

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA
ROME DIVISION**

SILVER COMET TERMINAL)	
PARTNERS, LLC,)	
)	CIVIL ACTION FILE
Plaintiff,)	
)	NO. _____
v.)	
)	
PAULDING COUNTY, GEORGIA,)	
PAULDING COUNTY AIRPORT)	
AUTHORITY, and, PAULDING)	
COUNTY INDUSTRIAL BUILDING)	
AUTHORITY,)	
)	
Defendants.)	
_____)	

COMPLAINT

COMES NOW, Silver Comet Terminal Partners, LLC (“Silver Comet”) and files this complaint seeking declaratory judgment.

INTRODUCTION

1.

As part of a series of agreements to develop commercial passenger service at the airport in Paulding County, Georgia (“the Airport”), and acting in reliance on the express legal authority of the Paulding County Airport Authority (the “Airport Authority”) to enter into such contracts, Silver Comet began entering into a series of

contracts with the Airport Authority in 2012. At that time, the defendant, Paulding County, Georgia (“Paulding County”), acting through its Board of Commissioners, fully supported the Airport Authority’s legal authority to take the steps necessary to develop commercial passenger service at the Airport. In fact, from 2012 to 2014, Paulding County itself likewise entered into a series of contracts for the purpose of developing commercial passenger service at the Airport.

Now, however, the Board of Commissioners is attempting to block the development of commercial passenger service at the Airport, and is asserting in litigation that the Airport Authority lacked the legal authority to enter into contractual arrangements with Silver Comet to develop commercial passenger service at the Airport and/or to take actions required by those contracts.

Most recently, on March 23, 2016, the Board of Commissioners threatened to bring suit on behalf of Paulding County against Silver Comet, purportedly to enforce one of the contracts between Silver Comet and the Airport Authority – a contract which (as stated earlier) Paulding County apparently contends that the Airport Authority lacked the authority to enter into.

For these reasons, Silver Comet is uncertain of its rights and legal relations vis-à-vis the Airport Authority and/or Paulding County, and seeks a declaration of

these rights and obligations pursuant to 28 U.S.C. § 2201 and Rule 57 of the Federal Rules of Civil Procedure.

PARTIES

2.

Silver Comet is a limited liability company incorporated in Delaware with its principal place of business in New York.

3.

Defendant Paulding County, Georgia (“Paulding County”), is a political subdivision of the State of Georgia created and existing under the laws of the State of Georgia. It is subject to the jurisdiction and venue of this Court. Paulding County may be served with process through the Chairman of its Board of Commissioners, David Austin.

4.

Defendant Airport Authority is political subdivision of the State of Georgia created by act of the Georgia General Assembly in 1972. [A true and accurate copy of the Act of the General Assembly is attached as Exhibit 1.] The Airport Authority is a corporate body with the power to sue and be sued and is subject to the jurisdiction and venue of this Court. The Airport Authority may be served with process through its Chairman, Calvin Thompson.

5.

Defendant Paulding County Industrial Building Authority is public corporation created by a local amendment to the Constitution of the State of Georgia of 1945 by an Act and Resolution of the General Assembly of the State of Georgia in 1962 (1962 Ga. Laws p. 1176, et seq.). It is a corporate body with the power to sue and be sued and is subject to the jurisdiction and venue of this Court. It may be served with process through its Chairman, Boyd Austin, or its Executive Director, Blake Swafford.

JURISDICTION AND VENUE

6.

Complete diversity exists among the parties. Silver Comet is a limited liability company created under the laws of Delaware with its principal place of business in New York. The Defendants are political subdivisions of the State of Georgia. The amount in controversy, without interest and costs, exceeds the sum or value specified in 28 U.S.C. § 1332.

7.

This Court has venue pursuant to 28 U.S.C. § 1391.

STATEMENT OF THE CLAIM

8.

