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Hail? No! There's an App for That: Georgia Courts Signal Favor for Innovation Over Monopolies as Taxis Battle Against Rideshares for Market Dominance

Sara Snowden

Hail? No! There's an App for That: Georgia Courts Signal Favor for Innovation Over Monopolies as Taxis Battle Against Rideshares for Market Dominance *

I. INTRODUCTION

Atlanta Metro Leasing, Inc. v. City of Atlanta[1] was a battle in the making between traditional taxis[2] and novel rideshares[3] since the latter emerged in Atlanta's vehicle-for-hire marketplace.[4] As a major player in Atlanta's traditional taxi industry, Atlanta Metro Leasing, Inc. (Atlanta Metro) went toe-to-toe with the City of Atlanta (City) for refusing to enforce its ordinances against rideshare companies, such as Uber and Lyft.[5] Atlanta Metro contended the City's failure to enforce its ordinances eroded Atlanta Metro's previously enjoyed exclusivity in the vehicle-for-hire industry, and therefore, diminished the value of taxi

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[1] 353 Ga. App. 785, 839 S.E.2d 278 (2020).

[2] O.C.G.A. § 40-1-1(63.1) (2020); Atlanta, Ga., Ordinance § 22-201 (2020) (defining "taxi" as a licensed vehicle for hire that carries a small, limited number of passengers on personalized trips for a fee).

[3] Atlanta, Ga., Ordinance § 22-201 (2020) (defining rideshare company as an entity that uses a digital network to connect passengers to drivers for prearranged transportation for hire).

[4] *Atlanta Metro*, 353 Ga. App. at 787, 839 S.E.2d at 282–83.

[5] *Id.* at 786–87, 791–92, 839 S.E. 2d at 282–83, 285–86; Atlanta, Ga., Code § 162-56(a) (2020) (requiring taxis operating in the City of Atlanta to possess a medallion and City-issued permit).

medallions.[6] Looming in the background, the advent of rideshares prompted a nationwide rash of similar, but unsuccessful, lawsuits.[7] In addition to this unfavorable, yet persuasive precedent, Atlanta Metro faced the challenge of overcoming the City's sovereign immunity defense.[8]

In an attempt to overcome these hurdles, Atlanta Metro presented the court with a matter of first impression: whether the City's issuance of taxi medallions created franchise agreements.[9] The appeal of this argument to Atlanta Metro was that a franchise agreement[10] is a contract protecting market exclusivity.[11] And according to the Georgia Legislature, a government entity cannot hide behind sovereign immunity when it has breached a contract.[12] Ultimately, the court disagreed and held that the issuance of medallions did not constitute a franchise agreement.[13] The court's response to these arguments reflects its forward-thinking approach and receptive attitude to the advancement of technological innovations.

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[6] *Id.* at 787–87, 839 S.E.2d at 282–83; Atlanta, Ga., Code § 162-56(a) (2020) (explaining that medallions, also known as certificates of public convenience and necessity, or CPNCs, are transferable permits required as a prerequisite to obtaining a business license to operate a taxi).

[7] Illinois Transp. Trade Ass'n v. City of Chicago, 839 F.3d 594, 598 (7th Cir. 2016) (holding bifurcated regulatory scheme was not an equal protection violation); Checker Cab Philadelphia v. Philadelphia Parking Auth., 306 F. Supp. 3d 710, 735–36 (E.D. Pa. 2018) (finding unequal treatment was justified because taxis and rideshares were not similarly situated); Desoto Cab Company, Inc. v. Picker, 228 F. Supp. 3d 950, 960 (N.D. Cal. 2017) (finding city was allowed to delegate regulatory duties over taxis and rideshares to different agencies because their business schemes were dissimilar); Boston Taxi Owners Ass'n, Inc. v. City of Boston, 180 F. Supp. 3d 108, 117 (Mass. Dist. Ct. 2016) (finding ownership of medallions did not equate to ownership in vehicle-for-hire industry to justify a right to market exclusivity).

[8] *Atlanta Metro*, 353 Ga. App. at 787–89, 839 S.E.2d at 283–84 (*citing* McConnell v. Dept. of Labor, 302 Ga. 18, 19, 805 S.E.2d 79 (2017)); GA. CONST. art. I, § 2, para. 9 (e) (Sovereign immunity protects governmental municipalities from legal action unless it is otherwise waived.).

[9] *Atlanta Metro*, 353 Ga. App. at 785, 839 S.E.2d at 281–82.

[10] *Franchise,* Black's Law Dictionary (11th ed. 2019) (defining franchise as a privilege conferred by the government that allowed a specific business substantive rights to operate in designated areas).

[11] *Atlanta Metro*, 353 Ga. App. at 786–87, 790–91, 839 S.E.2d at 282–83, 285.

[12] *Id.* at 790–91, 839 S.E.2d at 285 (*quoting* GA. CONST. art. I, § 2, para. 9(c) ("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 or agencies.")).

[13] *Id.* at 800, 839 S.E.2d at 291.

