

*The Court of Appeals*  
*47 Trinity Avenue SW, Suite 501*  
*Atlanta, Georgia 30334*

STEPHEN E. CASTLEN  
CLERK AND COURT ADMINISTRATOR

404-656-3450

September 16, 2015

Ms. Melanie F. Wilson  
Clerk, DeKalb County State Court  
2nd Floor, Administrative Tower  
Room 230 - Civil Division  
556 North McDonough Street  
Decatur, Georgia 30030

RE: Lower Court Case Number: 15CV5393  
A16D0007. Jay Bryant Goree v. Najarian Capital Group, et al.

Dear Ms. Wilson:

We are transferring to your Court the enclosed appeal for disposition, per this Court's order, dated September 15, 2015. If you have any questions regarding this matter, please do not hesitate to contact this office.

Sincerely,



Stephen E. Castlen  
Clerk/Court Administrator  
Court of Appeals of Georgia

SEC/ld  
Enclosures

# Court of Appeals of the State of Georgia

ATLANTA, September 15, 2015

*The Court of Appeals hereby passes the following order:*

## **A16D0007. JAY GOREE v. NAJARIAN CAPITAL, LLC.**

Jay Goree filed this application for discretionary appeal from an order entered by the DeKalb County Magistrate Court in this dispossession action. "The only avenue of appeal available from [a] magistrate court judgment is provided by OCGA § 15-10-41 (b) (1), which allows for a de novo appeal to the state or superior court." *Handler v. Hulsey*, 199 Ga. App. 751 (406 SE2d 225) (1991). In other words, a party aggrieved by a magistrate court ruling must first seek review in the state or superior court.

The Georgia Constitution requires that "[a]ny court shall transfer to the appropriate court in the state any civil case in which it determines that jurisdiction or venue lies elsewhere." 1983 Ga. Const., Art. 6, Sec. 1, Para. 8; *Bosma v. Gunter*, 258 Ga. 664 (373 SE2d 368) (1988). Accordingly, this case is hereby TRANSFERRED to DeKalb County State Court for disposition.

Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, 09/15/2015

I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court  
hereto affixed the day and year last above written.

Stephen E. Carlton, Clerk.

Mail  
to DeKalb  
State  
Court civil  
Room 230 division

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Lola -  
could you prepare  
a cover letter to  
go with this  
transfer?

FILED IN OFFICE

AUG 18 2015

FORM 2 - PAUPER'S AFFIDAVIT

CLERK, COURT OF APPEALS OF GEORGIA

COURT OF APPEALS OF GEORGIA

Jay Goree

APPELLANT

vs

NAJARIAN LLC

APPELLEE

CASE NUMBER \_\_\_\_\_

RECEIVED IN OFFICE  
2015 AUG 18 PM 3:50  
CLERK COURT ADMINISTRATOR  
COURT OF APPEALS OF GA

PAUPER'S AFFIDAVIT

Comes now Jay Goree (Appellant's name) first being duly sworn, deposes and states I am financially unable to pay the filing fee required for filing costs in the Court of Appeals of Georgia, and I request I be permitted to file \_\_\_\_\_ (Appellant's Brief or Appellant's Application) without having to pay filing fees. I further swear that the responses which I have made to the questions and instructions below are true.

1. Are you presently employed?  Yes  No

If the answer is "Yes", state the amount of your salary or wages per month, and give the name and address of your employer: \$2,000 monthly

If the answer is "No", state the date of last employment and the amount of the salary and wages per month which you received: N/A

2. Have you received within the past twelve months any money from any of the following sources?

- Business, profession or form of self-employment?  Yes  No
- Pensions, annuities or life insurance payments?  Yes  No
- Rent payments, interest or dividends?  Yes  No
- Gifts or inheritances?  Yes  No
- Any other sources?  Yes  No

If the answer to any of the above is "Yes", describe each source of money and state the amount received from each source during the past twelve months:

N/A

FORM 2 - PAUPER'S AFFIDAVIT page 2

3. Do you own any cash, or do you have money in a checking or savings account? (Include any funds in prison accounts)  Yes  No

If the answer is "Yes", state the total value of the items owned: \_\_\_\_\_

4. Do you own any real estate, stocks, bonds, notes, automobiles or other valuable property (excluding ordinary household furnishings and clothing)?  Yes  No

If the answer is "Yes", describe the property and state its approximate value:

\_\_\_\_\_

5. List the persons who are dependent upon you for financial support, state your relationship to those persons, and indicate how you contribute toward their support: \_\_\_\_\_

Taylor Goree Daughter 16yrs

I understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury and that state law provides as follows:

(a) A person to whom a lawful oath or affirmation has been administered commits the offense of perjury when, in a judicial proceeding, he knowingly and willfully makes a false statement material to the issue on point in question.

