitutes a written contract which waives the GLC's sovereign immunity."⁶²

In the opinion, the court immediately addressed the lottery ticket and the overall scope of the wording on the ticket, like every other lottery ticket in Georgia. The court points out that the lottery ticket contained the name Georgia Lottery, the price, how to win, the odds of winning, disclaimers for invalid tickets, and how to recover prizes won.⁶³ As a general overview, the court relies on prior case law to outline what is a valid enforceable contract: "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."⁶⁴ "An offer and an acceptance are essential prerequisites to the creation of every kind of contract. Thus, the law requires that the parties' consent to the formation of a contract. Until each has assented to all the terms, there is no binding contract[.]"⁶⁵

Through looking at the general view of what is a contract, the court backed its reasoning with *Talley* and *Sumner*.⁶⁶ Both cases demonstrated the idea and theories behind supporting a lottery ticket or contracts involving the lottery to be valid and enforceable.⁶⁷ Even *Sumner*, which is physical precedent (like this case) is influential to supporting the claim that a lottery ticket is an express written contract.⁶⁸ *Talley* reintroduced the broad authority for when a court

59. *Id.* at 534, 826 S.E.2d at 390. See Court of Appeals Rule 33.2(a).

60. *Ga. Lottery Corp.*, 349 Ga. App. at 529, 826 S.E.2d at 387.

61. *Id.* at 531, 826 S.E.2d at 388.

62. *Id.* at 529, 826 S.E.2d at 387.

63. *Id.*

64. O.C.G.A. § 13-3-1 (2019).

65. *Southeast Grading v. City of Atlanta*, 172 Ga. App. 798, 800, 342 S.E.2d 776, 779 (1984).

66. *Ga. Lottery Corp.*, 349 Ga. App. at 531–32, 826 S.E.2d at 388–89.

67. See *Talley*, 265 Ga. 179, 453 S.E.2d 704; See *Sumner*, 242 Ga. App. 758, 529 S.E.2d 925.

68. *Ga. Lottery Corp.*, 349 Ga. App. 531–32, 826 S.E.2d at 388–89.

should enforce a contract. By evaluating the cases together, this led to a strong argument for lottery ticket being an express written contract.⁶⁹

Next, the court evaluated GLC's argument that both parties need to sign the express written contract in order to waive sovereign immunity.⁷⁰ GLC argued that *Kyle* demonstrates that GLC is entitled to sovereign immunity and misconstrues *Kyle* that both parties need to sign the contract.⁷¹ However, the court distinguishes *Kyle* because the suit was for a trademark infringement, not a breach of contract. *Kyle's* sole purpose was establishing that GLC is an instrumentality of the state and entitled to sovereign immunity.⁷² GLC also cites to other authority that involved instrumentalities of the state because they were able to preserve sovereign immunity in cases involving a breach of an express written contract. In contrast, both cases involved contracts that expressly stated that both parties needed to sign the contract or else the contract would not be effective.⁷³ In furtherance the court stated, "the lottery ticket . . . contains no requirement that the GLC sign the ticket to render it valid."⁷⁴ GLC's argument that they needed to sign the ticket is not backed by legal authority and held no merit. Thus, since they had no mention, in writing, of the need for both parties to sign for the contract to become effective, the lottery ticket is enforceable without GLC's signature.

Lastly, GLC argued the General Assembly has never defined a lottery ticket as a contract and the court cannot hold that a lottery ticket is a contract because they would essentially undermine the General Assembly.⁷⁵ However, Judge Coomer noted, "the construction, interpretation and legal effect of a contract is a question for the court to decide."⁷⁶ When deciding if the alleged contract is a valid contract, a judiciary interpretation is needed, therefore it is irrelevant what the legislative branch has stated prior. Thus, the court deciding if a lottery ticket is a contract does not conflict with the General Assembly's definition of a lottery ticket.

69. See *Talley*, 265 Ga. 179, 453 S.E.2d 704; See *Sumner*, 242 Ga. App. 758, 529 S.E.2d 925.

70. *Ga. Lottery Corp.*, 349 Ga. App. at 532, 826 S.E.2d at 389.

71. *Id.*

72. *Id.*

73. *Id.* See *Ga. Dept. of Community Health v. Data Inquiry, LLC*, 313 Ga. App. 683, 686, 722 S.E.2d 403, 406 (2012); see also *Ga. Dept. of Labor v. RTT Associate*, 299 Ga. 78, 79, 786 S.E.2d 840, 842 (2016).

74. *Ga. Lottery Corp.*, 349 Ga. App. at 532, 826 S.E.2d at 389.

