

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 19-11391  
Non-Argument Calendar

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D.C. Docket No. 2:18-cv-00112-SCJ

TIM SUNDY,

Plaintiff-Appellant,

versus

FRIENDSHIP PAVILION ACQUISITION  
COMPANY, LLC,  
GARY PICONE,  
THOMAS LING,  
MICHAEL WEINSTEIN,  
ARSENAL REAL ESTATE FUND II-IDF,  
L.P.,  
GEORGIA DEPARTMENT OF  
TRANSPORTATION,  
et al.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Northern District of Georgia

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(March 13, 2020)

Before NEWSOM, BRANCH, and HULL, Circuit Judges.

PER CURIAM:

Tim Sundry, proceeding *pro se*, appeals the dismissal of his complaint brought under 42 U.S.C. §§ 1983 and 1985 for alleged violations of his constitutional rights. His suit arises out of a lease and road-construction dispute in state court in 2015, and Sundry's subsequent state-court action against various parties and state-court judges involved in the litigation (some of which were removed to federal court). While the state-court action was pending, Sundry filed the present suit in federal court naming various individuals and entities as defendants, including (as relevant here): (1) employees in the Hall County clerk's office (collectively, the clerk defendants); (2) Christopher Carr, Georgia's Attorney General (Carr); and (3) Friendship Pavilion Acquisition Company, LLC, the Arsenal Real Estate Fund II-IDF, L.P., Gary Picone, Thomas Ling, and Michael Weinstein (collectively, the Friendship defendants).<sup>1</sup>

Liberally construing his briefs, Sundry first asserts on appeal (a) that the district court erred in dismissing his claims against Carr and the clerk defendants

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<sup>1</sup> Sundry also named various other parties as defendants, but he abandoned his claims against them by failing to challenge in his initial brief all or part of the bases for dismissal cited by the district court. *See Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008); *see also Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 683 (11th Cir. 2014) (explaining that if an appellant does not appropriately challenge in an initial brief one of the grounds on which the district court based its judgment, he is deemed to have abandoned any challenge to that ground, and the district court's judgment should be affirmed).

based on the abstention doctrine set out in *Younger v. Harris*, 401 U.S. 37 (1971), because, he says, his due process and equal protection claims were not presented to the state court and are “independent” of the state-court proceedings,<sup>2</sup> and (b) that the district court erred in not allowing him to amend his complaint. Second, he argues that the district court erred (a) by dismissing the claim against Friendship as nonjusticiable because his requested declaratory relief would not redress his alleged injuries, and (b) by granting Friendship’s motion to set aside entry of default even though it did not “present[] a meritorious defense.” Finally, he argues that the removal of documents from the district court’s docket, a delay in fixing clerical mistakes, and a “secret” *ex parte* hearing by the court to find the missing documents violated his right to due process to be fully heard upon a complete record, “depriv[ed] [him] of his right to avoid cross-examine,” and “nullif[ied] the confrontation clause of the 6th Amendment.”<sup>3</sup> We will address each contention in turn.

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<sup>2</sup> Sundy’s claims are difficult to discern. At times, he seems to contend that various state-court employees engaged in a conspiracy against him—including by removing papers from the docket and conducting hearings without him. At other times, he simply (and even more vaguely) asserts that his due process, equal protection, and access-to-courts rights were violated.

<sup>3</sup> Sundy also argues that the district court erred in denying his motion to proceed *in forma pauperis* (IFP) as frivolous; however, this is not a final, appealable order. See 28 U.S.C. § 1291. We note that the proper procedure for challenging the district court’s decision was through a motion to proceed IFP in this Court, which we denied because his appeal was frivolous. Moreover, because he paid the requisite filing fee, any issue in this respect is moot. Therefore, we dismiss his appeal with respect to this issue.

I

Sundy first argues (a) that the district court erred in dismissing his claims against Carr and the clerk defendants based on the *Younger* abstention doctrine and (b) that the district court erred in not allowing him to amend his complaint.<sup>4</sup>

A

In *Younger*, the Supreme Court held that a federal district court may not enjoin a pending criminal state-court proceeding except under extraordinary circumstances. *Green v. Jefferson Cty. Comm'n*, 563 F.3d 1243, 1250 (11th Cir. 2009); *see also Younger*, 401 U.S. 37. The Supreme Court has since expanded the *Younger* doctrine to include, as relevant here, civil proceedings that “implicate state courts important interests in administering certain aspects of their judicial systems.” *Green*, 563 F.3d at 1250–51 (quotation omitted). Especially as applied to civil cases, the *Younger* abstention doctrine is “an extraordinary and narrow exception to the duty of a district court to adjudicate a controversy properly before it.” *Id.* at 1251 (quotation omitted). As such, the doctrine “only applies where the state proceeding at issue involves orders that are

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<sup>4</sup> “We review *de novo* the district court’s grant of a motion to dismiss,” *Timson*, 518 F.3d at 872, but review a district court’s decision to abstain on *Younger* grounds for an abuse of discretion, *Wexler v. Lepore*, 385 F.3d 1336, 1338 (11th Cir. 2004). “[W]e review *de novo* the underlying legal conclusion of whether a particular amendment to the complaint would be futile. *Chang v. JPMorgan Chase Bank, N.A.*, 845 F.3d 1087, 1093–1094 (11th Cir. 2017) (quotation omitted).

uniquely in furtherance of the state courts' ability to perform their *judicial* functions.” *Id.* (quotation omitted).

For *Younger* abstention to apply, certain factors must be met—(1) the state judicial proceedings must be ongoing, (2) the proceedings must “implicate important state interests,” and (3) the federal plaintiff must have had “an adequate opportunity” to raise constitutional challenges in the state proceedings. *See 31 Foster Children v. Bush*, 329 F.3d 1255, 1274–75 (11th Cir. 2003) (quotation omitted); *see also Middlesex Cty. Ethics Comm. v. Garden State Bar Ass’n*, 457 U.S. 423, 432 (1982). The first factor is met when a state proceeding is ongoing and the relief that plaintiff seeks would interfere with it. *31 Foster Children*, 329 F.3d at 1276. As for the second factor, the Supreme Court has repeatedly recognized that states “have important interests in administering certain aspects of their judicial systems.” *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 12–13 (1987). With respect to the third factor, “plaintiffs have the burden of establishing that the state proceedings do not provide an adequate remedy for their federal claims.” *31 Foster Children*, 329 F.3d at 1279. “A federal court should assume that state procedures will afford an adequate remedy, in the absence of unambiguous authority to the contrary.” *Id.* (quotation omitted). “The relevant question is not whether the state courts can do all that Plaintiffs wish they could, but whether the available remedies are . . . adequate. *Id.* (alteration omitted) (quotation omitted).

*Younger* abstention applies to claims for injunctive relief as well as claims for declaratory relief “that would effectively enjoin state proceedings.” *Old Republic Union Ins. Co. v. Tillis Trucking Co.*, 124 F.3d 1258, 1261, 1263–64 (11th Cir. 1997). Additionally, *Younger* abstention may apply to § 1983 claims raising constitutional challenges relating to an ongoing state proceeding. *See Doby v. Strength*, 758 F.2d 1405, 1405–06 (11th Cir. 1985).

To the extent that Sundry sought a declaratory judgment stating, among other things, that the manner in which the state court accepted his pleadings was unconstitutional, those orders were “uniquely in furtherance of the state court[’s] ability to perform [its] *judicial* function[.]” *See Green*, 563 F.3d at 1251 (quotation omitted). Furthermore, each of the *Younger* abstention factors has been satisfied here—the state-court proceedings were ongoing and implicated an important state interest, and Sundry failed to offer any evidence to overcome the presumption that the state processes can provide an adequate remedy, especially where he has filed appeals and writs of mandamus in the Georgia Court of Appeals and Georgia Supreme Court. Accordingly, the district court did not abuse its discretion by dismissing Sundry’s claims against Carr and the clerk defendants based on the *Younger* abstention doctrine.

## B

Under Federal Rule of Civil Procedure 15(a), “a district court ‘should freely give leave’ to amend a complaint ‘when justice so requires.’” *Chang*, 845 F.3d at 1094 (quoting Fed. R. Civ. P. 15(a)(2)). But importantly, “a district court may properly deny leave to amend the complaint under Rule 15(a) when such amendment would be futile, such as when the complaint as amended is still subject to dismissal because, for example, it fails to state a claim for relief.” *Id.* (quotation omitted).

Here, an amended complaint would have been futile because further allegations of similar activity—*i.e.*, assertions that his constitutional rights were violated, whether in conjunction with a conspiracy to remove papers and hold secret hearings or otherwise—would have been equally subject to dismissal under the *Younger* doctrine. Therefore, the district court did not err in refusing to allow Sundy leave to amend his complaint.

