

Docket No. \_\_\_\_\_

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SUPREME COURT OF THE UNITED STATES

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THE MIGNOTT LAW GROUP, LLC ET AL.,

Petitioners

v.

BRIAN GARDINER

Respondent

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On Petition for a Writ of Certiorari to the Supreme Court of Georgia

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PETITION FOR WRIT OF CERTIORARI

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Kimberly L. Fowler Bandoh  
Georgia Bar No. 142232  
Marsha W. Mignott  
Georgia Bar No. 141933  
Counsel(s) of Record

**Law Office of Kimberly Bandoh, LLC**  
1745 Phoenix Boulevard  
Suite 480  
Atlanta, Georgia 30349

## **PARTIES TO THE PROCEEDINGS**

1. The Mignott Law Group, LLC, Petitioner
2. Marsha W. Mignott, Joining Petitioner
3. Brian Gardiner, Respondent

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## **QUESTIONS PRESENTED**

- I. Whether the Georgia Court of Appeals erred by affirming the trial court's March 30, 2018 Order; which ordered The Mignott Law Group, LLC, a non-party corporation and Marsha W. Mignott, Esq. to pay attorney's fees without due process of law as required pursuant to O.C.G.A. § 9-15-14 (a) & (b); and the Fourteenth Amendment to the United States Constitution.
- II. Whether the Court of Appeals erred by affirming the trial court's Order(s); which unlawfully ordered The Mignott Law Group, LLC, a non-party corporation and Marsha W. Mignott, Esq. to pay additional attorney's fees without due process of law as required pursuant to O.C.G.A. § 9-15-14 (a) & (b); and the Fourteenth Amendment to the United States Constitution.
- III. Whether the Court of Appeals erred by affirming the trial court's *Fieri Facias* issued to seize assets for The Mignott Law Group, LLC, a non-party corporation and Marsha W. Mignott, Esq. without due process of law as required pursuant to O.C.G.A. § 9-15-14 (b); and the Fourteenth Amendment to the United States Constitution.

## **OPINION BELOW**

The Georgia Court of Appeals Order – January 10, 2020 attached as Appendix A, The Georgia Court of Appeals Order – December 2, 2019 attached as Appendix B, Georgia Court of Appeals Order – August 1, 2019 attached as Appendix C, Georgia Court of Appeals Order – August 2, 2018 attached as Appendix D, Georgia Court of Appeals Order – May 16, 2018 attached as Appendix E, Clayton County Superior Court Order – March 30, 2018 attached as Appendix F, Clayton County Superior Court Order – June 8, 2018 attached as Appendix G, Clayton County Superior Court Fieri Facias Order attached as Appendix H, Clayton County Superior Court Order – June 18, 2018 attached as Appendix I, Clayton County Superior Court Order – July 25, 2018 attached as Appendix J, Clayton County Superior Court Order – May 10, 2019 attached as Appendix K, Supreme Court of Georgia Denial of Petition for Writ of Certiorari (A20D0151) attached as Appendix L, and Supreme Court of Georgia Denial of Petition for Writ of Certiorari (A20D0148) attached as Appendix M.

## **BASIS FOR JURISDICTION**

This Court has jurisdiction to consider this writ pursuant to 28 U.S.C. § 1257 as the issues concern the Fourteenth Amendment right to equal protection under the law, and a final judgment in the case has been rendered by the Georgia Supreme Court.

## CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

*All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*

## STATEMENT OF THE CASE

### State Court Decision

On March 29, 2018, Judge Kathryn L. Powers issued an Order granting attorney's fees for a non-party to wit: Brian Gardiner, Esq. Said order was stamped filed with the Clerk of Superior Court on March 30, 2018, which included an award of attorney's fees against the Plaintiff Marian A. Ennis *only*.

On April 30, 2018, Marsha W. Mignott, Esq. former counsel for the Plaintiff in *Ennis v. Pearson et al.* CAFN: 2017CV00432-13, filed an Application for Discretionary Appeal regarding Judge Kathryn L. Powers' March 30, 2018 Order for attorney's fees issued to a *non-party* to wit; Brian Gardiner, Esq. counsel of record for one of the defendant's (i.e. Rivercrest Homeowners Association, Inc.).

On June 8, 2018, Judge Powers issued *sua sponte* an erroneous order; without any motions filed by either party. Said Order included *modifications* to the March 30, 2018 Order, thereby adding an award of attorney's fees against non-party corporation The Mignott Law Group, LLC and against former counsel for Plaintiff, Marsha W. Mignott, Esq.

On May 9, 2019, Judge Powers issued an Order address to matters; (1) Emergency Motion to Set Aside and (2) Defendant Rivercrest Motion to Dismiss. Said Order denied Plaintiff's request and granted additional attorney's fees against The Mignott Law Group, LLC a non-party corporation and former counsel for Plaintiff to wit: Marsha W. Mignott, Esq.

### **Facts of the Case**

On or about December 13, 2016 Marian A. Ennis (hereinafter “Ms. Ennis”) retained Petitioner Marsha W. Mignott, Esq employee of non-party corporation The Mignott Law Group, LLC for legal representation in a Homeowners Association (hereinafter “HOA”) dispute regarding defamation and damages.

On February 1, 2017, Ms. Ennis through representation of counsel filed her Complaint for Defamation and Damages against Charles Pearson, in both his individual capacity and his capacity as President of Rivercrest Homeowners Association, Inc., and against the Rivercrest Homeowners Associations, Inc. Subsequent to the filing of said complaint, Ms. Ennis informed Marsha W. Mignott, Esq. that she consulted with the attorney for defendant Rivercrest Homeowners Association regarding him

On or about November 14, 2017, on behalf of Ms. Ennis, Petitioner filed a Motion to Disqualify Defense Counsel Brian Gardiner, who represents Defendant Rivercrest Homeowners Association, Inc (hereinafter “Rivercrest”); in that, prior to filing her Complaint for Defamation and Damages against Charles Pearson, Ms. Ennis attempted to retain Mr. Brian Gardiner (hereinafter “Mr. Gardiner”) for legal services with regard to same. Furthermore, Mr. Gardiner had received an email from Ms. Ennis including confidential documents associated with her pending action for his review. Said email was received prior to Mr. Gardiner notifying Ms. Ennis via email that he was unable to proceed with representation and that he would provide her with a referral to another attorney.

On or about December 11, 2017, Attorney Warren Hinds, Esq (hereinafter “Attorney Hinds”), filed a responsive brief in response to the Motion to Disqualify Defense Counsel Brian Gardiner on behalf of Mr. Gardiner.

Once the motion was ripe, Petitioner vigorously sought a hearing on the issue. However, due to the retirement of then Judge Albert Collier, the trial court delayed scheduling the matter until the newly appointed Judge Kathryn L. Powers (hereinafter “Judge Powers”) was seated. Said delay was of no fault of Ms. Ennis or the Petitioner, in that; neither of them were able to control the internal workings of the trial court, including but not limited to court scheduling delays.

On March 14, 2018, a hearing was held by newly appointed Judge Powers regarding the Motion to Disqualify Defense Counsel Brian Gardiner. During said motions hearing, evidence was presented by the Petitioner on behalf of Ms. Ennis, including but not limited to the testimony of Ms. Ennis that she provided written communications to the office of Brian Gardiner; counsel for Rivercrest Homeowners Association, Inc. Additionally, Ms. Ennis testified that she deemed the nature of the written communications to be confidential, creating an unfair advantage for Rivercrest and the courts findings were consistent with same.

However, On March 30, 2018, the trial court denied Ms. Ennis’ Motion to Disqualify Defense Counsel Brian Gardiner and issued an order granting attorney’s fees for Mr. Gardiner’s counsel to wit: Warren Hinds, Esq. (**See attached Appendix D - March 30, 2018 Order**). The order did not grant attorney’s fees

against The Mignott Law Group, LLC., and/or Marsha W. Mignott, Esq in an individual capacity.

On April 6, 2018, Charles Pearson (hereinafter “Mr. Pearson”) by and through his counsel of record Marvin S. Arrington, Jr. filed a Motion to Dismiss Plaintiff’s Complaint for Defamation and Damages against Charles Pearson.

On May 3, 2018, Plaintiff timely filed a Brief in Support of Response in Opposition to Defendant’s Motion to Dismiss. Additionally, on the same day a Motion for Oral Argument was filed to secure and officially request that a hearing be properly scheduled, as to adequately and orally argue Defendant’s Motion to Dismiss.

On May 17, 2018, Mr. Gardiner’s attorney mailed a letter to the Clayton County Clerk’s office requesting a fi fa. Said request stated, “Pursuant to the court’s order, attorney’s fees were granted against the Plaintiff in this matter.” On May 22, 2018, Petitioner filed a response letter in opposition to the fi fa request.

On June 6, 2018, the trial court granted Mr. Pearson’s Motion to Dismiss *sua sponte*, thereby, ignoring Plaintiff’s Motion for Oral Argument in violating O.C.G.A. § 9-11-11-1(d). Additionally, a hearing was not scheduled by the court or either parties despite Plaintiff’s request.

