



*The Court of Appeals
of the
State of Georgia
Atlanta, Georgia 30334*

CHAMBERS OF
CHIEF JUDGE HERBERT E. PHIPPS

July 10, 2014

(404) 656-3457
FAX (404) 657-8945

Hon. Frank M. Hull
Judge, United States Court of Appeals
11th Judicial Circuit
56 Forsyth Street NW, Room 238
Atlanta, GA 30303

Dear Judge Hull:

On behalf of the Court of Appeals of Georgia, I ask that you serve on the Charles B. Mikell Memorial Committee. The Court has asked Presiding Judge John J. Ellington of our Court to chair the committee. The charge to the committee is to prepare an appropriate report on the life, character, and service of Judge Mikell. The members may also submit individual remarks.

The Court respectfully requests that the report, and any attendant remarks, be submitted to Presiding Judge Ellington by September 15, 2014. The final memorial will be published in an appropriate volume of the Georgia Appeals Reports.

Thank you for your willingness to serve on the committee. I look forward to reading the memorial to Judge Mikell.

Sincerely,

A handwritten signature in black ink, appearing to read "Herbert E. Phipps", written over a horizontal line.

Herbert E. Phipps

cc: Presiding Judge John J. Ellington
Jean M. Ruskell
Stephen E. Castlen



The Court of Appeals
of the
State of Georgia
Atlanta, Georgia 30334

CHAMBERS OF
CHIEF JUDGE HERBERT E. PHIPPS

July 10, 2014

(404) 656-3457
FAX (404) 657-8945

Hon. Ronald E. Ginsberg
10 Washington Avenue
Savannah, GA 31405

Dear Judge Ginsberg:

On behalf of the Court of Appeals of Georgia, I ask that you serve on the Charles B. Mikell Memorial Committee. The Court has asked Presiding Judge John J. Ellington of our Court to chair the committee. The charge to the committee is to prepare an appropriate report on the life, character, and service of Judge Mikell. The members may also submit individual remarks.

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Thank you for your willingness to serve on the committee. I look forward to reading the memorial to Judge Mikell.

Sincerely,

A handwritten signature in cursive script that reads "Herbert E. Phipps".

Herbert E. Phipps

cc: Presiding Judge John J. Ellington
Jean M. Ruskell
Stephen E. Castlen



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CHAMBERS OF
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July 10, 2014

(404) 656-3457
FAX (404) 657-8945

Mr. Sam Mikell
222 12th Street, N.E.
Apt. 2007
Atlanta 30309

Dear Mr. Mikell:

On behalf of the Court of Appeals of Georgia, I ask that you serve on the Charles B. Mikell Memorial Committee. The Court has asked Presiding Judge John J. Ellington of our Court to chair the committee. The charge to the committee is to prepare an appropriate report on the life, character, and service of Judge Mikell. The members may also submit individual remarks.

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Herbert E. Phipps

cc: Presiding Judge John J. Ellington
Jean M. Ruskell
Stephen E. Castlen



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CHAMBERS OF
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July 10, 2014

(404) 656-3457
FAX (404) 657-8945

Mr. William T. Daniel, Jr.
Brannen Searcy & Smith
22 Mulberry Bluff Drive
Savannah, GA 31406-3269

Dear Mr. Daniel:

On behalf of the Court of Appeals of Georgia, I ask that you serve on the Charles B. Mikell Memorial Committee. The Court has asked Presiding Judge John J. Ellington of our Court to chair the committee. The charge to the committee is to prepare an appropriate report on the life, character, and service of Judge Mikell. The members may also submit individual remarks.

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Sincerely,

Herbert E. Phipps

cc: Presiding Judge John J. Ellington
Jean M. Ruskell
Stephen E. Castlen



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CHAMBERS OF
CHIEF JUDGE HERBERT E. PHIPPS

July 10, 2014

(404) 656-3457
FAX (404) 657-8945

Mr. Brent J. Savage
Savage Turner Pinson & Karsman
304 East Bay Street
PO Box 10600
Savannah, GA 31412-8969

Dear Mr. Savage:

On behalf of the Court of Appeals of Georgia, I ask that you serve on the Charles B. Mikell Memorial Committee. The Court has asked Presiding Judge John J. Ellington of our Court to chair the committee. The charge to the committee is to prepare an appropriate report on the life, character, and service of Judge Mikell. The members may also submit individual remarks.

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Herbert E. Phipps

cc: Presiding Judge John J. Ellington
Jean M. Ruskell
Stephen E. Castlen



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CHAMBERS OF
CHIEF JUDGE HERBERT E. PHIPPS

July 10, 2014

(404) 656-3457
FAX (404) 657-8945

Mr. W. Scott Henwood
Hall Booth Smith, P.C.
191 Peachtree Street, NE, Suite 2900
Atlanta, GA 30303-1775

Dear Mr. Henwood:

On behalf of the Court of Appeals of Georgia, I ask that you serve on the Charles B. Mikell Memorial Committee. The Court has asked Presiding Judge John J. Ellington of our Court to chair the committee. The charge to the committee is to prepare an appropriate report on the life, character, and service of Judge Mikell. The members may also submit individual remarks.

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Herbert E. Phipps

cc: Presiding Judge John J. Ellington
Jean M. Ruskell
Stephen E. Castlen



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CHAMBERS OF
CHIEF JUDGE HERBERT E. PHIPPS

July 10, 2014

(404) 656-3457
FAX (404) 657-8945

Ms. Susan Warren Cox
Edenfield Cox Bruce & Classens, P.C.
115 Savannah Avenue
P.O. Box 1700
Statesboro, GA 30459-1700

Dear Ms. Cox:

On behalf of the Court of Appeals of Georgia, I ask that you serve on the Charles B. Mikell Memorial Committee. The Court has asked Presiding Judge John J. Ellington of our Court to chair the committee. The charge to the committee is to prepare an appropriate report on the life, character, and service of Judge Mikell. The members may also submit individual remarks.

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Herbert E. Phipps

cc: Presiding Judge John J. Ellington
Jean M. Ruskell
Stephen E. Castlen



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CHAMBERS OF
CHIEF JUDGE HERBERT E. PHIPPS

July 10, 2014

(404) 656-3457
FAX (404) 657-8945

Mr. Steven E. Scheer
Scheer & Montgomery, P.C.
8 East Liberty Street
Savannah, GA 31412

Dear Mr. Scheer:

On behalf of the Court of Appeals of Georgia, I ask that you serve on the Charles B. Mikell Memorial Committee. The Court has asked Presiding Judge John J. Ellington of our Court to chair the committee. The charge to the committee is to prepare an appropriate report on the life, character, and service of Judge Mikell. The members may also submit individual remarks.