## II

Second, Sundy asserts that the district court erred (a) by dismissing his claim against Friendship as nonjusticiable, and (b) by granting Friendship’s motion to set aside entry of default.<sup>5</sup>

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<sup>5</sup> We review questions of subject-matter jurisdiction *de novo*. *Pintando v. Miami-Dade Hous. Agency*, 501 F.3d 1241, 1242 (11th Cir. 2007). We review a district court’s ruling on a motion

## A

“Any time doubt arises as to the existence of federal jurisdiction, we are obliged to address the issue before proceeding further.” *Atlanta Gas Light Co. v. Aetna Cas. & Sur. Co.*, 68 F.3d 409, 414 (11th Cir. 1995). In all cases asserting claims under the Declaratory Judgment Act—such as this one—“the threshold question is whether a justiciable controversy exists.” *Id.* “Congress limited federal jurisdiction under the Declaratory Judgment Act to actual controversies, in statutory recognition of the fact that federal judicial power under Article III, Section 2 of the United States Constitution extends only to concrete ‘cases or controversies.’” *Id.*

“The party who invokes a federal court’s authority must show, at an ‘irreducible minimum,’ that at the time the complaint was filed, he has suffered some actual or threatened injury resulting from the defendant’s conduct, that the injury fairly can be traced to the challenged action, and that the injury is likely to be redressed by favorable court disposition.” *Id.* (quotation omitted). The Supreme Court has explained that “[t]he requirement of [an] actual injury redressable by the court, serves several of the implicit policies embodied in Article III.” *Valley Forge Christian Coll. v. Ams. United for Separation of Church &*

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to set aside an entry of default for abuse of discretion. See *Compania Interamericana Export-Import, S.A. v. Compania Dominicana de Aviacion*, 88 F.3d 948, 950 (11th Cir. 1996).



*State*, 454 U.S. 464, 472 (1982) (citation and quotations omitted). “It tends to assure that the legal questions presented to the court will be resolved . . . in a concrete factual context conducive to a realistic appreciation of the consequences of judicial action.” *Id.*

Here, even if the district court gave Sundry precisely what he asked for—a declaratory judgment stating that Friendship submitted a false affidavit with the Georgia Department of Transportation—that relief, alone, could not actually redress his alleged harm (deprivation of property) or completely resolve this case. Instead, it would only resolve a collateral issue; he would still have to return to state court, where he might (or might not) be able to use the declaratory judgment in support of a new suit seeking monetary damages. *Cf. Calderon v. Ashmus*, 523 U.S. 740, 746–47 (1998) (holding that a litigant’s request under the Declaratory Judgment Act for what is in effect “an advance ruling” on a collateral issue—rather than a “conclusive determination” of the underlying controversy—does not constitute an Article III “case or controversy”). Therefore, Sundry’s alleged injury was not likely to be redressed by a favorable court disposition, and the district court did not err in dismissing the claims against the Friendship defendants as nonjusticiable.

**B**

“[W]e have a strong preference for deciding cases on the merits—not based on a single missed deadline—whenever reasonably possible.” *Perez v. Wells Fargo N.A.*, 774 F.3d 1329, 1332 (11th Cir. 2014). We have explained that Federal Rule of Civil Procedure 55(a) “mandates the entry of default so that the adversary process [will not be] halted because of an essentially unresponsive party.” *Id.* at 1337 (alteration in original) (quotation omitted). “[A] motion for relief under Rule 55(c) . . . is appropriate . . . even when there has not been a formal entry of default . . . .” *Id.* (alteration adopted) (quotation omitted). “The court may set aside an entry of default for good cause.” Fed. R. Civ. P. 55(c); *Perez*, 774 F.3d at 1337–38. “Good cause” is a flexible, “mutable standard.” *Compania Interamericana Export-Import, S.A. v. Compania Dominicana de Aviacion*, 88 F.3d 948, 951 (11th Cir. 1996) (quotation omitted). To determine what constitutes good cause, courts have considered, but are not limited to, factors such as the willfulness of the default, “whether setting it aside would prejudice the adversary, and whether the defaulting party presents a meritorious defense.” *Id.* (addressing the denial of a Rule 55(c) motion). “Whatever factors are employed, the imperative is that they be regarded simply as a means of identifying

circumstances which warrant the finding of ‘good cause’ to set aside a default.”

*Id.* (quotation omitted).

Here, Friendship had a meritorious defense—*i.e.*, that the case was nonjusticiable. Given that fact, and the other attendant circumstances, the district court did not abuse its discretion by setting aside the entry of default.

### III

Finally, Sundy contends that the removal of documents from the district court’s docket, a delay in fixing clerical mistakes, and a “secret” *ex parte* hearing by the court to find the missing documents violated his constitutional rights.<sup>6</sup>

“A district court must be able to exercise its managerial power to maintain control over its docket.” *Young v. City of Palm Bay*, 358 F.3d 859, 864 (11th Cir. 2004). “This power is necessary for the court to administer effective justice and prevent congestion.” *Id.* The former Fifth Circuit explained that “court resources and capacities are finite,” and so, “within proper limits, judges must be permitted to bring management power to bear upon massive and complex litigation to prevent it from monopolizing the services of the court to the exclusion of other

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<sup>6</sup> “We review a district court’s decision made in the course of managing its docket for an abuse of discretion.” *Scantland v. Jeffry Knight, Inc.*, 721 F.3d 1308, 1320 (11th Cir. 2013). “The district court has a range of options; and so long as the district court does not commit a clear error in judgment, we will affirm the district court’s decision.” *Young v. City of Palm Bay*, 358 F.3d 859, 863 (11th Cir. 2004).

litigants.” *In re Air Crash Disaster at Florida Everglades*, 549 F.2d 1006, 1012 (5th Cir. 1977).

Here, the district court did not abuse its discretion when it corrected the docketing errors to which Sundy objected. Likewise, given the complexity of the litigation, involving numerous parties and filings, the court did not take an unreasonably long time to rule on the motions to dismiss, which fully disposed of the case and made discovery unnecessary. Finally, the district court did not hold a secret, *ex parte* meeting by speaking with the court clerks about allegedly missing documents without Sundy present, and Sundy’s decision not to appear at the motions hearing, despite clearly being aware of it, did not make it an unlawful *ex parte* hearing. Accordingly, Sundy failed to show any actual harm or abuse of discretion by the district court in this respect.

**AFFIRMED IN PART AND DISMISSED IN PART.**

4months,STAY,SUBMDJ

**U.S. District Court  
Northern District of Georgia (Gainesville)  
CIVIL DOCKET FOR CASE #: 2:18-cv-00112-SCJ**

Sundy et al v. Friendship Pavilion Acquisition Company, LLC et al  
Assigned to: Judge Steve C. Jones  
Cause: 42:1983 Civil Rights Act  
Date Filed: 07/10/2018  
Jury Demand: Plaintiff  
Nature of Suit: 440 Civil Rights: Other  
Jurisdiction: Federal Question

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Date Filed	#	Docket Text
07/10/2018	<u>1</u>	COMPLAINT with Jury Demand filed by David Sundy, Tim Sundy, and Nova-Lee Graber. (Filing fee \$400, receipt number GAN200004827) (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Civil Cover Sheet)(dgr) Please visit our website at <a href="http://www.gand.uscourts.gov/commonly-used-forms">http://www.gand.uscourts.gov/commonly-used-forms</a> to obtain Pretrial Instructions and Pretrial Associated Forms which includes the Consent To Proceed Before U.S. Magistrate form. (Entered: 07/10/2018)
07/10/2018	<u>2</u>	Summons Issued as to Friendship Pavilion Acquisition Company, LLC, Nova Casualty Company, Jacques "Jack" Partain, Michael Weinstein. (Attachments: # <u>1</u> Summons Nova, # <u>2</u> Summons Jacques "Jack" Partain, # <u>3</u> Summons Friendship Pavilion Acquisition Company, LLC)(dgr) (Entered: 07/10/2018)
07/11/2018	<u>3</u>	Summons Issued as to Charles Baker. (dgr) (Entered: 07/11/2018)
07/23/2018	<u>4</u>	Summons Issued as to Clint G. Bearden, Brenda Brady, G. Grant Brantley, Lisa Cook, C. Andrew Fuller, Georgia Department of Transportation, Bonnie Oliver, and Richard T. Winegarden. (Attachments: # <u>1</u> Summons Oliver, # <u>2</u> Summons GDOT, # <u>3</u> Summons Brantley, # <u>4</u> Summons Fuller, # <u>5</u> Summons Cook, # <u>6</u> Summons Brady, # <u>7</u> Summons Bearden)(dgr) (Entered: 07/24/2018)
07/26/2018	<u>5</u>	ORDER OF RECUSAL. Judge Richard W. Story recused. Case reassigned to Judge Steve C. Jones for all further proceedings NOTICE TO ALL COUNSEL OF RECORD: The Judge designation in the civil action number assigned to this case has been changed to 2:18-cv-112-SCJ. Please make note of this change in order to facilitate the docketing of pleadings in this case. Signed by Judge Richard W. Story on 07/26/2018. (dgr) (Entered: 07/26/2018)
07/26/2018		Clerk's Certificate of Mailing as to Nova-Lee Graber, David Sundy, and Tim Sundy re <u>5</u> Order of Recusal. (dgr) (Entered: 07/26/2018)
07/30/2018	<u>6</u>	Summons Issued as to Martha C. Christian. (dgr) (Entered: 07/30/2018)
07/30/2018	<u>7</u>	MOTION for Leave to File Supplemental Complaint with Memo in Support by Nova-Lee Graber, David Sundy, and Tim Sundy. (Attachments: # <u>1</u> Memo in Support)(dgr) (Entered: 07/30/2018)
07/31/2018	<u>8</u>	MOTION to Dismiss with Brief In Support by Clint G. Bearden, G. Grant Brantley, Christopher Carr, Martha C. Christian, C. Andrew Fuller, Georgia Department of Transportation, Bonnie Oliver, Jacques "Jack" Partain, Brenda Weaver, Richard T. Winegarden. (Attachments: # <u>1</u> Brief In Support)(Peters, William) (Entered: 07/31/2018)
07/31/2018	<u>12</u>	NOTICE Of Filing by Nova-Lee Graber, David Sundy, and Tim Sundy. (dgr) (Entered: 08/06/2018)
08/01/2018	<u>9</u>	MOTION to Dismiss with Brief In Support by Nova Casualty Company. (Attachments: # <u>1</u> Brief)(Woodward, Karen) (Entered: 08/01/2018)
08/01/2018	<u>10</u>	ANSWER to <u>1</u> COMPLAINT by Charles Baker, Brenda Brady, Lisa Cook. Discovery ends on 12/31/2018.(Stewart, J.) Please visit our website at <a href="http://www.gand.uscourts.gov">http://www.gand.uscourts.gov</a> to obtain Pretrial Instructions. (Entered: 08/01/2018)
08/09/2018	<u>13</u>	MOTION to Stay <i>Proceedings</i> with Brief In Support by Clint G. Bearden, G. Grant Brantley, Christopher Carr, Martha C. Christian, C. Andrew Fuller, Georgia Department of Transportation, Bonnie Oliver, Jacques "Jack" Partain, Brenda Weaver, Richard T. Winegarden. (Attachments: # <u>1</u> Brief In Support)(Peters, William) (Entered: 08/09/2018)