On June 8, 2018, Judge Powers issued a new order modifying the March 30, 2018 order granting attorney’s fees for Mr. Gardiner’s counsel to wit: Warren Hinds, Esq. Said order was issued unbeknownst to Ms. Ennis and the Petitioner, such that, between June 6, 2018 and June 8, 2018, there were no filings initiated by either

party requesting the trial court to clarify, modify, set aside, or vacate the March 30, 2018 Order. Furthermore, in accordance with same, the trial court did not notice Petitioners regarding the consideration for additional attorney's fees. However, the June 8, 2018 Order modified the March 30, 2018 order to include additional attorney's fees against the Petitioners. Moreover, the trial court did not conduct an evidentiary hearing permitting Petitioners an opportunity to challenge said claim for attorney's fees, on the record. (**See Attached Appendix E - June 8, 2018 Order).**

On June 11, 2018, a Motion for Recusal of Judge Kathryn L. Powers was filed, due to judicial bias and misapplication on the law. On June 18, 2018, Judge Kathryn L. Powers issued an Order recusing herself from the case. (**See Attached Exhibit F - June 18, 2018 Order**). On June 21, 2018, the case was reassigned to Judge Geronda V. Carter (hereinafter "Judge Carter").

On June 29, 2018, Petitioner filed an Emergency Motion to Stay Recording of the June 15, 2018 *Fieri Facias* issued against Marian A. Ennis; Non-Party Corporation, The Mignott Law Group, LLC; and Marsha W. Mignott, Esq. Additionally, an Emergency Motion to Set Aside Erroneous Order for Attorney's Fees and Fi Fa Issued against Marian A. Ennis, Non-Party Corporation, The Mignott Law Group, LLC, Marsha W. Mignott, Esq., was filed.

On July 3, 2018, Ms. Ennis filed an appeal based on the June 6, 2018 Order granting Mr. Pearson's Motion to Dismiss. On July 25, 2018, Judge Carter issued a Consent Order to Stay Action on Judgment for Attorney's Fees and Writ of Fieri

Facias. In said order, Judge Carter recused herself from the case due to a conflict of interest. (**See attached Appendix G - July 25, 2018 Order**). Thus, on July 31, 2018, the case was reassigned from Judge Carter to Judge Shana M. Rooks (hereinafter “Judge Rooks”).

On August 2, 2018, the Court of Appeals for the State of Georgia (hereinafter “Court of Appeals”) issued an Order based on the appeal filed by Ms. Ennis appealing the June 6, 2018 Order granting Mr. Pearson’s Motion to Dismiss. Said Court of Appeals Order stated that the Court did not have jurisdiction over the appeal because “the record contains no indication that the trial court directed the entry of judgment under § 9-11-54 (b) or that RHA has been dismissed from this action.” (**See attached Appendix C - August 2, 2018 COA Order**).

On September 6, 2018, Judge Rooks recused herself from the case due to a conflict of interest. On September 10, 2018, the case was reassigned from Judge Rooks to Judge Aaron B. Mason (hereinafter “Judge Mason”).

On November 11, 2018, Judge Mason recused himself. The case was subsequently reassigned from Judge Mason to Judge Robert Mack (hereinafter “Judge Mack”). On January 31, 2019, Judge Mack conducted a motion hearing on the Motion for Recusal of Judge Kathryn L. Powers. Following the motion hearing, on February 12, 2019, Judge Mack denied Ms. Ennis’ Motion for Recusal, hence formerly reinstating Judge Powers and continuing the case.

On April 23, 2019, Judge Powers conducted a hearing on Petitioner’s Emergency Motion to Set Aside June 8, 2018 Court Order granting attorney’s fees

and to Stay Recording of *Fi Fa*. During the hearing and on the record, argument was proffered to Judge Powers that entering an order against Petitioner's employer, a non-party corporation and Petitioner would result in the non-party having to seek counsel and file an action to protect its assets and the legal interest of its stakeholders. Despite the evidence presented to the court on behalf of the Ms. Ennis, the Non-Party Corporation to wit: The Mignott Law Group, LLC, and the Petitioner the trial court denied Petitioner's Emergency Motion to Set Aside June 8, 2018 Order and to Stay Recording of *Fi Fa*. (**See attached Appendix I - May 10, 2019 Order**).

On Monday May 20, 2019, Petitioner contacted the State Bar of Georgia to determine if Judge Powers' order for attorney's fees and *Fi Fa* against Ms. Ennis, the Non-Party Corporation to wit: The Mignott Law Group, LLC, and the Petitioner, jointly and severally created a conflict of interest. Pursuant to communication with Ms. Jenny Middleman, Esq. (hereinafter "Ms. Middleman") (i.e. duty attorney) Office of General Counsel; the order issued June 8, 2018 by Judge Powers created a conflict of interest pursuant to State Bar of Georgia Rule 1.7. Moreover, Ms. Middleman stated that the trial court's May 10, 2019 denial to set aside said order requires Petitioner Marsha W. Mignott, Esq. to withdraw as counsel for Ms. Ennis; in that, said conflict is nonwaivable.

On or about May 23, 2019, Petitioner filed a Motion to Withdraw as Counsel due to the nonwaivable conflict of interest created by Judge Powers' May 10, 2019 Order.

On June 12, 2019, Petitioner's Motion to Withdraw was granted. Once Petitioners no longer had an interest in Ms. Ennis' case, the May 10, 2019 Order denying Petitioner's Motion to Set Aside the Award of Attorney's Fees became a final judgment in regard to the nonparty corporation, The Mignott Law Group, LLC, and the Petitioner. On October 15, 2019 the parties filed a Voluntary Dismissal, and the action is currently final (See attached **Appendix K, Copy of Voluntary Dismissal filed November 15, 2019**).

#### REASONS FOR GRANTING THE WRIT

- I. The Court of Appeals for the State of Georgia erred by affirming the trial court's decision to uphold its March 30, 2018 Order; issued against The Mignott Law Group, LLC, a non-party corporation and Marsha W. Mignott, Esq. to pay attorney fees without due process of law as required pursuant to O.C.G.A. § 9-15-14 (a) & (b) and the Fourteenth Amendment to the United States Constitution.
  - A. **The State of Georgia Court of Appeals erred by affirming the trial court's decision when it ordered The Mignott Law Group, LLC, a non-party corporation and Marsha W. Mignott, Esq., to pay attorney's fees.**

O.C.G.A. § 9-15-14 (a) states in part "*In any civil action in any court of record of this state, reasonable and necessary attorney's fees and expenses of litigation shall be awarded to any party against whom another party has asserted a claim, defense, or other position with respect to which there existed such a complete absence of any justiciable issue of law . . .*" Subsection (b) states in part "*The court may assess reasonable and necessary attorney's fees*

*and expenses of litigation in any civil action in any court of record if, upon the motion of any party or the court itself, it finds that an attorney or party brought or defended an action, or any part thereof, that lacked substantial justification or that the action, or any part thereof, was interposed for delay or harassment, or if it finds that an attorney or party unnecessarily expanded the proceeding by other improper conduct . . .”*

On March 30, 2018, the trial court denied Ms. Ennis' Motion to Disqualify Defense Counsel Brian Gardiner and issued an order granting attorney's fees for Mr. Gardiner's counsel to wit: Warren Hinds, Esq, without showing a “*complete absence of any justiciable issue of law.*” Furthermore, at no time during or prior to the March 14, 2018 hearing did the trial court conduct an inquiry regarding any culpable conduct, under the statute, on the part of the non-party, The Mignott Law Group, LLC., and/or Marsha W. Mignott, Esq., which would warrant an award of attorney's fees against them. Separate motions were heard as to other matters, but no motion for Attorney's Fees had been filed or argued. *O.C.G.A. § 9-15-14 (b).* Additionally, at no time were arguments presented to show The Mignott Law Group, LLC and/or Marsha W. Mignott, Esq. interposed any delay; harassed the Defendant and/or their attorney; and that either party unnecessarily expanded any proceeding by other improper conduct pursuant to *O.C.G.A. § 9-15-14 (b).* Candidly, the only closely related delay was due to the retirement of Judge Albert Collier, in that, the trial court delayed scheduling the matter until the newly appointed Judge

Powers was seated; therefore, said delay was of no fault of non-party The Mignott Law Group, LLC and or Marsha W. Mignott, Esq.

*Williams v. Cooper*, 280 Ga. 145, 625 S.E.2d 754 (2006) “The Supreme Court, Benham, J., held that petitioner's request for costs and expenses of litigation, including attorney fees, did not provide notice to respondent's attorney that she could be held liable for attorney fees; overruling *Cohen v. Feldman*, 219 Ga.App. 90, 464 S.E.2d 237.” Here in *Williams*, the respondent's attorney could not be held liable for attorney's fees; therefore, the June 8, 2018 *sua sponte* erroneous order ordering Attorney's Fees against the non-party corporation, The Mignott Law Group, LLC and Marsha W. Mignott, Esq must be vacated.