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Herbert E. Phipps

cc: Presiding Judge John J. Ellington
Jean M. Ruskell
Stephen E. Castlen



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Atlanta, Georgia 30334*

CHAMBERS OF
CHIEF JUDGE HERBERT E. PHIPPS

July 10, 2014

(404) 656-3457
FAX (404) 657-8945

Hon. Louisa Abbot
Judge, Superior Court, Eastern Judicial Circuit
203 Chatham County Courthouse
133 Montgomery Street
Savannah, GA 31401

Dear Judge Abbot:

On behalf of the Court of Appeals of Georgia, I ask that you serve on the Charles B. Mikell Memorial Committee. The Court has asked Presiding Judge John J. Ellington of our Court to chair the committee. The charge to the committee is to prepare an appropriate report on the life, character, and service of Judge Mikell. The members may also submit individual remarks.

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Thank you for your willingness to serve on the committee. I look forward to reading the memorial to Judge Mikell.

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Herbert E. Phipps

cc: Presiding Judge John J. Ellington
Jean M. Ruskell
Stephen E. Castlen



*The Court of Appeals
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CHAMBERS OF
CHIEF JUDGE HERBERT E. PHIPPS

July 10, 2014

(404) 656-3457
FAX (404) 657-8945

Hon. Roy Barnes
The Barnes Law Group, LLC
31 Atlanta Street
Marietta, GA 30060

Dear Governor Barnes:

On behalf of the Court of Appeals of Georgia, I ask that you serve on the Charles B. Mikell Memorial Committee. The Court has asked Presiding Judge John J. Ellington of our Court to chair the committee. The charge to the committee is to prepare an appropriate report on the life, character, and service of Judge Mikell. The members may also submit individual remarks.

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Thank you for your willingness to serve on the committee. I look forward to reading the memorial to Judge Mikell.

Sincerely,

A handwritten signature in black ink, appearing to read "Herb", written over a white rectangular background.

Herbert E. Phipps

cc: Presiding Judge John J. Ellington
Jean M. Ruskell
Stephen E. Castlen



*The Court of Appeals
of the
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Atlanta, Georgia 30334*

CHAMBERS OF
CHIEF JUDGE HERBERT E. PHIPPS

July 10, 2014

(404) 656-3457
FAX (404) 657-8948

Hon. Perry Brannen, Jr.
407 Herb River Drive
Savannah, GA 31406

Dear Judge Brannen:

On behalf of the Court of Appeals of Georgia, I ask that you serve on the Charles B. Mikell Memorial Committee. The Court has asked Presiding Judge John J. Ellington of our Court to chair the committee. The charge to the committee is to prepare an appropriate report on the life, character, and service of Judge Mikell. The members may also submit individual remarks.

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Thank you for your willingness to serve on the committee. I look forward to reading the memorial to Judge Mikell.

Sincerely,

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Herbert E. Phipps

cc: Presiding Judge John J. Ellington
Jean M. Ruskell
Stephen E. Castlen



Court of Appeals

Memorandum

To: Fiscal Director Jan Kelley
From: Presiding Judge Herbert E. Phipps 
Subject: Portrait Commission Contract
Date: March 4, 2016

As you know, the portrait we commissioned from Artist Edward Clay Wright, Jr., has been completed and was delivered to the Court yesterday. Presiding Judge Ellington and Mr. Castlen were on hand when the crate was opened and assisted Will Moore in unwrapping the portrait. We found no damage of any kind to the painting, and everyone present expressed pleasure and satisfaction with the quality of the artist's work. I am sorry you were not available to see the portrait yesterday but I hope you will have an opportunity to see it soon.

The Court's contract with Mr. Wright specifies that my portrait is deemed accepted unless we request alterations to it within ten days of our receipt of it. I am satisfied and pleased with the portrait as it was received yesterday and will not request any alterations. You have my authorization to pay the remaining 50 percent of Mr. Wright's fee (\$6,000) which is due upon completion, delivery, and acceptance of the portrait.

Thank you very much for your assistance with the coordination of this contract and portrait commission. I appreciate your help during the past weeks, and the meticulous care you and Will Moore have taken to ensure the safe arrival and delivery to me of my portrait.

cc: Chief Judge Sara Doyle
Clerk of Court Steve Castlen



**OATH OF JUDGE OF THE
COURT OF APPEALS OF GEORGIA**

STATE OF GEORGIA)
COUNTY OF FULTON)

I, *Herbert E. Phipps*, a citizen of *the State of Georgia* and
being an employee of *The Court of Appeals of Georgia* and the
recipient of public funds for services rendered as such employee, do hereby solemnly swear and affirm
that I will support the Constitution of the United States and the Constitution of Georgia.

I do further swear that I will discharge all the duties lawfully required of me as Judge of the Court
of Appeals of Georgia, according to the best of my ability and understanding.

I do further swear and affirm that I am not the holder of any unaccounted for public money due
this State, or any political subdivision or authority thereof; that I am not the holder of any office
of trust under the government of the United States, nor of either of the several states, nor of any
foreign state; and that I am otherwise qualified to hold said office, according to the Constitution
and Laws of Georgia; and that I will support the Constitutions of the United States and of this
State.

I do further swear that I will administer justice without respect to person, and do equal rights to
the poor and the rich, and that I will faithfully and impartially discharge and perform all of the
duties incumbent on me as Judge of the Court of Appeals of this State, according to the best of my
ability and understanding, and agreeably to the laws of the Constitution of this State, and the
Constitution of the United States.

SO HELP ME GOD!

Herbert E. Phipps
Signature

Sworn to and subscribed before me, this)

18TH day of *December*, 20*12*)

Nathan Deal)

GOVERNOR



LOYALTY OATH

STATE OF GEORGIA
COUNTY OF FULTON

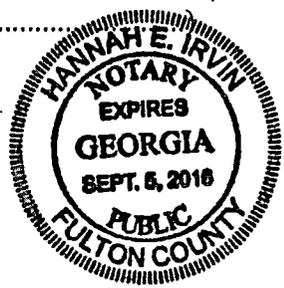
I, *Herbert E. Phipps*, a citizen of *the State of Georgia* and being an employee of *The Court of Appeals of Georgia* and the recipient of public funds for services rendered as such employee, do hereby solemnly swear and affirm that I will support the Constitution of the United States and the Constitution of Georgia.

SO HELP ME GOD!

Sworn to and subscribed before me, this the)
..18TH...day of ..December...20...12.....)

Herbert E. Phipps
.....
Signature

Hannah E. Irvin
.....
Notary



(O.C.G.A. 45-3-11)
(O.C.G.A. 45-3-12)
(O.C.G.A. 45-3-13)

Directions

The oath, when taken, must be attached to the oath of office and filed therewith as required by law.

The loyalty oath required by Code Sections 45-3-11 through 45-3-15 shall apply to all elected officers of this state, including the Governor, constitutional officers, elected officials or any political subdivision of the government of Georgia, and local school board officials (O.C.G.A. 45-3-12).



Court of Appeals

Memorandum

To: Judge Herbert E. Phipps
From: William L. Martin, III *WLM*
Subject: Swearing-In
Date: January 2, 2001

Enclosed in the attached envelope is your Oath of Office and your Loyalty Oath. These documents should be filled out prior to your swearing-in in the Governor's Office at 8:15 a.m. on Thursday, January 4th. Please have your administrative assistant fill them out as you would like them. If you have any questions about how to fill them out, please contact me.

