

**COURT OF APPEALS OF GEORGIA**  
**DOCUMENT RETURN NOTICE FOR BRIEFS OR MOTIONS**

October 8, 2015

**To:** Mr. Omotola Adewumi, 12806 Palermo Avenue, Victorville, California 92395

**Docket Number:** A16A0138 **Style:** Omotola Adewumi v. Amelia Grove Ashland Park

Your document(s) is (are) being returned for the following reason(s).

1.  **Your Appellant's Brief, was not accompanied by the statutory filing fee (\$300.00 civil) or a sufficient pauper's affidavit. OCGA§5-6-4 and Rule 5 Note: All pauper's affidavits should be notarized by a notary public.**
2.  A Request for Oral Argument must be filed as a separate document. Rule 28 (a) (3)
3.  Your document(s) was (were) not signed by counsel (No signatures with expressed permission are permitted). Rule 1 (a)
4.  No Certificate of Service or an improper Certificate of Service accompanied your document(s). Rule 6
5.  Your Certificate of Service did not include the complete name and mailing address of each opposing party. Rules 1(a) and 6. You should provide a copy of your filing to the District Attorney and include his/her name and address on your Certificate of Service.
6.  There were an insufficient number of copies of your document. Rule 6.
7.  Your document exceeds page limits. Rules 24 (f) and 27 (a)
8.  Your document was submitted without permission to file (supplemental brief or second motion for reconsideration). Rules 27 (a) and 37 (d)
9.  Letter briefs and letter cites are not permitted. Rule 27 (b)
10.  Your request for court action must be submitted in motion form. Rule 41 (a) I have enclosed a copy of the Rules of the Court of Appeals of Georgia for your review.
11.  Your motions were submitted in an improper form (joint, compound or alternative motions in one document). Rule 41 (b)
12.  Type was on both sides of the paper; type font was smaller than 10 characters per inch; and/or the type was not double-spaced. Rules 1(c), 37(a) and 41(b).
13.  The pages were not sequentially numbered with arabic numerals. Rule 24 (e)
14.  Case and/or record citations were not made in the proper form. Rules 24 (d) and 25 (c) (2)
15.  Margins were too small or paper size incorrect. Rules 1(c), 24(c), 37 (a) and 41(b)
16.  Your document(s) was (were) not securely bound at the top with staples or round head fasteners. Rule 1 (c)
17.  The Motion to Supplement has not been granted.
18.  Other: \_\_\_\_\_

COURT OF APPEALS OF GEORGIA  
DOCUMENT RETURN NOTICE FOR BRIEFS OR MOTIONS

To: *Omotola Adewumi*  
Docket Number: *A16AD138*

Style: *Omotola Adewumi*

Your document(s) is (are) being returned for the following reason(s).

1.  Your Appellant's Brief, was not accompanied by the statutory filing fee (\$300.00 civil; \$80.00 criminal \*Effective July 1, 2009) or a sufficient pauper's affidavit. OCGA §5-6-4 and Rule 5 Please be advised that your pauper's affidavit should be notarized by a notary public.
2.  A Request for Oral Argument must be filed as a separate document. Rule 28 (a) (3)
3.  Your document(s) was (were) not signed by counsel (No signatures with expressed permission are permitted). Rule 1 (a)
4.  No Certificate of Service or an improper Certificate of Service accompanied your document(s). Rule 6
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Ms. Adewumi's answer to the complaint was that she did not receive adequate notice from "Association" before foreclosure proceedings were started. The Court held a summary Judgment hearing on July 13, 2015 and ruled in favor of "Association" in a one page Order, devoid of findings and in which the trial court rules on matters of record which clearly indicated that Ms. Adewumi has two separate addresses on record and to which association failed to send the required notice at least 30 days before commencing foreclosure proceedings with the court. (O.C.G.A. 44-3-10944-3-109(c) , O.C.G.A. 44-3-10944-3-232(c).

Ms. Adewumi timely filed Notice of Appeal on August 12, 2015. According to the Notice from this Court the appeal was Docketed on September 16, 2015.

The trial court states in the final order entered on July 13, 2015 that judgment was based on all matters of record without stating its findings and what evidence were considered. The trial court erred in three foundational respects that require reversal: (1) By agreeing with the claims in the appelle's pleadings "that evidence of record shows that there are no issues of material fact".

(2) erred by relying on the movant claims that "because the defendant failed to timely respond to plaintiff's request for admissions then there remains no issue of material fact for the court to resolve, (3) The court also erred when it failed to see that the movant has no sufficient prove for the basis for summary judgment and

refusing to grant non movant the opportunity to point out the evidence on record during the hearing (Fed. R. Civ. P. 56(e)(1), (5) ).