II. FACTUAL BACKGROUND

The City has long required that taxis, a type of vehicle for hire, have a medallion and a City-issued license to operate.[14] After the City capped the number of authorized medallions, the medallions themselves became lucrative investments in what was considered a closed, exclusive market.[15] This medallion cap also fostered an understanding among medallion owners "that the city would take reasonable measures to enforce the [taxi] ordinance[s] such that unlicensed taxicab businesses in the City would be curtailed and . . . [medallion] values would be protected from diminution arising out of unlawful competition."[16]

Fast forward to 2012, the City saw the emergence of rideshare companies, namely Uber and Lyft, operating as rivals to traditional taxis.[17] The City initially responded by ticketing rideshare drivers as unlicensed taxis but suspended these efforts entirely in 2014.[18] The City's deferential treatment of rideshares has had dire consequences on medallion values.[19] In 2014, a single medallion in Atlanta was valued at $80,000.[20] By 2017, the estimated value was less than $10,000.[21] This is similar to plummeting values in other cities across the nation due to the advent of rideshares. For example, the average cost of a medallion in New York City fell from $1.16 million down to $164,518 between March 2014 to November 2019.[22]

Atlanta Metro filed suit against the City in the Fulton County Superior Court for breach of franchise agreements allegedly created when the City issued taxi medallions.[23] Atlanta Metro claimed that taxis were "urban transportation companies," and therefore, met the statutory classification requirements of section 36-34-2(7)(A) of the Official Code of Georgia Annotated,[24] under which the City was authorized to grant

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[14] *Id.* at 786, 839 S.E.2d at 282 (referring to code requiring taxis to possess medallions instituted in 1977).

[15] *Id.* (rising in value from $100 in 1977 to approximately $80,000 in 2014).

[16] *Id.* at 786–87, 839 S.E.2d at 282.

[17] *Id.* at 787, 839 S.E.2d at 282–83.

[18] *Id.*

[19] *Id.* at 787, 839 S.E. 2d at 283.

[20] *Id.* at 786, 839 S.E.2d at 282.

[21] Matt Kempner, *Atlanta Cabbies Want Compensation Over Uber Rules*, Atlanta Journal Constitution (May 16, 2017), https://www.ajc.com/business/atlanta-cabbies-want-compensation-over-uber-rules/TJecODvVIzNRviDtS9DgMN/.

[22] New York City Council, *Report of the Taxi Medallion Task Force* (Jan. 31, 2020), https://council.nyc.gov/data/taxis.

[23] *Atlanta Metro*, 353 Ga. App. at 785–87, 839 S.E.2d at 281–83.

[24] O.C.G.A. § 36-34-2(7)(A) (2020).

franchises.[25] Furthermore, Atlanta Metro asserted that, in addition to vesting property rights, medallion ownership guaranteed market exclusivity, and by failing to enforce taxi regulations equally against rideshares, the City permitted illegal competition to damage medallion values.[26] The lawsuit spanned from 2014, when the City stopped issuing citations to rideshares operating without medallions, until 2015 when the Georgia General Assembly enacted legislation governing rideshares.[27] In response, the City filed a motion to dismiss. The trial court granted the City's motion but gave no basis for its ruling.[28]

On appeal, the Georgia Court of Appeals affirmed the trial court's ruling.[29] The court of appeals rejected the assertion that taxis were urban transportation companies.[30] Therefore, since taxis did not fall into one of the statutorily required classifications necessary for franchise formation, the court held no franchise agreement or promise of market exclusivity was created when the medallions were issued.[31]

III. LEGAL BACKGROUND

A. Local and State Legislative History

The Atlanta Code of Ordinances (Code)[32] has given the City the power to regulate taxis as vehicles for hire, since 1977.[33] Per the Code, taxis must be licensed by the City to operate in Atlanta.[34] However, the City

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[25] *Atlanta Metro*, 353 Ga. App. at 793, 839 S.E.2d at 286–87.

[26] *Id.* at 786–87, 791–92, 839 S.E.2d at 282–83, 285–86.

[27] *Id.* at 787, 839 S.E.2d at 282–83 (referencing O.C.G.A. § 40-1-191 enacted July 1, 2015 and preempted the entire field of regulation over vehicles-for-hire, including taxis and rideshares, throughout the state).

[28] *Id.* at 787, 839 S.E.2d at 283.

[29] *Id.* at 785, 839 S.E.2d at 281.

[30] *Id.* at 794, 839 S.E.2d at 287.

[31] *Id.* at 792–95, 798, 839 S.E.2d at 286–87, 289.

[32] Atlanta, Ga., Code § 1-102 (2020).

[33] Atlanta, Ga., Code § 1-102(c)(36) (2020) (citing "The city shall have all powers now vested in the city and now or hereafter granted to municipal corporations by the laws of Georgia and shall have the power . . . [t]o regulate and license vehicles operated for hire in the city; to limit the number of such vehicles; to require the operators thereof to be licensed; to require public liability insurance on such vehicles in amounts prescribed by ordinance . . . .").