08/09/2018	<u>14</u>	ORDER granting <u>13</u> Motion to Stay. Proceedings in this matter are stayed pending the resolution of Defendants' motion to dismiss. Signed by Judge Steve C. Jones on 8/9/2018. (rjs) (Entered: 08/09/2018)
08/09/2018	<u>15</u>	MOTION to Stay <i>Discovery and Other Proceedings</i> by Nova Casualty Company. (Attachments: # <u>1</u> Text of Proposed Order)(Woodward, Karen) (Entered: 08/09/2018)
08/10/2018		Clerk's Certificate of Mailing as to Nova-Lee Graber, David Sundy, Tim Sundy re <u>14</u> Order. (rjs) (Entered: 08/10/2018)
08/10/2018	<u>16</u>	ORDER granting <u>15</u> Motion to Stay Discovery And Other Proceedings. IT IS ORDERED that discovery and other proceedings, including the Rule 26 conference, are stayed pending the Court's resolution of this defendant's <u>9</u> MOTION TO DISMISS. Signed by Judge Steve C. Jones on 8/10/2018. (rjs) (Entered: 08/10/2018)
08/10/2018		Clerk's Certificate of Mailing as to Nova-Lee Graber, David Sundy, Tim Sundy re <u>16</u> Order. (rjs) (Entered: 08/10/2018)
08/13/2018	<u>17</u>	MOTION to Stay with Brief In Support by Charles Baker, Brenda Brady, Lisa Cook. (Attachments: # <u>1</u> Brief, # <u>2</u> Text of Proposed Order)(Stewart, J.) (Entered: 08/13/2018)
08/13/2018	<u>18</u>	MOTION to Dismiss with Brief In Support by Charles Baker, Brenda Brady, Lisa Cook. (Attachments: # <u>1</u> Brief)(Stewart, J.) (Entered: 08/13/2018)
08/16/2018	<u>19</u>	ORDER granting <u>17</u> Motion to Stay. Proceedings in this matter are stayed pending resolution of Defendants Baker, Cook and Brady's motion to dismiss. Signed by Judge Steve C. Jones on 8/16/2018. (rjs) (Entered: 08/16/2018)
08/16/2018		Clerk's Certificate of Mailing as to Nova-Lee Graber, David Sundy and Tim Sundy re <u>19</u> Order. (rjs) (Entered: 08/16/2018)
08/16/2018	<u>20</u>	MOTION for Summary Judgment on the Property Owner's Affidavit with Brief In Support by David Sundy and Tim Sundy. (Attachments: # <u>1</u> Brief In Support of Motion for Summary Judgment)(dgr) --Please refer to <a href="http://www.gand.uscourts.gov">http://www.gand.uscourts.gov</a> to obtain the Notice to Respond to Summary Judgment Motion form contained on the Court's website.-- (Entered: 08/17/2018)
08/16/2018	<u>21</u>	Statement of Material Facts Not in Dispute for Which There is No Genuine Issue to be Tried re <u>20</u> MOTION for Summary Judgment filed by Tim Sundy. (dgr) (Entered: 08/17/2018)
08/16/2018	<u>22</u>	Statement of Material Facts Not in Dispute For Which There is No Genuine Issue to be Tried re <u>20</u> MOTION for Summary Judgment filed by David Sundy. (dgr) (Entered: 08/17/2018)
08/16/2018	<u>23</u>	NOTICE Of Filing by Tim Sundy (dgr) (Entered: 08/17/2018)
08/16/2018	<u>24</u>	NOTICE Of Filing by David Sundy (dgr) (Entered: 08/17/2018)
08/16/2018	<u>25</u>	NOTICE Of Filing Scotus Petition by Tim Sundy (dgr) (Entered: 08/17/2018)
08/17/2018	<u>26</u>	RESPONSE in Opposition re <u>8</u> MOTION to Dismiss filed by Nova-Lee Graber, David Sundy, and Tim Sundy. (dgr) (Entered: 08/17/2018)
08/20/2018	<u>27</u>	RESPONSE in Opposition re <u>9</u> MOTION to Dismiss filed by Nova-Lee Graber, David Sundy, Tim Sundy. (dgr) (Entered: 08/21/2018)
08/20/2018	<u>28</u>	RESPONSE in Opposition re <u>18</u> MOTION to Dismiss filed by Nova-Lee Graber, David Sundy, Tim Sundy. (dgr) (Entered: 08/21/2018)
08/24/2018	<u>29</u>	RESPONSE in Opposition re <u>20</u> MOTION for Summary Judgment filed by Charles Baker, Brenda Brady, Lisa Cook, Nova Casualty Company. (Woodward, Karen) (Entered: 08/24/2018)
08/24/2018	<u>30</u>	MOTION for Leave to File with Brief In Support by Nova Casualty Company. (Attachments: # <u>1</u> Brief, # <u>2</u> Text of Proposed Order)(Woodward, Karen) (Entered: 08/24/2018)

08/24/2018	<u>31</u>	RESPONSE in Opposition re <u>7</u> MOTION for Leave to File Supplemental Complaint filed by Nova Casualty Company. (Woodward, Karen) (Entered: 08/24/2018)
08/24/2018	<u>32</u>	MOTION to Strike <u>12</u> Notice of Filing with Brief In Support by Nova-Lee Graber, David Sundy, Tim Sundy. (Attachments: # <u>1</u> Brief In Support of Motion to Strike)(dgr) (Entered: 08/27/2018)
08/24/2018	<u>33</u>	AFFIDAVIT in Support re <u>32</u> MOTION to Strike <u>12</u> Notice of Filing filed by Tim Sundy. (dgr) (Entered: 08/27/2018)
08/24/2018	<u>34</u>	AFFIDAVIT in Support re <u>32</u> MOTION to Strike <u>12</u> Notice of Filing filed by David Sundy. (dgr) (Entered: 08/27/2018)
08/24/2018	<u>35</u>	AFFIDAVIT in Support re <u>32</u> MOTION to Strike <u>12</u> Notice of Filing filed by Nova-Lee Graber. (dgr) (Entered: 08/27/2018)
08/29/2018	<u>36</u>	REPLY to Response to Motion re <u>8</u> MOTION to Dismiss filed by Clint G. Bearden, G. Grant Brantley, Christopher Carr, Martha C. Christian, C. Andrew Fuller, Georgia Department of Transportation, Bonnie Oliver, Jacques "Jack" Partain, Brenda Weaver, Richard T. Winegarden. (Peters, William) (Entered: 08/29/2018)
08/29/2018	<u>37</u>	MOTION to Stay <i>Plaintiffs' Motion for Summary Judgment</i> with Brief In Support by Clint G. Bearden, G. Grant Brantley, Christopher Carr, Martha C. Christian, C. Andrew Fuller, Georgia Department of Transportation, Bonnie Oliver, Jacques "Jack" Partain, Brenda Weaver, Richard T. Winegarden. (Attachments: # <u>1</u> Brief)(Peters, William) (Entered: 08/29/2018)
08/30/2018	<u>38</u>	RESPONSE in Opposition re <u>18</u> MOTION to Dismiss and Objection to Scrivener Error filed by Nova-Lee Graber, David Sundy, Tim Sundy. (dgr) (Entered: 08/30/2018)
08/30/2018	<u>39</u>	MOTION for Separate Trials with Brief In Support by David Sundy, Tim Sundy. (Attachments: # <u>1</u> Brief In Support of Motion for Separate Trials)(dgr) (Entered: 08/30/2018)
09/04/2018	<u>40</u>	REPLY BRIEF re <u>9</u> MOTION to Dismiss filed by Nova Casualty Company. (Woodward, Karen) Modified on 9/5/2018 to edit event text (rjs). (Entered: 09/04/2018)
09/04/2018	<u>41</u>	REPLY to Response to Motion re <u>18</u> MOTION to Dismiss filed by Charles Baker, Brenda Brady, Lisa Cook. (Blalock, William) (Entered: 09/04/2018)
09/11/2018	<u>42</u>	Return of Service Executed by Tim Sundy. Nova Casualty Company served on 7/12/2018, answer due 8/2/2018. (dgr) (Entered: 09/12/2018)
09/11/2018	<u>43</u>	Return of Service Executed by Tim Sundy. Friendship Pavilion Acquisition Company, LLC served on 7/12/2018, answer due 8/2/2018. (dgr) (Entered: 09/12/2018)
09/12/2018	<u>44</u>	RESPONSE re <u>39</u> MOTION Separate Trials filed by Charles Baker, Brenda Brady, Lisa Cook. (Stewart, J.) (Entered: 09/12/2018)
09/13/2018	<u>45</u>	RESPONSE re <u>39</u> MOTION Separate Trials filed by Nova Casualty Company. (Woodward, Karen) (Entered: 09/13/2018)
09/13/2018	<u>46</u>	RESPONSE re <u>39</u> MOTION Separate Trials filed by Clint G. Bearden, G. Grant Brantley, Christopher Carr, Martha C. Christian, C. Andrew Fuller, Georgia Department of Transportation, Bonnie Oliver, Jacques "Jack" Partain, Brenda Weaver, Richard T. Winegarden. (Peters, William) (Entered: 09/13/2018)
10/01/2018	<u>47</u>	REPLY to <u>44</u> <u>45</u> <u>46</u> Response to Motion re <u>39</u> MOTION Separate Trials filed by David Sundy and Tim Sundy. (dgr) Modified on 10/2/2018 (dgr). (Entered: 10/02/2018)
10/01/2018	<u>48</u>	MOTION for Summary Judgment Exclusively Against Respondent Friendship Pavilion Acquisition Company, LLC with Brief In Support by David Sundy, Tim Sundy. (Attachments: # <u>1</u> Brief In Support of Motion for Summary Judgment)(dgr) —Please refer to <a href="http://www.gand.uscourts.gov">http://www.gand.uscourts.gov</a> to obtain the Notice to Respond to Summary Judgment Motion form contained on the Court's website.— Modified on 10/2/2018 (dgr). (Entered: 10/02/2018)