The Mignott Law Group, LLC and Marsha W. Mignott Esq. was not provided notice or an opportunity to be heard on the merits as to any sanctionable or culpable conduct under the Due Process Clause of the Fourteenth Amendment. Similarly, The Mignott Law Group, LLC and Marsha W. Mignott Esq. did not receive documentation to solidify the scheduling of a hearing date had it been placed on the record or filed with the Clayton County Superior Court Clerk's Office. Furthermore, the March 30, 2018, Order granting attorney's fees for a non-party to wit: Brian Gardiner, Esq was stamped filed with the Clerk of Superior Court on March 30, 2018 and only included an award of attorney's fees against the Plaintiff Marian A. Ennis. Reiteratively, there was no documentation evidencing attorney's fees for The Mignott Law Group, LLC or Marsha W. Mignott thus, the lack of notice to either

party and an opportunity to be heard violated the Due Process Clause of the Fourteenth Amendment and in good conscious should be overturned.

II. The Court of Appeals erred by affirming the trial court's Order(s); which unlawfully ordered The Mignott Law Group, LLC, a non-party corporation and Marsha W. Mignott, Esq. to pay additional attorney's fees without due process of law as required pursuant to O.C.G.A. § 9-15-14 (a) & (b); and the Fourteenth Amendment to the United States Constitution.

**B. The Court of Appeals erred when it upheld the trial court's June 8, 2018 decision ordering The Mignott Law Group, LLC, a non-party corporation and Marsha W. Mignott, Esq. to pay attorney's fees.**

Following the Judge's Order denying Ms. Ennis's Motion to Disqualify Defense Counsel Brian Gardiner, Mr. Pearson filed a Motion to Dismiss on April 6, 2018. Pursuant to O.C.G.A. § 9-11-11-1(d) "All discovery and any pending hearings or motions in the action shall be stayed upon the filing of a motion to dismiss ...until a final decision on the motion. The motion shall be heard not more than 30 days after service..." however, on June 6, 2018, more than 30 days after service and unbeknownst to the Plaintiff and/or Plaintiff's Counsel (i.e. no copy of the order received from the court or clerk), Judge Powers issued a *sua sponte* erroneous order; without any motions filed by either party, granting the Motion to Dismiss and Attorney's Fees against a non-party corporation The Mignott Law Group, LLC. and Plaintiff, Marsha W. Mignott, Esq. Judge Power's June 6, 2018 Order was untimely issued in accordance with O.C.G.A. § 9-11-11-1(d) and as such should have been set aside and vacated or filed sooner. Said conduct again exhibits the court's delay in

unnecessarily extending the proceedings therefore, the awarding of attorney's fees by Judge Kathryn L. Powers, without any motion filed by opposing counsel, the absence of arguments made to show that either party had caused delays, and/or harassment or other improper conduct accordingly violated O.C.G.A. § 9-15-14 (a) and (b).

Most notably, said Order addressed two matters (i.e. Plaintiff's Motion to Set Aside and Defendant's Motion to Dismiss) in further violation of O.C.G.A. § 9-11-11-1(d) as any pending motion should be stayed until a final decision on the motion to dismiss; therefore, a separate order regarding the Motion to Set Aside, should have followed if the case was pending prior to the Motion to Dismiss. Again, no motion or other filings existed to prompt the courts to issue a dual order that revisited an already adjudicated matter (Motion to Set Aside) and produced an appearance that the Motion to Set Aside was pending before the court. Said conduct was deceptive and blind sighting to Petitioner as the only order that should have been issued at the time was with respects to the Motion to Dismiss.

Petitioner further submits that upon the Motion for Recusal of Judge Powers, the matter traversed through the hands of three (3) other judges who recused themselves due to a conflict of interest, before reaching Judge Mack, who denied the Motion for Recusal of Judge Powers and formerly reinstated Judge Powers in the case. The self-recusal of the other judges-imposed trial court delays that exceeded the Petitioners scope of authority, in that, such further delay was of no fault of The Mignott Law Group, LLC and/or Marsha W. Mignott, Esq.

Notwithstanding, on April 23, 2019, Judge Powers conducted a hearing on Petitioners' Emergency Motion to Set Aside June 8, 2018 Court Order granting attorney's fees and to Stay Recording of Fi Fa. During the hearing and on the record, argument was proffered to Judge Powers that entering an order against Petitioner's employer, a non-party corporation and Petitioner would result in the non-party having to seek counsel and file an action to protect its assets and the legal interest of its stakeholders. Despite the evidence presented to the court on behalf of Ms. Ennis, the Non-Party Corporation to wit: The Mignott Law Group, LLC, and Marsha W. Mignott, Esq, the trial court denied Petitioner's Emergency Motion to Set Aside June 8, 2018 Order and to Stay Recording of Fi Fa. On June 18, 2018.

Moreover, said denial was in violation of the professional rules of ethical standards, as the miscarriage of law indicated a retaliatory approach that further barred The Mignott Law Group, LLC and Marsha W. Mignott, Esq. a reasonable opportunity to confront and challenge the value of the attorney's fees; completely negating O.C.G.A. § 9-15-14 (a) & (b); which serves as the baseline for awarding attorney's fees - [there must be a showing of] . . . *substantial justification or that the action, or any part thereof, was interposed for delay or harassment, or if it finds that an attorney or party unnecessarily expanded the proceeding by other improper conduct . . .*"

Concisely, it was argued on the record that the court lacked a bona fide argument to add both The Mignott Law Group and Marsha W. Mignott, Esq. as a

party. However, the court used the Petitioner's Motion of Recusal as a means for disciplinary sanctions to award attorney's fees upon reentering the case. Furthermore, according to the *State Bar of Georgia Rule 1.6*, denying the Petitioner's Emergency Motion to Set Aside Attorney's Fees, created a conflict of interest against Marsha W. Mignott, Esq., an attorney employed by The Mignott Law Group, LLC and The Mignott Law Group, LLC a non-party corporation. Therefore, the May 10, 2018 order granting more attorney's fees was a negligent application of the law and should be overturned.

In *Rowan v. Reuss*, 246 Ga.App. 139(1), 539 S.E.2d 241 (2000), the Court of Appeals reversed an award of attorney fees in part because the record did not demonstrate that the attorney against whom fees were assessed "received adequate notice of the court's intention to impose attorney fees...." There, as here, the trial court acted *sua sponte* in rendering the award, such that, the trial court did not provide adequate notice with regard to considering the award.

*"One against whom an award of attorney fees is sought "is entitled to an evidentiary hearing upon due notice permitting him an opportunity to 'confront and challenge the value and the need for the legal services claimed. (Cit.)' [Cit.]"* *Wehner v. Parris*, 258 Ga.App. 772(1), 574 S.E.2d 921 (2002). Without notice that the trial court was considering an award of fees pursuant to OCGA § 9-15-14(b), the hearing conducted in this case on a claim for attorney ... cannot be considered a realistic opportunity to

*contest the need for the legal services forming the basis of the award under OCGA § 9-15-14(b)."*

The court went on to say for an award under OCGA § 9-15-14(b), the conduct of the party against whom an award is sought, and the conduct of that party's counsel, are considered along with the impact of that conduct on the attorney fees incurred by the opposing party. *Mills v. Parker*, 267 Ga.App. 334(2), 599 S.E.2d 301 (2004). We hold, therefore, that without proper notice that an award of attorney fees under OCGA § 9-15-14(b) is under consideration, the party against whom fees are assessed should receive an opportunity to challenge the basis for which the fees are assessed. Moreover, the statute provides that the means of giving proper notice is a motion and that said motion should be filed by a party or even that, merely a form of notice to any person should be made available in accordance with the statute.

III. The Court of Appeals erred by affirming the trial court's *Fieri Facias* issued to seize assets for The Mignott Law Group, LLC, a non-party corporation and Marsha W. Mignott, Esq. without due process of law as required pursuant to O.C.G.A. § 9-15-14 (b); and the Fourteenth Amendment to the United States Constitution.

**C. The Court of Appeals erred when it upheld the trial court's decision to issue a *Fieri Facias* adding The Mignott Law Group, LLC, as a party to a civil action without service of a summons upon same.**

The Court of Appeals of the State of Georgia and the Supreme Court of Georgia violated the Petitioners' Fourth Amendment Due Process Rights by adding

The Mignott Law Group, LLC, a non-party corporation and Marsha W. Mignott Esq, as a party to the action using the exact same case number issued in the Ennis v. Pearson et al. CAFN: 2017CV00432-13. Said *Fiera Facias* has resulted in the assets of the Petitioners of risk of being sold to satisfy an unlawful money judgment.