[34] Atlanta, Ga., Code § 162-56(a) (2020) (citing "No vehicle for hire shall be operated on the highways of the city . . . until the company with which it is affiliated has obtained a business license from the city.").

also exercised its authority under O.C.G.A. § 36-60-25(a)[35] and stipulated that, as a prerequisite to obtaining a license, taxi operators must first possess a limited, and therefore, hard-to-come-by taxi medallion.[36] The state of Georgia and the City both recognize that these medallions have inherent property interests.[37] Per O.C.G.A. § 36-60-25(b),[38] medallions are fully transferrable by way of "purchase, gift, bequest, or acquisition . . . ."[39] Georgia Code section 36-60-25(b) also permits that medallions can serve as collateral for loans, granting lenders property rights as well.[40] Section 162-62 of the Atlanta City Ordinance,[41] which governs medallions in the City, echoes the language of the statute.[42]

In response to the growing popularity of rideshares and varying degrees of regulation in each municipality, the Georgia General Assembly passed House Bill 225.[43] Codified at O.C.G.A. § 40-1-191,[44] this statute preempted the entire field of regulation over vehicles for hire, providing uniform administration of taxis and rideshares throughout the state.[45] Though O.C.G.A. § 36-60-25(c)[46] was also amended to prohibit new taxi medallion regulations, any preexisting mandates, like those in the City, remained enforceable.[47]

B. Taxis and Rideshares: Equal Protection and Market Exclusivity

1. Bifurcated Schemes and Unequal Treatment

When courts in other jurisdictions considered whether regulatory schemes that held taxis and rideshares to different standards violated

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[35] O.C.G.A. § 36-60-25(a) (2020) (citing "Each . . . municipal corporation may require the owner or operator of a taxicab to obtain a certificate of public necessity and convenience or medallion in order to operate . . . .").

[36] Atlanta, Ga., Code § 162-61(a) (2020) (citing "The maximum number of taxicab CPNC's outstanding shall be 1,600 . . . established in 1995"); *Atlanta Metro*, 353 Ga. App. at 786, 839 S.E.2d at 282 (explaining the cost of a medallion increased from $100 in 1977 to $80,000 in 2014); Atlanta, Ga., Code § 162-56(a) (2020) (citing "No vehicle for hire shall be operated . . . until its owner . . . has . . . a valid certificate of public necessity and convenience . . . .").

[37] O.C.G.A. § 36-60-25(b) (2020); Atlanta, Ga., Ordinance § 162-62(a), (d), (e) (2020).

[38] O.C.G.A. § 36-60-25(b).

[39] *Id.*

[40] *Id.*

[41] Atlanta, Ga., Ordinance § 162-62(a), (d), (e) (1977).

[42] *Id.*

[43] Ga. H.R. Bill 225, 2015 Ga. Laws (codified at O.C.G.A. § 40-1-191 (2020)).

[44] O.C.G.A. § 40-1-191 (2020).

[45] *Id.*

[46] O.C.G.A. § 36-60-25(c) (2020).

[47] *Id.*

equal protection rights, they answered in the negative.[48] Bifurcated laws that resulted in unequal treatment were constitutional if there was any rational basis for the distinctive classifications.[49]

The United States Court of Appeals for the Seventh Circuit focused on the differences between taxis and popular rideshare company, Uber, in the 2016 case, *Illinois Transportation Trade Association v. City of Chicago*.[50] Striking down claims of equal protection violations, the court held that the respective modes of operation were sufficiently dissimilar which justified Chicago's separate regulatory structures.[51] Notably, there was a marked difference in the process by which passengers engaged taxis and rideshares.[52] Taxis were hired by being hailed on the street, called through a dispatch service, or summoned at a taxi stand.[53] Ubers, meanwhile, could not be hailed in a point-of-sale fashion.[54] Ubers were hired by passengers who registered for an online account prior to summoning the rideshare.[55] The court held that, in contrast to hailing a taxi, the process by which passengers requested Ubers created a contractual relationship between the parties.[56]

Additionally, the court listed several convenience and safety advantages of Uber over taxis.[57] Uber stored passenger payment information, provided estimated arrival times, and allowed patrons to hail a ride from anywhere (as opposed to traditional taxi street hails).[58] Moreover, Uber featured safety controls that allowed passengers to view driver identification and ratings before the rider entered the vehicle.[59] Likewise, passengers were encouraged to leave ratings after each trip as this enticed safer driving practices.[60] Furthermore, because Uber hired part-time drivers, the cars presumably were driven less miles and had less wear and tear.[61] Regarding taxis, the court noted that some

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[48] *Desoto Cab*, 228 F. Supp. 3d at 962; *Illinois Transp.*, 839 F.3d at 598; *Checker Cab*, 306 F. Supp. 3d at 736.

[49] *Checker Cab*, 306 F. Supp. 3d at 738–39 (*citing* FCC v. Beach Communications, 508 U.S. 307, 313–14 (1993)).

