

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

November 30, 2015

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

Docket Number: A16A0180 **Style:** Harold R. Lilly v. City of Carrollton, Georgia

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
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 (compound 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: I have enclosed a copy of the Court Rules for your review along with the return of your self addressed stamped envelope.**

For Additional information, please go to the Court's website at: www.gaappeals.us

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

To:

Docket Number:

Style:

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
5. Your Certificate of Service did not include the complete name and mailing address of each opposing counsel and pro se 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)
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: Compound Filing - Brief & Motion

For Additional information, please go to the Court's website at: www.gaappeals.us



2015

Georgia Court of Appeals

R U L E S

Last Update: January 21, 2015

Via Certified Mail # 705 0640 8000 5113 1541

Date November 21, 2015

Mr. Stephen E Castlen

Clerk of the Court

47 Trinity Ave S.W.

Suite 501 Atlanta Ga 30334

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. A16A0180

Dear Mr. Castlen,

RECEIVED IN OFFICE
2015 NOV 25
11:23 AM
COURT CLERK
COURT OF APPEALS OF GA

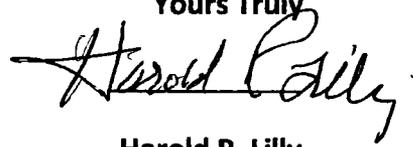
FILED IN OFFICE
NOV 25 2015
COURT CLERK
CLERK COURT OF APPEALS OF GA

Enclosed please find (4) originals of the Brief for **APPELLANT'S REPLY TO BRIEF OF APPELLEE, and APPELLANT'S REPLY TO APPELLEE'S MOTION TO DISMISS DIRECT APPEAL and BRIEF IN SUPPORT THEREOF**

Please File this with the Court and return a stamped filed copy of to me in the enclosed self-addressed, postage paid envelope.

Thank you for your assistance,

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**

HAROLD R LILLY

Appellant

FILED IN OFFICE
NOV 21 2013
COURT CLERK
CLERK COURT OF APPEALS OF GA
Case No: A16AA0180
RECEIVED
NOV 21 2013
11:30 AM

Direct Appeal From the
Superior Court of Carroll County

v

Civil Action File #

NO. 14CV01331-JDB

CITY OF CARROLLTON GEORGIA

Appellee

**APPELLANT'S REPLY TO BRIEF OF APPELLEE, and APPELLANT'S REPLY TO
APPELLEE'S MOTION TO DISMISS DIRECT APPEAL and 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 reply to Appellee's Motion To Dismiss Direct Appeal and Brief in Support thereof, pursuant to Court of appeals Rule 41(a) Court of Appeals Rule 1(a)(c) Court of Appeals RULE 6, Court of Appeals Rule 24(a) Court of Appeals Rule 25(b) Court of Appeals Rule 33(a) Court of Appeals Rule 36, and Yellow copy

of Important Rule requirements and information directed at Pro Se Filing by US postal Mail or Delivery service and shows the Honorable Court as follows:

PART I. INTRODUCTION

Statement of Contention and Clarification of Facts and Material Matters raised by the Appellee Because Appellee has not followed the procedures as laid out per Rule 25(b) and Rule 1 A, Appellant will give General contentions to the appellee facts because **(time is of the essence)** (emphasis as noted)his arguments and citations of the law within the Appellee's Motion to Dismiss pursuant to rule 25 (b) and rule 25(b)(2) In this underlying case their few facts because The Judge dismissed the action without proper discovery, without records, without permits, rulings or laws within 6 months of the action. Original evidence are contained in the appellants Original Petition is supported by Affidavit and the only supporting Evidence by the City is an Affidavit supporting the City's position by of Ante Litem Statutes by Tim Gizzard, all other facts are Procedural Postures, Exhibits supporting the Gizzard Affidavit are clearly unlegible, The Appeals Court State Of Georgia has the entire record including every single fact and argument and Contention that has come before the Superior Court. There is absolute evidence within this record to completely support the Appellants Position. Appellee's initials pleadings were served improperly on the Appellant almost a week after the 30 day deadline in the underlying case are they are all disputed by Appellant and answered and properly served on the Appellee by Certified mail There is no evidence within the Pre-Answer Motion to Dismiss or ruling by The Superior Court on any issue The Appellee advanced. There is no proper signature and there is also no disposition form to support, the Judgment. These issues are all brought

forward in the Appellants Direct Appeal, and therefore on the Face of the Documents they should be all invalidated. There is no separation of the Facts by the Court, All appeals rights are extinguishes with no separation of laws or merits. The main repeated theme of the Appellee is Ante Litem Statute of Limitations and Service by O.C.G.A 9-11-5(b), There is no written ruling on this issue in the First Judgment February 12,2015,(R:61) especial the Subject Matter Jurisdiction invoked by the Appellee. and again later and in the Second Ruling by way of answer with a ruling and a proper law to support The Motion to Set aside the Judgment.