I have enclosed a photostatic copy of the oaths in case you want to fill out a dummy set for your files.

After the swearing-in has occurred and the Governor has signed the oaths, it is my understanding that he will send the originals to the Secretary of State's office for filing in perpetuity and return to each of you a copy.

Thank you.

/ld
Attachments

**OATH OF JUDGE OF THE
COURT OF APPEALS OF GEORGIA**

STATE OF GEORGIA)

COUNTY OF FULTON)

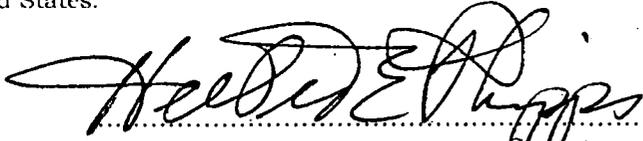
I, Herbert Edward Phipps , a citizen of
..... Albany, Dougherty County, Georgia and being
an employee of the Court of Appeals of Georgia and the recipient of
public funds for services rendered as such employee, do hereby solemnly swear and
affirm that I will support the Constitution of the United States and the Constitution of
Georgia.

I do further swear that I will discharge all the duties lawfully required of me
as Judge of the Court of Appeals of Georgia, according to the best of my
ability and understanding.

I do further swear and affirm that I am not the holder of any unaccounted for
public money due this State, or any political subdivision or authority thereof;
that I am not the holder of any office of trust under the government of the
United States, nor of either of the several states, nor of any foreign state; and
that I am otherwise qualified to hold said office according to the Constitution
and Laws of Georgia; and that I will support the Constitutions of the United
States and of this State.

I do further swear that I will administer justice without respect to person, and
do equal rights to the poor and the rich, and that I will faithfully and
impartially discharge and perform all of the duties incumbent on me as Judge
of the Court of Appeals of Georgia, according to the best of my ability and
understanding and agreeably to the Laws and the Constitution of this State
and the Constitution of the United States.

SO HELP ME GOD!


.....
Signature.

Sworn to and subscribed before me, this the)

..... 4th day of January 20.01)


.....)

GOVERNOR

(O.C.G.A 15-3-5)
(O.C.G.A 45-3-1)
(O.C.G.A 45-3-12)

LOYALTY OATH

STATE OF GEORGIA

COUNTY OF Fulton

I, Herbert Edward Phipps (name)

a citizen of Albany, Dougherty County, Georgia

and being an employee of the Court of Appeals of Georgia

and the recipient of public funds for services rendered as such employee, do hereby solemnly swear and affirm that I will support the Constitution of the United States and the Constitution of Georgia.

SO HELP ME GOD!

Sworn to and subscribed before me, this the)

4th day of January, 2001)

Robert Barnes
Governor

Herbert Phipps
Signature

(O.C.G.A. 45-3-11)
(O.C.G.A. 45-3-12)
(O.C.G.A. 45-3-13)

DIRECTIONS

This oath, when taken, must be attached to the oath of office and filed therewith as required by law.

The loyalty oath required by Code Sections 45-3-11 through 45-3-15 shall apply to all elected officers of this state, including the Governor, constitutional officers, elected officials of any political subdivision of the government of Georgia, and local school board officials. (O.C.G.A. 45-3-12)



Court of Appeals

Memorandum

To: Judge Phipps

Copy: Bill Martin

From: Katherine Durant (Central Staff)

Date: June 29, 2006

Subject: A06A1769. SOPHONIAS OTHELLO JAHENI v. THE STATE.

Judge Phipps, the notice of appeal in this criminal case was signed and filed by “Anita Parks with Express Permission of Barbara B. Claridge,” although the signature itself actually appears to indicate that it was signed by Barbara Claridge. Claridge is Jaheni's attorney of record. I contacted Bill Martin to discuss this appeal with him. He wrote the attached memorandum to Tom Porter, Esq., of the State Bar’s Unauthorized Practice of Law Division. According to records of the State Bar, Anita Parks is not a licensed attorney. We are assuming that Anita Parks is a staff person working for Claridge.

I am of the opinion that the typed wording that the notice of appeal was signed by “Anita Parks with Express Permission of Barbara B. Claridge,” indicates that it was in fact signed by Anita Parks, a person not authorized to practice law in this State. I have thus

drafted the attached order dismissing this appeal. Bill Martin suggests that this Court might want to publish this order as an opinion to put the bench and bar on notice. Should you agree, I will happy to assist in that effort in whatever manner you see fit. Please let me know if you wish to discuss this matter or if I may be of assistance otherwise.



Court of Appeals

Memorandum

To: Mr. Tom Porter
State Bar of Georgia
Unauthorized Practice of Law Division

From: *WLM*
William L. Martin, III

Subject: A06A1769. Sophonias O. Jaheni v. The State

Date: June 29, 2006

Dear Mr. Porter:

I was unable to locate your complaint form on your website so I have taken the liberty of sending you this memorandum concerning our telephone conversation of this date. As we discussed in our telephone conversation, it was brought to my attention by one of the staff attorney's on this Court that the attached Notice of Appeal was filed in Richmond Superior Court with the notation that it was filed "by Anita Parks with Express Permission for Barbara B. Claridge". I called the State Bar Office and was informed that there is no Anita Parks who is listed on the roll of attorneys in this State. Likewise, there is no Anita Parks listed on our roll of attorneys.

At your request, I am sending you this information. I do not know that the signature on the Notice of Appeal is that of Ms. Parks or of Barbara B. Claridge. However, I do want to advise you of this situation.

If you have any questions or if I could be of further assistance to you, please do not hesitate to contact me.

/ld

Attachment

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order:

PROPOSED ORDER (A06A1769.70) June 29, 2006 (by Durant)	
AGREE	DISAGREE

A06A1769. SOPHONIAS OTHELLO JAHENI v. THE STATE.

This appeal is from an order of the superior court denying Sophonias Othello Jaheni's motion for new trial in his criminal case. A notice of appeal was filed on his behalf by “[A.P.] with Express Permission of Barbara B. Claridge,” seeking review of the judgment of conviction and the denial of the motion for new trial. Claridge is Jaheni's attorney of record. According to records of the State Bar of Georgia, “A. P.” is not a licensed attorney.

OCGA § 15-19-51 (a) (1) prohibits any person other than a duly licensed attorney at law to “practice or appear as an attorney at law for any person other than himself in any court of this state or before any judicial body.” While a litigant may represent himself without counsel, he may not be represented by someone unauthorized to practice law. See *Eckles v. Atlanta Technology Group*, 267 Ga. 801 (485 SE2d 22) (1997). Moreover, Georgia Court of Appeals Rule 1 (a) provides that

All filings, documents, motions, briefs, requests and communications relating to appeals shall be in writing, shall be filed with the Clerk's office [and] *shall be signed by an attorney of record . . . Documents with conformed signatures by law firm staff or an attorney's employee will not be accepted.*

(Emphasis supplied.) Accordingly, only a duly licensed attorney may file a notice of appeal to this Court on behalf of an individual who does not appear *pro se*. *Congress Re-Insurance Corp. v. Archer-Western Contractors*, 226 Ga. App. 829 (487 SE2d 679) (1997). See also Rules of Professional Conduct, Bar Rule 4-102 (d), Rules 5.3 and 5.5. Because Jaheni's notice of appeal was filed by a person not authorized to

practice law in this State, the notice of appeal is null and void. *Gamble v. Diamond "D" Auto Sales*, 221 Ga. App. 688 (1996). The proper, timely filing of a notice of appeal is an absolute requirement to confer jurisdiction upon this Court. *Lewis v. Countrywide Funding Corporation*, 225 Ga. App. 440 (484 SE2d 66) (1997). Because of the absence of a proper notice of appeal, this Court is without jurisdiction to consider this appeal, which is therefore DISMISSED.