[50] 839 F.3d at 595.

[51] *Id.* at 598.

[52] *Id.* at 595–96.

[53] *Id.*

[54] *Id.* at 598.

[55] *Id.*

[56] *Id.*

[57] *Id.* at 596.

[58] *Id.*

[59] *Id.* at 598.

[60] *Id.* at 596.

[61] *Id.* at 598.

passengers still preferred them because they were hailed quickly and were immediately available.[62] Also, taxi fares were fixed by the city and predictable.[63] However, given that the nature of street hails made passengers more vulnerable, the city was justified when it enacted more stringent oversight of taxis.[64] Holding that rideshares and taxis were distinct services, the court reasoned that consumers likely agreed, because if not, rideshares could not have been established.[65]

Similar to *Illinois Transportation*, in *Checker Cab Philadelphia v. Philadelphia Parking Authority*,[66] a 2018 case from the United States District Court for the Eastern District of Pennsylvania, the court also considered the merits of alleged equal protection violations.[67] The court found the claim lacking because taxi and rideshare companies were not similarly situated, and therefore, unequal treatment was justified.[68] Beginning in October 2014, the Philadelphia Parking Authority (PPA) enforced taxi ordinances against illegal rideshares.[69] However, in 2016, the PPA and Uber reached a settlement, and the PPA ceased all impound and enforcement actions against rideshares.[70] This agreement constituted an acquiescence of rideshares' growing popularity in Philadelphia.[71]

The court ruled that the legal status of taxis and rideshares was substantially different.[72] The court found it "significant that the Pennsylvania legislature enacted new laws specifically"[73] for rideshares, rather than adapting existing taxi regulations to encompass them.[74] The court interpreted these new laws as a sign that the legislature considered rideshares distinguishable enough from taxis to warrant separate treatment.[75]

Similarly, due to the differences between taxis and rideshares, the court in *Desoto Cab Company, Inc. v. Picker*,[76] a 2017 case from the

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[62] *Id.* at 597.

[63] *Id.*

[64] *Id.* at 598.

[65] *Id.* at 598–99.

[66] 306 F. Supp. 3d 710 (E.D. Pa. 2018).

[67] *Id.* at 731.

[68] *Id.* at 735, 738–39.

[69] *Id.* at 725.

[70] *Id.* at 725–26.

[71] *Id.* at 730.

[72] *Id.* at 735.

[73] *Id.*

[74] *Id.*

[75] *Id.* at 735–36.

[76] 228 F. Supp. 3d at 950 (*aff'd,* 714 F. App'x. 783 (9th Cir. 2018)).

United States District Court for the Northern District of California, found San Francisco's bifurcated regulatory scheme constitutional.[77] When rideshares first emerged in the city, the same agency that oversaw taxis, the San Francisco Municipal Transportation Agency (SFMTA), also oversaw rideshares.[78] Not long after they were established, rideshare oversight was transferred to the less strict Public Utilities Commission (CPUC).[79] Oversight of taxis, on the other hand, remained with the more stringent SFMTA.[80] San Francisco premised the change on California's recognition that revolutionary rideshares did not meet the conventional definition of taxis.[81] The court contemplated whether rideshares were "de facto taxis" which required regulation by the same agency as taxis.[82] The CPUC classified rideshares as "prearranged" charter-party carriers, which the court identified as the main differentiating factor.[83]

The CPUC required rideshare drivers to "have a completed waybill in his or her possession at all times during the trip."[84] This waybill was proof that the driver prearranged details of the passenger, route, and charges prior to initiating the trip.[85] By contrast, taxi drivers exchanged no information until the passenger entered the vehicle.[86] Further, the court found it impractical for passengers to negotiate and compare rates with taxis in a street hail situation.[87] Therefore, since taxis were not "prearranged" they were not charter-party carriers.[88] Like *Illinois Transportation* and *Checker Cab*, the court's ruling rested on the bedrock that taxis and rideshares were not sufficiently similar, and therefore, unequal regulation was justified.[89]

2. Medallions and Market Exclusivity

In the 2016 case of *Boston Taxi Owners Ass'n Inc. v. City of Boston*,[90] the United States District Court for the District of Massachusetts ruled

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[77] *Id.* at 962.
[78] *Id.* at 954.
[79] *Id.* at 954–55.
[80] *Id.*
[81] *Id.* at 954.
[82] *Id.* at 952.
[83] *Id.* at 954–55, 960.
[84] *Id.* at 954.
[85] *Id.*
[86] *Id.* at 954–55.
[87] *Id.* at 961.
[88] *Id.* at 953.
[89] *Id.* at 960; *Illinois Transp.*, 839 F.3d at 598; *Checker Cab*, 306 F. Supp. 3d at 738–39.
[90] 180 F. Supp. 3d at 108.

that Boston's nonenforcement of taxi regulations against rideshares did not violate the plaintiff's rights.[91] Further, the court also proffered that taxi companies had no right to marketplace exclusivity in the vehicles-for-hire industry.[92]