75. *Id.* at 533, 826 S.E.2d at 389.

76. *Id.* (quoting *Ga. Kraft Co. v. Rhodes*, 257 Ga. 469, 472(2), 360 S.E.2d 595, 598 (1987)).

The court held that a lottery ticket is an express written contract.⁷⁷ Therefore, the Georgia Constitution waives the defense of sovereign immunity and allows Patel to continue in her pursuit to recover the life changing sum of \$5,000,000.⁷⁸

B. Dissent

Judge McMillian deliver the dissent, opposing Judge Coomer's holding that a lottery ticket is an express written contract.⁷⁹ Judge McMillian argued that a lottery ticket is an implied contract and that GLC should be allowed to assert sovereign immunity because the exception only applies to express written contracts.⁸⁰

The dissent accepts GLC's argument that since GLC did not sign the ticket, the ticket is not an enforceable express written contract. "[W]here none of the writings produced by the plaintiff were signed by a representative of [the other party],[the] plaintiff was unable to establish a written contract."⁸¹

Judge McMillian also points out that O.C.G.A. § 50-27-3(24)⁸² almost requires GLC to display the rules of the game on the lottery ticket and these rules should not be interpreted as contractual terms.⁸³ Essentially this statute implies that GLC has to list these terms/rules within the lottery ticket and should not be discouraged to change what is included in a lottery ticket. With these two main arguments, Judge McMillian believed that a lottery ticket is not an express written contract and GLC should have the opportunity to enforce sovereign immunity.⁸⁴

V. IMPLICATIONS

When dealing with a case of first impression, it is always important to analyze what kind of impact the holding may have. Specifically, to our case, how will a lottery ticket, now considered a valid express written contract, affect future litigation for GLC and what changes could happen to lottery tickets. This case may have a substantial effect

77. *Ga. Lottery Corp.*, 349 Ga. App. at 533–34, 826 S.E.2d at 390.

78. *See Id.* at 531, 826 S.E.2d at 388.

79. *Id.* at 534, 826 S.E.2d at 390.

80. *Id.* at 534–35, 826 S.E.2d at 390.

81. *Id.* at 535, 826 S.E.2d at 390 (quoting *Bd. of Regents of Univ. Sys. of Ga. v. Ruff*, 315 Ga. App. 452, 457, 726 S.E.2d 451, 455 (2012) (overruled)).

82. O.C.G.A. § 50-27-3(24) (2019).

83. *Ga. Lottery Corp.*, 349 Ga. App. at 535, 826 S.E.2d at 391.

84. *Id.* at 536, 826 S.E.2d at 391. "Accordingly, I would find that the trial court erred in denying the GLC's motion to dismiss on grounds of sovereign immunity and reverse." *Id.*

on how to play the lottery in the future and how recovering a prize won from a lottery ticket could be altered. For now, any lottery ticket disputes should have a right to a fair trial and holders of the lottery ticket will not have to worry about GLC claiming sovereign immunity.⁸⁵

A. The General Assembly's Paradox between Sovereign Immunity and Lottery Tickets

Through *Georgia Lottery Corporation v. Patel*, we find a very peculiar turn of events. GLC is a government instrumentality and through this recognition they have sovereign immunity.⁸⁶ However, GLC's actual use of sovereign immunity will be substantially harmed because GLC's primary service revolves around lottery tickets. Generally, the majority of suits that arise against GLC are contesting a lottery ticket. (Still it is important to note that sovereign immunity will not be waived in other instances, like a claim of trademark infringement against GLC.) Although, now that a lottery ticket is determined to be a valid express written contract the affirmative defense of sovereign immunity will be inoperable because every single claim that involves a lottery ticket, thus involves a breach of an express written contract.⁸⁷

The General Assembly created the Georgia Constitution, GLC, and O.C.G.A. § 50-27-3(24), as noted in Judge McMillian's dissent. This statute has practically required lottery tickets to include these terms and rules that ultimately pushed a lottery ticket to be an express written contract.⁸⁸ Since this statute was created by the General Assembly and is interpreted to have GLC list requirements that create a contract, the General Assembly has effectively forced GLC—their own state instrumentality—to always waive sovereign immunity for disputes pertaining to a lottery ticket. The Georgia Constitution's provision of waiving sovereign immunity was intended for the State and other entities to have knowledge that they were giving up this privilege, but the paradox arises because GLC is essentially forced to have a valid contract with any purchaser of a lottery ticket. The General Assembly has designed GLC to forfeit sovereign immunity whenever a lottery

85. *Id.* at 533, 826 S.E.2d at 390. "GLC is capable of entering into contracts and a lottery ticket is an express written contract." *Id.*

86. *See supra* note 55 and accompanying text.

