



Court of Appeals of Georgia

August 18, 2015

TO: Mr. Harold R. Lilly, 839 Danish Drive, Fayetteville, North Carolina 28303

RE: **Harold R. Lilly v. City of Carrollton, Georgia**

CHECK RETURN

- Your check number _____ in the amount of _____ written on the account of your firm for the filing fee in _____ is enclosed. Please be advised that this Court is returning your check since the filing fee was already paid by _____.

CASE STATUS - DISPOSED

- The referenced appeal was _____ on _____. The remittitur issued on _____, divesting this Court of any further jurisdiction of your case. The case is therefore, final.

CASE STATUS - UNKNOWN

- It is unknown whether you are planning to file an application or direct appeal. You agreed to retrieve your documents until you have made a decision.**

APPLICATION FOR PERMISSION TO APPEAL A PROBATION REVOCATION

- To appeal a probation revocation, you will need to file a Discretionary Application with this Court. Rule 31 of the Rules of the Court of Appeals of Georgia describes a Discretionary Application and the items you would need to include with your application.

A Discretionary Application must be filed within 30 days of the stamped filed date on the order that you are appealing and the application must be accompanied by a proper Certificate of Service and a pauper's affidavit or the \$80.00 filing fee. You must also comply with all the other applicable rules of Court regarding filing with the Court of Appeals of Georgia.

Enclosed, please find a copy of the Rules of the Court of Appeals for your review.

FILED IN OFFICE

AUG 15 2015

CLERK, COURT OF
APPEALS OF GEORGIA

Via Certified Mail

Mr. Stephen E Castten

Clerk of the Court

RE: Harold R. Lilly v. City Of Carrollton Georgia

Superior Court of Carroll county Civil Action File No. 14CV01331-JDB

Court Of Appeal of the State of Georgia File No. A15D0364

Dear Mr Castten,

Enclosed please find (4) originals of **APPEAL OF ORDER DENYING PETITIONER'S MOTION TO SET ASIDE JUDGMENT, and APPEAL OF ORDER GRANTING RESPONDENT MOTION FOR ATTORNEY'S FEE'S , APPEALS ORDER DISMISSING PETITIONER'S REPLY TO NEW ALLEGATIONS RAISED BY THE RESPONDENT PURSUANT TO O.C.G.A. § 5-6-38(a) and a BRIEF IN SUPPORT THEREOF:** in the above styled case . Please File this with the Court and return a stamped filed copy to me in the enclosed self-addressed, postage paid envelope.

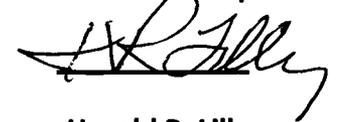
Thank you for your assistance,

RECEIVED IN OFFICE

2015 AUG 17 PM 3:41

CLERK/COURT ADMINISTRATION
COURT OF APPEALS OF GA

Yours Truly



Harold R. Lilly

727-288-5799

Appellant

839 Danish Dr.

Fayetteville N.C

28303

cc. Hall Booth Smith P.C.

www.arrowheadii@hotmail.com

IN THE COURT OF APPEALS OF THE
STATE OF GEORGIA

RECEIVED IN OFFICE
2015 AUG 17 PM 3:41
CLERK OF THE COURT OF APPEALS OF GEORGIA

HAROLD R LILLY

Appellant

V

FILED IN OFFICE

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CLERK COURT OF APPEALS OF GEORGIA

COURT of APPEAL

State Of Georgia

A15D0364

Civil Action #

NO. 14CV01331-JDB

CITY OF CARROLLTON GEORGIA

Appellee

APPEAL OF ORDER DENYING PETITIONER'S MOTION TO SET ASIDE JUDGMENT, and APPEAL OF ORDER GRANTING RESPONDENT MOTION FOR ATTORNEY'S FEE'S , APPEALS ORDER DISMISSING PETITIONER'S REPLY TO NEW ALLEGATIONS RAISED BY THE RESPONDENT PURSUANT TO O.C.G.A. § 5-6-38(a) and a BRIEF IN SUPPORT THEREOF:

Comes now Harold R. Lilly ("Appellant" or "Petitioner" or "Lilly" or "Plaintiff") named as Appellant in the above Captioned matter, and City of Carrollton Georgia or ("appellee" or "Respondent" or "City" or "Defendant") and files its direct appeal of Order granting Respondent Motion for Attorney's Fees pursuant to O.C.G.A § 9-15-14(e), files its Direct appeal of Order Denying Petitioner's Motion To Set Aside Judgment, and files its direct Appeal of Order Dismissing Petitioner's Reply to New allegations Raised by the

Respondent pursuant to Court of Appeal Rule 38(a) showing the honorable Court as follows.