The Location of the Property and the structure are within the Cities Boundary, The City has declared it removed the Structure, Within the City the method of Abatement is by way of O.C.G.A Title 41, There is no evidence in any Court of any Action regarding this matter. The Tax Assessor an expert answers all questions promptly to Appellant properly clearly understand the events but does not say anything is undecipherable. That Position is clearly demonstrated by the City because the simply have no records or permits. Tax Assessor had no record of any demolition Tax Assessor again has no liens or Citations recorded on its site, Tax assessor further had evidence of a complete structure on the site. This evidence is presented to the Court by Exhibits and Affidavit by the Appellant. Because there is no evidence recorded properly The Appellee offered as defense its statement of facts and arguments. At no time again does the City attorney offer copies of any demolition permits, or other permits upon repeated requests and as a professional has a duty to supply and keep records. City ordinances and permits required are clearly laid out in the first Petition, any evidence of The Statement of Facts and argument were not served properly Pursuant to any Statute, The record is clear and easy to read that the method of service by the Appellee is O.C.G.A 9-11-5 Upon further scrutiny this

Statute The Appellee based his service on in contention to Appellants Arguments of Service by OCGA 41-2-12(d) Appellee Service is repeatedly Contended by the Appellant with every document including again in this reply to the motion to Dismiss.

It is important to note that the (3) of the orders filed in Action A15D0364 were filled within the 30 day deadline, with a request of the court to grant the Appellant leave pursuant to Rule 38(b) for a Petition in the United States Supreme Court. The Court of appeals State of Georgia Ruled it lacked Jurisdiction, but did not

send the matter up as requested or follow the further direction of a Motion pursuant to 41(d) There was a 90 day limit to send it up to the Supreme Court by way of Petition and the Appellant put in another motion for an extension of time in A15D0364 which happen to be served within the Court on the same day as the Order May 7.,,2015. The Appeals court ruled that the relief could not be granted unless the appellant went back to the Trial Court and have the Judgment set aside.

Upon Direction by the Court The appellant has followed the direction of the Court of Appeals. With all the evidence and facts and the Merits and laws before the Trial Court Justice Dennis Blackmon, again does not pick one single law the Appellee has offered as defense, again with no ruling on any law within the defense the question is what law does the Court reply on. Since The matter was dismissed within 6 months of starting the action The Appellant has raised this issue within the Court of Appeals State of Georgia as a new Enumeration of error. Pursuant To Rule 41(d) on a Motion to Dismiss Whenever it appears the Court has no jurisdiction of a pending appeal, it shall be dismissed or transferred To The Supreme Court as the facts and/or

law require. Based on Evidence, Statute, Merits Rule and Statute the Appellee has no legal right to Dismiss this action with prejudice and The Judgment should have been set aside.

PART II. A ARGUMENT AND CITATION OF AUTHORITY

A.1/ Pursuant to rule 24(a) The Appellant has 20 days to issue a reply brief or be in fault according to the Statute of limitations,

2/ Pursuant to Rule 41(a) the Appellant is entitled to reply to the Appellee's Motion to Dismiss Direct Appeal

3/ Pursuant to Rule 41(a) the Appellant is entitled to reply to the Appellee's Brief

4/ Pursuant to the Rules of the Court of Appeals the date of record in the Appeals Court For the Appellee Brief and The Appellee's Motion to Dismiss Direct Appeal is recorded November 4, 2015. Court of Appeals state of Georgia has the date recorded for the Appellee as November 4, 2015, Pursuant to rule 24(a) the Statute of limitation rules out on November 24, 2015.

5/ The Appellant has received both documents the Appellee Brief and the appellee Motion to Dismiss Direct Appeal in the mail a week later by US mail, this only allows The Appellant only 2 weeks to reply to meet the deadline of November 24. There is no evidence within the Court it was served by certified mail that the appellant was served prior on the Same day by the Court of November 4, to give the appellant 20 days as required by Statute This is improper service pursuant to RULE A 6, O.C.G.A. 41-2-12(d) and O.C.G.A.9-11-5(b) and The Appellee's Brief and Motion to dismiss should be dismissed for improper service.

6/ Pursuant to Rule 1A [All filings, documents, motions ,briefs, requests, and communications relating to appeals shall be in writing.....and shall show that copies have been furnished to opposing counsel.....no signature by express permission shall be permittedall signed documents shall include the state bar of Georgia membership number of all submitting attorneys}

(Emphasis highlighted and underlined) All signed documents shall include the State Bar of Georgia membership number of all submitting attorneys.} (Emphasis noted) Affidavit of service by the Appellee in enumeration of error # 14, that the appellee claims as "indecipherable" does not meet this Standard. The Signature is totally indecipherable. This is a very important document and is record of the very first service.

Part II (B) Appellant's Statement of Contention of the Facts and Enumeration of errors

Rule 25 (b) Appellee.