Because Jaheni is represented by counsel, he is hereby informed of the following in accordance with *Rowland v. State*, 264 Ga. 872 (452 SE2d 756) (1995): This appeal has been dismissed because of your counsel's failure to file a proper notice of appeal. If you still wish to appeal, you may petition the trial court for leave to file an out-of-time appeal. If the trial court enters an order granting your request, you will have 30 days from the filing date of that order to file a notice of appeal referencing your conviction. If the trial court enters an order denying your request, you will have 30 days from the filing date of that order to file a notice of appeal referencing the denial of your request for an out-of-time appeal.

The Clerk of Court is directed to send a copy of this order to Jaheni as well as to Jaheni's attorney, and the latter is also directed to send a copy to Jaheni.

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta*

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

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

....., Clerk.



Court of Appeals

Memorandum

To: All Judges
From: *WLM*
William L. Martin, III
Subject: Court of Appeals Tags
Date: November 23, 2004

I have spoken to Alva Lovette of the Georgia Motor Vehicle Department regarding new tags for the judges of the Court of Appeals. It is not mandatory that you get a new tag, but if you do want one, I will need to order it very soon. Please let me know your thoughts by marking this memo and initialing same and returning it to me.

Thank you.

/ld

Judge Initials

I would like a new Court of Appeals tag	
I would not like a new Court of Appeals tag	<i>HEP</i>



Court of Appeals

Memorandum

To: Judge Phipps

CC: Chuck Williams; Bill Martin

Subject: A05A0569. *GREENBRIAR HOMES, INC. v. BUILDERS INSURANCE.*
Motion to Recall Remittitur.

Date: December 10, 2004

Greenbriar Homes, Inc. has filed a motion to recall the remittitur in this case. On November 4, 2004, the court dismissed Greenbriar's September 30, 2004, notice of appeal as untimely. In the notice of appeal, Greenbriar stated:

Notice is hereby given that GREENBRIAR HOMES, INC, defendant in the above-styled case, hereby appeals to the Court of Appeals from the lower Court's order dated August 30, 2004.¹

The index of the record prepared by the superior court clerk's office showed only one order entered in the case. That order, an order for mediation, was signed August 25, 2004 and entered August 30, 2004.² Given that Greenbriar filed its notice of appeal September 30, 2004, it was one

¹R.1.

²R.77.

day late to appeal the August 30, order and I prepared an order of dismissal.

Now Greenbriar contends that it was actually appealing an order *signed* August 30, 2004, but entered September 10, 2004, from which the notice of appeal was timely.³ That order struck Greenbriar's answer as a discovery sanction and entered judgment for the appellee. Although I saw the September 10, order when reviewing the record, the notice of appeal unequivocally stated that the appellant was appealing "from the lower Court's order dated August 30, 2004,"⁴ and I conducted the jurisdictional review based on that order.

OCGA § 5-6-48 (f) provides:

Where it is apparent from the notice of appeal, the record, the enumeration of errors, or any combination of the foregoing, what judgment or judgments were appealed from or what errors are sought to be asserted upon appeal, the appeal shall be considered in accordance therewith notwithstanding that the notice of appeal fails to specify definitely the judgment appealed. . . .

Greenbriar's problem is that it was not apparent from the notice of appeal and record that it did not intend to appeal the order entered August 30, the judgment definitely specified in the notice of appeal.

Greenbriar did not file a motion for reconsideration of the dismissal order because, it contends, it never received the order. According to Greenbriar, "[s]pecifically, Appellant did not

³R. 116.

⁴R.1.

receive a copy of the dismissal dated November 4, 2004, and only discovered it's [sic] existence when, through counsel, a search of the Superior Court record was conducted on November 30, 2004." Consequently, since the time for filing an MFR has long passed, Greenbriar has filed this motion to recall the remittitur.

This is a hard case, with considerations both for granting and denying the motion. The most important consideration for denying the motion is that Greenbriar is ultimately responsible for the dismissal of its appeal. It could have avoided the dismissal by including in its notice of appeal a "concise statement of the judgment, ruling, or order entitling the appellant to take an appeal" as required by OCGA § 5-6-37. Moreover, in its motion, it accepts no responsibility. Instead, it blames the Union Superior Court for omitting the order from the index. It also blames this court for considering the entry date as opposed to the signing date when searching for "the lower Court's order dated August 30, 2004," as listed in the notice of appeal. It makes this criticism even though the crucial date for determining the timeliness of a notice of appeal is the date of entry of an order, not the date of signing. OCGA § 5-6-38; see *Lewis & Sheron Enterprises, Inc. v. Great A & P Tea Co.*, 136 Ga. App. 910 (222 SE2d 659) (1975). And "[t]he filing with the clerk of a judgment, signed by the judge, constitutes the entry of a judgment." OCGA § 5-6-31.

Further where the remittitur has been transmitted to and received by the trial court, this court loses "jurisdiction of the case, and can not make any further order having the effect to alter or change the judgment pronounced. The rule would be different where the remittitur had been

transmitted as the result of mistake, irregularity, inadvertence, fraud, or the like.” (Citations and punctuation omitted.) *Slappy v. Ga. Power Co.*, 109 Ga. App. 850, 856 (137 SE2d 537) (1964). According to Greenbriar in its motion, “the trial court has not filed the remittitur at the time of filing these pleadings,” which was December 6. Our clerk’s office called the Union County Superior Court, however, and was told that the remittitur was received and filed December 3.

Considerations in support of granting Greenbriar’s motion include the following. First, the record did contain an appealable order from which the notice of appeal was timely, although the order was not listed in the index and not clearly identified by Greenbriar. Secondly, if Greenbriar’s allegation that it never received the order of dismissal is correct, this perhaps could be considered the kind of “irregularity” that would allow us to recall the remittitur according to *Slappy*. Lastly, OCGA § 5-6-48 provides that it is “the policy of both appellate courts in Georgia to attempt to avoid dismissing appeals and to try to reach the merits of every case when it can be done consistent with the mandate of the law.”

Weighing these competing considerations, I would suggest that we deny the motion to recall the remittitur. As I mentioned, ultimately the responsibility for the dismissal lies with Greenbriar. And given that the trial court has received the remittitur, we have lost jurisdiction unless our transmission of the remittitur was “irregular” because of Greenbriar’s failure to receive the order of dismissal.