### **CONCLUSION**

The trial court erred by awarding attorney's fees in violation of Petitioners Fourteenth Amendment Rights pursuant to O.C.G.A. § 9-15-14 (a) & (b). Subsequently, The Mignott Law Group, LLC a non-party corporation and Marsha W. Mignott, Esq. was added to a lawsuit without proper notice or afforded means to be heard. Additionally, the proceedings were unnecessarily expanded by this improper conduct and insufficiency of law, such that, the Petitioners was harassed throughout the extended proceedings. Furthermore, such misapplication of the law enabled the trial courts to render untimely and unsubstantiated evidence including but not limited to a letter by opposing counsel. Moreover, a responsive motion and the scheduling of same was not evidenced on the record; therefore, the addition of attorney's fees is retaliatory; specifically, since the fees were added after a motion for recusal was filed and heard.

**WHEREFORE**, Petitioners pray that a Writ of Certiorari be issued to review the numerous erroneous opinions of the Court of Appeals of the State of Georgia and the Supreme Court of Georgia, thus, upholding the Petitioners' rights under O.C.G.A. § 9-15-14 (a) & (b); and the Constitution of the United States of America.

*SIGNATURE ON NEXT PAGE*

Respectfully submitted, this 21<sup>st</sup> day of December, 2020.

K.Bandoh

Kimberly L. Fowler Bandoh  
Georgia Bar No. 142232  
Marsha W. Mignott  
Georgia Bar No. 141933  
Counsel(s) of Record

**Law Office of Kimberly L. Fowler Bandoh**  
1745 Phoenix Boulevard  
Suite 480  
Atlanta, GA 30349  
(770) 997-5200 Telephone  
(770) 936-1966 Facsimile  
[kim@bandohlaw.com](mailto:kim@bandohlaw.com)

## CERTIFICATE OF SERVICE

THIS is to certify that, as required by Supreme Court Rule 29 I have served a copy of the enclosed PETITION FOR WRIT OF CERTIORARI upon counsel for the opposing party, and on every other person required to be served, in the following manner:

- By hand delivery;
- By sending an email to Appellee at \_\_\_\_\_;
- By depositing a copy of the same in the United States Mail with adequate postage affixed thereon to ensure delivery addressed to:  
  
Warren R. Hinds, Esq.  
Warren R. Hinds, P.C.  
1303 Macy Drive  
Roswell, Georgia 30076

This 21<sup>st</sup> day of December, 2020.



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Kimberly L. Fowler Bandoh  
Georgia Bar No. 142232  
Marsha W. Mignott  
Georgia Bar No. 141933  
Counsel(s) of Record

**Law Office of Kimberly Bandoh, LLC**  
1745 Phoenix Boulevard  
Suite 480  
Atlanta, Georgia 30349  
(770) 997-5200 Telephone  
(770) 936-1966 Facsimile  
[kim@bandohlaw.com](mailto:kim@bandohlaw.com)

## **APPENDIX A**

**The Georgia Court of Appeals Order – January 10, 2020**

# Court of Appeals of the State of Georgia

ATLANTA, January 10, 2020

*The Court of Appeals hereby passes the following order*

**A20D0148. MARSHA W. MIGNOTT v. BRIAN GARDINER.**

Upon consideration of the APPELLANT'S Amended Motion for Reconsideration in the above styled case, it is ordered that the motion is hereby DENIED.



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, January 10, 2020.*

*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. Carter, Clerk.*

## **APPENDIX B**

**The Georgia Court of Appeals Order – December 2, 2019**

# Court of Appeals of the State of Georgia

ATLANTA, December 02, 2019

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

**A20D0148. MARSHA W. MIGNOTT v. BRIAN GARDINER.**

**A20D0151. THE MIGNOTT LAW GROUP, LLC v. BRIAN GARDINER.**

These related applications arose out of awards of attorney fees against Marsha W. Mignott and the Mignott Law Group, LLC (collectively the “Applicants”) in connection with Mignott’s representation of Marilyn Ennis, the plaintiff, in a lawsuit filed against a homeowner’s association. On March 30, 2018, the trial court entered an order denying the plaintiff’s motion to disqualify Brian Gardiner as counsel for the homeowner’s association and granting attorney fees to Gardiner. The plaintiff filed an application for discretionary appeal from the trial court’s order, which was dismissed for failure to follow interlocutory procedures. See *Ennis v. Rivercrest Homeowners Association, Inc.*, Case No. A18D0443, dismissed May 16, 2018.

Gardiner sought the issuance of a *fi fa.* against Ennis and the Applicants on May 17, 2018, and the Applicants objected on the grounds that the grant of fees was only against Ennis. On June 8, 2018, the trial court entered an order clarifying that Gardiner was awarded attorney fees in the amount of \$4,426.50 against Ennis and the Applicants and directed the issuance of the *fi fa.* On June 29, 2018, the Applicants filed “emergency motions” to stay recording of the *fi fa.* and to set aside the order of attorney fees. On May 10, 2019, the trial court entered its order denying the emergency motions and granting Gardiner an additional \$1,309.00 in attorney fees pursuant to OCGA § 9-15-14(b) due to the Applicants’ continued frivolous litigation.

On July 6, 2019, and July 9, 2019, the Applicants filed separate applications for discretionary appeal from the May 10, 2019, order of the trial court. This Court dismissed those applications for untimeliness and for failure to follow interlocutory

appeal procedures. See *Marsha W. Mignott v. Brian Gardiner*, Case No. A19D0545 and *The Mignott Law Group, LLC v. Brian Gardiner*, Case No. A19D0551 (both dismissed August 1, 2019). Thereafter on October 15, 2019, the parties in the underlying action filed a Joint Voluntary Dismissal of All Claims and Counterclaims with Prejudice. On October 31, 2019, and November 1, 2019, the Applicants filed separate applications for discretionary appeal, seeking to challenge yet again the trial court's May 10, 2019, order denying their motion to set aside attorney fees. We, however, lack jurisdiction.

These applications are barred by the law of the case. As stated earlier, the Applicants previously-filed applications for discretionary review of the trial court's order of May 10, 2019, were dismissed for untimeliness and failure to follow our interlocutory appeal procedures. "It is well established that any issue that was raised and resolved in an earlier appeal is the law of the case and is binding on this Court," and it matters not that the dismissal of the previous appeal did not reach the merits of the claim "because the dismissal, nevertheless, constitutes binding law of the case." *Ross v. State*, 310 Ga. App. 326, 327 (713 SE2d 438) (2011) (punctuation omitted). See also *Reeves v. Upson Regional Medical Center*, 315 Ga. App. 582, 585 (1) (a) (726 SE2d 544 ) (2012) (dismissal of an appeal because order challenged was interlocutory is law of the case and cannot be revisited).

Accordingly, our prior dismissals of the Applicants' challenges to the trial court's denials of their motion to set aside constitute the law of the case, and we are precluded from revisiting these issues. See *id.* at 328. These applications are therefore hereby DISMISSED.

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, 12/02/2019*

*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. Castles*

*, Clerk.*

## APPENDIX C

**Georgia Court of Appeals Order – August 1, 2019**

# Court of Appeals of the State of Georgia

ATLANTA, August 01, 2019

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

**A19D0545. MARSHA W. MIGNOTT v. BRIAN GARDINER.**

**A19D0551. THE MIGNOTT LAW GROUP, LLC. v. BRIAN GARDINER.**

In this civil action, Plaintiff Marian Ennis<sup>1</sup> raised a defamation claim against Charles Pearson, in his individual capacity and in his capacity as President of Rivercrest Homeowners Association, Inc. (“RHA”) and sought damages from both defendants. Marsha W. Mignott and the Mignott Law Group represented Ennis, and Brian Gardiner represented RHA. Ennis filed a motion to disqualify Gardiner, which was denied and resulted in an award of attorney’s fees to Gardiner.<sup>2</sup> On July 6, 2019, and July 9, 2019, respectively, Mignott and The Mignott Law Group filed applications for discretionary appeal from the trial court’s order dated May 10, 2019, which denied their motion to set aside the order awarding attorney fees pursuant to OCGA § 9-15-14 (b) and granted a motion to compel Mignott’s deposition. We lack jurisdiction for two reasons.

First, an application for discretionary appeal must be filed within 30 days of entry of the order to be appealed. OCGA § 5-6-35 (d); *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992). We lack jurisdiction to consider an untimely application. See *Hill*, *supra*. Here, Mignott filed her application 57 days after the trial court’s

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<sup>1</sup> Ennis’s first name is listed as “Marilyn” in the trial court order at issue in this application.

<sup>2</sup> On May 16, 2018, we dismissed Ennis’s application for discretionary appeal from the order awarding fees for failure to follow the interlocutory appeal procedures. See Case No. A18D0443.

order was entered, and the Mignott Law Group filed its application 60 days after the entry of the order. Therefore, both applications are untimely.