The City of Boston required that all taxi operators be licensed with medallions and abide by the taxi enforcement codes under Rule 403.[93] Prior to the advent of rideshares, based on the limited number of medallions issued by the city and the own-to-operate requirement, medallion owners enjoyed isolated market exclusivity.[94] However, beginning in 2012, rideshares appeared in Boston and operated without medallions.[95] The City of Boston took the stance that it would not enforce the taxi-related regulations against rideshares.[96]

In evaluating whether the different regulatory structures improperly harmed medallion owners, the court found that market exclusivity was not a right vested by medallion ownership.[97] The court held that each owner only enjoyed exclusivity to his own medallion.[98] Furthermore, owning a medallion was not equivalent to owning an interest in the vehicle-for-hire market.[99] Thus, owning a medallion did not confer the right to exclude others.[100] The exclusivity previously enjoyed before the introduction of rideshares was a product solely of the regulatory scheme and not a right of exclusivity by virtue of medallion ownership.[101]

Lastly, in 2017, the Georgia Supreme Court applied these same principals barring exclusivity in *Abramyan v. State*, [102] and held that taxi companies were not entitled to an "unalterable monopoly." [103] In 2015, following the introduction of rideshares to the vehicle-for-hire market, Georgia enacted O.C.G.A. § 36-60-25(a).[104] This provision prohibited municipalities from requiring taxi operators to obtain a medallion unless

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[91] *Id.* at 117.

[92] *Id.*

[93] *Id.* at 113 (referencing Boston Police Department "Rule 403" as a comprehensive set of taxi regulations which requires all taxi operators to possess a medallion, maintain properly functioning vehicles, and sets forth rules for engaging customers).

[94] *Id.* at 113, 117.

[95] *Id.* at 114.

[96] *Id.* at 113–14.

[97] *Id.* at 117.

[98] *Id.*

[99] *Id.*

[100] *Id.*

[101] *Id.*

[102] 301 Ga. 308, 800 S.E.2d 366 (2017).

[103] *Id.* at 309, 800 S.E.2d at 368.

[104] *Id.* at 308–09, 800 S.E.2d at 368.

the City had previously required one before the law was passed.[105] Existing taxi operators in Atlanta, who were grandfathered in to the medallion prerequisite, asserted that the new legislation infringed on their exclusive rights as medallion owners.[106] The court pointed out that because the City had a preexisting medallion requirement, new entrants into the City's taxi market would also be required to purchase a medallion.[107] The court found no basis to conclude, however, that mere ownership of a medallion equated to a rightful claim to exclusivity.[108]

C. Franchise Agreements

A franchise is a privilege conferred by the government that allows a specific business substantive rights to operate in designated areas.[109] As such, a franchise constitutes a contract with property privileges.[110] Because franchise agreements result in a degree of market exclusivity, Georgia took a narrow approach as to which types of industries could be granted a franchise.[111] Specifically, O.C.G.A. § 36-34-2(7)(A) delegates municipalities the power to grant franchises "for the use and occupancy of the streets"[112] only to public utilities and services, as well as urban transportation companies.[113]

Georgia Code section 36-34-2(7)(A) enumerates several commonly accepted public utilities and services.[114] Included in the statute are power, gas, steam-heat, telephone, and water companies.[115] These frequently approved utility providers are not, however, automatically granted a franchise.[116] For example, in *City of Macon v. Alltel Commc'ns, Inc.*,[117] the city alleged a franchise agreement existed with a local telephone provider in a bid to charge higher fees.[118] The Georgia Supreme

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[105] *Id.*

[106] *Id.* at 309, 800 S.E.2d at 368.

[107] *Id.* at 310, 800 S.E.2d at 369.

[108] *Id.* at 311, 800 S.E.2d at 369.

[109] *Franchise,* Black's Law Dictionary (11th ed. 2019).

[110] Macon Ambulance Serv., Inc. v. Snow Props., Inc., 218 Ga. 262, 265, 127 S.E.2d 598, 601 (1962).

[111] O.C.G.A. § 36-34-2(7)(A) (2020).

[112] *Id.*

[113] *Id.*

[114] *Id.*

[115] *Id.*

[116] City of Macon v. Alltel Commc'ns, Inc., 277 Ga. 823, 830, 596 S.E.2d 589, 595 (2004).

[117] *Id.* at 823, 596 S.E.2d at 589.

[118] *Id.* at 824–26, 830, 596 S.E.2d at 591–92, 595.