If allowed to stand, these errors will undermine the standard requirements of motion of summary judgment. Ms. Adewumi therefore respectfully asks this Court to send the case back to the trial court <sup>with direction for Jury trial.</sup> ~~for entry of an order. (The directing the~~  
~~Plaintiff to produce all documents responsive to its request without reliance~~  
~~on the implausible (a) (4) exception and (2) awarding Mr. Schick attorney fees~~  
 ~~pursuant to Fed. R. Civ. P. 18.7(b) for the necessity of bringing and pursuing this~~  
~~action in light of the absence of substantial justification for the Plaintiff's failure to~~  
~~timely produce all responsive documents.~~

B. **Summary of Proceedings Below and Statement of Material Facts Relevant to this Appeal**

Association filed a complaint in the Gwinnett Superior Court on or around August 4, 2014 against Ms. Adewumi. She replied the complaint on or around September 4, 2014. Association also filed a request for admissions on September 26, 2014 and later a motion for Summary Judgment on April 6, 2015. Ms. Adewumi answer to the complaint was that she did not receive adequate notice from the Association before they started the foreclosure. The Court held a summary Judgment hearing on July 13, 2015 and ruled in favor of “Association” in a one page Order, devoid of findings and in which the trial court rules on matters of record which clearly indicated that Ms. Adewumi has two separate addresses on record and “Association” failed to provide notice to one of the address before proceeding with the foreclosure.

Ms. Adewumi did not reply to the request for admissions nor the motion for summary judgment since she is under no obligation to offer affidavits or any other materials in support of its opposition when the movant’s papers are themselves insufficient to support a motion for summary judgment or on their genuine issues of material fact. When a motion for summary judgment is filed, the burden of

proof rest on the movant to prove that there are no material facts in dispute and therefore entitled to judgment as a matter of law.

## **PART II**

### **A. ENUMERATION OF ERRORS**

#### **A.1. Enumeration of Error #1**

By agreeing with the claims in the Association's pleadings "that evidence of record shows that there are no issues of material fact". A look at the evidence of record showed that Ms. Adewumi has two addresses (see Ptf. Ex. B). The record also showed that the Association only sent notice only to the property address for Ms. Adewumi and not the other designated and in the record of the Association. (See Ptf. Notice to Ms. Adewumi dated June 23, 2015). In the hearing this issue was raised by Ms. Adewumi and the counsel to the Association only stated that he was given Ms. Adewumi address by the Association but did not deny that Ms. Adewumi has a second address. The issue of adequate notification (O.C.G.A. 44-3-10944-3-109(c) , O.C.G.A. 44-3-10944-3-232(c).) is therefore a genuine issue in dispute, the burden of which the Association did not meet and should have caused the trial court to deny the summary judgment motion (Fed.R.Civ.P. 56(c)).

## **A.2. Enumeration of Error #2**

The trial Court erred by agreeing with the Association that “because the defendant failed to timely respond to plaintiff’s request for admissions then there remains no issue of material fact for the court to resolve. Summary Judgment is not granted because the non movant fail to respond to movant request for admissions but only if the movant showed affirmatively that “there is no genuine issue as to any material fact and that they were entitled to a judgment as a matter of law” (Fed.R.Civ.P. 56(c) ). This is a burden they did not meet because their motion papers specifically referenced materials in the record which showed that material facts remained in dispute.

## **A.3. Enumeration of Error #3**

The trial Court also erred by refusing to grant non movant the opportunity to support her objection with evidence on record (Fed. R. Civ. P. 56(e)(1), (5) ). During the hearing, Ms. Adewumi offered to present the evidence of material fact which is already part of the court record but she was refused. The evidence of record (Request for admission) showed that Ms. Adewumi has two different addresses as seen in the request for admission filed by the Association, and that the foreclosure of lien notice presented as exhibit by the Association only showed the notice being sent to the property address of Ms. Adewumi. The Court’s one page

ruling failed to cite any findings, authorities, or grounds for its findings on summary judgment. Also there was nothing in the affidavit of Kathryn K. Roberts which mentioned that notice of lien foreclosure was sent to the other address of Ms. Adewumi. Thus regardless of whether Adewumi timely responded (or responded at all) to Amelia Grove's motion for summary judgment, the movant still has failed to affirmatively show that they were entitled to a summary judgment as a matter of law on the issue of adequate notice. Fed.R.Civ.P. 56(c). This is a burden they did not meet because their motion papers specifically referenced materials in the record which showed that material facts remain in dispute.