(b) A person convicted of the offense of perjury shall be punished by a fine of not more than \$1,000 or by imprisonment for not less than one nor more than ten years, or both. OCGA §16-10-70.

I, Jay Bryant Goree, do swear and affirm under penalty of law that the statements contained in this affidavit are true. I further attest that this application for in forma pauperis status is not presented to harass or to cause unnecessary delay or needless increase in the costs of litigation.

This the 18 day of AUGUST, 2015.

JAY GOREE  
(Your name printed or typed)

Jg  
(Sign your name.)

3756 MISTY LAKE  
ELLENWOOD GA 30294  
(Your complete address and telephone number)

Sworn to and subscribed before me

SEAL

this the 18th day of August, 2015.

Martin Wooley  
NOTARY PUBLIC  
DEKALB COUNTY  
EXPIRES  
GEORGIA  
January 21, 2019

**FILED IN OFFICE**

**AUG 18 2015**

CLERK, COURT OF  
APPEALS OF GEORGIA

CASE NO. \_\_\_\_\_

*Discretionary Appeal*  
**IN THE COURT OF APPEALS OF GEORGIA**  
**Magistrate Court Case Number: 15D38669**  
**Superior court case: 15CV-5393**

**JAY BRYANT GOREE**  
**Plaintiffs-Appellants,**

v.

**NAJARIAN CAPITAL GROUP ET AL**  
**Defendants-Appellees.**

On Appeal from the Magistrate Court of Dekalb  
State of Georgia

**EMERGENCY MOTION FOR JURISDICTION**  
**JUDICIAL MISCONDUCT FROM TRIAL COURT**  
**VIOLATION OF CIVIL RIGHTS/DUE PROCESS**  
**CANNON 2 VIOLATION**

August 18, 2015

JAY BRYANT GOREE  
3756 Misty Lake  
Ellenwood, Georgia 30294  
*678 886-0780*

RECEIVED IN OFFICE  
2015 AUG 18 PM 3:50  
COURT OF APPEALS OF GEORGIA

## FINDINGS

Decided: October 29, 2007

James Michael Money, Edwards, McLeod & Money, P.C., Douglasville, for Appellants. Najarian Capital Group, Temecula, CA, pro se. Jay Bryant Goree, Lawrenceville, pro se.

Honorable court, we respectfully request a review from the Court of Appeals on the Trial Court, Magistrate Courts decision to ignore the Appeal to the Superior Court of Georgia of it its decision concerning the propriety of the superior court's exercise of subject-matter jurisdiction in this action. See Najarian Capital Group, LLC vs. Jay Bryant Goree, Pro Se.

This case began as a dispossessory action against appellee Jay Bryant Goree filed by Najarian Capital Group, who reportedly bought the property owned by Goree which resulted in a Wrongful Foreclosure Dispute. Goree answered the complaint and the magistrate court still entered a Writ of Possession and Dispossessory judgment. Goree filed a notice of Appeal and filed a motion to set aside or vacate the judgment. Following a hearing on the to Vacate the Stay by Najarian Capital, motion to set aside, the magistrate court issued an order directing Goree to pay monies into the court for rent upon Appeal and also issued affirmed the Writ of Possession. After Goree paid the Appeals fee for the Superior Court, the Magistrate Court still went ahead and issued a Writ that was signed off on by Judge Leshaw, the Magistrate Court Judge. This resolution of issues outside the magistrate court's jurisdiction but the Honorable Judge has still commenced the Writ Of Possession to issue Instantor.. In superior court, Goree filed a third-party complaint against appellants, Goree is seeking a Motion to vacatr the honorable Judges Orders, alleging, inter alia, that appellants conspired to dispossess him of the his property. The original complaint against Goree was sent to Superior Court by the Magistrate Court refused to stop the Dispossesory Warrant and Goree could possibly end up homeless if the Court of Appeals does not deem this a Superior Court Issue and ensure that the Magistrate Court lacks

Appellee appealed, contending that the Magistrate court lacked jurisdiction over the action because the magistrate court's authority to transfer the action to superior court should have been the entire case including the Writ of Possession there of and that transfer to the superior court was not proper under the applicable rules because this should have prevented the actual case from going to the Marshalls by the Honorable Judge Leshaw signing off on it who presided over the Magistrate Court hearing.