Court held that while telephone companies could be franchised if they chose, no party could unilaterally create a contract.[119]

1. Franchise-Eligible Urban Transportation Companies

Though O.C.G.A. § 36-34-2(7)(A) does not define "urban transportation company," the inspiration for the term was likely derived from *McCutcheon v. Wozencraft*,[120] a case decided in 1923 by the Texas Supreme Court.[121] In *McCutcheon*, the city of Dallas denied a petition to grant a motor bus company a franchise.[122] After the court analyzed other types of urban transportation throughout the evolution of the industry, the court held motor buses were, in fact, franchises.[123]

Cities like Dallas had a tendency to restrict the grant of franchises to protect against greed from the inevitable monopolies that resulted.[124] However, on the flip side, companies that provided public services to the masses invested a large amount of capital to establish infrastructures.[125] These companies required the city guarantee some right of permanency, beyond a mere operational license, to justify their investments.[126] In congealing the definition of which businesses qualified for these protections, the court highlighted that true franchises generally required the use of "definite or designated portions of . . . public thoroughfares."[127] Uncontested franchises such as public utilities, street cars, and railways required dedicated land for tracks, pipes, and poles.[128] The court paralleled this with the fixed routes on which motor busses operated and concluded that, just like the uncontested franchises, busses also used designated portions of city streets.[129]

Turning an eye toward public interest in transportation innovations, the court considered the evolutionary aspects of the industry.[130] In New York, double-decker busses, held to be a franchise, took the place of horse-drawn stage lines.[131] These busses, vital to public interest,

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[119] *Id.* at 830, 596 S.E.2d at 595.

[120] 255 S.W. 716 (Tex. Comm'n App. 1923, rev'd).

[121] *Id.*

[122] *Id.*

[123] *Id.* at 718–19.

[124] *Id.* at 718

[125] *Id.* at 719.

[126] *Id.*

[127] *Id.* at 718–19.

[128] *Id.* at 719.

[129] *Id.*

[130] *Id.*

[131] *Id.*

operated in areas inaccessible to street cars.[132] The court rightfully predicted that street cars, a common mode of transportation at the time, would be discarded as the industry progressed.[133]

In summation, the court held motor bus companies to be a franchise-eligible form of urban transportation.[134] This was premised on the fact that busses provided the public with a comprehensive system of mass transportation which operated on fixed routes and designated thoroughfares.[135] Lastly, the capital investment required to establish the urban transportation network was significant and warranted some degree of permanency from the city.[136] Therefore, motor busses that provided urban transportation were franchises.[137]

2. Prohibition on Exclusive Franchises

In 1962, the Georgia Supreme Court held, in *Macon Ambulance Service, Inc. v. Snow Properties*,[138] that unless the legislature conferred an express power, municipalities were forbidden to grant exclusive franchises.[139] Doing so, the court reasoned, encouraged wrongful monopolies and stifled competition.[140] Though the use of streets could be authorized, cities could not adopt ordinances that gave all work of one trade exclusively to one provider.[141]

In *Macon Ambulance*, the court deemed the city's ordinance granting an exclusive, five-year franchise to an ambulance provider void.[142] Macon's city charter authorized the mayor and city council to establish regulations, including oversight of ambulances for hire that affected the security, welfare, and health of the city.[143] Acting on that authority, the city entered a franchise agreement with Macon Ambulance Service to provide transportation of wounded or ill charity patients to and from the hospital within Macon's city limits.[144] Nonetheless, the supreme court ruled that the public service provided was insufficient to overcome the

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[132] *Id.*
[133] *Id.*
[134] *Id.*
[135] *Id.*
[136] *Id.*
[137] *Id.*
[138] 218 Ga. at 262, 127 S.E.2d at 598.
[139] *Id.* at 265–67, 127 S.E.2d at 601–02.
[140] *Id.* at 266, 127 S.E.2d at 601.
[141] *Id.* at 265–66, 127 S.E.2d at 601.
[142] *Id.* at 268, 127 S.E.2d at 602.
[143] *Id.* at 265, 127 S.E.2d at 600.
[144] *Id.*

unauthorized monopoly created by the exclusive franchise ordinance.[145] The court explained that the city's charter granted "[t]he power to prohibit any ambulance for hire from using the streets of Macon [but the charter did] not carry with it the power to grant an exclusive right to one party engaged in a private business to so use its streets for such purpose."[146]

The Georgia Court of Appeals followed this precedent in the 1986 case of *Cable Holdings of Battlefield, Inc. v. Lookout Cable Services*.[147] In 1972, several local government entities granted Cable Holdings, the county's community antenna television service, an exclusive franchise to operate in Walker County.[148] The court reinforced the holding of *Macon Ambulance* and held that the exclusivity features of the franchise agreement were void and unenforceable because the local government lacked the authority to grant them.[149] The nature of the franchise involved, a local community television station, was irrelevant to the analysis, even though a natural monopoly existed in the market.[150] The court held that where natural monopolies existed, the marketplace would make an exclusive determination.[151]

IV. COURT'S RATIONALE

Judge Hodges, writing for the Georgia Court of Appeals, held that no franchise agreement was breached with Atlanta Metro when the City refused to enforce taxi regulations against rideshares because no franchise agreement existed in the first place.[152] Though a valid franchise agreement could have conferred privileges of market exclusivity, the court held the City was not statutorily authorized to grant such a franchise under O.C.G.A. § 36-34-2(7)(A).[153] Likewise, the court discerned that even though O.C.G.A. § 36-60-25(b) and Code § 162-62 recognize the property rights of medallions, the mere fact that a franchise also creates property rights does not mean the two are symbiotic.[154]

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[145] *Id.* at 267–68, 127 S.E.2d at 602.