Second, both Mignott and the Mignott Law Group failed to follow the proper appellate procedure. Rather than filing an application for discretionary review, they were required to use the interlocutory appeal procedure to appeal the order at issue because it an interlocutory order requiring compliance with OCGA § 5-6-34 (b) as the case remains pending in the trial court. “In a case involving multiple parties or multiple claims, a decision adjudicating fewer than all the claims or the rights and liabilities of [fewer] than all the parties is not a final judgment.” *Johnson v. Hosp. Corp. of America*, 192 Ga. App. 628, 629 (385 SE2d 731) (1989) (punctuation omitted). Under such circumstances, there must be either an express determination that there is no just reason for delay under OCGA § 9-11-54 (b) or compliance with the interlocutory appeal requirements of OCGA § 5-6-34 (b). See *id.*

For these reasons, we lack jurisdiction over these applications, which are hereby DISMISSED.



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, 08/01/2019*

*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. Castor*

*, Clerk.*

## APPENDIX D

Georgia Court of Appeals Order – August 2, 2018

# Court of Appeals of the State of Georgia

ATLANTA, August 02, 2018

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

**A18D0532. MARIAN A. ENNIS v. CHARLES PEARSON.**

In this civil action, Plaintiff Marian Ennis<sup>1</sup> raised (i) a defamation claim against Charles Pearson, in his individual capacity and in his capacity as President of Rivercrest Homeowners Association, Inc. (“RHA”); and (ii) a claim for damages against RHA arising out of a dispute over past-due homeowner association fees. On June 6, 2018, the trial court granted Pearson’s motion to dismiss Ennis’s defamation claim.<sup>2</sup> In its June 6 order, the trial court also explicitly reserved a ruling on the parties’ requests for attorney fees “until final disposition of the case.”<sup>3</sup> Ennis then filed this application for discretionary review, seeking to appeal the June 6 order. We lack jurisdiction.

“In a case involving multiple parties or multiple claims, a decision adjudicating fewer than all the claims or the rights and liabilities of [fewer] than all the parties is not a final judgment.” *Johnson v. Hosp. Corp. of America*, 192 Ga. App. 628, 629 (385 SE2d 731) (1989) (punctuation omitted). Under such circumstances, there must be either an express determination that there is no just reason for delay under OCGA § 9-11-54 (b) or compliance with the interlocutory appeal requirements of OCGA

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<sup>1</sup> Ennis’s first name is listed as “Marilyn” in the trial court order at issue in this application.

<sup>2</sup> Ennis has not submitted a copy of Pearson’s motion to dismiss, in violation of Court of Appeals Rule 31 (e).

<sup>3</sup> The statutory basis for the parties’ requests for attorney fees is unclear on the current record.

§ 5-6-34 (b). See *id.* Where neither code section is followed, the appeal is premature and must be dismissed. *Id.*

The record contains no indication that the trial court directed the entry of judgment under § 9-11-54 (b) or that RHA has been dismissed from this action. Consequently (and pretermitted whether an application for discretionary appeal was required), because this action remains pending below, Ennis was required to use the interlocutory appeal procedures – including obtaining a certificate of immediate review from the trial court – to appeal the June 6 order. See OCGA § 5-6-34 (b); *Boyd v. State*, 191 Ga. App. 435, 435 (383 SE2d 906) (1989). Her failure to do so deprives us of jurisdiction over this application, which is hereby DISMISSED. See *Bailey v. Bailey*, 266 Ga. 832, 833 (471 SE2d 213) (1996); *Boyd*, 191 Ga. App. at 435.

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, 08/02/2018*

*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. Castor*

*, Clerk.*

## APPENDIX E

Georgia Court of Appeals Order – May 16, 2018

# Court of Appeals of the State of Georgia

ATLANTA, May 16, 2018

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

**A18D0443. MARILYN A. ENNIS v. RIVERCREST HOMEOWNERS  
ASSOCIATION, INC. et al.**

In this civil action, plaintiff Marilyn A. Ennis filed a motion to disqualify counsel for defendant Rivercrest Homeowners Association, Inc. The trial court denied the motion and awarded attorney fees to defense counsel. Ennis then filed this application for discretionary appeal seeking review of the attorney fees award. We, however, lack jurisdiction.

Because the action remains pending below, the order Ennis seeks to appeal is interlocutory. See *Eidson v. Croutch*, 337 Ga. App. 542, 544 (788 SE2d 129) (2016) (because the transfer order was a continuation of the same proceeding and not final, the attorney fees order was not immediately appealable). Therefore, in order to obtain appellate review, Ennis was required to follow the interlocutory appeal procedure set forth in OCGA § 5-6-34 (b), including obtaining a certificate of immediate review. See *Bailey v. Bailey*, 266 Ga. 832, 833 (471 SE2d 213) (1996) (where contested order is interlocutory, discretionary appeal statute does not excuse failure to comply with OCGA § 5-6-34 (b)); *Eidson*, 337 Ga. App. at 545 (“Although . . . an order granting attorney fees may involve a distinct and separate offshoot of the underlying pending action, that is not the test for determining whether this Court has jurisdiction.”). Ennis’s failure to do so deprives this Court of jurisdiction of this application, which is hereby DISMISSED. Defense counsel’s request for a frivolous application penalty

pursuant to Court of Appeals Rule 7 (e) (2) is DENIED.



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, 05/16/2018*

*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. Carter*

*, Clerk.*

## APPENDIX F

Clayton County Superior Court Order – March 30, 2018

IN THE SUPERIOR COURT OF CLAYTON COUNTY  
STATE OF GEORGIA

FILED  
CLAYTON COUNTY, GA

2018 MAR 30 PM 3:13

MARILYN A. ENNIS,  
Plaintiff,

vs.

CHARLES PEARSON, in his capacity as  
PRESIDENT OF RIVERCREST  
HOMEOWNERS ASSOCIATION, INC.,  
CHARLES PEARSON, in his individual capacity,  
And RIVERCREST HOMEOWNERS  
ASSOCIATION, INC.  
Defendants.

)  
CIVIL ACTION  
NO. 2017 CV 00432-13

JACQUELINE L. WILSON  
CLERK, SUPERIOR COURT

ORDER

The above-styled matter appeared before this Court on March 14<sup>th</sup>, 2018 pursuant Plaintiff's Motion to Disqualify Defense Counsel Brian Gardiner. Plaintiff filed the pending Motion on November 14<sup>th</sup>, 2017. Mr. Gardiner filed a Responsive Brief on December 11<sup>th</sup>, 2017.<sup>1</sup>

Both parties appeared and presented argument, as well as evidence regarding the motion. After review of the pending motion and the record and relevant law, the Court DENIES Plaintiff's Motion to Disqualify and finds as follows:

The above-styled Complaint arises from a dispute between Plaintiff and Defendants regarding homeowners' association fees and allegations of defamation arising from Plaintiff's alleged failure to pay the disputed fees. Plaintiff is the former Treasurer for the Rivercrest Homeowners Association. Plaintiff alleges in her motion that she communicated confidential information and supporting documentation to Mr. Gardiner regarding her dispute in this matter. Mr. Gardiner is one of the attorneys of record for the Defendants. Plaintiff alleges that between January 14, 2016 and May 20, 2016, she e-mailed and otherwise communicated to Mr. Gardiner information and supporting

<sup>1</sup> At the hearing Plaintiff's counsel alleged the responsive brief was untimely and should be stricken. However, Uniform Superior Court Rule 6.2 allows for 30 days to file a response to all motions unless otherwise shortened by the Court. The Court finds the response was timely filed.

documentation regarding her dispute and that she shared “confidences” with Mr. Gardiner that would provide an unfair advantage to Defendant. According to Plaintiff, when confronted with what Plaintiff and her current counsel perceived as a conflict in the matter at her deposition on September 15, 2017, Mr. Gardiner refused to withdraw as counsel of record, but delayed the deposition and provided a timeline of communications to Plaintiff’s counsel. Subsequently, Plaintiff filed a grievance with the State Bar of Georgia on October 20, 2017 and the instant motion in November.

The Court reviewed both the pleadings in the record, as well as the testimony provided at the hearing, including most notably, Plaintiff’s own testimony on the timeline of events and what was communicated. The Court finds as follows:

On January 14, 2016 Ms. Ennis sent an unsolicited email to Mr. Gardiner requesting his services in her dispute with Rivercrest HOA. (Gardiner’s Exhibit A) In her email Plaintiff states she was given his name based on a referral and that she needs to speak with Mr. Gardiner about her dispute about a HOA matter “where they are invoicing me back to 2009-2015 because they claim they cannot fine payments for that period of time. At the time I was the treasurer of the association and it is now a personal vendetta from the current board and myself.” Within 10 minutes, Mr. Gardiner responds via email stating that “I cannot assist you at this time” and provides a recommendation for another attorney. (Gardiner’s Exhibit B). Soon thereafter, Plaintiff hires other counsel, Mr. Justin Threlkill, who initially represented her interests in the HOA dispute. (See February 2, 2016 Letter from Mr. Threlkill to HOA, Gardiner Exhibit C).