O.C.G.A § 5-6-38(a) RULES 22(b) JURISDICTION

Pursuant to Georgia Court of appeals Rule 22(b)

And Rule 38(a) This Court has jurisdiction over the matter as the application for appeal is within the 30 day time limit to file the appeal and service is by Certified Mail to the Court has been meant, and the appellee has been properly served by certified mail according to Georgia Court of appeal Rule

Court of appeal Rule 22 Enumerations of Errors

Appellant Re-asserts its enumerations of errors filed April 10, 2015 and add the following 16-24

- 1/ Records in court attest That the Sheriff delivered the Petition January 5, 2015 , and, The (30) day period expired at the End of February 4, 2015 , all the Respondent's Delivery were not delivered as per Georgia statute TITLE § 41-2-12 (a)and (d) by Certified mail to the appellant and in conjunction with Georgia TITLE § 9-10-12(a)
- 2/ Hall Booth Smith as attorney for Appellee has a higher Duty of care than a public officer under Georgia title § 41-2-12(a)and (d)
- 3/ Property and Structure are within the City Limits of Carrollton Georgia.(See original complaint Paragraph 4)

4/ City Instructed a third party contractor to demolish the structure and changed the chain of Title Permit required Georgia Title § 41-2-7(c) (See Petitioner's Reply To defendant's Pre-Answer Motion to Dismiss Page 6) and Page 10)

5/ Demolition order and Permits are required within the City limits. Nothing has been produced. (See Petitioner's Reply To defendant's Pre-Answer Motion to Dismiss Page 6)

6/ Request for replacement of Structure is a request for monetary damage. (See Petitioner's Reply To defendant's Pre-Answer Motion to Dismiss Page 7-8)

7/ Booth Statute of Limitations have been negated by Tax assessors Email. (See Petitioner's Reply To defendant's Pre-Answer Motion to Dismiss Page 5)

8/ Evidence by tax assessor has been ignored. (See Petitioner's Reply To defendant's Pre-Answer Motion to Dismiss Exhibit A) and (Original Complaint same Exhibit)

9/ With no records in any Court before Petitions Action, appellant is a party to the Action. (See Petitioner's Reply To defendant's Pre-Answer Motion to Dismiss Page 1)

10/ No records were changed in any Court Recorded by then attorney of Record (Connerly) for the City regarding any alterations to the structure on the property.

11/ Tax assessor (an expert close to the action) was taxing a structure that did not exist. (See Petitioner's Reply To defendant's Pre-Answer Motion to Dismiss and brief thereof Page 10-11)

12/ Process of Abatement by the City of Carrollton is not the procedure followed by any other City in the State of Georgia. (See Petitioner's Reply To defendant's Pre-Answer Motion to Dismiss and brief thereof Page 2and 3)

13/ "Property Structure" and Due diligence (See Petitioner's Reply To defendant's Pre-Answer Motion to Dismiss and brief thereof Page 10)

14/ Signature signed by Delivery for Hall booth Smith un-legible Unified Code title 3-401(a) and (b) (See Petitioner's Reply To defendant's Pre-Answer Motion to Dismiss and brief thereof Page 15

15/ Due Process of the law.

Additional ENUMERATION OF ERRORS Court of Appeal

State of Georgia rule 22

16/ Pursuant to O.C.G.A. § 9-11-58(a) improper Signature see Exhibit " D"

17/ Pursuant to O.C.G.A. § 9-11-58(b) There is no Disposition Form filed on any order See Exhibit "H" email recorded at the top of page

18/ Pursuant to O.C.G.A. § 9-15-14(e) superior Court lacks jurisdiction pursuant to the (45) day Statute of Limitation.

19/ Superior Court is only allowed to dismiss an action within the first (6) months pursuant to O.C.G.A § 9-11-41 .Court has not ruled Harassment, Vexatious, frivolous or action brought in bad faith, all grounds for Dismissal without prejudice .O.C.G.A § 9-11-41 (a) court can therefore only dismiss an action in accordance with (b) involuntary dismissal within O.C.G.A § 9-11-60 (1)-(3)

20/ Pursuant to O.C.G.A. § 9-11-41(b) There is no evidence in any court of component jurisdiction of any prior complaint O.C.G.A § 9-11-60 (3)

21/ Respondent Motion to Dismiss with Prejudice has argued superior Court lacks **subject matter Jurisdiction** for both its ante litem pleadings Superior Court made no ruling on Subject matter Jurisdiction therefore superior Court lacks jurisdiction pursuant to O.C.G.A § 9-11-41(b) to dismiss the action subject to a matter of jurisdiction being

invoked the Court is not entitled to dismiss the action with prejudice. O.C.G.A § 9-11-60 (1)

22/ Superior Court Order signed February 12, 2015 is a final non-jury order without any attached ruling on the facts, the laws or the merits.. This action is not a second notice of a dismissal which operates as a adjudication upon the merits .Court has failed to separate the matter of law facts and merits in its ruling. therefore lack Jurisdiction.

23/ Superior Court order Signed February 12, 2015 to dismiss lacks jurisdiction per. O.C.G.A § 9-11-60(d)(1) O.C.G.A § 9-11-41(b) and new ruling July 21, 2015 per O.C.G.A. § 9-15-14(e)

24/ Superior Court Order See Exhibit "I" signed and ordered August 4,2015 Entered August 7, 2015 dismissing Petitioner's reply to New allegations raised by the respondent 'delivery of a copy" means "handing it to the person" delivery per O.C.G.A § 9-11-5(b) evidence within the record does not support a proper service. .Pursuant to O.C.G.A § 9-11-60(d)(2)(3) this is grounds to have the judgment set aside.