[146] *Id.* at 266–67, 127 S.E.2d at 601.

[147] 178 Ga. App. 456, 457–58, 343 S.E.2d 737, 739–40 (1986).

[148] *Id.* at 456, 343 S.E.2d at 738.

[149] *Id.* at 456–59, 343 S.E.2d at 739–40.

[150] *Id.* at 457, 343 S.E.2d at 739.

[151] *Id.*

[152] *Atlanta Metro*, 353 Ga. App. at 785, 839 S.E.2d at 281–82.

[153] *Id.* at 792–94, 839 S.E.2d at 286–87.

[154] *Id.* at 795–96, 839 S.E.2d at 287–88.

A. Statutory Classifications of Permissible Franchisees

"The prevailing rule is that unless the power is expressly conferred by the legislature, a municipal corporation can not grant . . . an exclusive privilege or monopoly."[155] Georgia Code section 36-34-2(7)(A) authorizes the City to grant franchises to public utilities and services, as well as urban transportation companies.[156] Atlanta Metro conceded, as a matter of statutory interpretation, that taxis were not public utilities or services.[157] Rather, it argued that taxis fell under the umbrella of "urban transportation companies." [158]

The court derived its definition of "urban transportation company" from Texas's *McCutcheon* opinion, one of the rare cases that discussed evolving forms of urban transportation.[159] Using *McCutcheon* as a framework, the Georgia Court of Appeals drew several distinctions between taxis and urban transportation companies.[160] The court articulated that urban transportation companies used designated thoroughfares, operated on fixed routes, offered mass-transit, and required extensive capital to build and maintain an urban infrastructure.[161]

Taxis, on the other hand, did not possess the trademark characteristics of urban transportation companies.[162] Rather than operating on designated thoroughfares and fixed routes, taxis could drive on any public street and followed whatever route the passenger preferred.[163] Additionally, rather than providing mass transit, taxis transported individual passengers to unique destinations.[164] Lastly, unlike urban transportation companies, taxis did not require extensive capital to build an infrastructure, justifying some degree of permanency.[165] Therefore, since taxis did not meet an O.C.G.A. § 36-34-2(7)(A) qualified classification for which the City was authorized

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[155] *Id.* at 792, 839 S.E.2d at 286 (quoting *Macon Ambulance*, 218 Ga. at 265, 127 S.E.2d at 598).

[156] *Id.*

[157] *Id.* at 793, 839 S.E.2d at 286.

[158] *Id.*

[159] *Id.* at 793–94, 839 S.E.2d at 286–87.

[160] *Id.* at 794, 839 S.E.2d at 287.

[161] *Id.* at 793–94, 839 S.E.2d at 286–87.

[162] *Id.* at 794, 839 S.E.2d at 287.

[163] *Id.*

[164] *Id.* at 793, 839 S.E.2d at 286.

[165] *Id.*

to grant a franchise, the court held there was no valid franchise agreement between Atlanta Metro and the City of Atlanta.[166]

Next, the court studied Section 1-102(c) of the Atlanta City Ordinance and held that, based on its language, the City did not grant a franchise when it issued medallions.[167] The ordinance authorizes the City to grant franchises to public utilities and services.[168] In addition to reiterating that taxis were not, in fact, public utilities and services, the court highlighted that the ordinance "empower[ed] the City to license and regulate vehicles . . . for hire."[169] The court found the term "license" particularly noteworthy and held that the text of Section 1-102(c) supported the conclusion that medallions were unequivocally not franchises.[170]

Additionally, it is widely accepted that a franchise is a contract that creates property rights, however, the court of appeals ruled that the property rights vested in medallion ownership did not equate to a franchise.[171] Though medallions could be sold, transferred, bequeathed, and pledged as collateral for loans, the court held this did not alter the glaring fact that taxis were not public services or utilities.[172] Therefore, because O.C.G.A. § 36-34-2(7)(A) and Atlanta City Ordinance § 1-102 only authorized the City to grant franchises to public services or utilities, the City did not have the power to grant franchises to taxis.[173]

B. Statutory Intent

The Georgia Court of Appeals looked at the apparent intent of O.C.G.A. § 36-60-25(a) and Section 162-56(a) of the Atlanta City Ordinance and concluded that neither provision manifested an intent to form a contract.[174] Georgia Code section 36-60-25(a) uses permissible language in stating that the City "may" require a taxi operator to obtain a medallion.[175] Likewise, the City ordinance states that no vehicle for hire can be operated until its owner has obtained a medallion and business

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[166] *Id.* at 794, 796, 839 S.E.2d at 287–88.

[167] *Id.* at 794–95, 839 S.E.2d at 287.