Please let me know how you would like to proceed and I will prepare an order accordingly.



Court of Appeals

Memorandum

To: File JK

From: William L. Martin, III

Subject: A05A0569. Greenbriar Homes, Inc. v. Builders Insurance

Date: December 1, 2004

This Court dismissed the above appeal for the Notice of Appeal having been filed late. The Notice of Appeal did not describe the order as required by §5-6-37, but only dated the order. The clerk at the trial court did not properly index the record and the only order indexed in the record was an order to mediate which was dated August 24 and filed with the Court on August 30.

This is the order Sheila identified as the appealable order. In actuality, the appealable order is located at R-116, but is not indexed as such.

This Court issued an order dismissing the appeal because the Notice of Appeal was late, *vis a vie*, the order entered August 30, 2004.

The actual order that was meant to be appealed was entered on September 10, 2004, and was timely.

The remittitur issued on November 30, 2004, divesting this Court of jurisdiction. The clerk's office was notified by counsel for the appellant who stated counsel had not received the Court's order of November 4, 2004, dismissing the application. Since this Court's remittitur issued on November 30, 2004, the Court has lost jurisdiction pursuant to *Slappy v. Georgia Power*, 109 App. 850 (1961). The appellant most likely will be filing a Motion to Recall the Remittitur.

/ld

cc: Rachael Derrico

Rachel,

Bill came in about a dismissal in A05A0569, *Greenbriar Homes*. The attorney screwed up in the NOA and identified the order being appealed solely as the order "dated August 30, 2004"; the NOA was filed September 30, 2004, making it untimely by one day.

Apparently, there were two orders,

(1) one signed on August 24, 2004 and stamped filed August 30, 2004 (which was yellow tabbed as the order being appealed), and

(2) the other order was actually signed on August 30, 2004, and was stamped filed on September 10, 2004.

The attorney has called and claims the second order was the one being appealed. Which would have been timely.

The trouble is the remittitur has gone out and we no longer have jurisdiction to reconsider the dismissal, unless the remittitur was issued by "mistake, inadvertence, fraud, or something or other." *Slappey v. Morrison* (ask Bill). Bill has told the attorney that the mistake was his for failure to concisely identify the order being appealed per the Rules. That certainly is true.

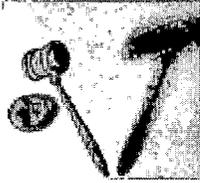
The attorney has told Bill that he is going to file a motion to recall the remittitur. Bill wanted to know if we wanted the motion to go directly to the judge or to Central Staff, first. I said CS, so that we could do a memo reflecting above with a recommendation as to the recall.

Lee



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Case 1. [A05A0569](#) (OCTOBER 27, 2004)
Style: GREENBRIAR HOMES V. BUILDERS INSUANCE
COA Status: REMITTITUR
COA Date/Judgement: NOVEMBER 04, 2004 DISMISSED
Trial Court Case 04CV139
Number:

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Judge Phipps Speaks to Summer Law Interns

Judge Herbert Phipps, Court of Appeals of Georgia, was the keynote speaker at the Atlanta Bar Association's 2004 Summer Law Internship Program Kick Off Breakfast on June 25, 2004.

Judge Phipps' remarks to the group of judges, lawyers, and interns stressed the "Importance of Being Honorable." He recalled his impressions of the legal profession during his teenage years and the impact of the visit on career day at his school of Mr. C.B. King, the only black lawyer in south Georgia during segregation.

Honor, regardless of profession, is essential to those who strive to do well, for those who want to succeed,

"because doing well, alone, is not enough... you should live by the rule that you don't have the right to claim that you are doing well unless you are also doing good."

Judge Phipps noted that even though honor may compel one to stand alone on an issue or make one unpopular in the eyes of those watching, an honorable person must "have the courage to do the right thing when the whole world is



Judge Herbert Phipps

watching; have the courage to do the right thing when no one is watching."

The summer interns are high school students in the Atlanta Public Schools who are assigned to law firms and judges. ☺

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Georgia Judges Attend Judicial Education Seminar

Representatives of Georgia's judges, courts administrators, and judicial educators attended the Advanced Leadership Institute in Judicial Education (LIJE) workshop on March 16-20, in Memphis, Tennessee.

The purpose of the LIJE program is to create a more unified and informed judiciary and ultimately to improve the quality of justice in state courts.

As a result of the LIJE, significant steps have been taken toward achieving a more organized and networked judicial education organization that is based upon an increasingly strong professional organization of state judicial educators.



Some of the Georgia contingent at the Advanced Leadership Institute in Judicial Education in Memphis, TN.

Chief Magistrate Judge Michael Baird, Clayton County, said, "I enjoyed the opportunity to participate. In addition to the substantive topics that were covered, the opportunity to interact with judges from the various classes of courts is most helpful. Through that type of small group reflection, we learn that the challenges that face our respective courts are more similar than one might imagine. The chairs of the training councils for the State, Superior, and Magistrate courts are in agreement that we should try to focus on more merged training in the future. I appreciate the opportunity to participate and thank ICJE and the Council of Superior Court Judges for covering the cost of the program." ☪

Attendees

Superior Court

- Judge Albert Rahn, Atlantic Circuit
- Judge John Allen, Chattahoochee Circuit
- Judge John Simpson, Coweta Circuit
- Judge Bonnie Oliver, Northeastern Circuit
- Judge Thomas Hodges, Northern Circuit
- Judge Robert Castellani, Stone Mtn. Circuit

State Court

- Judge Bridgette Campbell, Cobb County
- Sr. Judge Jack McLaughlin, DeKalb Co.
- Judge Brenda Cole, Fulton County
- Judge Gayle Hamrick, Richmond County
- Judge Jeanette Little, Troup County

Magistrate Court

- Judge Michael Baird, Clayton County
- Judge David Wood, DeKalb County

Court Administrators, Educators

- Ms. Marla Moore, AOC
- Mr. Doug Ashworth, CSCJ
- Mr. Richard Reaves, ICJE
- Dr. Lynda Hanscome, ICJE
- Ms. Kathy Mitchem, ICJE

Mark Your Calendar...



The next meeting of the Judicial Council of Georgia will take place August 20, 2004, at the Wyndam Atlanta Hotel.

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*The Court of Appeals
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CHAMBERS OF
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September 18, 2002

The Honorable Norman S. Fletcher
Chief Justice
Supreme Court of Georgia
244 Washington Street
Atlanta, GA 30334

RE: Georgia Indigent Defense Council Advisory Board

Dear Chief Justice Fletcher:

I have appointed Judge Herbert E. Phipps to replace Senior Appellate Judge Marion T. Pope, Jr. as the Court of Appeals representative on the Indigent Defense Council Advisory Board, effective immediately.

