



SUPREME COURT OF GEORGIA  
Case No. S19C0395

June 03, 2019

The Honorable Supreme Court met pursuant to adjournment.  
The following order was passed.

**TIM SUNDY v. FRIENDSHIP PAVILION ACQUISITION CO. et al..**

**The Supreme Court today denied the petition for certiorari in this case. All the Justices concur, except Ellington, J., disqualified.**

Court of Appeals Case No. A19D0108

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

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

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

A handwritten signature in cursive script, reading "Thine A. Barnes".

, Clerk

**A001**

# Court of Appeals of the State of Georgia

ATLANTA, October 19, 2018

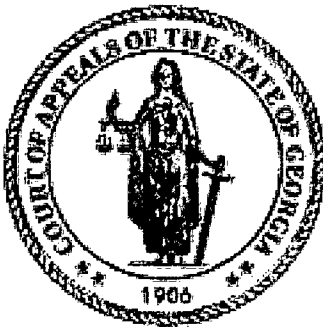
*The Court of Appeals hereby passes the following order*

**A19D0108. TIM SUNDY v. FRIENDSHIP PAVILION ACQUISITION CO., et al..**

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

LC NUMBERS:

2016CV982



*Court of Appeals of the State of Georgia*

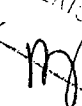
*Clerk's Office, Atlanta, October 19, 2018.*

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

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

*Stephen E. Castles*, Clerk.

**A004**

FILED  
HALL CO., GA  
2018 AUG 22 PM 3:25  
CHARLES BAKER, CLERK  
SUPERIOR STATE COURT  
BY 

IN THE SUPERIOR COURT OF HALL COUNTY  
STATE OF GEORGIA

TIM SUNDY,

Plaintiff/Petitioner,

vs.

Friendship Pavilion Acquisition Co.; et al.  
Defendants

Civil Action File No.:

2016CV982A

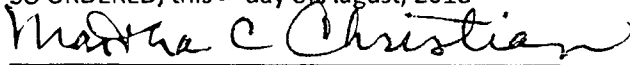
ORDER DISMISSING CASE

On June 29, 2018, this Court entered a **Notice of Pretrial Conference** which ordered all parties and their attorneys to appear at 1:00 p.m. on July 30, 2018 at the Hall County courthouse for a pretrial conference to be held for the above captioned case. The hearing was held at 1:00 p.m. on July 30, 2018 and the Plaintiff/Petitioner, Tim Sundy, did not appear. Plaintiff/Petitioner was properly served with the Notice of Pretrial Conference. The Notice gave all parties warning that if they did not appear, their pleadings could be dismissed.

Furthermore, on July 6, 2018, Plaintiff/Petitioner filed a Notice of Dismissal. While, generally, a Plaintiff may voluntarily dismiss his or her complaint by filing a written notice of dismissal before the first witness is sworn, if a Defendant has filed a counterclaim or asked for other affirmative relief, then such counterclaims or relief shall not be dismissed if that Defendant objects to the dismissal. In this case, the remaining Defendants did not object to the dismissal.

Therefore, this case is DISMISSED in its entirety, including all claims of Defendants for affirmative relief from Plaintiff/Petitioner.

SO ORDERED, this <sup>20th</sup> day of August, 2018



Martha C. Christian

Judge Hall County Superior Court

By Assignment



# Court of Appeals of the State of Georgia

ATLANTA, March 15, 2019

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

**A19D0345. TIM SUNDY v. FRIENDSHIP PAVILION ACQUISITION COMPANY, LLC.**

This case began as a dispossessory proceeding in magistrate court. After defendant Mediterranean Dining Group, Inc. asserted a counterclaim for damages, the action was transferred to the superior court. At some point, Tim Sundy and David Sundy were added as defendants.<sup>1</sup> On December 3, 2018, the superior court issued a “Final Judgment” awarding the plaintiff \$394,617.47 in unpaid lease obligations and interest against all three defendants. On January 2, 2019, defendant Tim Sundy, proceeding pro se, filed this application for discretionary appeal, seeking appellate review of the December 3 order.<sup>2</sup> We lack jurisdiction.

An application for discretionary review generally may be filed within 30 days of entry of the order sought to be appealed. See OCGA § 5-6-35 (d). The underlying subject matter of an appeal, however, controls over the relief sought in determining the proper appellate procedure. *Radio Sandy Springs, Inc. v. Allen Road Joint Venture*, 311 Ga. App. 334, 335 (715 SE2d 752) (2011). Under OCGA § 44-7-56,

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<sup>1</sup> It appears that additional counterclaim defendants also were added to this action before entry of the order on appeal in this application. The status of those parties is unclear on the current record.

<sup>2</sup> Tim Sundy initially filed this application in the Supreme Court, which transferred the matter to this Court. As the only defendant who signed the application, Tim Sundy is the sole applicant because, as a non-attorney, he may not file an appeal on behalf of other parties. See *Aniebue v. Jaguar Credit Corp.*, 308 Ga. App. 1, 1, n. 1 (708 SE2d 4) (2011).

appeals in dispossessory actions must be filed within 7 days of the date the judgment was entered. See *Ray M. Wright, Inc. v. Jones*, 239 Ga. App. 521, 522-523 (521 SE2d 456) (1999). Pretermittting whether the December 3 order is a final order that disposed of all pending issues in this case, Tim Sundy's application is untimely, as it was filed 30 days after entry of the superior court order he seeks to appeal.

Consequently, this untimely application for discretionary review is hereby DISMISSED for lack of jurisdiction.<sup>3</sup>



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, 03/15/2019*

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

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

*Stephen E. Carthon*

, Clerk.

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<sup>3</sup> To the extent that Tim Sundy also seeks permission to appeal a "Case Disposition Form" entered on December 6, 2018, or any prior orders entered in this action, his application likewise is untimely, pretermittting whether an appeal otherwise would lie from any such filings. See OCGA § 44-7-56; *Radio Sandy Springs, Inc.*, 311 Ga. App. at 335-336.



SUPREME COURT OF GEORGIA  
Case No. S19C0395

July 01, 2019

The Honorable Supreme Court met pursuant to  
adjournment.

The following order was passed.

**TIM SUNDY v. FRIENDSHIP PAVILION ACQUISITION CO.  
et al.**

**Upon consideration of the Motion for  
Reconsideration filed in this case, it is ordered that it be  
hereby denied.**

**All the Justices concur, except Ellington, J.,  
disqualified**





SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

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

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

 , Clerk