10/01/2018	<u>49</u>	MOTION Reopen Discovery by David Sundy and Tim Sundy. (dgr) (Entered: 10/02/2018)
10/01/2018	<u>50</u>	MOTION for Notice to Plaintiff of 21 Days to Amend the Complaint by David Sundy and Tim Sundy. (dgr) (Entered: 10/02/2018)
10/01/2018	<u>51</u>	MOTION for Leave to File a Late Objection to Respondents' <u>36</u> , <u>37</u> , <u>41</u> by David Sundy and Tim Sundy. (dgr) (Entered: 10/02/2018)
10/03/2018	<u>52</u>	Summons Issued as to Christopher Carr and Brenda Weaver. (Attachments: # <u>1</u> Summons Christopher M. Carr)(dgr) (Entered: 10/03/2018)
10/03/2018	<u>53</u>	MOTION for Order to Show Cause to be Issued to Respondents Charles Baker, Lisa Cook, Brenda Brady and Nova Casualty Company by Nova-Lee Graber, David Sundy, Tim Sundy. (Attachments: # <u>1</u> Exhibit III)(dgr) (Entered: 10/03/2018)
10/10/2018	<u>54</u>	RESPONSE in Opposition re <u>50</u> MOTION for Notice to Plaintiff of 21 Days to Amend the Complaint filed by Nova Casualty Company. (Woodward, Karen) (Entered: 10/10/2018)
10/10/2018	<u>55</u>	RESPONSE in Opposition re <u>49</u> MOTION Reopen Discovery, <u>20</u> MOTION for Summary Judgment filed by Nova Casualty Company. (Woodward, Karen) (Entered: 10/10/2018)
10/11/2018	<u>58</u>	MOTION for Leave to Dismiss with Prejudice Petitioners' Claims Against Specific Respondents Georgia Department of Transportation, Arsenal Real Estate Fund II-IDF, L.P., Gary Picone, Thomas Ling, Michael Weinstein, Bonnie Oliver, Brenda Weaver, Richard T. Winegarden, G. Grant Brantley, Clint G. Bearden, and Jay W. Cook by Nova-Lee Graber, David Sundy, Tim Sundy. (dgr) (Entered: 10/12/2018)
10/12/2018	<u>56</u>	RESPONSE in Opposition re <u>49</u> MOTION Reopen Discovery, <u>20</u> MOTION for Summary Judgment filed by Charles Baker, Brenda Brady, Lisa Cook. (Stewart, J.) (Entered: 10/12/2018)
10/12/2018	<u>59</u>	RESPONSE in Opposition re <u>50</u> MOTION for Notice to Plaintiff of 21 Days to Amend the Complaint filed by Charles Baker, Brenda Brady, Lisa Cook. (Stewart, J.) (Entered: 10/12/2018)
10/12/2018	<u>60</u>	RESPONSE in Opposition re <u>51</u> MOTION for Leave to File a Late Objection to Respondents' <u>36</u> , <u>37</u> , <u>41</u> , <u>53</u> MOTION for Order, <u>49</u> MOTION Reopen Discovery filed by Charles Baker, Brenda Brady, Lisa Cook. (Stewart, J.) (Entered: 10/12/2018)
10/15/2018	<u>61</u>	RESPONSE re <u>49</u> MOTION Reopen Discovery filed by Clint G. Bearden, G. Grant Brantley, Christopher Carr, Martha C. Christian, C. Andrew Fuller, Georgia Department of Transportation, Bonnie Oliver, Jacques "Jack" Partain, Brenda Weaver, Richard T. Winegarden. (Peters, William) (Entered: 10/15/2018)
10/15/2018	<u>62</u>	NOTICE of Appearance by Robert C. Khayat, Jr on behalf of Friendship Pavilion Acquisition Company, LLC (Khayat, Robert) (Entered: 10/15/2018)
10/15/2018	<u>63</u>	MOTION to Set Aside Default <i>Or, In the Alternative, for Extension of Time to Respond to Complaint and Memorandum of Law in Support</i> by Friendship Pavilion Acquisition Company, LLC. (Attachments: # <u>1</u> Exhibit A: Declaration of Michelle McCarthy)(Khayat, Robert). Added MOTION for Extension of Time to File Answer on 10/16/2018 (ddm). (Entered: 10/15/2018)
10/19/2018	<u>64</u>	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM with Brief In Support by Brenda Brady, Lisa Cook. (Attachments: # <u>1</u> Brief, # <u>2</u> Affidavit)(Stewart, J.) (Entered: 10/19/2018)
10/22/2018	<u>65</u>	MOTION to Dismiss Petitioners' Claims against Respondents C. Carr, A. Fuller, and M. Christian by Nova-Lee Graber, David Sundy, Tim Sundy. (Attachments: # <u>1</u> Brief)(rsg) (Entered: 10/22/2018)
10/23/2018	<u>66</u>	MOTION for Leave for Consent Agreement and to File Friendship Pavilion Acquisition Company, LLC's Response to Complaint with Brief In Support by Nova-Lee Graber, David Sundy, Tim Sundy. (Attachments: # <u>1</u> Brief, # <u>2</u> Consent Agreement, # <u>3</u> Text of Proposed Order)(rsg) (Entered: 10/23/2018)

10/24/2018	<u>67</u>	ORDER granting <u>66</u> Motion for Extension of Time to Answer. Friendship Pavilion Acquisition Company, LLC Answer due 11/2/2018. Signed by Judge Steve C. Jones on 10/24/2018. (rjs) (Entered: 10/24/2018)
10/24/2018		Clerk's Certificate of Mailing as to Nova-Lee Graber, David Sundy and Tim Sundy re <u>67</u> Order. (rjs) (Entered: 10/24/2018)
10/25/2018		Submission of <u>53</u> MOTION for Order to District Judge Steve C. Jones. (jkl) (Entered: 10/25/2018)
11/01/2018	<u>68</u>	REPLY to <u>61</u> , <u>60</u> , and <u>59</u> Response to Motion re <u>50</u> MOTION for Notice to Plaintiff of 21 Days to Amend the Complaint, <u>51</u> MOTION for Leave to File a Late Objection to Respondents' <u>36</u> , <u>37</u> , <u>41</u> , and <u>49</u> MOTION Reopen Discovery filed by Nova-Lee Graber, David Sundy, Tim Sundy. (dgr) (Entered: 11/01/2018)
11/02/2018	<u>69</u>	MOTION to Dismiss with Brief In Support by Friendship Pavilion Acquisition Company, LLC. (Attachments: # <u>1</u> Brief, # <u>2</u> Exhibit 1)(Khayat, Robert) (Entered: 11/02/2018)
11/02/2018	<u>70</u>	ANSWER to <u>1</u> COMPLAINT by Friendship Pavilion Acquisition Company, LLC.(Khayat, Robert) Please visit our website at <a href="http://www.gand.uscourts.gov">http://www.gand.uscourts.gov</a> to obtain Pretrial Instructions. (Entered: 11/02/2018)
11/02/2018	<u>71</u>	MOTION to Stay by Friendship Pavilion Acquisition Company, LLC. (Attachments: # <u>1</u> Text of Proposed Order)(Khayat, Robert) (Entered: 11/02/2018)
11/13/2018	<u>72</u>	RESPONSE in Opposition re <u>64</u> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Nova-Lee Graber, David Sundy, Tim Sundy. (dgr) (Entered: 11/14/2018)
11/13/2018	<u>73</u>	RESPONSE in Opposition re <u>69</u> MOTION to Dismiss filed by Nova-Lee Graber, David Sundy, Tim Sundy. (dgr) (Entered: 11/14/2018)
11/13/2018	<u>74</u>	MOTION for Leave to File Petitioner's Response to <u>64</u> with Citation of Authorities Out of Time with Brief In Support by Nova-Lee Graber, David Sundy, Tim Sundy. (Attachments: # <u>1</u> Brief in Support)(dgr) (Entered: 11/14/2018)
11/13/2018	<u>75</u>	MOTION for Clerks Entry of Default Against Defendant Friendship Pavilion Acquisition Company, LLC by Nova-Lee Graber, David Sundy, Tim Sundy. (dgr) (Entered: 11/14/2018)
11/19/2018	<u>76</u>	RESPONSE in Opposition re <u>70</u> <u>71</u> MOTION to Stay filed by Nova-Lee Graber, David Sundy, Tim Sundy. (dgr) (Entered: 11/20/2018)
11/21/2018	<u>77</u>	REPLY to Response to Motion re <u>64</u> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Charles Baker, Brenda Brady, Lisa Cook. (Stewart, J.) (Entered: 11/21/2018)
11/27/2018	<u>78</u>	REPLY BRIEF re <u>69</u> MOTION to Dismiss filed by Friendship Pavilion Acquisition Company, LLC. (Attachments: # <u>1</u> Exhibit 1: November 26, 2018 Hearing Transcript)(Khayat, Robert) (Entered: 11/27/2018)
11/27/2018	<u>79</u>	RESPONSE in Opposition re <u>75</u> MOTION for Clerks Entry of Default filed by Friendship Pavilion Acquisition Company, LLC. (Khayat, Robert) (Entered: 11/27/2018)
11/29/2018	<u>80</u>	MOTION for Summary Judgment with Brief In Support by David Sundy, Tim Sundy. (Attachments: # <u>1</u> Brief, # <u>2</u> Text of Proposed Order)(rsg) --Please refer to <a href="http://www.gand.uscourts.gov">http://www.gand.uscourts.gov</a> to obtain the Notice to Respond to Summary Judgment Motion form contained on the Court's website.-- (Entered: 11/29/2018)
12/03/2018	<u>81</u>	REPLY BRIEF re <u>71</u> MOTION to Stay filed by Friendship Pavilion Acquisition Company, LLC. (Khayat, Robert) (Entered: 12/03/2018)
12/12/2018	<u>82</u>	NOTICE Of Filing Violations of FRCP Rule 5 by Defendant Friendship Pavilion Acquisition Company, LLC by Nova-Lee Graber, David Sundy, Tim Sundy (dgr) (Entered: 12/13/2018)
12/17/2018	<u>83</u>	MOTION for Hearing re <u>18</u> MOTION to Dismiss , <u>64</u> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM with Brief In Support by Charles Baker, Brenda