Very truly yours,


G. Alan Blackburn

GAB:ml

cc: Mr. Michael B. Shapiro
Judge Herbert E. Phipps
Senior Appellate Judge Marion T. Pope, Jr.
Mr. William L. Martin, III ✓



Court of Appeals

Memorandum

To: Presiding Judge Smith, Presiding Judge Ruffin, Judge Ellington, Judge Adams, and Judge Bernes

From: Judge Phipps *HEP*

Subject: A08A0130; A08A0248; A08A0255; A08A0281; A08A0526; A08A0559; A08A1631. Boca Petroco, Inc., et al. v. Petroleum Realty II, LLC; and vice versa

Date: April 24, 2008

I attach a draft opinion in A08A0130, the first in this series of seven appeals. The draft is currently being spaded and for that reason may change, but as its conclusion will affect the other appeals, I welcome your thoughts at this stage.

cc: William L. Martin, III



Court of Appeals

Memorandum

To: All Judges
Jan Kelley, Fiscal Director
Bill Martin, Clerk of Court

From: Judge Phipps *HEP*

Subject: 2010 Calendars

Date: August 19, 2009

This afternoon we received notification from Carrie Anne Steele that it is time to order 2010 paper calendars. In this time of severe budget crisis, I propose that 2010 paper calendars be eliminated from our purchasing schedule as they are not needed in light of the availability of electronic calendaring through Groupwise for all Court personnel.

From: Carrie Anne STEELE
To: Court of Appeals
Date: 8/19/2009 4:34 PM
Subject: calendars
Attachments: 2010 CALEND PRICING Govt (all reps).pdf

2010 calendars are available to purchase. Please start submitting requisitions for the purchase of 2010 calendars at your convenience. I have attached a price sheet of calendars Minton Jones is selling at a discounted price to all government agencies. A much larger selection can be found in the Minton Jones catalog. Thanks.

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AAG	G470-00	Monthly Planner, 14 Months, 7 7/8 x 11 7/8	4.90	
AAG	G520-00	Weekly Appointment 8 x 11 Black Prof	6.72	
AAG	G545-00	Weekly Planner Executive 8 3/4 x 6 7/8 Black	24.38	
AAG	G560-00	Daily Appointment Group 7 7/8 x 11 Blk 4 pers	24.95	
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AAG	PM1-28	Monthly Wall Planner 8 x 11	5.13	
AAG	PM11-28	Wall Calendar 3 Months per Page 12 1/4 x 27	8.32	
AAG	PM12-28	Yearly Wall Planner 24 x 36, Blue/White	7.25	
AAG	PM200-28	Dbt sided Erasable Wall Planner, 24 x 36	14.67	
AAG	PM2-28-10	Monthly Wall 12 x 17	6.92	
AAG	PM26-28	Dbt sided Erasable Wall Planner, 24 x 36	14.19	
AAG	PM3-28	Monthly Wall Calendar 1PPM 15 1/2 x 22 3/4	13.84	
AAG	PM326-28	Dbt sided Erasable Wall Calendar, 32 x 48	22.06	
AAG	PM4-28	Monthly Wall, 20 x 30	12.54	
AAG	SK1170-00	Monthly Desk Pad 2 color 22 x 17	6.95	
AAG	SK14-00	Monthly Desk Pad 17 3/4 x 10 7/8	4.93	
AAG	SK2-00	Recycled 14 Month 2PPM Planner 11 7/8 x 7 7/8	5.48	
*AAG	SK24-00-10	Monthly Desk Pad 22 x 17 Standard	1.65	
AAG	SK8-00	Monthly Desk/Wall Calendar 11 x 8 1/4	5.60	
AAG	SW200-00	Pad, Desk Monthly 22x17 Blue/Grey	7.44	

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«JANUARY, 2008»

«AFFIRMED»

In the Court of Appeals of Georgia

A08A0130. BOCA PETROCO, INC. et al. v. PETROLEUM PH-006
REALTY II, LLC.

PHIPPS, Judge.

This appeal arises from litigation in Florida between Boca Petroco, Inc., Trico V Petroleum, Inc. and Trico VII Petroleum, Inc. (collectively, “Boca” and “Trico”) on one side and Petroleum Realty II, LLC (“PR II”) on the other side. Boca and Trico filed a notice of lis pendens against property in Gwinnett County reflecting one of the Florida actions. PR II petitioned the Gwinnett County Superior Court to cancel the notice of lis pendens.«V1. 12-24» The court ruled that the lis pendens was not authorized, and it cancelled the notice and ordered that it be removed from the record.«V2. 557» Boca and Trico appeal. We affirm.

OCGA § 44-14-610 et seq. provides for the filing of a notice of lis pendens against real property involved in a legal action. Whether the requirements of this statute are met is a legal question,¹ and we review the trial court's decision de novo.

The record shows that the Florida litigation involved a dispute concerning a lease between PR II and Trico V for properties, including the Gwinnett property, to be used as gas stations and convenience stores.«**V1. 26-67 (lease), 176 (identifying 1795 Beaver Ruin Rd.)**» In June 2004, PR II sued Boca and Trico in Florida for breach of the lease (the “2004 Action”),«**V1. 15; V2. 413 (¶ 9)**» and in July 2004 the parties entered into a settlement that modified the lease.«**see V1. 15-16 (¶ 10), 251-283; V2. 413-414 (¶ 10)**» Later, PR II alleged that Boca and Trico defaulted on their obligations under the modified lease.«**see V1. 16**» On March 21, 2006, after an evidentiary hearing, the Florida court entered a “partial non-final judgment” in the 2004 Action terminating the lease, awarding damages to PR II on certain of its claims, and retaining jurisdiction to enforce and modify the judgment and to award additional relief.«**V2. 432-433**» A Florida appellate court affirmed this judgment on October 18, 2006.²

¹ See *Everchanged, Inc. v. Young*, 273 Ga. 474 & n. 5 (542 SE2d 505) (2001).

² *Trico V Petroleum v. Petroleum Realty I*, 939 So. 2d 1075 (Fla. App. 2006).

In October 2006, Boca and Trico filed a separate action in Florida (the “2006 Action”), which contained twelve counts seeking money damages and one count seeking specific performance of the lease, including the right to purchase certain properties covered by the lease.«V2. 436-473 (esp. 460-461)» In connection with the 2006 Action, Boca and Trico filed a notice of lis pendens against the Gwinnett property.«V2. 393-394» PR II petitioned the Gwinnett County Superior Court to cancel the lis pendens.«V1. 12-24» After a preliminary review of the evidence and pleadings,«see V2. 556» the court held that, because the ruling in the 2004 Action terminated the lease, Boca and Trico lacked any enforceable interest in the Gwinnett County property and thus were not entitled to assert a lis pendens against it in connection with the 2006 Action.«V2. 556-557» The court granted PR II’s petition and ordered the lis pendens to be cancelled and removed from the record.«V2. 557»

“The purpose of a lis pendens is to notify prospective purchasers that the property in question is directly involved in a pending suit in the sense that the suit seeks some relief respecting that particular property.”³

³ *Colony Bank Southeast v. Brown*, 275 Ga. App. 807, 808 (622 SE2d 7) (2005) (citation and punctuation omitted).