On or about April 23, 2016, Plaintiff attended a HOA meeting and inquired who the HOA attorney was. According to Plaintiff, the HOA members did not know the attorney’s name, but just that counsel was handling the dispute. Plaintiff memorialized her attendance at the meeting and her discovery that Mr. Gardiner was the HOA’s attorney in a May 7, 2016 letter. (Gardiner’s Exhibit D). The first demand letter from Mr. Gardiner on behalf of the HOA was sent to Plaintiff on May 6, 2016 and a second letter on May 20<sup>th</sup>. All subsequent communications between Plaintiff and Mr. Gardiner

were Plaintiff's efforts regarding her claim against the HOA. At this point, it is undisputed Plaintiff knew the HOA was represented by Mr. Gardiner and that she was represented by counsel. In her May 7<sup>th</sup> letter and testimony, Plaintiff stated she initiated communication with Mr. Gardiner on May 2<sup>nd</sup> via phone, that Mr. Gardiner had not received anything from Mr. Thraillkill, he had no idea what she was talking about and that she "only briefly talked to him". Plaintiff was specifically asked at the hearing by her current counsel if she shared any confidences regarding her defense or information about her strategy in the matter for which Plaintiff stated "No." Plaintiff reiterated that she only spoke with Mr. Gardiner during this May 2<sup>nd</sup> phone call briefly and that she had no information for her. Again, Plaintiff emailed Mr. Gardiner on May 20<sup>th</sup> referring to her January 14<sup>th</sup> communication and her factual dispute of the amount owed.

It is clear from the testimony and the record, Plaintiff was aware Mr. Gardiner was not her attorney, nor representing her interests at all. She had retained other counsel to represent her. Moreover, if any communications occurred, they were initiated by Plaintiff and not Mr. Gardiner. Lastly, there is no evidence that any confidential or privileged information was communicated in either the January 14<sup>th</sup> email or thereafter. Plaintiff had knowledge that Mr. Gardiner was representing the HOA in May 2016, yet continuously attempted to communicate with him, outside of her counsel. Even if the propriety of such communications can be called into question, there is no evidence such information was confidential or that Plaintiff had any expectation of privacy in them. In fact, Plaintiff has denied any confidential communications occurred. Plaintiff's Motion is hereby **DENIED**.

As to Mr. Gardiner's request for attorney's fees pursuant to O.C.G.A. §9-15-14, the Court **GRANTS** counsel's request. The Court finds in its discretion, pursuant to §9-15-14(b), that Plaintiff's filed her motion to disqualify was without substantial justification and was interposed for delay or harassment. Mr. Gardiner and his counsel provided Plaintiff's counsel with a specific timeline of events and communications, stayed proceeding with Plaintiff's deposition and tried repeatedly to communicate with Plaintiff's counsel in an effort to address any perceived conflict of interest.

CERTIFICATE OF SERVICE

I, Jamie Blevins, Judicial Assistant to the Judge Kathryn L. Powers, do hereby certify that I have this day served the enclosed pleading or document titled **ORDER** upon the individuals listed below by mailing a true copy of same in envelopes with adequate postage via U.S. mail addressed as follows:

Case #2017CV00432-13

Marsha W. Mignott  
4945 Presidents Way  
Tucker, Georgia 30084

Anthony Denapoli  
William D. Strickland  
2200 Century Parkway N.E.  
Suite 1050  
Atlanta, Georgia 30345

Marvin S. Arrington Jr  
2200 Fairburn Road S.W.  
Atlanta, Georgia 30331

Holly Peace  
153 Senoia Road  
Peachtree City, Georgia 30269

Brian M. Gardiner  
Wes Dunlap  
5604 Wendy Bagwell Parkway  
Suite 923  
Hiram, Georgia 30141

FILED  
CLAYTON COUNTY, GA  
MARCH 30 2018 PM 3:13  
JUDGE KATHRYN L. POWERS  
CLAYTON COUNTY COURT

This 30<sup>th</sup> day of March, 2018

Jamie Blevins  
Jamie Blevins, Administrative Assistant to  
Judge Kathryn L. Powers  
Superior Court of Clayton County  
Clayton Judicial Circuit

Plaintiff's counsel did not response to these communications and delayed in filing her motion for approximately two months after the allegations of a conflict arose and the receipt of Mr. Gardiner's timeline.

Therefore, after review of the testimony provided, including the affidavits and testimony of Mr. Warren Hinds, the Court hereby awards Mr. Gardiner \$4,426.50 in attorney's fees.

SO ORDERED this 29<sup>th</sup> day of March, 2018.

  
KATHRYN L. POWERS  
Judge, Superior Court  
Clayton Judicial Circuit

FILED  
CLERK'S OFFICE, CLAYTON CO., GA  
2018 MAR 30 PM 12:15  
JACQUELINE M. COOPER  
CLERK'S OFFICE, CLAYTON CO.

## **APPENDIX G**

**Clayton County Superior Court Order – June 8, 2018**

IN THE SUPERIOR COURT OF CLAYTON COUNTY  
STATE OF GEORGIA

MARILYN A. ENNIS,

Plaintiff,

vs.

CHARLES PEARSON, in his capacity as  
PRESIDENT OF RIVERCREST  
HOMEOWNERS ASSOCIATION, INC.,  
CHARLES PEARSON, in his individual capacity,  
And RIVERCREST HOMEOWNERS  
ASSOCIATION, INC.

Defendants.

)  
)  
)  
)  
)

CIVIL ACTION  
NO. 2017 CV 00432-13

FILED  
CLAYTON COUNTY, GA  
2018 JUN -8 PM 3:39  
JACQUELINE D. WILLS  
CLERK SUPERIOR COURT

ORDER

The above-styled matter appeared before this Court pursuant to Plaintiff's Motion to Disqualify Attorney Brian Gardiner. This Court entered an Order on March 29, 2018 denying Plaintiff's Motion to Disqualify and granting Mr. Gardiner's request for attorney's fees pursuant to §9-15-14(b).

Subsequently, counsel for Mr. Gardiner has requested a *fi fa* issue against Plaintiff Marilyn Ennis, Marsha Mignott and the Mignott Law Group, LLC, jointly and severally on the attorney's fees awarded. Plaintiff's counsel has objected stating that the Order only awarded attorney's fees against Plaintiff and not against The Mignott Law Group, LLC or Ms. Mignott individually.

For purposes of clarification, the Court's Order granted Mr. Gardiner's request, in its entirety, for attorney's fees pursuant to O.C.G.A. §9-15-14(b). (See Order pg. 3). In his Motion, Mr. Gardiner requested attorney's fees be awarded against Plaintiff Marilyn A. Ennis and her counsel, Ms. Mignott. The Court granted Mr. Gardiner's request. Due to a scrivener's error, the Order incorrectly stated only an award against Plaintiff. However, Mr. Gardiner was awarded \$4,426.50 in attorney's fees against Plaintiff Marilyn A. Ennis and her counsel, Ms. Marsha Mignott and The Mignott Law Group, LLC. The Clerk should issue a *fi fa* accordingly.

SO ORDERED this 8<sup>th</sup> day of June, 2018.

  
KATHRYN L. POWERS  
Judge, Superior Court  
Clayton Judicial Circuit

CERTIFICATE OF SERVICE

I, Jamie Blevins, Judicial Assistant to the Judge Kathryn L. Powers, do hereby certify that I have this day served the enclosed pleading or document titled **ORDER** upon the individuals listed below by mailing a true copy of same in envelopes with adequate postage via U.S. mail addressed as follows:

Case #2017CV00432-13

Marsha W. Mignott  
4945 Presidents Way  
Tucker, Georgia 30084

Anthony Denapoli  
William D. Strickland  
2200 Century Parkway, N.E.  
Suite 1050  
Atlanta, Georgia 30345

Marvin S. Arrington Jr.  
Vincent P. Phillips  
2200 Fairburn Road S.W.  
Atlanta, Georgia 30331

Holly Peace  
153 Senoia Road  
Peachtree City, Georgia 30269

Wes Dunlap  
Brian M. Gardiner  
5604 Wendy Bagwell Parkway  
Suite 923  
Hiram, Georgia 30141

Warren R. Hinds  
1303 Macy Drive  
Roswell, Georgia 30076

FILED  
CLAYTON COUNTY, GA  
2018 JUN -8 PM 3:39  
JACQUELINE D. WILLS  
CLERK SUPERIOR COURT

This 8<sup>th</sup> day of June, 2018

Jamie Blevins  
Jamie Blevins, Administrative Assistant to  
Judge Kathryn L. Powers  
Superior Court of Clayton County  
Clayton Judicial Circuit

## APPENDIX H

### Clayton County Superior Court Fieri Facias Order

## WRIT OF FIERI FACIAS

FILED  
CLAYTON COUNTY, GA

SUPERIOR COURT OF CLAYTON COUNTY 2018 JUN 15 AM 9:42

CASE NO.	DATE OF JUDGMENT
2017CV00432-13	05/30/2018

MARIAN A ENNIS  
12206 Crestwood Court  
Fayetteville, GA 30214JACQUELINE D. WILLS  
CLERK SUPERIOR COURT

Defendant's Attorney - Name, Address and Telephone No.