		Brady, Lisa Cook. (Attachments: # <u>1</u> Brief)(Stewart, J.) (Entered: 12/17/2018)
12/18/2018	<u>84</u>	RESPONSE re <u>82</u> Notice of Filing filed by Friendship Pavilion Acquisition Company, LLC. (Khayat, Robert) (Entered: 12/18/2018)
12/18/2018	<u>85</u>	MOTION for Hearing re <u>69</u> MOTION to Dismiss by Friendship Pavilion Acquisition Company, LLC. (Khayat, Robert) (Entered: 12/18/2018)
12/19/2018	<u>86</u>	MOTION for Hearing re <u>9</u> MOTION to Dismiss by Nova Casualty Company. (Woodward, Karen) (Entered: 12/19/2018)
12/20/2018		NOTICE of Hearing on Motion re: Motion Hearing set for all pending motions on January 23, 2019 at 9:30 AM in GAIN Courtroom 303 before Judge Steve C. Jones. (rjs) (Entered: 12/20/2018)
12/20/2018		DOCKET ORDER: The motions for hearing (Doc. Nos. <u>83</u> , <u>85</u> , and <u>86</u> ) are GRANTED. Ruled on by Judge Steve C. Jones on 12/20/2018 and entered as directed by Chambers. (rjs) (Entered: 12/20/2018)
12/20/2018		Clerk's Certificate of Mailing as to Nova-Lee Graber, David Sundy and Tim Sundy re Notice of Hearing on Motion and Docket Order. (rjs) (Entered: 12/20/2018)
12/20/2018	<u>87</u>	RESPONSE in Opposition re <u>80</u> MOTION for Summary Judgment filed by Friendship Pavilion Acquisition Company, LLC. (Khayat, Robert) (Entered: 12/20/2018)
12/31/2018	<u>88</u>	MOTION to Vacate the Order on Motion for December 20, 2018 Hearing on Motions, with Brief In Support by David Sundy, Tim Sundy. (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Exhibit F, # <u>3</u> Text of Proposed Order)(rsg) (Entered: 12/31/2018)
01/03/2019	<u>89</u>	ORDER denying <u>88</u> Petitioners' Motion to Vacate the December 20, 2018 order granting hearing. The Court also provides clarification that all pending motions (filed by both Plaintiffs and Defendants) have been set for hearing, per the Clerk's Notice of Hearing entry of December 20, 2018. The Court has reviewed the voluminous docket and finds that a hearing is necessary to aid in the Court's ability to fully understand the nature of the parties' arguments. Signed by Judge Steve C. Jones on 1/3/2019. (rjs) (Entered: 01/03/2019)
01/03/2019		Clerk's Certificate of Mailing as to Nova-Lee Graber, David Sundy, Tim Sundy re <u>89</u> Order. (rjs) (Entered: 01/03/2019)

**IN THE SUPERIOR COURT OF HALL COUNTY  
STATE OF GEORGIA**

**FRIENDSHIP PAVILION ACQUISITION  
COMPANY, LLC**

Plaintiff,

v.

**Mediterranean Dining Group Inc.,  
Tim Sundy and David Sundy**

Defendants,

v.

**ARSENAL REAL ESTATE FUND II-IDF, LP;  
Gary Picone; Thomas Ling; and, Michael Weinstein**  
Defendants in Counterclaim

**Civil Action Case No.:**

2015CV001366

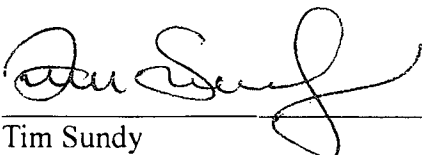
**NOTICE TO THE ATTORNEY GENERAL PURSUANT TO  
O.C.G.A. § 9-10-2 BY TIM SUNDY**

**TO:** The Attorney General of the State of Georgia  
Christopher Carr  
40 Capitol Square SW  
Atlanta, GA 30334

**Certified Mail: 70141820000072106735**

*Pro se* Tim Sundy, in special appearance, without waiver of appeal, without waiver of any rights, privileges and immunities, submits this **NOTICE** to the Attorney General of the State of Georgia, pursuant to O.C.G.A. § 9-10-2. A Rule Nisi hearing has been scheduled for 2 March 2020 at 9:30 A.M., Hall County Courthouse, Gainesville, Georgia as to the above captioned case. The Defendant has previous unwavering matters in which Judge Martha C. Christian in her official capacity is a party.

Respectfully submitted 21 February 2020.



Tim Sundy  
c/o 227 Sandy Springs Place, Ste. D-465  
Sandy Springs, GA 30328

**A0022**

**IN THE SUPERIOR COURT OF HALL COUNTY  
STATE OF GEORGIA**

**FRIENDSHIP PAVILION ACQUISITION  
COMPANY, LLC**

Plaintiff,

v.

**Mediterranean Dining Group Inc.,  
Tim Sundry and David Sundry**  
Defendants,

v.

**ARSENAL REAL ESTATE FUND II-IDF, LP;  
Gary Picone; Thomas Ling; and, Michael Weinstein**  
Defendants in Counterclaim

**Civil Action Case No.:**


2015CV001366

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that an accurate copy of NOTICE TO THE ATTORNEY GENERAL PURSUANT TO O.C.G.A. § 9-10-2 BY TIM SUNDY was sent by U.S. mail to the following counsel of record in this action:

Robert C. Khayat, Jr., The Khayat Law Firm, 75 Fourteenth Street, Ste. 2750 , Atlanta, GA 30309

This 21 February 2021.



Tim Sundry, without prejudice  
c/o 227 Sandy Springs Place, Suite D-465  
Sandy Springs, GA 30328

**A0023**

**IN THE SUPERIOR COURT OF HALL COUNTY  
STATE OF GEORGIA**

Friendship Pavilion Acquisitions Co., LLC     )  
Plaintiff

Civil Action  
No. 2015- CV -1366B

vs.     )

Mediterranean Dining Group, Inc.,     )  
David Sundy and Tim Sundy,  
Defendants

vs.     )

Michael Weinstein,     )  
Arsenal Real Estate Fund II,  
Thomas Ling,     )  
Gary Picone,  
Defendants in Counterclaim

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[Handwritten signature]

**ORDER ON DEFENDANTS' MOTION TO SET ASIDE**

**Procedure**

On December 3, 2018, a Final Judgment was entered in this case.

On December 13, 2018, Defendants, Tim Sundy and David Sundy (Defendants) filed a pleading titled "Motion Pursuant to O.C.G.A. 9-11-60(d)(2)(3) To Set Aside the December 3, 2018 Void Final Judgment for Fraud Upon the Court and/or Non-Amendable Effects."

Then on January 2, 2019, Defendant, Tim Sundy filed a Notice of Appeal to the Supreme Court of Georgia.

Also, on January 2, 2019, Defendant, Tim Sundy filed an Application for Appeal Pursuant to O.C.G.A. Section 5-6-35 in the Supreme Court of Georgia. (S19602).

On January 15, 2019, Plaintiff filed a Response to Defendants' Motion to Set Aside.

On January 31, 2019, the Supreme Court transferred the Application to the Court of Appeals of Georgia (A19D0345).