I. INTRODUCTION

Pro se Appellant Lilly Filed his motion to set aside Judgment and related pleadings on June 8, 2015 to the Superior Court and appellee and A reply to New allegations on July 10 , 2015 to the Honorable Court, after receiving notice from Clerk of the Court see Exhibit "E" Appellant Petitioner again was not properly served per § 41-2-12(d) by certified mail or O.C.G.A § 9-11-5(b) with a copy being served or left inside the office or place of residence to an component individual over the age of 18 at the appellants address 839 Danish dr. in Fayetteville N.C) See Exhibit "A" and "B" attached to this Motion. Specifically Appellant argues that the City's Pleadings and Pre-Answer Motion to dismiss should have been served on him via certified mail, or handed a hard copy of the document on the 30th day following service by the Respondent thereby denying him due process according to the fifth amendment

In conjunction with the Motion for Default Judgment, Petitioner also filled a "Motion for Replacement of Structure (rule (6.2) a Motion to Compel Discovery rule (6.4)

a Reply to Defendant's Pre-Answer Motion to Dismiss("Motion to Dismiss" and "Reply to Defendant's Answer" were all filed on the 30th day according rule 6.2 on reply to motion To Dismiss Filed February 4, 2015 , Dismissal by the Judge on March 12 2015 pursuant to 9-11-58(a) have no proper Judges Signature pursuant to O.C.G.A § 9-11-58(a) also and no proper Disposition Form within the court records filled out by the respondent According to O.C.G.A § 9-11-58(b)

The Superior Court without allowing The Petitioner 30 days to reply or answers signed and entered the Respondent's Pre-Answer Motion to dismiss with Prejudice on February 12. 2015 21 days before the Motion was to be answered according to rule 6.2 Motions.

Without any adjudication by the City Prior to June 28, 2010, With no records recorded in any court or the Tax assessor's office or within the proper Plat, after June 28, 2010, regarding any demolition complaint or Permit the Applicant is entitled by law to file a motion within (3) years to have the Judgment set aside Pursuant O.C.G.A § 9-11-60(f)

II PROCEDURAL POSTURE.

Following dismissal of appellants first Complaint by Superior February 12, 2015 with a non-jury dismissal with no separation of law , facts or merits, appeals court state of Georgia ruling it lacks jurisdiction missing the 30 day deadline for a direct appeal, and a further ruling it is unable to grant any other relief unless the appellant has the Order of dismissal set Aside Superior Court has now granted Respondent Attorney's fees and costs ,and denied the Motion to Set aside Judgment pursuant to O.C.G.A. § 9-11-60(d) As with past motions and every single document served on the Appellant, Respondent City still claims it has properly served the Appellant pursuant to O.C.G.A § 9-11-5(b) Appellants motion to set aside Judgment was filed June 8,2015, Appellee's response and Claim for Attorney's fees was filed July 01, ,2015, more than (45) days after order to dismiss for lack of jurisdiction was filed in the Appeal Court State of Georgia May 7,2015 Petitioner's reply to New allegations raised by the respondent ,and reply to Respondents Motion for Attorney's Fee's Petitioner's Motion To

Strike pursuant To O.C.G.A 9-11-12 and request for Attorney's Fee's and Cost under O.C.G.A 9-15-14 rule 6.2 and rule 2.1 was sent by certified mail on July 10, 2015, and filed on July 13, 2015, Order to Deny Motion to set aside Judgment was filed July 22, 2015, and order Granting Attorney's fee was filed July 22, 2015, Petitioner's reply to New allegations raised by the respondent, and reply to Respondents Motion for Attorney's Fee's Petitioner's Motion To Strike pursuant To O.C.G.A 9-11-12 and request for Attorney's Fee's and Cost under O.C.G.A 9-15-14 rule 6.2 and rule 2.1 was filed by certified mail on July 10, 2015, Judges Order to Deny Motion to set aside Judgment was filed July 22, 2015, and order Granting Attorney's fee was filed July 22, 2015, Judges Order dismissing Petitioner's reply to New allegations raised by the respondent, and reply to Respondents Motion for Attorney's Fee's Petitioner's Motion To Strike pursuant To O.C.G.A 9-11-12 and request for Attorney's Fee's and Cost under O.C.G.A 9-15-14 rule 6.2 and rule 2.1 was Dismissed on August 4, 2015 and Filed on Aug 7, 2015

III ARGUMENT AND CITATION OF AUTHORITY

Pursuant to Title O.C.G.A § 9-11-41 (a) and (b) trial Court is not entitled to dismiss an action with prejudice if a matter of jurisdiction is invoked. Pursuant to O.C.G.A. §9-11-60(d)(1)(2)or(3) the Appellant is entitled to have the Judgment set aside

.Before the Honorable Court are copies of (3) orders with proper signatures an Order Granting Respondents motion for Attorney's fee's Exhibit "D" AN Order Denying Petitioner's Motion to set aside Judgment see Exhibit "C" and An Order Dismissing Petitioner's Reply to New Allegations Raised by the Respondent See Exhibit "I" and (4) orders filed April 10, 2015 in this court without proper signatures or disposition forms required by O.C.G.A § 9-11-58(a) or (b) Order to Dismiss and (3) orders Denied Filed April 10 , 2015 with the Court of appeal State of Georgia

A.(1) Improper Service pursuant to O.C.G.A 41-2-12(d) is grounds to set aside Judgment pursuant to O.C.G.A. § 9-11-60(d)(2)

Although the superior Court has ruled in its ruling against the interpretation of this Statute O.C.G.A § 41-2-12(d) the Appellant offers the following argument against that ruling. See Exhibit "F" attached Page One Defendant's Pre-Answer Motion to Dismiss was Filed February 4, 2015

Judge's Ruling "Petitioner to redress an allegedly improper demolition that already take place to a prior nuisance complaint that he was served by regular mail" See Judges Order Exhibit "F" and Exhibit "E" it is a fact That Petitioner was improperly served by regular mail See Exhibits A "B" and "C" and recorded in the record simply not within the prescribed time frame of 30 Days pursuant to Superior Court Rule 6.2 on Motions and O.C.G.A. § 9-11-5(b) by handing a copy of the Document to a person that resides therein:

Judge further rules "O.C.G.A §41-2-12 "Applies to a Nuisance Complaint by public Officers" Petitioner argues further that the Statute 41- 2-12(d) is the method of service for anybody that replies to any Complaint (Respondent bottom first page See Exhibit "A" States **"City will answer this as a Complaint"** Introduction **"As Pro se Petitioner"** and at Bottom of Page "Accordingly The City will provide Petitioner the benefit of doubt and refer to Petitioner's motion as **"his Complaint henceforth"**

The Respondent files this document at the Court at 3.30 Pm on February 4 2015, and then sends it by mail see Exhibit A affidavit of delivery

The Respondents knows Petitioner is Pro-Se, Answers A Complaint pursuant to O.C.G.A Title 41 knows the property is within the City Limits ,knows that permits are required for any demolition and enforces the property within City Limits with a "Public Officer"

Respondent Records a date for the First Time on February 4, 2015, that it destroyed the Structure on or about June 28, 2012 and shows no evidence within the record of a Demolition permit. Respondent then argues that it served the Petitioner per O.C.G.A § 9-11-5(b) and O.C.G.A 41 -2-12(d) Service is irrelevant relying fully on its proper service in accordance with O.C.G.A § 9-11-5(b)

A Public Officer, A building Inspector, A City Engineer, A Compliance Manger, an Assistant Compliance Manger "Gizzard" an Attorney of Record , an Attorney Representing the City "Hall Booth Smith" are all the same Entity, They answer for the City They work for the "City" They are liable for the City, they are the City. 'Tim Gizzard" Assistant City Manager in charge of the Compliance department answered a "Complaint" Filed by the Petitioner, with an affidavit February 4,2015, Motion to Dismiss The "Complaint" requires it be answered by Certified Mail in accordance with .O.C.G.A § 41-2-12(d)(by Certified mail) . U.S Mail requires a 20 Decimal number recorded for the Delivery There are no 20 Decimal record numbers on any Document certified and recorded in this action by the City.

Pursuant to O.C.G.A § 9-11-60(d)(2) improper service within the record The appellant is entitled to have the judgment set aside.

**A.(2) Improper Service pursuant O.C.G.A § 9-11-5(b) is grounds to set aside Judgment
pursuant to O.C.G.A. § 9-11-60(d)(2)**

Petitioner was served by regular mail, it is not a allegation it is a fact see Exhibit "C" and "D" Attached Copy of envelope from "Smith Connerly LLP" delivered by regular uncertified mail, with no round stamp a week after the 30 day deadline and not pursuant to Superior Court rule 6.2 not meeting the strict requirement of O.C.G.A. § 9-11-5(b) by handing a copy to a person over 18 at the location. On the 30th day. See Argument of Respondent Filed March 18, 2015 . Signature signed by Delivery for Hall booth Smith un-legible Unified Code title 3-401(a) and (b) (See Petitioner's Reply To defendant's Pre-Answer Motion to Dismiss and brief thereof Page 15 Hall Booth Smith and individual un-legible signature is not the US Mail, service to person within the dwelling, See Respondent's Affidavit of Service for Defendant's Pre-trail Motion to Dismiss attached hereto as Exhibit C)

Within the record every filing by the Respondent City is filed in a similar fashion and in error by either of the two statutes for delivery.

§ 9-11-5 (2010)- Service and filing of pleadings subsequent to the original complaint and other papers

[O.C.G.A. 9-11-5 (2010)
9-11-5. Service and filing of pleadings subsequent to the original
complaint and other papers
(b) Same -- How made. Whenever under this chapter service is
required or **permitted to be made upon a party represented by an
attorney**, the service shall be made upon the attorney unless service
upon the party is ordered by the court. Service upon the attorney or
upon a party shall be made by delivering a copy to the person to be
served or by mailing it to the person to be served at the person's last
known address or, if no address is known, by leaving it with the clerk
of the court. **As used in this Code section, the term "delivery of a
copy" means handing it to the person to be served or leaving it at
the person to be served's office with a person in charge thereof
or, if such office is closed or the person to be served has no
office, leaving it at the person to be served's dwelling house or
usual place of abode with some person of suitable age and
discretion residing therein.]** (emphasis highlighted) "

Condensed version

"delivery of a copy" means handing it to the person with some person of suitable age
and discretion **residing therein. See exhibits A, B and C.**

On the 30th day at the Pro-se Petitioners place of Abode Not at some indiscrete time
there after and claiming it is properly served pursuant to O.C.G.A. § 9-11-12(a) And 9-
11-5(b) Furthermore according to the Petitioner interpretation of the law whether its groundless
or not pursuant to O.C.G.A § 9-15-14(e) 45 days has expired.. The Time limit is pass by several
months from March 11, 2015 Pursuant to O.C.G.A § 9-11-60(d) (1) and to O.C.G.A § 9-15-
14(e) Superior Court lacks jurisdiction

Service requirements pursuant to O.C.G.A § 9-11-5(b)

"delivery of a copy" means handing it to the person to be served or leaving it at the
person to be served's office with a person in charge thereof The only form of delivery
by the U.S Mail that meets this requirement is Certified Mail. with a return slip and a 20
decimal coded number for tracking City in every one of its fits filing has no such

Evidence within the record of any such service with a 20 decimal coded number attached to the service, US regular mail does not served the person within, and has no record of any time or date stamped on its delivery. It could be 3, days 6 days or never, there is no guarantee of any delivery, however Certified mail does. The only evidence within the Court record is the respondent by affidavit dropped it in the mail.