87. *See Ga. Lottery Corp.*, 349 Ga. App. at 533, 826 S.E.2d at 389–90.

88. *Id.* at 535, 826 S.E.2d at 391. "It is entirely consistent for the rules of the game to be printed on the ticket [through O.C.G.A. § 50-27-3(24)]." *Id.* *See also Sumner*, 242 Ga. App. at 761, 529 S.E.2d at 927. The O.C.G.A. § 50-27-2(3) solidifies that the lottery must be operated with integrity and dignity.

ticket dispute arises and, from this case, they forfeited the knowledge that they waived sovereign immunity.

In theory, GLC could alter the structure of lottery tickets by leaving out more of the specifics such as: the price; the odds; or even the name, Georgia Lottery, on the ticket. While this is an option it is highly unlikely. If GLC took this route and removed certain specifics the lottery tickets would not comply with the regulations and the overall purpose of raising funds for educational purposes would ultimately take a great loss. The purchasers of lottery tickets would be skeptical without the direct specifics to the game and would most likely decide not to buy the tickets anymore. This would tarnish the net profits recovered and hinder certain programs throughout Georgia such as the Hope Scholarship. However, changing the structure and specifics in a lottery ticket is not the solution. GLC is now stuck between a rock and a hard place. It has been given sovereign immunity but since their business revolves around billions of express written contracts, they cannot enforce the defense.

B. An Idea of Hope for GLC recovering their ability to use Sovereign Immunity in cases involving Lottery Tickets

Within the discussion of Georgia Lottery Corporation v. Patel, GLC relies on certain cases to prove that both parties must sign the express written contract or sovereign immunity is still applicable.⁸⁹ As noted above, the court rejected this idea because "the lottery ticket . . . contains no requirement that the GLC sign the ticket to render it valid."⁹⁰ However, this case may have been in favor of GLC had they put an extra clause within the disclaimer.

If GLC wants to gain the power of sovereign immunity back they need to add more specifics, not take any specifics out of the lottery ticket. GLC could essentially print tickets to say, "To claim prizes over \$600, present the ticket to any Georgia Lottery office . . . [the ticket will need to be signed by a member of GLC, in order for the claim to be validated.]"⁹¹ This new restriction will be less noticeable and could possibly go undetected which will preserve the profits accumulated from the lottery tickets to support Georgia's educational purposes and programs. If done properly, the citizens of Georgia would not notice the clause until they actually won a prize over \$600. However, these tactics can raise new arguments regarding contract law, such as bad faith.

89. *Ga. Lottery Corp.*, 349 Ga. App. at 532, 826 S.E.2d at 389.

90. *Id.*

91. *See Id.* at 530, 826 S.E.2d at 387.

The frequency of litigation for these types of cases is not at an alarming level. Based on the public policy of the doctrine of sovereign immunity,⁹² it is likely that GLC will not instruct a new clause or tactic to preserve sovereign immunity. If these cases become more prevalent in future times, then GLC may have no choice but to alter their construction of a lottery ticket. The threat of constant and strenuous litigation could impact GLC's ability to provide adequate services to support Georgia's educational purposes. In addition, GLC already has a clause that quickly trumps many actions taken against it, the disclaimer that emphasizes that misprinted tickets are void and do not afford any recovery of a prize.⁹³ With both the disclaimer and the small amount of litigations involving lottery tickets, it is likely GLC will accept that sovereign immunity is not attainable for these types of disputes.

VI. CONCLUSION

Having a lottery ticket become an express written contract could impact the benefits that GLC provides, if they are not careful. Ultimately, GLC will have to decide whether to add a clause needing both parties to sign, or they will likely do nothing. If GLC chooses to do nothing then all Georgia purchasers of lottery tickets will still have the benefit of being able to file a claim for a breach of contract on a lottery ticket, thus avoiding sovereign immunity. The lottery can be viewed in a poor light, seen as gambling or throwing money away, but the overall benefits supply our youth with amazing college scholarships. Hopefully GLC will not decide to alter lottery tickets to preserve sovereign immunity because of the likely economic effect of less tickets sold and less revenue for Georgia's educational purposes. In conclusion, Georgia citizens should be at ease, knowing that if they ever came across a life changing lottery ticket, they will still have the right to bring a suit on GLC in the event GLC tries to deny the ticket.

92. *See supra* note 54, 56–57 and accompanying text.

93. *See supra* text accompanying note 36.