The phrase “lis pendens” means, literally, pending suit. The common law doctrine of lis pendens relied on notice in the actual pleadings filed with the court in initiating litigation of property interests. The doctrine imputed to all third parties constructive notice of the litigation and of the claims against property being asserted in the pleadings and bound third parties to the outcome of the litigation.⁴

In 1939, Georgia codified the lis pendens doctrine to require filing of a notice of lis pendens,⁵ and this statutory requirement currently exists at OCGA § 44-14-610, which provides:

No action, whether seeking legal or equitable relief or both, as to real property in this state shall operate as a lis pendens as to any such real property therein until there shall have been filed in the office of the clerk of the superior court of the county where the real property is located and shall have been recorded by the clerk in a book to be kept by him for the purpose a notice of the institution of the action containing the names of the parties, the time of the institution of the action, the name of the court in which it is pending, a description of the real property involved, and a statement of the relief sought regarding the property.

⁴ *Vance v. Lomas Mtg. USA*, 263 Ga. 33, 35 (1) (426 SE2d 873) (1993) (citations and punctuation omitted).

⁵ See *id.*

But Georgia still looks to the common law elements of lis pendens to determine if litigation gives rise to a valid lis pendens for which notice may be filed. In *Scroggins v. Edmondson*,⁶ the Georgia Supreme Court held:

“To the existence of a valid and effective lis pendens, it is essential that three elements be present; . . . the property must be of a character to be subject to the rule; the court must have jurisdiction both of the person and the subject-matter; and the property involved must be sufficiently described in the pleadings.” Further, the real property must be “involved” in the suit within the meaning of [OCGA § 44-14-610], i.e., it must be property which is actually and directly brought into litigation by the pleadings in a pending suit and as to which some relief is sought respecting that particular property.⁷

A court may cancel a notice of lis pendens if, on its face, it does not meet the common law requirements for validity.⁸ But “a motion to cancel a notice of lis pendens does not raise any issue concerning the merits of a claim,” and thus a court may not cancel

⁶ 250 Ga. 430 (297 SE2d 469) (1982).

⁷ Id. at 432-433 (2), quoting *Walker v. Houston*, 176 Ga. 878, 880 (169 SE 107) (1933) (other citation and punctuation omitted); see also *Panfel v. Boyd*, 187 Ga. App. 639, 646 (4) (371 SE2d 222) (1988).

⁸ See *Hutson v. Young*, 255 Ga. App. 169, 171 (564 SE2d 780) (2002).

a lis pendens notice because the claim in the underlying case (here, the 2006 Action) lacks merit.⁹

1. Boca and Trico argue that the trial court improperly considered the merits of the 2006 Action in determining that it did not create a valid lis pendens concerning the Gwinnett property. «A/nts’ Br. at 10» We agree.

In its holding, the trial court focused on the question of whether Boca and Trico had an “enforceable interest” in the property. «V2. 556-557» A party who lacks an ownership interest in real property cannot file a valid notice of lis pendens against the property.¹⁰ And a lis pendens is “void and subject to removal by the trial court” if the party who filed the notice loses his ownership interest.¹¹ But the trial court based its finding that Boca and Trico could not claim an enforceable property interest in the

⁹ *Scroggins*, supra at 433 (2); see also *Jay Jenkins Co. v. Financial Planning Dynamics*, 256 Ga. 39, 43 (5) (343 SE2d 487) (1986) (although some states statutorily authorize cancellation of lis pendens notice when plaintiff’s success on merits of underlying case is unlikely, “[i]n Georgia, we have no such statute”).

¹⁰ See *Jay Jenkins*, supra at 42 (4) (a) (affirming cancellation of lis pendens brought against real property by person who no longer had interest in joint venture that owned property).

¹¹ *Bellamy v. Federal Deposit Ins. Corp.*, 236 Ga. App. 747, 753 (4) (c) (512 SE2d 671) (1999) (affirming cancellation of lis pendens after party’s ownership interest in property was extinguished through foreclosure and sale, which were upheld on appeal).

2006 Action upon an order in the earlier 2004 Action terminating the lease that gave rise to the property interest.«V2. 432-433, 556-557»

In *Moore v. Bank of Fitzgerald*,¹² the Georgia Supreme Court held that notices of lis pendens could not be cancelled on a theory that the underlying action was estopped by earlier litigation. Because estoppel was an affirmative defense to the underlying action, the *Moore* court held that the “estoppel theory relates to the merits of the [underlying] claim, an issue which has no relevancy to [a] . . . motion to cancel . . . notices of lis pendens.”¹³ Pretermitted whether the 2004 Action estopped Boca and Trico from seeking specific performance in the 2006 Action,¹⁴ we find that the trial court impermissibly considered the merits of the 2006 Action in holding, based on an estoppel theory, that Boca and Trico lacked a property interest that could give rise to a valid lis pendens.

2. Nevertheless, we find that the trial court properly cancelled the notice of lis pendens, because one of the other required elements for a valid lis pendens was not

¹² 266 Ga. 190 (465 SE2d 445) (1996).

¹³ *Id.* at 191.

¹⁴ We thus need not address Boca and Trico’s separate claim of error concerning whether the order in the 2004 Action in fact estopped them from seeking specific performance in the 2006 Action.

met, i.e., that “the court . . . have jurisdiction both of the person and the subject-matter.”¹⁵

Boca and Trico argue that this requirement was met because the Gwinnett County Superior Court had jurisdiction over the petition to cancel lis pendens. «A/nts’ **Resp. to Suppl. Br. at 7-8**» But the jurisdiction of the court entertaining a later challenge to a lis pendens has no bearing upon whether the underlying litigation created a valid lis pendens in the first place. For the jurisdictional requirement articulated by the Georgia Supreme Court in *Scroggins* to have purpose, therefore, the “court” referred to must be the court before which the underlying litigation was filed. Earlier Georgia law addressing the jurisdictional requirement supports this interpretation. In *Carmichael Tile Co. v. Yaarab Temple Building Co.*,¹⁶ for example, the Georgia Supreme Court described lis pendens as “the jurisdiction, power or control which the court acquires over the property involved in the suit pending the continuance of the action and until *its* final judgment therein, . . . for [the] object [of] the keeping of the subject, or res, within the power of the court until the judgment or decree shall be entered, and thus to make it possible to give effect to *their* judgments

¹⁵ See *Scroggins*, supra at 432 (citation and punctuation omitted).

¹⁶ 177 Ga. 318 (170 SE 294) (1933).

and decrees.”¹⁷ One purpose of lis pendens is thus to ensure that the court adjudicating a lawsuit involving real property retains its power over the property pending the suit’s resolution. The jurisdictional requirement set out in *Scroggins* makes sense within the context of this purpose, because if the court hearing the underlying litigation lacks jurisdiction over the property, then it has no power over the property to retain and thus the litigation cannot create a valid lis pendens affecting the property.