The Appellant has therefore not been served properly by any Statute and The Respondent is therefore totally in default on every document it served. to the appellant by U.S Mail. The appellant in the Contrary has every single document from the beginning properly served on the Appellee by Certified mail. The Appellant, Respectively requests the Court of Appeal State of Georgia review and make a full determination regarding this matter. If First Service is Improper and every other service is improper, all matters have to be reviewed.

B. Superior Court Lacks jurisdiction to award attorney's fees and Cost Pursuant to O.C.G.A. § 9-15-14 (e) Pursuant to O.C.G.A. § 9-11-60(d)(1) Jurisdiction is also grounds to have the Judgment set aside.

Superior Court in its ruling for Attorney's Fee does not rule the action was Vexatious was Frivolous or the Petitioner harassed the City , all grounds for a dismissal without prejudice pursuant to O.C.G.A § 9-11-41(a) action before the court is a involuntary dismissal pursuant to O.C.G.A § 9-11-41(b) The dismissal with prejudice therefore has to apply within this part of the Law more specifically because the case was dismissed within 6 months of its initiation. Respondent or Judge has never addressed in any of this matter in its pleadings or its rulings ,or the pleadings. Superior Court again in its current ruling does apply any law anywhere within its order regarding the first dismissal with prejudice. O.C.G.A. § 9-11-41(b) which specifically states if an issued is raised upon jurisdiction the Court cannot dismiss an action with prejudice . The matter is right before the court on the face of the document. Respondent argue **subject matter Jurisdiction** for both of its ante litem Statutes it invokes. Court made no ruling .Therefore within the record and on the face of the document the Court is not allowed to dismiss any action because of a matter of jurisdiction and.(**must affirmatively show no claim in fact existed**)

With respect to The Order Denying Petitioner's Motion to set aside Judgment see Exhibit "D" and the Order Granting Respondents motion for Attorney's fee's and Cost under O.C.G.A § 9-15-14(d) see Exhibit "B" pursuant to O.C.G.A § 9-15-14 (e) Attorney's fees and expenses under this Code section may be requested by motion at any time during the course of the action **but not later than 45 days after the final disposition** of the action.

a judge's ruling is commonly referred to as disposition, regardless of level of resolution

C. " ORDER GRANTING RESPONDENT'S MOTION FOR ATTORNEYS FEE'S AND COSTS" should be denied

More specifically with regards to any previous timeline Pursuant to O.C.G.A § 9-11-5(b) Attorney's fee's is a new Pleading not in First Document pleaded or previously recorded, and Pursuant to O.C.G.A. § 9-15-14(e) 45 days expired on the First order 45 days after February 12 , 45 days expired after the (3) orders recorded March 4, 2015 and 45 days after the order signed May 7 , 2015 in the Georgia Court of appeals. The Respondent therefore is not entitled to any attorney's fees and Costs, pursuant to O.C.G.A § 9-15-14 (e)

C(a) Definition of groundless meaning "without Foundation, inaccurate, untrue"

(a)(1) "Without Foundation' Appellant owns the property and has requested all permits regarding this demolition that had already taken place and is not recorded ,permits are to be on file and accessible at hands reach to the public. This is not a second Complaint it is a first complaint there is nothing recorded in any court prior to this action so there is nothing in Tile O.C.G.A 9-11-41 that allows the Superior court to dismiss this action with prejudice.

(a)(2) Appellant's claims are not "inaccurate", he has given the proper parcel number and address to the proper

(a)(3) "Untrue", Nothing is untrue in any document filed by the appellant it is supported by Affidavit.

Appellant therefore respectively request The honorable Appeal Court to review if the Appellants actions were groundless If it is found Pursuant to O.C.G.A. § 9-11-58 (a) and (b) the orders are all Invalid by the strict requirement of this Statute and pursuant to O.C.G.A § 9-11-41(b) The Court lacks jurisdiction.

Petitioner by law has a (3) year statute of Limitations to file this motion, O.C.G.A. § 9-11-60(f) "In all other instances, all motions to set aside judgments shall be brought within three years from entry of the judgment complained of".....]

D. DUE PROCESS IS GROUNDS to have the judgment set aside O.C.G.A. § 9-11-60(d)(2)(3)

Judge's Ruling see Exhibit "E" " Petitioner Filed three groundless motions **nearly a month after** this Court entered an order Dismissing the Action"

Applicants argument First and Foremost The Motion for default Judgment, Motion to replace Structure, and Motion to Compel were all filed and recorded on the 30th day from which the Petitioner was required by law to Answer the Motion to Dismiss with Prejudice and answer the Motion pursuant to O.C.G.A § 9-11-12(a)

The Judge therefore did not give the Petitioner "Due Process" and filed his Judgment (21) days before the Pre-Answer Motion to Dismiss was required by Law and recorded it a Month too prematurely See Exhibit "H" a copy of the record by Alan J Lee Clerk of the Superior Court

Pursuant to O.C.G.A § 9-11-60(d)(2) lack of Due process within the record The appellant is entitled to have the judgment set aside.