Several years ago, Silver Comet was solicited by the Chairman and various Members of the Paulding County Board of Commissioners, the Airport Director, the County Manager, and Members of the Airport Authority to sign a Commercial Lease and Airport Use Agreement (the “Lease and Airport Use Agreement”) to establish commercial passenger service at the Paulding County Airport. The parties to the Lease and Airport Use Agreement are Silver Comet, the Airport Authority, and the Industrial Building Authority. [The Lease and Airport Use Agreement is attached as Exhibit 2.]

9.

The Lease and Airport Use Agreement was the first in a series of interconnected agreements and undertakings necessary to establish commercial passenger service at the Airport. Paulding County was fully aware of the Lease and Airport Use Agreement, and of all of the various other agreements executed for the purpose of developing commercial passenger service at the Airport.

10.

Pursuant to the terms of the Lease and Airport Use Agreement, Silver Comet leased office space in the Airport terminal building. The Lease and Airport Use

Agreement grants Silver Comet the right to use the leased premises “as office space for the marketing and establishment of general aviation and commercial passenger service and activities ancillary thereto at the [Airport].”

11.

The Lease and Airport Use Agreement also gave Silver Comet the “right ... to require” the Airport Authority to submit an application to the FAA for a Part 139 Airport Operating Certification, and to “use its best efforts to obtain such Certification, including, without limitation, making all financially feasible improvements” necessary for commercial passenger service at the Airport.

12.

On September 24, 2013, Blake Swafford – then the Director of the Paulding County Airport Department (with whom Silver Comet had negotiated the Lease and Airport Use Agreement) and an employee of Paulding County – submitted to the FAA, at the request of Silver Comet, an Application for Certificate under 14 C.F.R. 139 *et seq.* (the “Part 139 Application”). The Part 139 Certificate is a prerequisite to commercial passenger service at the Airport, and thus is essential to the consideration for this entire arrangement and undertaking to develop commercial passenger service at the Airport. Paulding County was well aware and supportive of the Part 139 Application at the time of its submission to the FAA. A true and

accurate copy of the Part 139 Application is attached as Exhibit 3. [See the Affidavits of Commission Chairman David A. Austin, Commissioners David Barnett, David Carmichael, Tommie Graham and County Manager Michael L. Jones true and accurate copies of which are attached as Exhibits 13, 14, 15, 16 and 17, respectively.]

13.

In October, 2013, shortly after the required submission of the Part 139 Application, the parties negotiated and entered into certain agreements for the issuance of bonds by the Airport Authority in the amount of approximately \$3.6 million, to finance modifications to the Airport necessary to allow the Airport to handle large, commercial passenger aircraft. These agreements included an agreement between the Airport Authority and Silver Comet (“October 2013 agreement”), attached as Exhibit 4, and an Intergovernmental Contract between Paulding County and the Airport Authority, attached as Exhibit 5.

14.

The proceeds of the bond issuance were to “be used to widen and extend the taxiway at the Paulding County Airport to accommodate commercial passenger jets.” *Avery v. State of Georgia*, 295 Ga. 630, 761 S.E.2d 56 (2014) (validating the bonds issued in connection with the Airport project).

15.

Paulding County approved the terms of the bond resolution and also approved the Intergovernmental Contract with the Airport Authority at its regular meeting on October 8, 2013. The October 8, 2013 meeting was open to the public and notice of the meeting was posted publicly. The County approved the supplemental bond resolution during its regular meeting on October 22, 2013, which was also open to the public. Paulding County later petitioned the superior court to validate the bond pursuant to O.C.G.A. § 36–82–75. *Avery, supra*, at 631.

16.

In its brief submitted to the Georgia Supreme Court in *Avery v. State of Georgia*, Paulding County successfully argued:

The pertinent issue before this Court-whether the Bond and its security are proper under the Georgia Constitution and Georgia law - has nothing to do with Silver Comet, LLC (“Silver Comet”), despite Appellants’ best efforts to put Silver Comet at center stage.