Warren R. Hinds, P.C.  
Crossville Village Office Park  
133 Macy Drive  
Roswell, GA 30076MARSHA WILLIAMS MIGNOTT and  
THE MIGNOTT LAW GROUP, LLC  
4945 PRESIDENTS WAY  
TUCKER GA 30084  
PLAINTIFF  
VS  
BRIAN GARDINER  
5604 Wendy Bagwell  
Suite 923  
Hiram, GA 30141  
DEFENDANT

To all and singular the sheriffs of the State and their deputies:

In the above styled case, and on the judgment date set out, the defendant(s) recovered against the plaintiff(s) judgment in the following sums:

Principal	\$	N/ A
Interest	\$	N/ A
State Penalty 15-21-73	\$	N/ A
County Penalty 15-21-93	\$	N/ A
Attorney's Fees	\$	4,426.50
Court Costs	\$	N/ A
Surcharges	\$	N/ A
Other Costs	\$	N/ A
Total Due	\$	4,426.50

## CANCELLATION

The within and foregoing Fi.Fa. having been paid in full the Clerk of Superior Court is hereby directed to cancel it of record this

\_\_\_\_\_  
Signature and Title

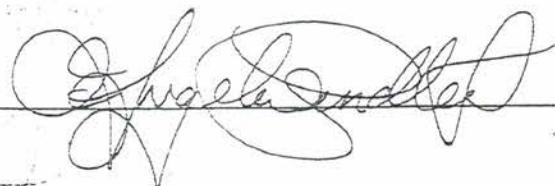
with future interest upon said principal amount from the date of judgment at the legal rate.

Therefore, YOU ARE COMMANDED, that of the goods and chattels, lands and tenements of said plaintiff(s) , and  
ESPECIALLY/ONLY of the following described property, to wit:BK01421P6342  
YOU cause to be made the several sums set out in the foregoing recital of the judgment in this case and have the said several sums of money before the Superior Court of this County at the next term of Court, with this Writ to render to said plaintiff(s) the principal, interest, attorney fees and costs aforesaid.

Witness the Honorable Judges of Said Court:

Dated JUNE 12, 2018

  
00503501



Deputy Clerk

## NOTICE OF LEAVE OF ABSENCE (AMENDED)

To: All Judges, Clerks of Court, and Counsel of Record  
From: William D. Strickland  
Subject: Notice of Leave of Absence  
Date: August 23, 2018

Comes now William D. Strickland and respectfully notifies all judges before whom he has cases pending, all affected clerks of court, and all opposing counsel, that he will be on leave pursuant to Uniform Superior Court Rule 16, as follows:

1. The period of leave during which time Applicant will be away from the practice of law is as follows:

September 7, 2018 through September 14, 2018;  
September 20 and 21, 2018;  
October 11, 12 and 15, 2018;  
November 1, 2, 19, 20, 21, 22, 23 and 26, 2018;  
December 14, 2018 through January 7, 2019.

The purpose of Applicant's leave for this period of time is for family vacation, unless specified otherwise.

2. Applicant certifies that he is lead counsel and attorney of record in each of the matters pertaining hereto.

3. All affected judges and opposing counsel shall have ten (10) days from the date of this notice to object to it. If no objections are filed, the leave shall be granted.

Respectfully Submitted,

STRICKLAND & SCHWARTZ, LLC

*/s/ William D. Strickland*

---

WILLIAM D. STRICKLAND  
Georgia Bar No. 688062

Strickland & Schwartz, LLC  
2200 Century Parkway, NE, Suite 1050  
Atlanta, Georgia 30345  
404-296-6692

EFILED  
CLAYTON COUNTY, GA  
8/30/2018 1:33 PM  
Jacqueline D. Wills  
CLERK SUPERIOR COURT

CERTIFICATE OF SERVICE

This is to certify that I have this date served a copy to the foregoing Notice of Leave of absence upon all Judges, Clerks of Court and opposing counsel listed on the attached Exhibit "A" by depositing the same in the U.S. Mail with adequate postage affixed thereto.

This 23rd day of August, 2018.

STRICKLAND & SCHWARTZ, LLC

/s/ *William D. Strickland*

---

WILLIAM D. STRICKLAND  
GEORGIA BAR NO. 688062

Strickland & Schwartz, LLC  
2200 Century Parkway, NE, Suite 1050  
Atlanta, Georgia 30345  
404-296-6692

## EXHIBIT "A"

Sonia Williams v. Michael Marshall and Geffry Vargas 17-C-00155-2	Presiding Judge State Court of Gwinnett County 75 Langley Drive Lawrenceville, GA 30046	R. Shane Smith, Esq. 263 Hwy. 74 North Peachtree City, GA 30269
1000.1893	Richard T. Alexander, Jr., Clerk State Court of Gwinnett County P. O. Box 880 Lawrenceville, GA 30046	
Jason and Lyndsay Greenlee v. Chakctila S. McKinnon STSV2017-000110	Presiding Judge State Court of Henry County One Judicial Center, Suite 120 44 John Frank Ward Blvd. McDonough, GA 30253	Jonathan P. Hayes, Esq. Goldstein & Hayes, P.C. 3060 Peachtree Rd., N.W., Suite 1000 Atlanta, GA 30305
1000.1899	Michelle B. "Shelly" Gardner Clerk, State Court of Henry County One Judicial Center, Suite 120 44 John Frank Ward Blvd. McDonough, GA 30253	
Marian A. Ennis v. Charles Pearson, in his capacity as President of Rivercrest Homeowners Association, Inc. et. al. 2017CV00432-5	Presiding Judge Superior Court of Clayton County 9151 Tara Boulevard Jonesboro, GA 30236	Brian Gardner, Esq. Dunlap Gardiner, LLP 5604 Wendy Bagwell Parkway Suite 923 Hiram, GA 30141
	Jacqueline Willis, Clerk Superior Court of Clayton County 9151 Tara Boulevard Room 1CL35 Jonesboro, GA 30236	Marsha W. Mignott, Esq. The Mignott Law Group, LLC 4945 Presidents Way Tucker, GA 30084
1000.1900		Wes Dunlap, Esq. Dunlap Gardiner, LLP 5604 Wendy Bagwell Parkway Suite 923 Hiram, GA 30141
Foskey Builders, Inc. v. Heritage Pointe HOA, Inc. 2017-CV-425-5	Presiding Judge Superior Court of Newton County 1132 Usher Street, N.W. Covington, GA 30014	Holly Peace, Esq. Manning Legal Group 153 Senoia Road Peachtree City, GA 30269
	Linda D. Hays, Clerk Superior Court of Newton County 1132 Usher Street, N.W. Covington, GA 30014	Brian Gardiner, Esq. Wes Dunlap, Esq. Dunlap Gardiner, LLP 5604 Wendy Bagwell Parkway Suite 923 Hiram, GA 30141
1000.1904		Kara F. Hooks Massey Law Firm, LLC 945 Bank Street, Suite A Conyers, GA 30012

## APPENDIX I

Clayton County Superior Court Order – June 18, 2018

**COPY**

IN THE SUPERIOR COURT OF CLAYTON COUNTY  
STATE OF GEORGIA

MARIAN A. ENNIS,

CASE NO. 2017CV00432-13

vs.

CHARLES PEARSON, in his capacity  
as President of Rivercrest Homeowners  
Association, Inc., CHARLES  
PEARSON, in his Individual Capacity,  
and RIVERCREST HOMEOWNERS  
ASSOCIATION, INC.

Defendants.

**ORDER**

The above-named Plaintiff filed a Motion for Recusal on June 11, 2018.

When presented with a recusal motion, the trial court must determine the timeliness of the motion and the legal sufficiency of the affidavit and make a determination, assuming any of the facts alleged in the affidavit to be true, whether recusal is warranted. *Uniform Superior Court Rule 25.3.*

Based on a review of Plaintiff's Motion, the Court finds the threshold requirements have been met. Therefore, the matter should be reassigned to the next division of the Superior Court of Clayton County to hear Plaintiff's Motion.

SO ORDERED this 18<sup>th</sup> day of June, 2018.

