



SUPREME COURT OF GEORGIA

Case No. S19C0943

November 04, 2019

The Honorable Supreme Court met pursuant to  
adjournment.

The following order was passed.

TIM SUNDY v. FRIENDSHIP PAVILION ACQUISITION  
COMPANY, LLC.

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. A19D0345

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.

*Theresa A. Barnes*  
Clerk

**Appx001**

# 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 Sundry and David Sundry 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 Sundry, 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,

---

<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 Sundry initially filed this application in the Supreme Court, which transferred the matter to this Court. As the only defendant who signed the application, Tim Sundry 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). Pretermitted 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. Costello*, Clerk.

---

<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, pretermitted 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.

**Additional material  
from this filing is  
available in the  
Clerk's Office.**