The sole purpose of the Bond is to finance the expansion of the parallel taxiway at the Paulding Northwest Atlanta Airport (the “Airport”). It is to be issued by the Paulding County Airport Authority (the “Airport Authority”), and it is to be paid by the revenue the Airport Authority receives from Paulding County, Georgia (the “County”). The County agreed to service the debt of the Bond in exchange for its use of the expanded facilities and services provided by the Airport Authority. The County’s payments and the Airport Authority’s provision of services and facilities are memorialized in an

intergovernmental agreement between the two. ***The County's payments are the sole security for the Bond.*** (Emphasis added.)

Basically, the taxiway – which is parallel to the landing strip and is what planes use to taxi to and from the terminal – needs to be lengthened and widened to accommodate commercial planes and the improve the overall safety of the airport facility for both small private planes and larger commercial planes (the “Project”).

Silver Comet is involved with the overall transformation of the Airport into a regional hub for commercial flights. [Cites omitted.] It is not, however, involved with the Project that the Bond is intended to finance. The Project is simply the expansion of the parallel taxiway, which is – and remains – entirely public. That is the entirety of the Project, and it in no way involves Silver Comet. It is not uncommon or improper for an airport authority to bring in a private company to operate certain portions of a public commercial airport.

A true and complete copy of Paulding County's brief is attached as Exhibit 6.

17.

Payments to the holders of the Airport bonds by the Airport Authority are due on February 1 and August 1 of each year.

18.

In 2014, Paulding County and the Airport Authority entered into an additional Intergovernmental Contract (“the 2014 Intergovernmental Contract”) relating to the operation of the Airport, which was amended by First Amendment dated November 13, 2014. True and accurate copies of this 2014 Intergovernmental Contract and First Amendment thereto, are attached as Exhibits 7 and 8, respectively.

19.

In each Intergovernmental Contract, both the Airport Authority and Paulding County represented, warranted and agreed that they possessed the authority to enter into those agreements and perform all acts necessary to the performance thereof.

20.

Consistent with Paulding County's support up until 2015, Silver Comet reasonably relied on those representations and warranties by Paulding County and the Airport Authority in the Intergovernmental Contract.

21.

Consistent with the Lease and Airport Use Agreement's provision giving Silver Comet the "right ... to require" the submission of a Part 139 Application, the 2014 Intergovernmental Contract states that "the County agrees to provide sufficient police and fire protection to the Airport so as to enable the Authority to provide the services the Authority deems appropriate at the Airport including, but not limited to services required or in conjunction with a Part 139 Certification."

22.

According to Paulding County's Annual Report for 2014:

In the fall of 2008, the County opened a general aviation airport. ... The County also enlisted the services of a consultant with expertise in airport-related economic development master plans. The economic development efforts associated with the airport project will be funded

through public-private partnerships, in addition to federal, state and local funds. Due to increasing demand and limited availability of hanger space in the Atlanta Metropolitan Area, the planned Paulding Northwest Atlanta Airport has generated considerable interest in the aviation community. ... In 2013 the Airport submitted an application to the FAA to allow for commercial flights.

23.

Before 2015, Paulding County authorized hundreds of thousands of dollars in expenditures that are essential for the Airport to handle commercial passenger service, including payment for the widening of the taxiway before the bond was issued, and to receive a Part 139 Certification.

24.

The Commercial Use and Lease Agreement, the Bond Agreement, the Intergovernmental Agreement and the 2014 Intergovernmental Agreement, and the obligations of the parties thereunder, all are premised upon and for the purpose of developing commercial passenger service at the Airport. Developing commercial passenger service at the Airport is essential to the consideration for all of the agreements between Silver Comet and the Airport Authority. Commercial passenger service cannot be developed at the Airport without the FAA's issuance of the Part 139 Certification.

25.