1. The term "subject-matter jurisdiction" has often been loosely used by courts and the Court of Appeals in framing the issues in this case, has caused substantial confusion. See *Hopkins v. Hopkins*, 237 Ga. 845, 229 S.E.2d 751 (1976). This confusion arises out of the failure of courts to clearly distinguish between subject-matter jurisdiction, personal jurisdiction, venue, and as here, the applicable statutory procedure for pursuing an appeal. See generally *id.* The phrase "subject-matter jurisdiction," as defined by this Court, "refers to subject matter alone,' i.e., 'conferring jurisdiction in specified kinds of cases.' [Cit.]" *Id.* at 846, 229 S.E.2d 751. "'Jurisdiction of the subject matter does not mean simply jurisdiction of the particular case then occupying the attention of the court, but jurisdiction of the class of cases to which that particular case belongs.' [Cit.]" *Id.*

In this appeal, although appellants framed the challenge to the Magistrate court's order as an attack on that court's lack of subject-matter jurisdiction over the transferred action, the real issues were whether Goree followed the applicable statutory procedure for pursuing an appeal from the magistrate court's judgment and the related question of whether the magistrate court properly transferred the underlying dispossessory action to superior court, thereby authorizing that court to rule on the particular facts in the case before it.

Although Goree filed a notice of Appeal from the magistrate court's order granting a Writ of Possession, 2. Although the notice of Appeal had no effect on the magistrate court's authority over the dispossessory action, the court previously had entered judgment in favor of appellants. Goree filed a motion to set

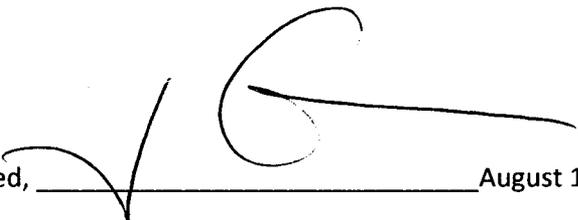
aside the default judgment and the magistrate court chose to hold an unreported hearing on that motion. See *Howe v. Roberts*, 259 Ga. 617(1), 385 S.E.2d 276 (1989) (magistrate court not required to follow Civil Practice Act but is permitted, if it chooses, to do so). The court then entered an order which provided, in pertinent part, that. Further, after the Superior Court Ruling, Jay Goree filed another Appeal to the proper Court, the Court of Appeals of Georgia. The Trial Court Judge Leshaw, then still signed an Order of Writ knowing full well that the lower court lacked Jurisdiction. Judge Leshaw is in violation of the State Law and is also hindering Civil Rights as well as providing Judicial Misconduct.

The magistrate court, however, was not authorized to issue a Writ of Possession, this should have been decided upon by the Superior Court of Dekalb County In the absence of an express order setting aside the judgment, the Court of Appeals is being asked to review the decisions of the Magistrate Court Judge so that Goree will be entitled to due process under Georgia Law Nevertheless, the record in this case makes clear that appellants failed to challenge the propriety of the transfer order in superior court, despite multiple opportunities to do so, and there is no dispute that the superior court would have subject-matter jurisdiction over the dispossessory action had the transfer order been proper.

Goree believes that the issues on appeal, is in conflict with long-standing statutory and case law requiring courts to dismiss an action "[w]henver it appears, by suggestion of the parties or otherwise, that the court lacks jurisdiction of the subject matter." OCGA § 9-11-12(h)(3). "The court's lack of subject-matter jurisdiction cannot be waived and may be raised at any time either in the trial court, in a collateral attack on a judgment, or in an appeal. [Cit.]" Ruskell, Davis and Shulman's Ga. Practice and Procedure § 9:3, p. 464 (2007 ed.). See *Jackson v. Gamble*, 232 Ga. 149, 152, 205 S.E.2d 256 (1974) (waiver or consent to jurisdiction cannot confer jurisdiction over the subject matter).

**Prayer,**

.That this court affirms that this case lies with the Court of Appeals County and not with the Magistrate Court or the Superior Court of Dekalb County and that the entire case must be transferred to the Court of Appeals. That the lover court Judge is Sanctioned for gross dereliction of duty and Cann 2 Violation as well as Judicial Misconduct. That this court maintains Jurisdiction.

