

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

GEORGIACARRY.ORG, INC., and)	
PHILLIP EVANS,)	
)	
Plaintiffs,)	Civil Action No.:
)	
v.)	2014-CV-253810
)	
THE ATLANTA BOTANICAL)	
GARDEN, INC.,)	
)	
Defendant.)	
_____)	

**ORDER ON MOTIONS FOR SUMMARY JUDGMENT AND
JUDGMENT IN FAVOR OF DEFENDANT**

On July 14, 2016, Plaintiffs GeorgiaCarry.org, Inc. and Phillip Evans (“Plaintiffs”) filed a Motion for Summary Judgment. On July 15, 2016, Defendant Atlanta Botanical Garden, Inc. (the “Garden”) filed a Motion for Judgment on the Pleadings and, on August 12, 2016, filed a Response to Plaintiffs’ Motion for Summary Judgment. The Garden’s response included an attached affidavit and exhibits. Accordingly, on August 19, 2016, this Court issued an Order converting Defendant’s Motion for Judgment on the Pleadings to a Motion for Summary Judgment.

On September 1, 2016, this Court held a hearing on the Cross-Motions for Summary Judgment. Having considered the Parties’ briefs and the arguments of counsel for both sides, the Court finds the following:

The Garden may exclude or eject persons in possession of a gun under O.C.G.A. § 16-11-127(c) because the botanical garden property, leased from the City of Atlanta, is private property under Georgia law. Plaintiffs contended that the Garden is not a lessee of private property because it leased its land from the City of Atlanta. However, the Georgia Supreme Court has previously held that when the City of Atlanta conveys a leasehold estate to a private lessee – as occurred in the present matter – the property becomes private property, and the lessee holds the property as a private owner. *Delta Air Lines Inc. v. Coleman*, 219 Ga. 12, 131 S.E.2d 768 (1963). The Court explained:

A leasehold is an estate in land less than the fee; it is severed from the fee and classified for tax purposes as realty. Code Ann. § 92–114. When the City of Atlanta conveyed to the Delta Corporation a leasehold estate in the land here involved, it completely disposed of a distinct estate in its land for a valuable consideration, and Delta acquired it and ***holds it as a private owner***. When any estate in public property is disposed of, it loses its identity of being public property and is subject to taxes while in private ownership just as any other privately owned property. Private property becomes public property when it passes into public ownership; and ***public property becomes private property when it passes into private ownership***.

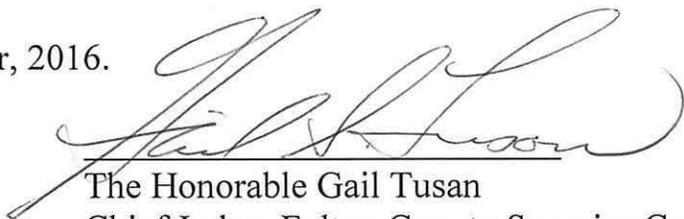
Id. at 16 (emphasis added). This proposition – that public property is converted into private property when leased to a private entity – has been the governing law in Georgia for more than 50 years and has been reaffirmed as recently as this year. *See Douglas Cty. v. Anneewakee*, 179 Ga. App. 270, 271, 346 S.E.2d 368 (1986);

Columbus, Georgia Bd. of Tax Assessors v. Med. Ctr. Hosp. Auth., No. A16A0638, 2016 WL 3654495 (Ga. Ct. App. July 7, 2016).

Under binding precedent from the Georgia Supreme Court, the Garden is an entity “in legal control of private property” and may exclude or eject individuals carrying a gun under O.C.G.A. § 16-11-127(c). It is therefore hereby **ORDERED** that The Atlanta Botanical Garden, Inc.’s Motion for Summary Judgment is **GRANTED** and Plaintiffs GeorgiaCarry.org, Inc. and Phillip Evans’s Motion for Summary Judgment is **DENIED**.

JUDGMENT is hereby entered in favor of Defendant The Atlanta Botanical Garden, Inc. and against Plaintiffs GeorgiaCarry.org, Inc. and Phillip Evans.

This 14th day of September, 2016.


The Honorable Gail Tusan
Chief Judge, Fulton County Superior Court