However, beginning in 2015, Paulding County began attempting to prevent the issuance of the Part 139 Application. First, its Board of Commissioners passed a resolution stating that the “Part 139 Certificate is hereby withdrawn and any associated environmental review is hereby terminated.” A true and accurate copy of Resolution 15-01 is attached hereto as Exhibit 9. Paulding County then submitted Resolution 15-01 to the FAA by letter dated January 23, 2015. The FAA replied by letter dated June 30, 2015, stating in pertinent part:

The October 2014 intergovernmental agreement (IGA) executed between the County and the Authority appears to make the Authority responsible for operating [the Airport]. As you are aware, the Authority has expressed interest in introducing commercial service to [the Airport] notwithstanding the County’s [Resolution 15-01]. In light of the IGA and Part 139’s strictures on airport operators, the FAA is inclined to deem the Part 139 application to remain active and pending.

A true and accurate copy of the FAA’s June 30, 2015 letter is attached as Exhibit 10.

26.

In addition, Paulding County has filed suit against the Airport Authority in Paulding Superior Court (“state Declaratory Judgment action”)¹, asking for a

¹ Despite the fact the declaratory judgment action has been pending since November 2015, no Judge has been assigned to the case, and each of the Judges in Paulding Superior Court to whom the case has been assigned have recused themselves.

declaration that the Airport Authority did not have the legal authority to submit the Part 139 Application pursuant to the Lease and Airport Use Agreement. [Paulding County Declaratory Judgment action, ¶'s 15, 25, 30 and 32(v), a true and complete copy of which is attached as Exhibit 11.] The Airport Authority denies Paulding County's allegation that the Airport Authority lacked legal authority to submit the Part 139 Application pursuant to the Lease and Airport Use Agreement.

27.

The Intergovernmental Agreement requires Paulding County to reimburse the Airport Authority for payment to the bondholders. In anticipation and consideration of the development of commercial passenger service at the Airport, the October 2013 agreement provides for Silver Comet also to reimburse the Airport Authority for these payments. It does not, however, require Silver Comet to reimburse Paulding County.

28.

Paulding County has now sent a letter to the Airport Authority on March 23, 2016 threatening to sue Silver Comet for failure to reimburse Paulding County for the most recent payment to the bondholders. A true and complete copy of the March 23, 2016 letter is attached as Exhibit 12. Paulding County makes this threat despite the fact that its own actions are impairing the issuance of the Part 139 Certification,

and thus the development of commercial passenger service at the Airport and the generation of revenue therefrom, are the cause of Silver Comet's refusal to reimburse the Airport Authority.

29.

If the Airport Authority did not have the legal authority to submit the Part 139 Application pursuant to the Lease and Airport Use Agreement, as Paulding County alleges in the state Declaratory Judgment action, then it necessarily follows that the Airport Authority did not have the authority to enter into in the October 2013 agreement with Silver Comet, providing for Silver Comet to reimburse the Airport Authority for the amount of the bond payments, payments which Paulding County is legally obligated to make.

30.

The inconsistent positions taken by the Board of Commissioners on behalf of Paulding County causes Silver Comet to be uncertain of its rights and legal relations.

WHEREFORE, Silver Comet seeks a declaration of the legal authority of the Airport Authority to enter into all of the agreements and arrangements that were essential to the consideration for the development of commercial passenger service at the Airport, including, but not limited to, the Lease and Airport Use Agreement,

intergovernmental agreements, submission of the Part 139 Application, and the October 2013 agreement between Silver Comet and the Airport Authority.

Respectfully submitted, this 31st day of March, 2016.

Chilivis, Cochran, Larkins & Bever LLP

By: /s/ **Anthony L. Cochran**

Anthony L. Cochran

Georgia Bar No. 172425

John D. Dalbey

Georgia Bar No. 003150

Counsel for Plaintiff,

Silver Comet Terminal Partners, LLC

Chilivis, Cochran, Larkins & Bever LLP

3127 Maple Drive, N.E.

Atlanta, GA 30305

(404) 233-4171 (telephone)

(404) 261-2842 (facsimile)

alc@cclblaw.com

jdd@cclblaw.com