Respectfully Submitted,  August 18, 2015

**Certificate of Service:**

I JAY BRYANT GOREE have provided a copy of this filing to the Appellees with adequate postage affixed this 18<sup>th</sup> day of August 18, 2015

NAJARIAN LLC Six Concourse Parkway, Suite 2800, Atlanta, Ga. 30076

; JAY BRYANT GOREE

IN THE MAGISTRATE COURT OF DEKALB  
STATE OF GEORGIA

APPLICATION FOR WRIT OF POSSESSION

EVICT

Case No. 15D38669

Najarian Capital LLC  
Plaintiff

Jay Goree and all others residing  
Defendant

1200 Pennsylvania Ave  
Address

vs. at 3756 Misty Lake,  
Address

McDonough GA  
City State Zip

Ellenwood, GA  
City State Zip

Application is hereby made to the Court for the issuance of a Writ of Possession due to the failure of the Defendant to;

file his/her answer, and Plaintiff has not accepted money.

comply with the Order of this Court dated April 6, 2015, in that payment(s) of \$ 1,000<sup>00</sup>, due on April 13, 2015 and May 5, 2015 and June 5, 2015 and July 5, 2015 and August 5, 2015 were missed, and Plaintiff has not accepted money after that date.

pursuant to Court's Order, and Plaintiff has not accepted money in the interim.

Other: Defendant's failure to make rent payments into Court's registry resulted in the dismissal of his appeal. See Attach Order Dismissing Appeal entered by Superior Court on August 12, 2015.

Sworn to/Subscribed/filed before me

This 13 day of Aug, 2015.

entered by Superior Court on August 12, 2015.

This 13<sup>th</sup> day of August, 2015.

Colgan  
Deputy Clerk

[Signature]  
Attorney Owner - Phone No. Kane St. John 678.453.6219

WRIT OF POSSESSION

MAGISTRATE COURT OF DEKALB COUNTY  
2015 AUG 13 PM 2:54  
FILED BY: Colgan

GEORGIA, DEKALB COUNTY

TO THE MARSHAL OR HIS LAWFUL DEPUTIES:

You are hereby commanded to remove said Defendant together with his property hereon from said house and premises and to deliver full and quiet possession of same to the Plaintiff herein.

This 13 day of Aug, 2015

[Signature]  
Judge, Magistrate Court of DeKalb County

         Vacated,          Settled,          Ejected,          Held up.         

Comments:         

Deputy Marshal

Search Images Maps Play YouTube News Gmail Drive More

This version of Internet Explorer is no longer supported. Please upgrade to a supported browser. Dismiss

jay gorie

It looks like you have enabled Internet Explorer Compatibility View. Gmail works best if you turn this off. Learn how to do this Dismiss

Mail

COMPOSE

Fwd: inbox x

Aug 10 (8 days)

Inbox (4,690)

Important

Sent Mail

Drafts (51)

Spam (72)

Trash

Circles

[imap]/Drafts



Search people.

Invitations

(1/4)

rtamplin-at-com  
cast.net--Ovvad  
uxh1fgwe1pc03wo  
2680e4@public.t  
alk.google.com wants  
to be able to chat with  
you. Okay?

yes no

Alonia Jones

R. Matthew STEV...

Bonni Allen

**jay gorie** <jgorree5000@gmail.com>

to me

----- Forwarded message -----  
From: "JB" <jgorree5000@gmail.com>  
Date: Aug 10, 2015 12:42 PM  
Subject:  
To: <jgorree5000@gmail.com>  
Cc:

OJS SEARCH HOME  
August 10, 2015 ( Information last refreshed 10-AUG-2015 12:12:06 PM EST ) LOGOUT

Civil Case Search

Case ID:

Last Name / First Name:  
OR Company Name:  
Exact Last Name Search Phonetic Search

Case Type:  
Case Status: Open All  
Court Code:  
Filing Date From:  
Filing Date To:  
Case Information  
Case: 15D38669 (Closed) NAJARIAN CAPITAL LLC VS JAY GOREE  
Filing Date: 02/10/2015 Type: Magistrate Dispossessory  
Judge: Berryl A. Anderson Magistrate Court  
Secondary: Tenant At Sufferance  
Tertiary:  
Related Cases:  
No Related Cases  
Scheduled Events  
Scheduled Date/Time Event Description Building Room  
25- II INL-15 09:00:00 Non Jury Trial Calendar 4R