The brief of appellee shall be divided in the following manner:

1. Part One shall point out any **material inaccuracy** or incompleteness of appellant's statement of facts and any additional statement of facts deemed necessary, plus such additional parts of the record or transcript deemed material. Failure to do so shall constitute consent to a decision based on the appellant's statement of facts. Except as controverted, appellant's statement of facts may be accepted by this Court as true. (emphasis highlighted)

2. Part Two shall contain appellee's argument and the citation of authorities **as to each enumeration of error**. It shall also include the standard of review if different from that contended by the appellant. (emphasis highlighted)

Pursuant to Rule 25(b) Paragraph number 1 is full of inaccuracy and the Argument by Appellant as such was present by certified day on the required last day it was to be recorded in the Court

Argument by Appellant. Appellee has not argued any enumeration of error by citation, but rather sent the Court in a different direction with the Cities version of events, pursuant only to a lack of jurisdiction and "Abuse of Discretion" Appellee has not pointed out any material inaccuracy and uses one foot note "The Statements are Generally indecipherable" That Statement is highly inadequate pursuant to Court of appeals Rule 25(b)(2) and should be dismissed

Appellee has not attacked the Appellant in any formable way pursuant to Rule 25(a) it is therefore paramount that the Appellant draw the Courts attention to Rule 25(b)

Appellee's Main contention is Court of Appeals State of Georgia Lacks subject matter Jurisdiction. Subject matter Jurisdiction is the underlying issue raised by the Appellee in its Pre-Answer Motion to dismiss, Subject matter jurisdiction again is the underlying issue pertaining to Attorney's fees granted to the Appellee contrary to O.C.G.A 9-15-14(e) and Subject matter

Jurisdiction is a relative issue in the Motion to set the Judgment aside, as well as Subject matter jurisdiction is a fundament part of O.C.G.A 9-11-41(a) and (b) all issues addressed in the Appellants enumeration of Errors.

PART II (C) ARGUMENT AND CITATION OF AUTHORITIES

Rule 41(d) Motion to Dismiss incorporates an addition matter within its reading. [Whenever it appears the Court has no Jurisdiction of a pending appeal it shall be dismissed or **transferred to the Supreme Court, as the facts and/or the law require**](Emphasis noted) Court of Appeal State of Georgia in its ruling May 7 A15D0364 attached to this current Appeal made its determination based on the law according to a ruling which directed the Appellant back down to the Trial Court for further Adjudication before it could grant any other relief. Appellant followed direction and Appeals the ruling by the Trial Court, Multiply errors of which the Appellant has in this appeal is attached and contained within the body of the Appellants brief in this matter.

Within the Superior Court of Carroll County the trial Court additional errors were revealed, #16 to #24 inclusive that are clearly separated in the Appellants brief. Appellee raises issues pursuant to OCGA 5-6-35(a) Appeal by Application OCGA 5-6-35(a)((8) and (a)(10) and raises per OCGA 5-6-38(a) that of a 30 day deadline has passed on Judges Order(R 61) OCGA 9-11-60 states two methods of Attack Collateral Attack and Direct Attack.

Collateral attack says OCGA 9-11-60(a) Collateral attack. **A judgment void on its face may be attacked in any court by any person.** (In any Court) (Emphasis noted) can

be Court of Appeals State of Georgia at any time or in The United States Supreme Court. And Any Person includes The Appellant.

The Final Judgment Recorded on February 12, (R 61) has invoked no law on its face . It is void on its face pursuant to O.C.G.A 9-11-58(a) and (b) and both 9-11-41(a)and (b) It further has no Precedent or follows no rule consistent with Rule 33(a) or Rule 36. O.C.G..A 41-2-12(d) and O.C.G.A 9-11-5(b) of which the Appellant has invoked as improper service consistently with regards to Appellee Service in Enumeration of Errors 1-24 within this action is inherently incorporated in O.C.GA 9-11-60(f). OCGA 9-11-60(f) Procedure for time of relief. Reasonable notice shall be afforded the parties on all motions. Motions to set aside judgments may be served by any means by which an original complaint may be legally served if it cannot be legally served as any other motion.

Furthermore the Appellee's Argument That the Motion to set aside Judgment was not Combined with a motion for a new trial or a motion for notwithstanding verdict is a reference to the OCGA 9-11-60 (b) of methods of a direct attack in the Court of Rendition. This matter has nothing to do with the Court of Rendition this matter can deal with both a Collateral Attack and a Direct Attack and both types of attack are in OCGA 9-11-60

Appellee Argues **Numanovic v Jones** 321 Ga. App 763 764 (2013) was a petition for Legitimation nothing to do with a non-jury trail order to dismiss with Prejudice or errors in its brief Argued by appellee pursuant to RULE 25(a)

Appellant Numanovic filed a petition full of errors which the court denied as untimely but noted in its ruling that two code sections determined the method for pursuing appeals to this court and to the Supreme Court of Georgia.....and orders that may be appeared directly including all final judgment.