Pursuant to O.C.G.A § 9-11-60(d)(2)(3) and 9-11-41(b) Not separating the laws the fact and the merits.as required in the district court within the record The appellant should be entitled to have the judgment set aside

§ 9-11-60 - Relief from judgments (2010)

(d) Motion to set aside. A motion to set aside may be brought to set aside a judgment based upon:

(1) **Lack of jurisdiction** over the person or the subject matter;

(2) **Fraud, accident, or mistake or the acts of the adverse party** unmixed with the negligence or fault of the movant; or

(3) A non-amendable defect which appears upon the face of the record or pleadings. Under this paragraph, **it is not sufficient that the complaint or other pleading fails to state a claim upon which relief can be granted, but the pleadings must affirmatively show no claim in fact existed.**(emphasis highlighted)

Proper Deliver by this Statute or O.C.G.A § 9-11-5(b) or O.C.G.A §41-2-12

[(d) Orders and other filings made subsequent to service of the initial complaint shall be served in the manner provided in this Code section on any interested party who answers the complaint or appears at the hearing.] (emphasis highlighted)

Pursuant to both Statutes the Respondent is in violation of the service. See Exhibit "A , B and C Pursuant to O.C.G.A § 9-11-60(d)(2) improper service within the record The appellant is entitled to have the judgment set aside.

Pursuant to O.C.G.A § 9-15-14 (e) and Judges Ruling "Lacks Substantial Justification triggering the Assessment of Attorney's Fees" Last ruling Filed by Georgia Court of Appeal May 7, 2015 Expired by Statute of limitations on or about June 15 2015. This ruling lacks jurisdiction and Judge has erred in his ruling

III ARGUMENT AND CITATION OF AUTHORITY (Continued)

E. Superior Court Lacks jurisdiction to Dismiss action with Prejudice Pursuant to O.C.G.A §9-11-41(b) appellant is entitled to have the judgment set aside.

Appellee continues to argue repeatedly that it has properly serviced the appellant pursuant to §9-11-5(b) and claims all service pursuant to O.C.G.A. §41-2-12 including (d)and recorded is irrelevant. And Judges current ruling supports this position. Appellant denies this is the proper intent of both Statutes.(**Fraud, accident, or mistake or the acts of the adverse party**)

Superior Court has made a ruling on Petitioners Motion to set aside the Judgment. Pursuant to O.C.G.A § 9-11-41 there are two avenues to dismiss an action

(a) Voluntary Dismissal and (b) Involuntary Dismissal The Court in its ruling does not rule specifically noting what law it has relied on to Justify its ruling it simply states the action was based on a prior complaint.

Voluntary and Involuntary dismissal gives several avenues to dismiss an action Court can dismiss an action based on the action being Frivolous, or vexatious the Respondent argued those in its Response including Harassment but the Court never ruled in the Cities favor on those issues

It therefore gives the Respondent no grounds to dismiss the action without prejudice pertaining to that issue.

Since the action is not a voluntary dismissal , the court therefore within its ruling must dismiss the case based on the criteria within (b) Involuntary Dismissal. it specifically states within this Statute that a matter of Jurisdiction does not allow the Court to a dismissal with prejudice any action when a matter of Jurisdiction exists

[(1) A dismissal for failure of the plaintiff to prosecute does not operate as an adjudication upon the merits; and (2) Any other dismissal under this subsection and any dismissal not provided for in this Code section, **other than a dismissal for lack of jurisdiction** or for improper venue or for lack of an indispensable party, does operate as an **adjudication upon the merits** unless the court in its order for dismissal specifies otherwise.] (emphasis highlighted)

The Very first pleading by The Respondent in its pleading regarding The matter of Both Ante Litem Statutes it invokes, is **the matter of Subject Matter Jurisdiction**, See Motion To Dismiss Filed February 4, 2015 (court lacks jurisdiction on the entire Matter)

Pursuant to O.C.G.A § 9-11-60(d) improper adjudication of the merits The appellant is entitled to have the judgment set aside.

Respondent's entire ruling and pleadings are based on §9-11-12(b)(1) in which Appellee argues that the Superior Court Lacks subject matter jurisdiction. This one issue alone pursuant to O.C.G.A §9-11-41(b) under involuntary dismissal does not allow the Superior Court to dismiss the Action appellee has not shown. **(must affirmatively show no claim in fact existed)**

F. Superior Court lack of any Ruling pursuant to §9-11-12(b)(6) is insufficient to deny any Compel of Documents pursuant to superior Court Rule 6.4

Respondent's entire ruling and pleadings are based on § 9-11-12(b)(1) in which the City argues that the **Superior Court Lacks subject matter jurisdiction**. See Defendants Pre-answer Motion to dismiss page 3 Argument A

The Respondent pleads one other Statute §9-11-12(b)(6) does not provide any law in which the Petitioner is not entitled to compel the Documents it requested in a motion filed and denied on March 12, 2015 see exhibit Superior Court in its current ruling still does not provide any law in its ruling whereby it is entitled to totally extinguish the appellant the capability to demand discovery. (the only request being that of public documents The permits.)

Appellant pleads that the respondent still has not provided a demolition permit only a Citation and produced nothing in the Court records of any previous adjudication This is a public document not a document of discovery The Superior court therefore lacks jurisdiction upon involuntary Dismissal §9-11-41(b) to grant the Respondent's requests. Because it was never entitled to dismiss the action in the first place with prejudice based on the reading of the law contained in Involuntary dismissal .there is absolutely no way any reading of the law will allow the court to extinguish the production of a public document.. the Court is therefore over-reaching its Authority

The appellant is the owner of the property by quitclaim it is recorded in the record, there are no actions within the court prior to this action against this property, there is no action, complaint or lien placed against this property at the tax assessor's office. ,The judge is in error ruling anything to do with a prior Complaint.(and that is the only position the court has in its current ruling filed July 22, 2015) The Court has not divided separated quoted or attached any law within the motion to dismiss with prejudice in its former ruling or its current ruling. The defendant on the face of its own motion for pre-trial specifically says there is no previous action. **(must affirmatively show no claim in fact existed)**

With no evidence in the Trial Court of a prior Complaint The trial court ruling is not supported by anything within the statute contained with O.C.G.A. 9—11-41(a) or (b)

The Defendant pleads one other Statute §9-11-12(b)(6) and does not provide any law in which the Petitioner is not entitle to compel the Documents it requested in a motion filed and denied on March the 12 by certified mail. only argument is the complaint fails as a matter of law.