[168] *Id.* at 794, 839 S.E.2d at 287.

[169] *Id.* at 794–95, 839 S.E.2d at 287 (stating public utilities and services, for the purposes of Atlanta, Ga., Ordinance § 1-102(c), provided a comprehensive system of benefits to the City, not those that provided benefits on an individual basis and operated on fixed routes).

[170] *Id.* at 795, 839 S.E.2d at 287.

[171] *Id.* at 795–96, 839 S.E.2d at 287–88.

[172] *Id.*

[173] *Id.* at 794, 796, 839 S.E.2d at 287–88.

[174] *Id.* at 797–98, 839 S.E.2d at 289.

[175] *Id.* at 797, 839 S.E.2d at 289.

license.[176] Specifically, the ordinance states, "No such business license shall be issued until the [medallion] and company permits have been issued . . . ."[177] The court focused on the words "business license" in holding that the intent was to require a medallion before taxis became licensed, rather than forming a franchise agreement when the medallion was issued.[178] Lastly, the court proffered that the intent behind these provisions was to promote public safety and convenience.[179] The purpose was not, the court held, intended to create specific property rights in franchise agreements with promises of perpetual exclusivity in the vehicles-for-hire market.[180] The court noted other jurisdictions had performed a similar analysis in considering whether city regulations created a binding contract in relation to medallion issuance and came to the same result.[181] The court concluded that the City's regulations did not support an inference that medallion issuance obligated the City to provide taxis with market exclusivity, by franchise or otherwise.[182]

C. Court's Conclusion

The Georgia Court of Appeals affirmed the trial court's decision and held that, based on the terms in the relevant statutes and ordinances, the City lacked statutory standing to enter into franchise agreements with taxi companies.[183] The inherent property rights of medallions was insufficient to overcome the lack of required classification for statutory authority to grant a franchise.[184] Therefore, the City's sovereign immunity barred Atlanta Metro's attempted recovery for diminished medallion values due to the loss of market exclusivity and the City's favorable treatment of rideshares.[185] In so ruling, the Georgia Court of Appeals joined the ranks of its sister states and struck down attempts by Atlanta taxis to fight back against the invasion of rideshares in the vehicle-for-hire market.[186]

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[176] *Id.* at 798, 839 S.E.2d at 289.

[177] *Id.* (quoting Atlanta, Ga., Ordinance § 162-56(a)).

[178] *Id.*

[179] *Id.*

[180] *Id.* at 798–99, 839 S.E.2d at 290.

[181] *Id.* at 799–800, 839 S.E.2d at 290.

[182] *Id.* at 800, 839 S.E.2d at 290.

[183] *Id.* at 796, 839 S.E.2d at 288.

[184] *Id.*

[185] *Id.* at 800, 839 S.E.2d at 290 (holding that because the City did not enter a franchise agreement when it issued medallions, no contract was formed to breach, and therefore, because there was no breached contract, the City's sovereign immunity barred Atlanta Metro's claims).

[186] *Id.*

V. IMPLICATIONS

Atlanta Metro, as a case involving a matter of first impression, represents Georgia's initiation into the global conversation regarding the impacts emerging technologies have had on the transportation industry and related legal constructs. These are revolutionary times and rapid innovations are impacting a vast array of industries. Technologies that seemed impossible only a few short years ago are the realities of the world today. As society adopts these changes, existing industries, as well as the law, must adapt accordingly. *Atlanta Metro* offers a glimpse into the philosophy Georgia courts will likely implement in future cases involving tensions between existing and emerging technologies.

Atlanta Metro illustrated what will become an even greater necessity for Georgia attorneys—clever lawyering. Likely due to the almost universal courtroom failures of taxi companies in other jurisdictions, the attorneys proffered a new legal theory. Atlanta Metro attempted to cement the City's feet into a franchise agreement and exploited a previously ill-defined, but permissible, franchise classification: urban transportation companies. If successful, the court could have held that the City entered a valid franchise agreement that not only invalidated the City's sovereign immunity defense, but also guaranteed freedom from illegal competition (i.e. rideshares) when it issued taxi medallions. Though the argument was unsuccessful, the court gave, at long last, a definition to the statutory term "urban transportation company."

The case also illustrated how Georgia courts, legislature, and market competitors might engage going forward. The court, in line with similar holdings from foreign jurisdictions, took a utilitarian approach. The legislature will not be accountable for diminished property values caused by the passage of new laws intended for public good. Additionally, though taxis sought equal regulatory treatment by blurring distinctions with rideshares, the court suggested the market should decide the similarity of services.

Furthermore, the court will not allow existing industries to preclude new market entrants as this would stunt innovation to the public's detriment. In the vehicle-for-hire industry, technological advances have improved the safety and convenience for passengers, as well as increased access to affordable transportation. Absent the court's willingness to permit competition and innovation, instead of taxis and rideshares we might have horses and buggies. *Atlanta Metro* highlights Georgia's receptive and forward-thinking policies on the advancements of the technological revolution.

Sara Snowden