Judge Further noted in his ruling

[We further note that Georgia law requires that a petition for legitimation be filed in a new civil proceeding with separate civil action number, and not within the same civil action number as the underlying adoption proceeding.].....and [Because the review of the trial court's denial of Numanovic's petition for legitimation must come by discretionary application and Numanovic failed to file an application, we are without jurisdiction to hear the merits of his appeal] 3 judges rule pursuant to

RAY, Judge.

BARNES, P.J., and MILLER, J., concur.

Appellee argues with case law Anderson v GGS Hotel Holdings Inc, 234 Ga.App 284, (1998)

This action is a tort action presided over by one Judge McMurray by way of Statement of Claim

it was a tort action against defendant GGS Hotel Holdings, Georgia, Inc.,

Argument by Appellant: There is no enumeration of errors It was an arbitration clearly being passed on by a single Judge The case was arbitrated on December 5, 1997, and in an order entered on February 3, 1998, the trial court made the award of

the arbitrators the judgment of the court.

This case does not meet the criteria for rule 33(a) or rule 36 to be applied as a precedent case regarding the Appellant's Petition in this underlying action

Appellee invokes case law: Kappelmeier v Homer 226 Ga App 379 486 SE2d 612

Appellant argument

Kappelmeier v Homer 226 Ga App 379 486 SE2d 612 is a liable Suit filed with a counterclaim of substantial justification based on the action was frivolous groundless and vexatious, similar arguments filed by the Appellee in this action for its award of Attorney fees countered by the arguments set forth by Lilly in the Enumeration of errors that are spelled out specifically to rule 22 and required to be answered in accordance with Rule 25(b)

Again this case law invoked ay Appellee has but a single Judge McMurray same Judge that preceded over the former. Again under Direct Review of Court Order per Statute 33(a) and 36 this does not meet the strict requirements to set any precedent. It therefore is inapplicable.

Appellee invokes case law Mitcham v. Blalock, 268 Ga. 644,646(1997).

Appellant argument: Case Is an arbitration award passed on by the Court and dealt with through the Supreme .Court of Georgia [The three arbitrators found ASI and Jones jointly and severally liable to Mitcham on his claims]

[Summary judgment was awarded the defendants, and the Court of Appeals affirmed the trial court's grant of summary judgment]

[Eight days after Mitcham filed his notice of appeal from the trial court's grant of the injunction to appellees, appellee Blalock filed a motion under OCGA § 9-15-14 for assessment of attorney fees]

Argument by Appellant as recorded above the claim for attorney's fees was filed 8 days after the Deposition.

Appellant Lilly's argument: With respect to that case it was 8 days with respect this action appellee. Request is after 45 days and does not meet O.C.G.A 9-15-14(e)

[Mitcham seeks reversal of the trial court's order finding him and his attorney jointly and severally liable to Blalock under OCGA § 9-15-14(a) and (b) for \$4242.74 in attorney fees and expenses of litigation.]

It is clear that the award of \$4242.74 is below the threshold of small claims and that of the Magistrate Court where the appellee City should have filed its action regarding the matter in the first place, and where the Ante Litem Statutes raised by the Appellee under its Pre-answer motion for dismissal should have previously been recorded. Because nothing was ever recorded is one of the reason why this action has occurred.

Alternatively Appellant LILLY is entitled to the documents it has requested in the action because the Appellee is a public Utility and its Attorney of Record owes the Appellant a Public Duty to provide the Documents requested in its Petition pursuant to O.C.G.A 9-11-24

ADAMS et al. v. GEORGIA DEPARTMENT OF CORRECTIONS et al (274 Ga 461(553 d 798)(2001)

Under this provision, a private citizen "may turn to the judicial branch to seek to compel or enjoin the actions of one who discharges public duties 'where the question is one of public right and the

object is to procure the enforcement of a public duty. . . . [Cits.]" *Brissey v. Ellison*, 272 Ga. 38, 39 (526 SE2d 851) (2000). Therefore, the existence of standing under OCGA 9-6-24 ultimately depends upon whether Appellee's owe a public duty which appellants, as members of the public, are entitled to have enforced.

Appellant further argues as an action against a Public Utility The Appellant should have been allowed additional time requirements as a right in its first Appeal A15D0364.

Part II D APPELANTS CONTENTION WITH Appellee Standard of review

Appellee invokes two statutes within its Standard of Review

Barner v. Binkley 695 S.E.2d 398 (2010) Court of Appeals of Georgia.

Barner v Binkley involves a bench trial at which Barner did not appear. It involved repetitive conduct of not showing up in the court part of ruling [Barner appeals the trial court's denial of his motion to set aside the judgment entered against him].....