The Superior court therefore lacks jurisdiction upon involuntary Dismissal §9-11-41(b) to grant the Respondent's requests on the matter of any law to block the Compel of a public document.

Because The Superior Court makes absolutely no mention in its ruling that the Superior Court Lacks subject Matter Jurisdiction, or in its new ruling on the matter July 22 , 2015, both issues of ante Litem Statutes are Irrelevant because the Court in its ruling only address one specific Issue that of a prior Complaint and makes no mention of any specific law the Respondent can invoke to grant the respondent that request The Court again makes no ruling with respect to O.C.G.A § 9-11-12(b)(6) or anything to do with any third party claim, so that statute is irrelevant too.

The courts only ruling is regards to a prior Complaint.. The judge has therefore erred in his decision.

For that reason within the boundary and criteria of the law pertaining to Dismissal . Pursuant to § 9-11-41(b) it specifically states if there is a matter of jurisdiction the Court cannot dismiss the action based on adjudication on the merits.

Since the Court again has not made a ruling regarding the any other part of the Respondent's pleading by quoting any part of the law pursuant to title§ 9-11-12(1) or (6) The Court lack jurisdiction Pursuant to O.C.G.A § 9-11-60(d) (1) (2) and (3)

G. Superior Court Signature and Deposition Form

1(a) Superior Court Order is subject to being invalidated Pursuant To:

[O.C.G.A. § . 9-11-58 (a) Signing. Except when otherwise specifically provided by statute, all judgments shall be signed by the judge and filed with the clerk. The **signature of the judge shall be followed by the spelling of the judge's name and title legibly typed, printed, or stamped.** The failure of the judgment to have the typed, printed, or stamped name of the judge shall not invalidate the judgment.....].(emphasis highlighted)

Upon a request to the Superior Court and relayed by the Clerk of the Court Alan J Lee to the appellant none of these orders have a the special form required by the Court to have the order properly Entered Pursuant to O.C.G.A § 9-11-58(b) **see Exhibit "H" dated July 6, 2015**
(Fraud, accident, or mistake or the acts of the adverse party)

**G.1(b) Superior Court orders are subject to being invalidated pursuant to
O.C.G.A. § . 9-11-58 (b)**

[(b) When judgment entered. The filing with the clerk of a judgment, signed by the judge, with the **fully completed civil case disposition form constitutes the entry of the judgment**, and, **unless the court otherwise directs**, no judgment shall be effective for any purpose until the entry of the same, as provided in this subsection. As part of the filing of the final judgment, a civil case disposition form shall be filed by the prevailing party or by the plaintiff if the case is settled, dismissed, or otherwise disposed of without a prevailing party; provided, however, that the amount of a sealed or otherwise confidential settlement agreement shall not be disclosed on the civil case disposition form.....] (emphasis highlighted)

unless the court otherwise directs **a fully completed civil case disposition form constitutes the entry of the judgment**

(Fraud, accident, or mistake or the acts of the adverse party)

There is no civil case disposition form within the file and the court has ruled this motion as moot. See Exhibit "I" attached to this motion. The superior Court judge has erred in its interpretation of the law. The appellant should be entitled to a direct appeal of this order and respectively request another ruling.

Pursuant to O.C.G.A § 9-11-60(d)(2) and (3).The appellant is entitled to have the judgment set aside Based on the fact there is no proper Signature or disposition form within the court records filled out by the appellee and the appellee has not shown any evidence within the court on which relief can not be granted.

See copy of Document entered June 13, 2015 and filed with The Superior Court Exhibit "G"

Having started this action as an owner of the property having an interest in the chain of title, having proved the Property is within the City limits, having separated the definition between Property and Structure , having replied by certified mail pursuant to the Statute and without requesting any Solicitor or Clients fees only requesting proper permits off the shelf and replacement , having the Respondent Reply and request a trial with 12 Jurors , and still not producing the first prerequisite of any demolition "a permit", Having a mountain of evidence within the Court record contrary to the respondents claims, The Applicant therefore requests that pursuant to Superior Court Rule 2.1 and O.C.G.A § 9-11-5(b) The appellant should be entitled to Solicitor and Client fees.