On February 11, 2019, this Court entered an Order staying the case until determination of the notice of appeal.



On February 11, 2019, this Court entered an Order setting a hearing on Defendant Tim Sundry's Motion for Leave to Proceed in Forma Pauperis, which Motion was filed on February 8, 2019 and was in regard to the Notice of Appeal.

On March 7, 2019, a hearing was held on Defendant's Motion to Proceed in Forma Pauperis. Even though he received proper and legal notice, Mr. Tim Sundry did not appear. On March 13, 2019, an Order was entered denying Defendant's Motion for Leave to Proceed in Forma Pauperis.

On March 15, 2019, The Court of Appeals dismissed Defendant's application for discretionary review for lack of jurisdiction. Defendant, Tim Sundry, filed a Petition for Certiorari, which was denied by the Supreme Court of Georgia on November 4, 2019. (S19C0943).

On January 28, 2020, a Notice of Show Cause Hearing Regarding Itemized Appeal Costs was set for March 2, 2020. Defendant was given proper and legal notice of the hearing but did not appear.

On March 9, 2020, an Order Dismissing Notice of Appeal Pursuant to O.C.G.A. Section 5-6-48(c) was entered and in that Order the stay was lifted.

In each enumeration raised by Defendants in this Motion, Defendants claim "[t]he fraudulent or void final Judgment and the closing of this case did not cure the non-amendable defect which appears upon the face of the record or pleadings." They cite O.C.G.A Section 9-11-60(d)(2)(3) and ask that the judgment be set aside for "fraud upon the court and/or non-amendable effects."

O.C.G.A. Section 9-11-60(d) provides:

(d) *Motion to set aside.* A motion to set aside may be brought to set aside a judgment based upon:

- (1) Lack of jurisdiction over the person or the subject matter;
  - (2) Fraud, accident, or mistake or the acts of the adverse party unmixed with the negligence or fault of the movant; or
  - (3) A nonamendable defect which appears upon the face of the record or pleadings.
- Under this paragraph, it is not sufficient that the complaint or other pleading fails to state a claim upon which relief can be granted, but the pleadings must affirmatively show no claim in fact existed.

#### **I. Claims of Fraud, Accident or Mistake**

"The overarching principle of seeking relief under O.C.G.A. § 9-11-60(d)(2) is that it may be granted only where the grounds are unmixed with the negligence or fault of the movant." *Winnersville Roofing Co. v. Coddington*, 283 Ga. App. 95 at 97 (2006). See also, *Smith v. Mann*, 200 Ga. App. 701, 702 (1991). After the first hearing in this case neither of the Defendants attended pretrial hearings, the calendar call or the trial. They have objected to just about every ruling made by this court and every order entered by this court. Moreover, they were given many notices by the Court in written orders that if they did not attend, the Court could rule against them. Specifically, in the Notice Of Pretrial Conference filed on September 18, 2018, they were ordered to appear and "should they not appear or not comply with

any provision of this Order, then all of their pleadings may be dismissed by the Court and a default judgment entered against said party or parties.” In an Order entered on November 8, 2018, they were ordered to attend a calendar call on November 26, 2018 and announce, or their “answer and counterclaim and all claims will be dismissed for want of prosecution.” The order further provided that “[a]ll claims of Plaintiff and /or any Defendants’ Counterclaim and any other claims remaining in this case shall be tried beginning on December 3, 2018.”

Therefore, any enumeration that alleges fraud, accident or mistake is not unmixed with the negligence or fault of Defendants and is not cause for setting aside the final judgment.

## **2. Nonamendable Defect Which Appears on the Record or Pleadings**

Defendants have the burden of showing that because of a nonamendable defect that appears on the face of the record or pleadings, the judgment entered in this case was void.

In their Motion to Set Aside, Defendants enumerate several errors. The Court will address each enumeration below.

### **A. There is a nonamendable defect which appears upon the face of the record or pleadings because “Defendants were not afforded equal protection of the law for their 16 March 2018 *Brown v. Johnson* petition.”**

It is important to note what happened in the case prior to Defendants filing the March 16, 2018 document.

When appointed to hear this case in an Order entered on October 6, 2016, this Court began an attempt to unravel the nature of the case, the pleadings, what persons were parties to the case and the claims of those parties. The case was complicated by the fact that it had been removed to and then remanded from Federal Court and documents filed by the parties in Federal Court had not been filed in this record. After obtaining and reviewing the pleadings, the Court determined that the best course of action was to set a status conference and hearing on pending motions. The Court entered a Rule Nisi order on November 8, 2016 ordering the parties to attend a hearing set for December 8, 2016. The Order directed all persons named in the case caption at that time to attend and address several matters. One of the issues was which persons were proper parties in the case. After being served with this Order, Defendants began what would become a pattern in the case. On December 2, 2016, they filed a “Joint Objection”, in which they objected to the Court having a hearing at all and stated that the “Rule Nisi gives the appearance of bias and exhibits the malpractice, oppression and tyrannical partiality of the Court in its effort to get Judge Fuller out of a hole, dump the Sundys into the appellate court and then wash their hands of the matter.” The Court held the hearing on December 8, 2016. Tim Sundry appeared and argued, but neither David Sundry nor the attorney for Defendant Mediterranean Dining Group appeared.

On December 22, 2016, this Court entered several orders on the issues that were addressed at the December 8, 2016 hearing. On December 30, 2016, Defendants filed another “Joint Objection”. Again, Defendants objected to this Court holding any hearing and not ruling in their favor immediately. They

specifically objected to the Court's Rule Nisi entered on December 22, which ordered parties to appear on January 11, 2017 for a hearing on the Motions for Summary Judgment and other issues.

On January 5, 2017, Defendant David Sundy filed a "Notice of Filing Brown v. Johnson Action by David Sundy" and filed an amendment to that notice on January 7, 2017. In the Notice, David Sundy stated that he had filed a separate civil action in Hall County Superior Court naming this Judge, Judge Andrew Fuller, and Charles Baker, Clerk of Superior Court as parties (C.A. No. 2017CV000031A). On January 10, 2017, Defendants also filed a Joint Motion for Involuntary Disqualification of Martha C. Christian. The motion to recuse was assigned to another Judge to determine as provided by U.S.C.R. 25.3. and the hearing set for January 11, 2017, was continued. On March 21, 2017, an Order denying the motion to recuse was entered.

The record reflects that after the denial of the motion to recuse, Defendants continued to file objections to this Court's rulings, both in this case and with the Supreme Court of Georgia and the Court of Appeals. Every time this Court set a hearing, Defendants refused to attend. Defendants took the position that this Court was disqualified from hearing the case because it lost jurisdiction for not ruling on certain motions within the 90 days required by O.C.G.A. Section 15-6-21. On May 3, 2017, Defendants filed a "Joint Objection" raising this issue. This Court entered an Order regarding the objection on May 18, 2017.

On August 16, 2017, Defendants filed another "Objection" claiming that this Judge was disqualified from hearing the case. This document was filed at 12:22 p.m. before a motion hearing set in the case which began at 1:30 p.m. on that date.

On October 17, 2017, the Court entered several Orders which addressed the various issues raised by pending motions and in each of those Orders the Court again addressed Defendants' claim that this Court was disqualified and had no jurisdiction to hear the case. On November 29, 2017, Defendants filed another "Joint Objection" to the Court's most recent order. In that objection, Defendants moved for "the involuntary [dis]qualification of Martha C. Christian from the above entitled matter for lack of jurisdiction and venue."

Undeterred by the Court denying their Motions, Defendants filed the March 16, 2018 document, titled "Motion: Verified Petition for an Order in the Nature of Writ of Injunction Pursuant to Brown v. Johnson and Motion for Declaratory Judgment." This document was in reality another effort to remove this Judge from the case. In this document, Defendants attempted to add new parties and new claims totally unrelated to the original claims in this case. In that document, they sought to bring in as parties: this Judge; the Clerk of Superior Court; Judge Jack Partain; Judge Brenda Weaver; Chris Carr, the Attorney General for the State of Georgia; and "unknown names, Hall County's liability carrier, c/o Peggy Kanaday." On May 3, 2018, this Court entered an Order denying Defendants' attempt to add new unrelated claims and parties to this case.

First of all, a mandamus is not a proper way to seek to remove a judge from a case. *Gray v. Manis*, 822 Ga. 336, 337 (2007). Furthermore, mandamus "is not an available remedy to require [a judge] to perform h[er] judicial function in a manner different from the way [s]he has performed it." *Kappelmeier v. Iannazzone*, 279 Ga. 131, 131-132 (2005). Nevertheless, in this case, the Court did not reach the merits of Defendants' claims raised in the attempt to file a mandamus. The Court ruled pursuant to O.C.G.A. Section 9-11-15(d) that the "Motion" was an attempt to add a supplemental

pleading. Being a supplemental pleading, it had no effect until it was allowed. *Kelly v. Pierce Roofing, Inc.*, 220 Ga. App. 391, 393 (1996). The Court ruled further that Defendants could not add parties to this case. O.C.G.A. Section 9-11-21; *Valdosta Hotel Properties, LLC v. White*, 278 Ga. App. 206 (2006).