[Nevertheless, the motion to set aside was timely, as such motions need only be filed within three years from entry of the judgment complained of. See OCGA § 9-11-60(f). We therefore refer to the general appellate rule on reviewing orders on such motions, which is that we do not reverse a trial court's ruling on a motion to set aside unless the trial court abused its discretion. See *Brown v. Gadson*.^[1] However, where, as here, the facts are undisputed and the question is one of law, we review the ruling de novo. *Guthrie v. Wickes*.^[2] ...]

The issue came down to the rights of a Jury additional part of ruling by the Court [The Georgia Constitution provides: "The right to trial by jury shall remain inviolate, except that the court shall render judgment without the verdict of a jury in all civil cases where no issuable defense is filed and where a jury is not demanded in writing by either party." Ga. Const. of 1983, Art. I, Sec. I, Par. XI (a). Similarly, OCGA § 9-11-38 of the Civil Practice Act provides:

Last part of ruling

[Accordingly, in the absence of any evidence of an implied waiver of Barner's right to a jury trial, we hold that, as a matter of law, a nonamendable defect of record existed, and that the trial court erred in denying Barner's motion to set aside the judgment.]

Judgment reversed. BARNES, P.J., and BERNES, J., concur.

Argument by the Appellant Lilly regarding this underlying case. Of particular importance is the repetitive Conduct of Barner, Appellant requested very simple actions of the court in its initial action.

Assuming the appellees defense completely breaks down the real question to this case does the Appellee City still reserve its right to jury trial base its repetitive nature of improper service

Appellee invokes a 2nd case law Johnston v Correale 285 Ga App 870,870(2007) Appellant argues again is a trial, with substantial evidence produced concerning an unfulfilled contract, Appellant argues it not a non-jury trial dismissed with prejudice in this underlying case and improperly served.

[For the reasons set forth below, Justice affirm.....

A directed verdict is proper only if there is no conflict in the evidence as to any material issue and the evidence introduced, with all reasonable deductions therefrom, shall demand a particular verdict. In determining whether any conflict in the evidence exists, the court must construe the evidence most favorably to the party opposing the motion for directed verdict. The **standard used to review the grant or denial of a directed verdict is the any evidence test**] (emphasis noted)

Appellant does not have any contention with this review on the underlying Matter in this case.

[As the trial court stated **prior to making its determination**, Johnston simply has not supported her legal claims in this case, although the facts may nonetheless make Correale's actions seem unsavory at best].(emphasis noted)

[4. Since we have determined that the trial court did not err by granting Correale's motion for a directed verdict, we **need not reach Johnston's remaining enumeration of error**.(emphasis noted)

Judgment affirmed.]

Argument by Appellant: The Appellant fails to see how this Case has any bearing on this

underlying case. The Case went to court, it is well documented it dealt with enumeration of errors and the standard of review was the any evidence test.

PART II (E) APPELLANT ARGUMENT of Material Matters raised by the Appellee

Pursuant to Rule 25(b) and Rule 1 A, on any Enumeration of Errors, 1-24 Appellee is in Default. In this underlying case the facts and evidence are contained in the Original Petition supported by Affidavit and the only supporting Evidence by the City is an Affidavit supporting the City's position by Tim Gizzard, all other facts are Procedural Postures, The Appeals Court State Of Georgia has the entire record including every single fact and argument and Contention that has come before the Superior Court. There is absolute evidence within this record to completely support the Appellants Position. There is no evidence within the Pre-answer Motion to Dismiss to support anything by ruling or law. The main repeated theme of the Appellee is Ante Litem, Statute of Limitations It is important to note that the (3) of the orders filed in Action A15D0364 were filled within the 30 day deadline with A15D0364

Pursuant To Court of Appeals State of Georgia Rule 41(d) on a Motion to Dismiss Whenever it appears the Court has no jurisdiction of a pending appeal, it shall be dismissed or transferred to The Supreme Court as the facts and/or law require. In case A15D364 attached to this current action the appellant followed the clear direction of the Court of Appeals as directed back to the Trial Court for further Adjudication

**PART II (F) REPLY BY APPELLANT TO APPELLEE'S ARGUMENT AND
CITATION OF AUTHORITY pursuant to to rule 41(a) 24(a) and rule 25(b)**

Based on Evidence, the law, and the Merits by Rule and Statute the Appellee has no legal right to Dismiss this action with prejudice for Lack of Jurisdiction

Appellant has reviewed the Appellee's Briefs and The Standard of Review should be a proper brief filed in accordance with rule 25 (b) and there is no such order to the Appellee's brief

Rule 25 (b) Appellee.