§ 9-11-41 - Dismissal of actions; recommencement within six months (emphasis highlighted)

O.C.G.A. 9-11-41 (2010)

9-11-41. Dismissal of actions; recommencement within six months

(3) Effect. A dismissal under this subsection is without prejudice, **except that the filing of a second notice of dismissal operates as an adjudication upon the merits.** (emphasis highlighted)

[(b)..... The court as trier of the facts may then determine the facts and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. The effect of dismissals shall be as follows: (1) A dismissal for failure of the plaintiff to prosecute does not operate as an adjudication upon the merits; and (2) **Any other dismissal** under this subsection and any dismissal not provided for in this Code section, **other than a dismissal for lack of jurisdiction** or for improper venue or for lack of an indispensable party, **does operate as an adjudication upon the merits unless the court in its order for dismissal specifies otherwise.]** (emphasis highlighted)

Condensed as follows:

(2) Any other dismissal ... other than a dismissal for lack of jurisdiction ... does operate as an adjudication upon the merits **unless the court in its order for dismissal specifies otherwise.]**

(emphasis highlighted)

Having not ruled under Defendant's pleading O.C.G.A 9-11-12(b)(1) That the Court Lacks Subject Matter Jurisdiction (which in its core reading and interpretation does not allow any dismissal based on Jurisdiction)having Not ruled under other defendant's pleading O.C.G.A.9-11-12(b) (6) that the Plaintiff does not have a Legal interest in the property "when it is clear it is not a tort action, or a Claim does not Support a Cause of Action, and fully answered by the Petitioner Plaintiff on March 4.2015 within the 30 day deadline, having shown pursuant to O.C.G.A. 9-11-60(d)(3) has shown No current ruling before or after both current rulings that meets the criteria of either O.C.G.A. 9-11-41(a) or (b) and the court not ruling on harassment Frivolous or vexatious behavior, grounds for dismissal without prejudice,

Having not provided any law that Plaintiff does not have right to move the Court to Compel the Production of Documents. Should be extinguished, and only having O.C.G.A 9-11-41(d) to make any proper ruling to dismiss an action within the first (6) months The Superior Court therefore lacks Jurisdiction To grant a Order to dismiss the Action with Prejudice and The appellant is entitled to have the dismissal Order set aside.

IV. CONCLUSION

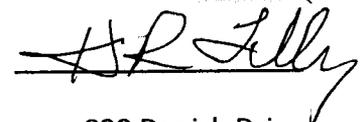
Based on improper service by either 9-11-5(b) or 41-2-12(d) with every document served by the appellee and within the record, Based on judge not allowing due process to answer the Dismissal with prejudice before signing the order, based on a failure pursuant to Statute 9-11-58(a) and (b) based upon the appellant property filing its motion for default judgment, motion to replace structure and motion to compel discovery of public documents properly by certified mail, Based on superior court lacking jurisdiction to dismiss the action pursuant to 9-11-41(a) or (b) based on the superior court not separating the laws the facts and the merits in its ruling like the district court, based on the only current ruling by the judge of

that of a prior complaint, when there is no adjudication of any prior complaint in any court of competent jurisdiction, the Appellant should be entitled to have the judgment set aside and the award of Solicitor and Client fees pursuant to superior court Rule 2.1 and 9-15-14(a) and (b) due process Having shown the Court that appellant was not being properly Served in accordance with O.C.G.A 9-11-5(b) having (4) orders before the Court that do not have a proper Signature or Disposition Form in the Court Files, having a motion before the Court for Discovery of Documents properly Filed by rule 6.4 A motion before the Court To replace the Structure Rule 6.2, and a Motion before the Court for Default Judgment all properly filed by certified mail within the proper timeline, having No jurisdiction to award Attorney's fees pursuant to O.C.G.A 9-15-14(e)and then granting Attorney's fees to a City that has not even produced a simple copy of a permit (a public document)on the property,

For the foregoing reasons the appellant should be granted dismissal of the Attorney's fee and cost, the order denying the motion to set-aside judgment reversed, O.C.G.A 9-11-60(d) And Judges Order dismissing Petitioner's reply to New allegations raised by the respondent ,and reply to Respondents Motion for Attorney's Fee's Petitioner's Motion To Strike pursuant To O.C.G.A 9-11-12 and request for Attorney's Fee's and Cost under O.C.G.A 9-15-14 rule 6.2 and rule 2.1 that was Dismissed and was Filed Aug 7 ,2015 should be fully reviewed in conjunction with any existing orders that should be invalidated pursuant to 9-11-58 (a) and (b) .

Respectively Submitted this 15th day of August 2015

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IN THE SUPERIOR COURT OF CARROLL COUNTY
STATE OF GEORGIA

FILED
GA. CARROLL COUNTY
CLERK _____ COURT
2015 FEB -4 10:30

Alan J. Lee
CLERK SUPERIOR COURT
CARROLL COUNTY GEORGIA

HAROLD R. LILLY,

Petitioner,

v.

CITY OF CARROLLTON, GEORGIA,

Respondent.

CIVIL ACTION FILE
NO. 14CV01331-JDB

**DEFENDANT'S PRE-ANSWER MOTION TO DISMISS
AND BRIEF IN SUPPORT THEREOF**

COMES NOW, CITY OF CARROLLTON, GEORGIA ("Respondent" or the "City"), named as Respondent in the above-captioned matter, and files its Pre-Answer Motion to Dismiss and Brief in Support Thereof, pursuant to O.C.G.A. § 9-11-12(b)(1) and (6), showing this Honorable Court as follows:

I. INTRODUCTION

As a pro se petitioner, Harold Lilly's ("Petitioner") alleged claim¹ arises out of the City's abatement of a nuisance. Specifically, the City demolished the remains of a house structure previously damaged by fire (the "Property Structure"). Petitioner seeks an order from the Court to replace the Property Structure and/or the production of documents related to the demolition of the Property Structure.



¹ Petitioner styles this action as a motion under Uniform Superior Court Rules 6.1 and 6.7. However, those rules pertain to motion procedure for *existing civil actions*. With no underlying civil action pending before this Court, the City assumes Petitioner intended to file a Complaint. Accordingly, the City will provide Petitioner the benefit of doubt and refer to Petitioner's "motion" as his Complaint henceforth.