In *Brown v. Johnson*, 251 Ga. 436 (1983), cited by Defendants, the Supreme Court of Georgia held that a petition for mandamus “may be filed in the appropriate superior court.” It then held that a superior court named as a respondent would disqualify regarding the petition and another superior court judge would be appointed to hear and determine the matter. At 437. This case and the cases that have followed, do not stand for the proposition that a petition for mandamus can be filed against a judge in a pending case. If the request to add parties then goes to a new judge and that judge allows parties to be added, it would be tantamount to filing a motion to recuse without following U.S.C.R 25, as the sitting judge would have to step down, having been added as a party. This would make no logical sense, as such a petition could be filed in every pending case to delay the proceeding, to attempt to disqualify the sitting judge and to attempt to judge shop. This is why U.S.C.R 25.3 gives the sitting judge the authority to first determine the timeliness of the motion to recuse and the legal sufficiency of the affidavit and to make a determination whether recusal would be warranted. Also, U.S.C.R 25.2 provides that “[a]llegations consisting of bare conclusions and opinions shall not be legally sufficient to support the motion or warrant further proceedings.” “A recusal motion supported by an affidavit containing completely unsubstantiated allegations of judicial bias cannot be used as a tool for delay and to judge shop.” *Gray v. Manis*, 282 Ga. 336 at 337(2007).

The Court’s ruling on this issue was not in error and therefore, there is no nonamendable defect appearing on the face of the record or pleadings.

**B. There is a nonamendable defect which appears upon the face of the record or pleadings for Defendants’ claim of removal from office for violations under O.C.G.A. Section 15-6-21(b)(c)(d).**

Again, as stated above, this argument has been made many times in this case and each time it was raised, the Court addressed the issue. While O.C.G.A. Section 15-6-21(b) does require a judge to rule on all matters submitted to the Court within 90 days, the remedy if a judge does not so rule is not that the Court loses jurisdiction. See *Cobb County v. Robertson*, 314 Ga. App 455 (2012); *Hawkins v Blair*, 334 Ga. app. 898 (2015).

Therefore, this enumeration has no merit.

**C. The final judgment was fraudulent or void for the nonamendable defect which appears upon the face of the record or pleadings for Defendants’ claim of permissive counterclaims with a separate trial.**

Defendants’ assert that their counterclaim was “permissive” as defined in O.C.G.A. Section 9-11-13(b) and that they were entitled to a separate trial. However, a review of the counterclaim set forth in the document titled “AMENDED COUNTERCLAIM AND THIRD-PARTY PLAINTIFFS/INTERVENOR DEFENDANTS/GUARANTORS COMPLAINT”, filed on June 12, 2017, shows that Defendants’ counterclaim was not permissive. See *Steve A. Martin Agency, Inc. v. Planters FIRST Corp.*, 297 Ga. App. 780, 782-784 (2009).

In any event, the record shows Defendants were ordered to appear on two separate dates for a pretrial conference but chose not to attend either. They could have sought a separate or bifurcated trial at that time but chose not to appear at the pretrial conference or present a proposed pretrial order. In addition, they were given proper and legal notice of a calendar call and they were ordered to appear. In the order setting the calendar call for November 26, 2018, Defendants were given notice that appearance was mandatory and if a party did not appear and announce, then his complaint or answer and counterclaim and all claims would be dismissed for want of prosecution. Defendants chose not to appear. Therefore, on November 26, 2018, the Court dismissed Defendants' counterclaims and all claims against Plaintiff and Defendants in Counterclaim. The Order of dismissal was entered on December 3, 2018, *nunc pro tunc*, November 26, 2018. Thus, there were no counterclaims pending on December 3, 2018.

Finally, the trial of the case was set for December 3, 2018. Defendants were given proper and legal notice of the trial. They chose not to appear for trial.

**D. The final judgment was fraudulent or void because of the nonamendable defect which appears upon the face of the record or pleadings for Defendants' claim of third-party status granted by federal court.**

This argument has no merit. Defendants were recognized as intervenors in this case in an Order entered on December 22, 2016. The Motion to Intervene filed by Defendants in Federal Court after removal, was never filed in this court, so this Court has no idea of its contents. Defendants were put on notice by order of this court entered on April 11, 2017 that the parties were relying on documents that were not filed in this court. They were given ample opportunity to have those documents made part of the record in this case. Defendants chose not to file the Motion to Intervene. They did file a copy of the Federal Court order allowing them to intervene as Defendants in the Federal Court case. This order simply stated that the Motion to Intervene was granted, however, since the Motion is not in this file, this Court has no idea what the Federal Court intended with the order other than to allow Defendants to be intervenor defendants. Also, there is nothing in the record in this case that shows that they were allowed to add parties or new claims when the action was in Federal Court.

Furthermore, this Court did not "summarily ignore" the Federal Court order. *El Chico Rests. V. Transp. Ins. Co.*, 235 Ga App 427, 429 (1998). The record shows that this Court held a hearing on December 8, 2016 during which the Court considered the Federal Court order. Mr. Tim Sundry was present at this hearing, Mr. David Sundry did not appear. At the hearing, the Court took judicial notice of the Federal Court Order. The Court stated:

I've read the case that Mr. Sundry cited, and it appeared that the Court can reconsider the issue of the intervention but that—and I've looked at the intervenor statute, and it appears that this is a permissive intervention, and the Court is going to allow it. I don't hear your objection, and so I'm going to allow David Sundry and Tim Sundry and find they are proper intervenors in the Friendship Pavilion case. So that's really not an issue. (12/8/16 Tr. pg. 18).

Plaintiff's attorney responded:

Yeah. The only thing I would just say, your Honor, is we just reserve any rights that we have as far as them being intervenors or defendants or counterclaim plaintiffs. But as far as being into the case, we do not object. (12/8/16 Tr. pg. 18).

On October 30, 2017, this court entered an order which addressed Defendants' status. The court ruled that Defendants' "AMENDED COUNTERCLAIM AND THIRD-PARTY PLAINTIFFS/INTERVENOR DEFENDANTS/GUARANTORS COMPLAINT" was deemed to be a request to add additional parties as Defendants in Counterclaim. The Court allowed the Amendment and the addition of four parties as Defendants in Counterclaim.

The record and pleadings reflect that the ruling by the Court on this issue was not in error. This enumeration is not a nonamendable defect that appears on the face of the record or pleadings.

**E. The final judgment was fraudulent or void because of the nonamendable defect for Defendants' claim of adding parties as a matter of law.**

This argument has no merit. The record shows that Defendants were allowed to add parties, as noted in paragraph D. above.

**F. There is a nonamendable defect because Defendants were deprived of their right to default in the state court proceedings.**

The record and pleadings reflect that the ruling by the Court on this issue was not in error. This enumeration is not a nonamendable defect that appears on the face of the record or pleadings.

**G. The final judgment was fraudulent or void because of the nonamendable defect for Defendants' claim of Tim Sundy's Lis Pendens remaining pending throughout the duration of an appeal.**

The record and pleadings reflect that the ruling by the Court on this issue was not in error. This enumeration is not a nonamendable defect that appears on the face of the record or pleadings.

**H. The final judgment is fraudulent or void because of a nonamendable defect for Defendants' claim of Plaintiff FPAC currently being in default in Federal Court and having admitted that Plaintiff is in default in Federal Court.**

Defendants offer no admissible evidence to support this claim. They allege that there was a pending case in Federal Court. This record shows that on November 14, 2018, Defendants filed "Intervenors' Standing Objections to all Void Orders and Proceedings and Notice to the Court of Pending Matters in Federal Court." This document was filed after they had notice of a calendar call and hearing set in this case for November 26, 2018 and a trial set for December 3, 2018. In this "Objection" Defendants complained that because of this Court's improper procedure and rulings, they were forced to file a lawsuit in the United State District Court for the Norther District of Georgia. They objected "to the State court for not having separate trial and to disqualified Judge Martha Christian for ongoing schemes while federal action is construed as a separate trial." A document they

document they attached to their "Objection" states that the case in Federal Court was filed on July 10, 2018. Defendants' bare allegations in their "Objection" are not evidence.

This enumeration is not a nonamendable defect that appears on the face of the record or pleadings.

**I. The final judgment was fraudulent or void because of the nonamendable defect with Plaintiff presenting back rent owed, yet Plaintiff also presenting testimony/evidence to the Court of road construction and receipt of reduced rent payments, with the Court willfully failing to recognize and consider a part of the lease.**

Defendants are really arguing a mistake or fraud on the court under 9-11-60(d)(2). Their failure to attend trial and present evidence was their neglect and fault and the judgment cannot be set aside on such a ground.

This claim is not a nonamendable defect that appears on the face of the record or pleadings.

**J. The final judgment was fraudulent or void because of the nonamendable defect with Plaintiff presenting back rent owed while making misrepresentations to the Court about the nature of Defendants' reduced rent payments.**

Defendants have presented no affidavits, depositions, sworn testimony or other admissible evidence that proves Plaintiff's witness at trial testified falsely. Defendants had proper and legal notice to attend trial and chose not to do so, therefore they waived their right to present evidence. Defendants will not be allowed to use O.C.G.A. Section 9-11-60 to attack the credibility of witnesses at a trial they chose not to attend. Defendants are really arguing a mistake or fraud on the court under 9-11-60(d)(2). Their failure to attend trial and present evidence was their neglect and fault and the judgment cannot be set aside on such a ground.

This claim is not a nonamendable defect that appears on the face of the record or pleadings.

**K. The final judgment was fraudulent or void because of a nonamendable defect for Defendants' claim of not being protected under Art. 1, & 1, para. 2 of Georgia's Constitution. Defendants were not afforded equal protection in the filing of documents with the clerk of court.**

Defendants claim they were "not afforded equal protection in the filing of documents with the Clerk of Court, in the application of existing law to Defendants' claims, in the protection of Defendants' constitutional and statutory rights, and even the Attorney General failed his duties and joined in the commissions of crimes against Defendants with Judge Christian and co-conspirators."