The brief of appellee shall be divided in the following manner:

1. Part One shall point out any **material inaccuracy** or incompleteness of appellant's statement of facts and any additional statement of facts deemed necessary, plus such additional parts of the record or transcript deemed material. Failure to do so shall constitute consent to a decision based on the appellant's statement of facts. Except as controverted, appellant's statement of facts may be accepted by this Court as true. (emphasis highlighted)
2. Part Two shall contain appellee's argument and the citation of authorities **as to each enumeration of error**. It shall also include the standard of review if different from that contended by the appellant. (emphasis highlighted)

Argument by Appellant. Appellee has not argued any enumeration of error by citation, #1-24 inclusive but rather sent the Court in a different direction with the Cities version of events, pursuant only to a lack of jurisdiction and "Abuse of Discretion" Appellee has not pointed out any material inaccuracy and uses one foot note "The Statements are Generally indecipherable" That Statement is highly inadequate pursuant to Court of appeals Rule 25(b)(2) and should be dismissed

PART III (A) Appellants request Standard of review

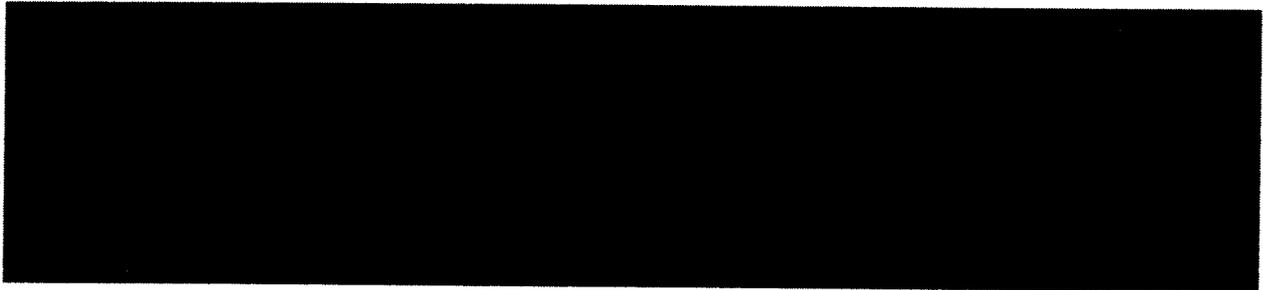
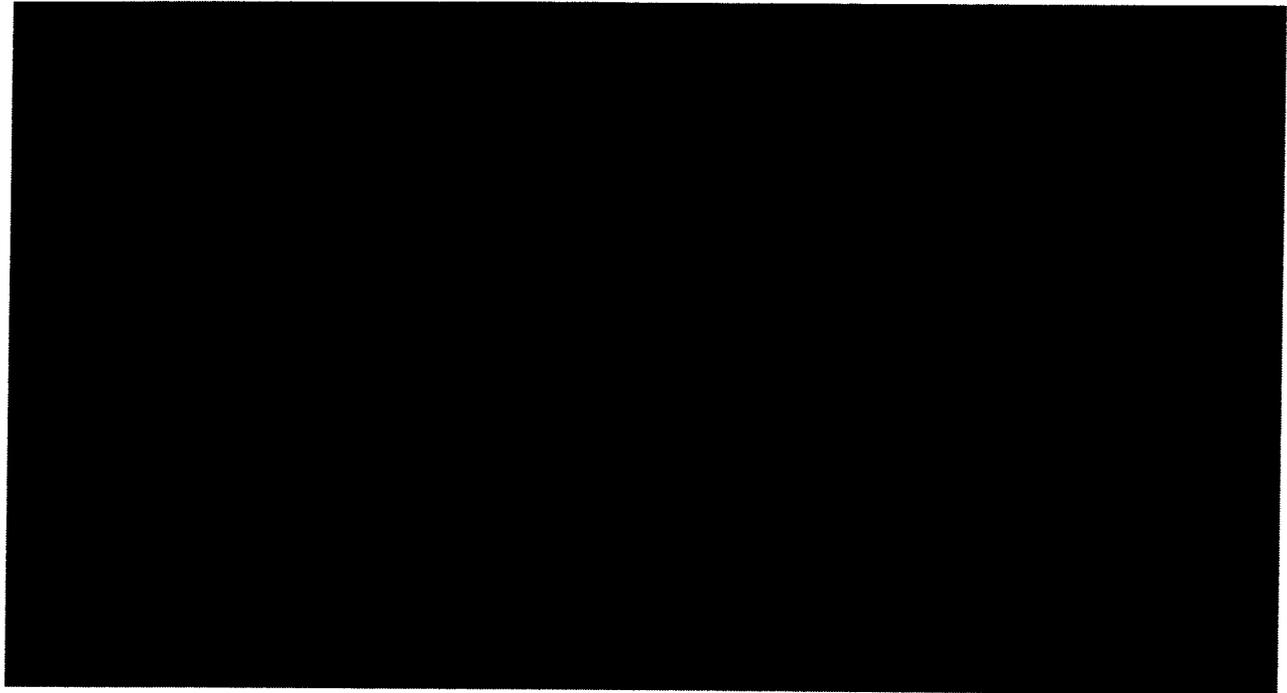
In law, the **standard of review** is the amount of deference given by one court (or some other appellate tribunal) in reviewing a decision of a lower court or tribunal. A low standard of review means that the decision under review will be varied or overturned if the reviewing court considers there is any error at all in the lower court's decision. A high standard of review means that deference is accorded to the decision under review, so that it will not be disturbed just because the reviewing court might have decided the matter differently; it will be varied only if the higher court considers the decision to have obvious error. The standard of review may be set by statute, rule or precedent. In the United States,