  
Kathryn L. Powers  
Judge, Superior Court  
Clayton Judicial Circuit

CERTIFICATE OF SERVICE

I, Jamie Blevins, Judicial Assistant to the Judge Kathryn L. Powers, do hereby certify that I have this day served the enclosed pleading or document titled **ORDER** upon the individuals listed below by mailing a true copy of same in envelopes with adequate postage via U.S. mail addressed as follows:

Case #2017CV00432-13

Marsha Mignott  
4945 Presidents Way  
Tucker, Georgia 30084

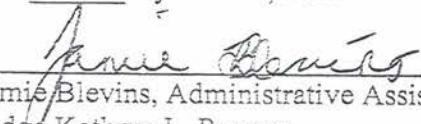
William D. Strickland  
Anthony Denapoli  
2200 Century Parkway N.E.  
Suite 1050  
Atlanta, Georgia 30345

Marvin S. Arrington Jr  
Vincent P. Phillips  
2200 Fairburn Road S.W.  
Atlanta, Georgia 30331

Brian M. Gardiner  
Wes Dunlap  
5604 Wendy Bagwell Parkway  
Suite 923  
Hiram, Georgia 30141

Warren R. Hinds  
1303 Macy Drive  
Roswell, Georgia 30076

This 20<sup>th</sup> day of June, 2018

  
\_\_\_\_\_  
Jamie Blevins, Administrative Assistant to  
Judge Kathryn L. Powers  
Superior Court of Clayton County  
Clayton Judicial Circuit

## **APPENDIX J**

**Clayton County Superior Court Order – July 25, 2018**

FILED IN OPEN COURT

In The Superior Court of Clayton County  
JUL 25 2018  
State of Georgia

2018CV00432-09

✓  
GERONDA V. CARTER  
SUPERIOR COURT JUDGE  
STATE OF GEORGIA

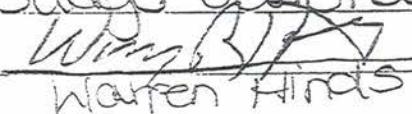
Sent Order to Stay Action On  
Judgment for Attorney's Fees  
& Writ of Fieri Facisa

The Movants Marian Ennis, Marsha W. Mignott, & The Mignott Law Group, LLC and the Respondent, Brian Gardiner agree that no action will be taken on the judgments issued by Kathryn Powers on March 30, 2018; June 8, 2018; and June 12, 2018; until the Emergency Motions filed by the Movants on June 29, 2018, can be heard.

Additionally, the parties agree that Judge Geronda Carter has decided to recuse herself from the pending matter.

So Ordered this 25<sup>th</sup> day of July, 2018

  
Marsha Mignott

  
Chief Judge Geronda Carter  
  
Warren Hinds

## APPENDIX K

Clayton County Superior Court Order – May 10, 2019

IN THE SUPERIOR COURT OF CLAYTON COUNTY, GA  
CLAYTON COUNTY, GA

STATE OF GEORGIA

2019 MAY 10, AM 9:47

MARILYN A. ENNIS,  
Plaintiff,

JACQUELINE D. WILLS  
CLERK SUPERIOR COURT

vs.

CHARLES PEARSON, in his capacity as  
PRESIDENT OF RIVERCREST  
HOMEOWNERS ASSOCIATION, INC.,  
CHARLES PEARSON, in his individual capacity,  
And RIVERCREST HOMEOWNERS  
ASSOCIATION, INC.  
Defendants.

) CIVIL ACTION  
NO. 2017 CV 00432-13

ORDER

The above-styled matter appeared before this Court on April 23, 2019, pursuant to Plaintiff's Emergency Motion to Set Aside this Court June 8<sup>th</sup>, 2018 Order granting attorney's fees and to Stay Recording of the *file*. Plaintiff's counsel argues that the Court's June 8<sup>th</sup> Order *sua sponte* awarded attorney's fees against her as counsel and her law firm. Mr. Gardiner argues in response that a hearing was held on March 14, 2018, that his motion and request for attorney's fees against both Plaintiff and her counsel were plead and heard, the subsequent orders entered and as a result he is entitled to awarded attorney's fees.

On June 11, 2018, Plaintiff filed a Motion to Recuse. Thereafter, the matter was re-assigned to address the Motion to Recuse. On February 12, 2019, Judge Mack entered an Order denying Plaintiff's Motion to Recuse. During period it was re-assigned, Defendant Rivercrest Homeowners Association, Inc. filed a Motion to Dismiss and/or Motion to Compel the Plaintiff's deposition on October 4, 2018. Therefore, upon receipt of Judge Mack's Order, this Court scheduled the matter to address Plaintiff's pending motions, as well as Defendant Rivercrest's Motion to Dismiss and/or Compel.

I. Plaintiff's Motion to Set Aside June 8<sup>th</sup>, 2018 Order Granting Attorney's Fees

This Court entered an Order on March 29, 2018 denying Plaintiff's Motion to Disqualify and granting Mr. Gardiner's request for attorney's fees pursuant to §9-15-14(b). In the Order, Mr. Gardiner and his counsel were awarded \$4,426.50 in attorney's fees against Plaintiff Marilyn A. Ennis and her counsel, Ms. Marsha Mignott and The Mignott Law Group, LLC. On June 8<sup>th</sup>, 2018, the Court entered a subsequent order clarifying the attorney's fees award to the extent such was necessary.

After review of the record, including the argument and law presented, the Court DENIES Plaintiff's Motion to Set Aside. The Clerk should issue a *fi fa* accordingly in favor of Mr. Gardiner in the amount \$4,426.50 in attorney's fees against Plaintiff Marilyn A. Ennis and her counsel, Ms. Marsha Mignott and The Mignott Law Group, LLC.

Mr. Gardiner and his counsel, Mr. Hinds, additionally requested attorney's fees pursuant to O.C.G.A. §9-14-15(b) for Plaintiff's counsel continued frivolous litigation in this matter. The Court GRANTS Mr. Gardiner's request pursuant to O.C.G.A. §9-15-14(b) and in its discretion finds that Plaintiff's counsel, Ms. Mignott, unnecessarily expanded this proceeding which lacks substantial justification in law or fact. Therefore, the Court awards Mr. Gardiner and his counsel attorney's fees in the amount of \$1,309.00 against Ms. Marsha Mignott and The Mignott Law Group, LLC.

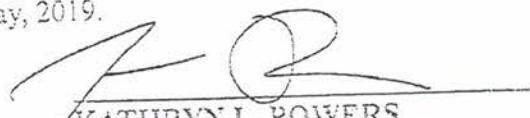
II. Defendant Rivercrest's Motion to Dismiss and/or Motion to Compel

The second motion heard was Defendant Rivercrest's Motion to Compel Plaintiff's deposition or dismiss Plaintiff's Complaint for her willfully evading her deposition and a request for attorney's fees. In response, Plaintiff argues she has not willfully evaded her deposition, but rather offers that issues arose regarding scheduling around her filed Leave of Absence and whether the deposition should proceed during the pendency of the recusal motion.

After review of the evidence and argument presented, the Court GRANTS Defendant Rivercrest's Motion to Compel the Plaintiff's deposition. Counsel shall schedule and complete the deposition within sixty (60) days from the date of this Order. The Court will reserve any request for attorney's fees until

final disposition and request from counsel.

SO ORDERED this 7<sup>th</sup> day of May, 2019.



KATHRYN L. POWERS

Judge, Superior Court  
Clayton Judicial Circuit

FILED  
CLAYTON COUNTY, GA  
2019 MAY 10 AM 9:47

JACQUELINE D. WILLS  
CLERK, SUPERIOR COURT

## **APPENDIX L**

**Supreme Court of Georgia Denial of Petition for Writ of  
Certiorari (A20D0151).**



SUPREME COURT OF GEORGIA

Case No. S20C0762

August 10, 2020

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

THE MIGNOTT LAW GROUP, LLC v. BRIAN GARDINER.

The Supreme Court today denied the petition for certiorari in this case.

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

Court of Appeals Case No. A20D0151

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 black ink, appearing to read "Thavis N. Barnes".

, Clerk

## **APPENDIX M**

**Supreme Court of Georgia Denial of Petition for Writ of  
Certiorari (A20D0148).**



SUPREME COURT OF GEORGIA  
Case No. S20C0755

August 10, 2020

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

MARSHA W. MIGNOTT v. BRIAN GARDINER.

The Supreme Court today denied the petition for certiorari in this case.

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

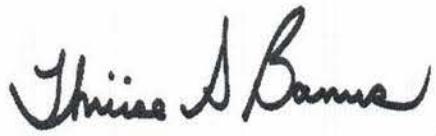
Court of Appeals Case No. A20D0148

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.

  
Thrice A. Barnes, Clerk

**PROOF OF SERVICE**

THIS is to certify that, as required by Supreme Court Rule 29 I have served a copy of the enclosed PETITION FOR WRIT OF CERTIORARI on each party to the above proceeding or that parties counsel, and on every other person required to be served, by depositing and envelope containing the above documents in the United States Mail properly addressed to each of them with First Class Postage Prepaid or deliver to a third-party commercial carrier for delivery within three calendar days.

Warren R. Hinds, Esq.  
Warren R. Hinds, P.C.  
1303 Macy Drive  
Roswell, Georgia 30076

I declare under penalty of perjury that the foregoing is true and correct.

This 21<sup>st</sup> day of December, 2020.

*KL Bandoh*

---

Kimberly L. Fowler Bandoh  
Georgia Bar No. 142232  
Marsha W. Mignott  
Georgia Bar No. 141933  
Counsel(s) of Record

**Law Office of Kimberly Bandoh, LLC**  
1745 Phoenix Boulevard  
Suite 480  
Atlanta, Georgia 30349  
(770) 997-5200 Telephone  
(770) 936-1966 Facsimile  
[kim@bandohlaw.com](mailto:kim@bandohlaw.com)