“[J]urisdiction means the power of a court to render a binding judgment in the case.”¹⁸ The United States Supreme Court noted long ago that a court in one state does not have subject matter jurisdiction over real property in another state and thus cannot directly affect the title of property in another state.¹⁹ And Florida courts have recognized that they lack jurisdiction over real property in other states.²⁰ Thus, while

¹⁷ *Id.* at 327-328, quoting *Tinsley v. Rice*, 105 Ga. 285, 288 (31 SE 174) (1898) (punctuation omitted) (emphasis supplied); see also *Scarborough v. Long*, 186 Ga. 412, 418-419 (2) (197 SE 796) (1938).

¹⁸ *Williams v. Fuller*, 244 Ga. 846, 849 (2) (262 SE2d 135) (1979).

¹⁹ *Fall v. Eastin*, 215 U. S. 1, 9-10 (30 SC 3, 54 LE 65) (1909); see also *Baker v. Gen. Motors Corp.*, 522 U. S. 222, 239 (B) (118 SC 657, 139 LE2d 580) (1998) (“one State’s judgment cannot automatically transfer title to land in another State”), citing *Fall*, *supra*.

²⁰ See *Polkowski v. Polkowski*, 854 S2d 286 (Fla. App. 2003).

the Florida court presiding over the 2006 Action could exercise personal jurisdiction over a party so as to indirectly affect title to the Gwinnett property,²¹ this does not satisfy Georgia's requirement that the court also have subject matter jurisdiction for a valid *lis pendens*.

As Boca and Trico argue, some jurisdictions recognize *lis pendens* created by litigation in other states.²² These courts have cited the public policy benefits of expanding *lis pendens* notice,²³ and they have noted that the common law requirements for *lis pendens* served to mitigate the harshness of the doctrine before the enactment of statutes requiring the filing of notice and interpreted their *lis pendens*

²¹ See *Fall*, supra at 10 (An extraterritorial court's "decree does not operate directly upon the property nor affect the title, but is made effectual through coercion of the defendant. . . . The court has no inherent power by the mere force of its decree to annul a deed or to establish a title.") (citations and punctuation omitted); *General Elec. Capital Corp. v. Advance Petroleum*, 660 S2d 1139, 1143 (Fla. App. 1995) (United States Supreme Court decisions, including *Fall*, "make clear that, although a court may not directly act upon real or personal property which lies beyond its borders, it may indirectly act on such property by its assertion of in personam jurisdiction over the defendant").

²² See *Kerns v. Kerns*, 53 P3d 1157, 1160-1164 (II) (Colo. 2002); *TWE Retirement Fund Trust v. Ream*, 8 P3d 1182, 1187 (B) (1) (b) (Ariz. Ct. App. 2000); *Winters v. Schulman*, 977 P2d 1218, 1223 (C) (Utah Ct. App. 1999); *Belleville State Bank v. Steele*, 345 NW2d 405, 408-411 (Wis. 1984).

²³ See, e.g., *TWE Retirement Fund*, supra at 1187; *Winters*, supra at 1222-1223.

notice statutes to narrow those common law requirements.²⁴ Unlike these states, however, Georgia has expressly reaffirmed the common law outlines of lis pendens doctrine, including its jurisdictional requirements, since the 1939 enactment of its notice statute.²⁵

“Under the right for any reason rule, an appellate court will affirm a judgment if it is correct for any reason, even if that reason is different than the reason upon which the trial court relied.”²⁶ PR II argued below that the lis pendens was invalid because the Florida court lacked jurisdiction over the property, «V2. 423-424; V3. 3-

²⁴ See *Kerns*, supra at 1161-1162 (holding Colorado’s lis pendens statute “obviates the need for [] common-law restrictions” and thus finding “no sound justification for limiting the statute’s applicability to actions pending in the jurisdiction where the property is located or to actions that operate directly upon title”) (citations omitted); *Belleville State Bank*, supra at 411 (because Wisconsin’s lis pendens statute ameliorated harshness of common law lis pendens, “[t]here is no reason therefore for statutory lis pendens, *in contrast to common law lis pendens*, to be limited to the territorial jurisdiction of the court in which the action is pending”) (emphasis supplied).

²⁵ *Scroggins*, supra at 432; see also *Ludvik v. James S. Jackson Co.*, 635 P2d 1135, 1140-1141 (Wyo. 1981) (holding that Wyoming’s lis pendens statute did not alter common law requirements and thus did not have extraterritorial application), citing *Walker*, supra.

²⁶ *City of Gainesville v. Dodd*, 275 Ga. 834, 835 (573 SE2d 369) (2002) (citation and punctuation omitted).

6» and we affirm on this ground the trial court’s grant of the petition to cancel the notice of lis pendens.²⁷

3. Boca and Trico argue that the trial court erred in directing the clerk to remove the lis pendens from the records.«A/nts’ Br. at 22» OCGA § 44-14-612 provides for the settlement, dismissal or final judgment in an action to be reflected on the face of the lis pendens record. “Although [OCGA § 44-14-612] provides means for recording the removal of a properly filed notice of lis pendens, a lis pendens not entitled to be recorded may be removed by court order by means and for causes other than those prescribed[.]”²⁸ The trial court did not err in ordering the invalid lis pendens removed.²⁹

Judgment affirmed. WHOLE COURT.«**twelve-judge opinion consistent with Bill Martin’s 4/23/08 memo**»

²⁷ See *Bailey v. Hall*, 267 Ga. App. 222, 223 n. 1 (599 SE2d 226) (2004) (judgment may be affirmed as right for any reason “when the judgment may be sustained upon a legal basis apparent from the record which was fairly presented in the court below”).

²⁸ *Hill v. L/A Mgmt. Corp.*, 234 Ga. 341, 343 (1) (216 SE2d 97) (1975) (citation omitted).

²⁹ *Id.* at 344 (1).

From: Debbie Zimmerman
To: Bill Martin
Date: 11/3/2008 2:41 PM
Subject: Re: Fwd: Clerk Feedback Form

Dear Bill,

Judge Phipps does know Mr. McCant, and he did run into him a couple of weeks ago and spoke with him about his class. However, he does not remember telling Mr. McCant that he would be able to send him law books for his class.

Judge Phipps wonders whether you would mind notifying Mr. McCant that the Official Code of Georgia is available online free to all Georgia citizens (<http://www.lexis-nexis.com/hottopics/gacode/default.asp> - this link was found through our own website by clicking on "related links"). Mr. McCant could then print out any information he finds useful for his class. Judge Phipps's response to Mr. McCant's request for actual books for his class would be that all of our law books are owned by the State of Georgia and he is unable to give them away to anyone. Any old, outdated books (even if we kept them instead of discarding them, which is the only way we could give them away to his class) would not be useful because they would contain incorrect legal information.

Of course, when Mr. McCant sees the entire Georgia Code online he will notice that Title 9 deals with civil law. We don't have any materials to distribute about civil law, that we know of. Judge Phipps feels that the court's very general brochures about the court structure of Georgia are too basic for the high school class Mr. McCant is teaching. He believes they have moved beyond that level of information.

Thanks very much for forwarding this email to us and for your help answering it. We did not receive a copy of it directly. Are we supposed to?

Debbie

>>> Bill Martin 11/3/2008 1:33 PM >>>

Did you receive this in the mail? Is there anything I need to do.