Appellant respectively request the Court of appeals to use the Standard of Review to be applied by **Statute and Rule**, whereas Appellee motion to Dismiss is based on a Precedent of ignoring all 24 enumeration of Errors. (Appellant finds this quite extraordinary if the Court allows the appellee to proceed in this manner since there is no detailed argument pursuant to Rule 25(a)) It is now up to the Honorable Court to Rule whether the errors are indecipherable or not whether they are supported by Citation and whether any documented recorded as Enumeration of error 1-24 doesn't meet the strict review of the Courts requirements and has to be abandoned.

PART III A(1) Appellant under Standard of review

Black's Law Dictionary defines "precedent" as a "rule of law established for the first time by a court for a particular type of case and thereafter referred to in deciding similar cases.

1. Appellant under standard of review respectively request that RULE 33(a) and RULE 36 be the standard of review for case law precedent invoked by the Appellee



(Emphasis noted)

2. Appellant respectively request the Court of Appeals to look before every order signed and recorded by date to see if there is a Disposition Form as required by O.C.G.A 9-11-58(a)
3. Appellant respectively request the Court of Appeals to look before every order signed and recorded by date to see if there is a Disposition Form as required by O.C.G.A 9-11-58(b)

4. Appellant under standard of review respectively request that all service in this action be subject to the review of O.C.G.A.9-11-5(b) O.C.G.A. 41-2-12(d) by the Appellee in accordance with Rule 6. And 1A

Appellant under standard of review respectively request that all Attorney's fees in this action be subject to the review of Statute by O.C.G.A. 9-15-14(e)

PART III B The Standard of review can be through other means as well and the appellant leaves that up to the discretion of the court.

1. **Sufficiency of the Evidence** :The appellate court reviews the trial court's judgment to determine whether the evidence in the record is strong enough to support the judgment
2. **Manifest Weight of the Evidence** The appellate court has the duty to weigh the evidence and determine whether the findings of the trial court were so against the weight of the evidence as to require a reversal and a retrial. The reviewing court can reverse the judgment when the verdict is so clearly unreasonable, given the evidence, that it is unjust.
3. **Abuse of Discretion** A judicial abuse of discretion occurs when the trial judge acts in an arbitrary or unreasonable way that results in unfairly denying a person an important right or causes an unjust result

Appellant argument Basically what is indecipherable is the Signature by Express permission as recorded in enumeration of Error #14, Pursuant to Court of Appeals Rule 1(a) the appellant respectively request the standard of review by Rule 1(a) since this is

the first document delivered by US mail with an affidavit signed within the Court see Appellee Affidavit of First Service(R) And evidence supporting the affidavit attached to the original pre-answer motion to dismiss signed by Tim Gizzard. With that reply it is worthy to note no Demolition permit or record in any court of Competent Jurisdiction was given and the City then admits to its demolition date.

PART IV (A) Appellant now answers by Reply to the Appellee's motion to Dismiss

Direct appeal C. and D. (pages 16-24) (are from Appellants Original Brief)

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) (see Index to case NO 2014-su-cv-1331 item 30 pages 155-156) the Appellant offers the following argument against that ruling. (see Index to case NO 2014-su-cv-1331 certificate of service item 7 pages 32-33 and item 8 pages 34-47) 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 it is a fact That Petitioner was improperly served by regular mail 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: (see record Index to case NO 2014-su-cv-1331 item 24 pages 117-136)

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 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**" within record (see Index to case NO 2014-su-cv-1331 item 10 page 71-95) first page

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

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. aside (see record Index to case NO 2014-su-cv-1331 item 10 pages 55-60)

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) within record (see Index to case NO 2014-su-cv-1331 item 22 respondents response page 110-113) pages 2 and 3 within the response.

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. See the complete record of all service to the appellant by the appellee

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 an allegation it is a fact see initial service documents recorded by appellee using "Smith Connerly LLP" office 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 19, 2015 . within record (see Index to case NO 2014-su-cv-1331 item 22 page 110-113) 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-trial Motion to Dismiss (see Index to case NO 2014-su-cv-1331 affidavit of service item 7 pages 32-33 and item 8 certificate of service)

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. See all Affidavits of service by appellee in complete record.