Per Judge Leshaw  
Went Ordered on  
August 13, 2015  
CASE NO:  
15D38669

IN THE SUPERIOR COURT  
OF DEKALB COUNTY, GEORGIA

Najarian Capital LLC,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Jay Goree	)	Case No. 15CV5393
And All Other Occupants of	)	
3756 Misty Lake,	)	
Ellenwood, Georgia,	)	
	)	
Defendants.	)	

ORDER DISMISSING APPEAL

This case was called on August 10, 2015, pursuant to the Court's issuance of a Rule Nisi originally directing the parties and their attorneys to appear before the Court on August 4, 2015, which hearing was reset to August 10, 2015 at the request of Defendant. This matter is an appeal by Defendant Mr. Goree of a Judgment and Writ of Possession issued by the Magistrate Court of DeKalb County on April 6, 2015.

Plaintiff filed and presented to the Court without objection its Motion To Dismiss Appeal and, in the Alternative, for Issuance of Writ of Possession *Instantly*. Defendant Mr. Goree admitted in open court that he had not made any rental payments into the registry of the court, as directed by the Magistrate Court's Judgment of April 6, 2015. In addition, this Court has confirmed that the Magistrate Court's records indicated that no such rental payments have been made. Therefore, this Court finds that Defendant has failed to make the \$1,000 rental payments



**"Require."** The rules prescribing that a judge "require" certain conduct of others are, like all of the rules in this Code, rules of reason. The use of the term "require" in that context means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control. See Sections 3B(3), 3B(4), 3B(6), 3B(9) and 3C(2).

**"Support"** is defined as non-monetary assistance to a candidate. See Sections 3E(1)(d) and 7B(2).

Adopted effective January 1, 1994; amended effective January 1, 1998; September 8, 2011.

## **Canon 1**

### **Judges Shall Uphold the Integrity and Independence of the Judiciary.**

An independent and honorable judiciary is indispensable to justice in our society. Judges shall participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe such standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

*Commentary: Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depends in turn upon their acting without fear or favor. Although judges should be independent, they must comply with the law, including the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.*

Adopted effective January 1, 1994.

## **Canon 2**

### **Judges Shall Avoid Impropriety and the Appearance of Impropriety in All Their Activities.**

**A.** Judges shall respect and comply with the law\* and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

*Commentary: Public confidence in the judiciary is eroded by irresponsible or improper conduct of judges. Judges must avoid all impropriety and appearance of impropriety. Judges must expect to be the subject of constant public scrutiny. Judges must therefore accept restrictions on their conduct that might be viewed as burdensome by the ordinary citizen, and they should do so freely and willingly.*

*The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules, or other specific provisions of this*

*Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired.*

*See also, Commentary under Section 2C.*

**B.** Judges shall not allow their family, social, political or other relationships to influence their judicial conduct or judgment. Judges shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor should they convey or permit others to convey the impression that they are in a special position to influence them. Judges should not testify voluntarily as a character witness.

**Commentary:** *Maintaining the prestige of judicial office is essential to a system of government in which the judiciary functions independently of the executive and legislative branches. Respect for the judicial office facilitates the orderly conduct of legitimate judicial functions. Judges should distinguish between proper and improper use of the prestige of office in all of their activities. For example, it would be improper for a judge to allude to his or her judgeship to gain a personal advantage such as deferential treatment when stopped by a police officer for a traffic offense. Similarly, judicial letterhead must not be used for conducting a judge's personal business.*

*A judge must avoid lending the prestige of judicial office for the advancement of the private interests of others. For example, a judge must not use the judge's position to gain advantage in a civil suit involving a member of the judge's family. In contracts for publication of a judge's writings, a judge should retain control over the advertising to avoid exploitation of the judge's office. As to the acceptance of awards, see Section 4D(5)(a) and Commentary.*

*Although a judge should be sensitive to possible abuse of the prestige of office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation. However, a judge must not initiate the communication of information to a sentencing judge or probation or corrections officer, but may provide to such person information for the record in response to a formal request.*

*Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees seeking names for consideration, and by responding to official inquiries concerning a person being considered for a judgeship. See also Canon 5, regarding use of a judge's name in political activities.*

*A judge must not testify voluntarily as a character witness, because to do so may lend the prestige of the judicial office in support of a party for whom the judge testifies. Moreover, when a judge testifies as a witness, a lawyer who regularly appears before the judge may be placed in the awkward position of cross-examining the judge. A judge may, however, testify when properly summoned. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.*