## **B. STATEMENT OF JURISDICTION**

The Court of Appeals has jurisdiction by virtue of O.C.G.A. § 5-6-34(a)(1) as a final judgment, and Article VI, § V, ¶ III of the Constitution of the State of Georgia, and because the case is not within the categories of cases enumerated in Article VI, § VI, ¶ II and ¶ III of the Constitution of the State of Georgia that reside within the exclusive appellate jurisdiction of the Supreme Court of Georgia.

## PART THREE

### A. ARGUMENT AND CITATION OF AUTHORITY

#### **A.1. The trial court erred by agreeing with the claims in the Association's pleadings "that evidence of record shows that there are no issues of material fact."**

The trial court erred by agreeing with the claims in the Association's pleadings "that evidence of record shows that there are no issues of material fact". A look at the evidence of record showed that Ms. Adewumi has two Addresses (see Ptf. Ex. B). The record also showed that the Association only sent notice only to the property address for Ms. Adewumi and not the other designated and in the record of the Association. (See Ptf. Notice to Ms. Adewumi dated June 23, 2015). In the hearing this issue was raised by Ms. Adewumi and the counsel to the Association only stated that he was given Ms. Adewumi address by the Association but did not deny that Ms. Adewumi has a second address. The issue of adequate notification (O.C.G.A. 44-3-10944-3-109(c) , O.C.G.A. 44-3-10944-3-232(c).) is therefore a genuine issue in dispute, the burden of which the Association did not meet and should have caused the trial court to deny the summary judgment motion (Fed.R.Civ.P. 56(c)).

**A.2 The trial Court erred by agreeing with the Association that “because the defendant failed to timely respond to plaintiff’s request for admissions then there remains no issue of material fact for the court to resolve.**

The trial Court erred by agreeing with the Association that “because the defendant failed to timely respond to plaintiff’s request for admissions then there remains no issue of material fact for the court to resolve. Summary Judgment is not granted because the non movant fail to respond to movant request for admissions but only if the movant showed affirmatively that “there is no genuine issue as to any material fact and that they were entitled to a judgment as a matter of law” (Fed.R.Civ.P. 56(c) ). This is a burden they did not meet because their motion papers specifically referenced materials in the record which showed that material facts remained in dispute.

**A.3 The trial Court also erred by refusing to grant non movant the opportunity to support an her objection.**

The trial Court also erred by refusing to grant non movant the opportunity to support her objection with evidence on record (Fed. R. Civ. P. 56(e)(1), (5) ). During the hearing, Ms. Adewumi offered to present the evidence of material fact which is already part of the court record but she was refused. The evidence of

record (Request for admission) showed that Ms. Adewumi has two different addresses as seen in the request for admission filed by the Association, and that the foreclosure of lien notice presented as exhibit by the Association only showed the notice being sent to the property address of Ms. Adewumi. The Court's one page ruling failed to cite any findings, authorities, or grounds for its findings on summary judgment. Also there was nothing in the affidavit of Kathryn K. Roberts which mentioned that notice of lien foreclosure was sent to the other address of Ms. Adewumi. Thus regardless of whether Adewumi timely responded (or responded at all) to Amelia Grove's motion for summary judgment, the movant still has failed to affirmatively show that they were entitled to a summary judgment as a matter of law on the issue of adequate notice. Fed.R.Civ.P. 56(c). This is a burden they did not meet because their motion papers specifically referenced materials in the record which showed that material facts remain in dispute.

## CONCLUSION

For the above-stated reasons, Appellant respectfully asks this Court to vacate the final order and remand the case back to the trial court with direction on Jury trial.

Respectfully submitted, this 5th day of October, 2015.



Omotola Adewumi  
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IN THE COURT OF APPEALS  
STATE OF GEORGIA

OMOTOLA ADEWUMI, )  
Appellant, )  
v. ) COURT OF APPEALS  
AMELIA GROVE/ASHLAND ) CASE NO. A16A0138  
PARK HOMEOWNERS )  
ASSOCIATION )  
GEORGIA )  
Appellee )  
\_\_\_\_\_ )

CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for the opposing party in the foregoing matter with a copy of this Brief of Appellant by electronic mail and by depositing in the United States Mail a true and correct copy of same in a properly addressed envelope with adequate postage thereon to:

Bradley W. Griffin, Attorney at Law  
Lazega and Johnson, LLC.  
3520 Piedmont Road, NE  
Atlanta, GA 30309

This 5th day of October, 2015.



Omotola Adewumi  
Appellant Pro Se