§ 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..**

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, then all matters are in default the the appellee

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 Index to case NO 2014-su-cv-1331 item 30 pages 155-156 and the Order Granting Respondents motion for Attorney's fee's and Cost under O.C.G.A § 9-15-14(d) (see Index to case NO 2014-su-cv-1331 item 31 pages 157-163) 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 aside (see record Index to case NO 2014-su-cv-1331 item 31 pages 157-163)

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 (see record Index to case NO 2014-su-cv-1331 item 11 pages61)

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) (see record Index to case NO 2014-su-cv-1331 item 23 Court of appeals pages 114-116)

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 (see record Index to case NO 2014-su-cv-1331 item 5 pages 13-30) See Pleadings and supporting affidavit

(a)(3) "Untrue", Nothing is untrue in any document filed by the appellant it is supported by Affidavit. (see Index to case NO 2014-su-cv-1331 item 5 pages 13-30 including affidavit of support)

Appellant therefore respectfully 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. (see record Index to case NO 2014-su-cv-1331 item 29 pages 149-154) and order dismissing as moot (see record Index to case NO 2014-su-cv-1331 item 32 pages 164-174)

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) (see record Index to case NO 2014-su-cv-1331 item 24 pages 117-136) And (see record Index to case NO 2014-su-cv-1331 item 29 pages 149-154)

Judge's Ruling (see record Index to case NO 2014-su-cv-1331 item 30 and 31) Petitioner Filed three groundless motions **nearly a month after** this Court entered an order Dismissing the Action" (see record Index to case NO 2014-su-cv-1331 item 31 pages 157-163)

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 Index to case NO 2014-su-cv-1331 item 11 page 61)

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. (see record Index to case NO 2014-su-cv-1331 item 24 pages 117-136)

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 Index to case NO 2014-su-cv-1331 item 7 and 8

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 (see Index to case NO 2014-su-cv-1331 item 31 pages 157-163)

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) (see record Index to case NO 2014-su-cv-1331 item 22 pages 110-113) 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) within record (see Index to case NO 2014-su-cv-1331 item 10 page 55-60)

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 (see Index to case NO 2014-su-cv-1331 item 10 page 55-60)

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 filled and denied on March 12,2015 see exhibit Superior Court (see Index to case NO 2014-su-cv-1331 item 11 page 61) 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, by affidavit (see Index to case NO 2014-su-cv-1331 item 5 attached affidavit)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 **July 6, 2015** 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) **nothing is recorded by the appellee within the entire record of any disposition form filled out and entered for the city**

(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.

1. City Procedural Posture errors

Appellee states "applicant's initial pleadings in the underlying case had multiply errors" and the theme of its errors according to the Appellee was A failure to comply with ante litem notice requirement under O.C.G.A 36-33-5. Appellee fails to note that in this pleading it stated Lacks subject matter jurisdiction, and the Superior Court made absolutely no ruling on this matter in the City's Pre-answer Motion to Dismiss on February 12, 2015. again Counsel makes no reference to the Improper Signature on this order or the fact that there is no disposition form in the record to make it valid .This matter is address in the enumeration of errors and there is no reply by the City on this critical matter.

V. CONCLUSION

With no evidence within the record of a demotion Order granted in any Court of Competent Jurisdiction with no evidence of a proper Demolition Contractor and permit in the record, admitting they destroyed a structure e without proper permits ,with a property that is within the boundary of the City and the laws requiring both with 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) no evidence of any disposition form, based upon the appellant property filing its motion for default judgment by certified mail, a 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) 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) see(R:155-156) And Judges Order dismissing Petitioner's reply to New allegations raised by the respondent see (R: 157-163) ,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 see (R:164-174) 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 21st th day of NOVEMBER 2015

H R. Lilly


839 Danish Drive

Fayetteville NC

28303

PH 727 288 5799

Email Arrowheadii@hotmail.com

IN THE COURT OF APPEALS OF THE
STATE OF GEORGIA

2015 JUL 25 4:00 PM
CLERK OF SUPERIOR COURT

RECEIVED IN OFFICE
NOV 2 2015
CLERK OF SUPERIOR COURT
Case No. A16A0180
CLERK COURT OF APPEALS OF GA

HAROLD R LILLY
Appellant

v.

CITY OF CARROLLTON GEORGIA
Appellee

DIRECT APPEAL

From The Superior
Court of Carroll County

Civil Action File

NO. 14CV01331-JDB

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing

**APPELLANT'S REPLY TO BRIEF OF APPELLEE, and APPELLANT'S REPLY TO
APPELLEE'S MOTION TO DISMISS DIRECT APPEAL and BRIEF IN SUPPORT
THEREOF**

To Appellee City of Carrollton Georgia

By Certified Mail # 7015 0640 0000 5113 1558 To the Following

Hall Booth Smith P.C.

Kenneth D Jones

Russell A Britt

191 Peachtree St. N.E.

Suite 2900

Atlanta Georgia 30303-

Respectively Submitted

this 21 th day of November 2015

M.R. Lilly


839 Danish Drive

Fayetteville NC

28303

PH 727 288 5799

Email Arrowheadii@hotmail.com