First, the Court may only look to the record and pleadings in this case. Again, Defendants have not presented any evidence to support this Motion. Generally, Defendants claim that they were not allowed to file documents without using the U.S. mail. They also claim that the Clerk of Court withheld documents from the record "for purposes of fraud upon the court." and that the Clerk of Court "intentionally and repeatedly tampers with citizens' papers in every case, and the record of every case."

The specific allegations made in the Motion are that a document that is shown marked filed on October 23, 2018, titled "Intervenors' Objection to the Court's 18 September Orders" was withheld from the docket/record for the purpose of fraud upon the court; and a document shown as filed on November 14, 2018, titled "Intervenors' Standing Objections to All Void Orders, Proceedings and Notice to the Court of Pending Matters in Federal Court", was withheld from the docket/record by the Clerk for almost two weeks. There is also an allegation about a missing pleading dated December 20, 2016.

i. The October 20, 2016 document.

On May 17, 2017, Defendant Tim Sundy filed an affidavit regarding a "Joint Objection" he alleged was delivered to the Clerk of Court on December 20, 2016. In his affidavit he alleged that when he appeared at the Clerk's office in May of 2017 and asked for a certified copy of the document, the Clerk could not find the document in the file. He stated that "the missing document is causing Affiant as well as other parties to be deprived of a full and complete record in circumstances where Affiant appeals his case or redresses matters in a federal court."

On June 5, 2017, the Clerk of Court for Hall County Superior Court filed Civil Action No. 2017 CV 1125 pursuant to O.C.G.A. Section 24-11-2 seeking to establish the December 20, 2016 "Objection" as a lost document. On July 10, 2018, an order was entered directing the Clerk to restore the December 20, 2016 document to the file in this case. The document was then filed of record in this case as of December 20, 2016.

The December 20, 2016 "Objection", shows that it was a pleading filed by Defendants to assert that Plaintiff had waived its right to present evidence regarding the pending Motion for Summary Judgment; that the court had no right to set a hearing or hear oral argument; and that they were "entitled to a ruling on Summary Judgment(s) being issued without a hearing and entry as a matter of law." These issues had been raised prior to and were raised after this "Objection" was allegedly filed.

Prior to the December 8, 2016 hearing Defendants filed an "Objection" wherein they objected to a summary Judgment hearing being held on December 8. They asserted the position that no party had requested a hearing; that Plaintiffs had waived its right to present evidence on the Motion and that and that they were entitled to a ruling on Summary Judgments(s) without a hearing and "entry as a matter of law." Considering the objection, the Court stated that since the Rule Nisi setting the hearing did not give any notice regarding Motions of Summary Judgment, such Motions would not be heard that day.

However, on December 8, the Court also held a status conference and the Court and parties discussed setting a hearing on the Motions for Summary Judgment. A date for the hearing was discussed and it was agreed that the hearing would take place on January 11, 2017. Mr. Tim Sundy stated: "We'll do the 11<sup>th</sup>, your Honor."

On December 15, 2016, Defendant Tim Sundy filed an "Objection" regarding the December 8 hearing. While this "Objection" was also filed in another case pending in Hall County Superior Court, it had this case number on it, so the Clerk also filed it in this case. In that Objection, he



complained that the Court set a future Summary Judgment hearing for the non-moving parties who “cannot present evidence.” He stated again that no party had requested a hearing.

On December 22, 2016, a Rule Nisi was entered setting January 11, 2017 as for a hearing on all Motions, including Motions for Summary Judgment. On December 30, 2016, Defendants filed a “Joint Objection”. In this document, defendants complained about the entry of the Rule Nisi and stated that Plaintiff waived its right to present evidence. On January 10, 2017, Defendants filed a “Joint Motion for Involuntary Disqualification of Martha C. Christian”. Therefore, the hearing set for January 11, 2017 was continued.

On April 11, 2017, after Defendants’ motion to recuse was denied by another judge appointed to hear it, this Court entered separate orders denying each motion for summary judgment. The motions were decided without a hearing, as was requested by Defendants.

Therefore, while the December 20, 2016 “Objection” was not shown on the docket as filed in this case, until it was restored in July of 2018, the Court had been made aware of Defendants’ objections in three other documents prior to the time the Court ruled on the merits of both Motions. Defendants had their objections considered and no hearing was held, so they suffered no harm.

Additionally, while Defendants filed numerous appeals, all the appeals were dismissed. The complaint about the appellate record being inaccurate has no merit because they could have filed a request pursuant to O.C.G.A. Section 5-6-41(f) to seek to complete the record.

ii. The October 23, 2018 document.

As for the October 23, 2018 “Objection”, Defendants present no evidence that this document was withheld from the docket. The record shows that on November 8, 2018, this Court entered an Order regarding this Objection.

iii. The November 14, 2018 document.

As for the November 14, 2018 “Standing Objection”, the record shows that on November 26, 2018, this court held a calendar call and hearing in the case. At the hearing, the Court put on the record that “I have a document that was sent to the Clerk of Court, and it is in this case to be filed.” The Court stated that she had “reviewed this document and to the extent that it again objects to this Court’s jurisdiction, it is denied.” Regarding the document, the Court also stated:

“It makes no claim, it is simple a notice, as has been the pattern in that the Defendants, David Sundy and Tim Sundy, file documents prior to the hearing and don’t show up for the hearing. I am going to ask that this document be filed in the Clerk’s office in this case and I will deem it filed as of the date that it was received, which apparently was November 14<sup>th</sup> of this year.”

iv. General equal protection claim.

As for Defendants’ general claim that they were denied equal protection, they have not pointed to anything in this record to show that they were not allowed to file documents in person, nor have they

submitted an affidavit setting forth evidence that the Sheriff or any person kept them from filing documents in the Clerk's office.

Some of the pleadings in this case show that Defendants have filed other cases in the Superior Court of Hall County. So, the Court is aware that at one point, in Civil Action Case No. 2016 CV 000982, filed by Tim Sundry, there was an Order entered by the Chief Judge of the Northeastern Judicial Circuit which provided that "[p]rior to stamp filing this pleading or any other pleading presented for filing in the above-captioned and numbered case by Tim Sundry, the judges of the Northeastern Judicial Circuit determined that the undersigned would review any pleading presented for filing by Tim Sundry in the above-captioned and numbered case or any other case pending in the Superior Court of Hall County wherein Tim Sundry is a party." The Judge stated it was "for the purpose of allowing the court to determine whether a pleading presented for filing is a new case or properly filed in an existing case." The procedure implemented by the Chief Judge applied to Tim Sundry and not David Sundry. Neither Defendant has shown that this procedure in any way kept them from filing documents in this case and therefore, as discussed above, Defendants suffered no harm from this procedure. This Order has not been filed in this case.

Even if this Court were to take judicial notice of an order in another case entered by another judge, "no person is free to abuse the courts by inundating them with frivolous suits which burden the administration of the courts for no useful purpose." *In re Carter*, 235 Ga. App. 551, 552 (1998). The limitation imposed on Defendant Tim Sundry's ability to immediately file documents in pending litigation does not totally deprive Tim or David Sundry of meaningful access to the courts and is reasonable under the circumstances. *Smith v. Adamson*, 226 Ga. App. 698, 670 (1997). A review of the record in this case alone will reveal the numerous pleadings filed by Defendants which repeat the same arguments and objections. Furthermore, Defendant Tim Sundry filed documents in Case No. 982 showing the caption of 982 but also having the file number for this case on it as "Companion Civil Action Case No.: 2015-CV-001366A". The Clerk filed the 982 document in this case and then Defendant David Sundry filed an objection to the Clerk filing the documents as marked and demanded that the document be removed from the file. Likewise, Defendants filed a document showing the caption of 1366, but also having the file number for 982 as "Related Civil Action Case No. 2106CV000982." The record also shows repeated attempts to improperly appeal most of the Orders of this Court; the filing of a motion to recuse this Court; the filing of emergency motions with the Georgia Court of Appeals, the Supreme Court of Georgia and with the Attorney General for the State of Georgia.

Again, no restriction on the filing of any documents in this case was imposed by this Court and any restriction that may have been imposed by the Chief Judge did not influence Defendants' access to the Court in this case.

This enumeration is not a nonamendable defect that appears on the face of the record or pleadings.

**L. The final judgment was fraudulent or void because of a nonamendable defect for Defendants' claim of standing their ground.**

This claim is summed up by Defendants' allegation that the Court has

purposefully placed Defendants in an unconstitutional condition-if Defendants stand their ground, Defendants lose; if Defendants acquiesce to the fraudulent activities of the Court and its officers and to the fraud upon the court perpetrated by Plaintiff, Defendants lose. Judge Christian has exercised *defacto*-powers by tyrannical partiality in a seizure of jurisdiction when she is a disqualified Judge and the Court itself abdicated jurisdiction over pro se Defendants and their claims.

Again, Defendants have repeatedly claimed in several pleadings throughout this case that this Judge is disqualified from presiding on the case. Defendants have also filed "Objections" to just about every order and every action this court has taken. In an Order entered on November 8, 2018, the Court addressed another "Objection" filed by Defendants. In that Order the Court stated:

This Court continues to have jurisdiction in this case, as it has ruled on more than one occasion. However, Defendants proceed to ignore orders of this Court even though they have been warned that their pleadings may be dismissed. If, as Defendants...claim, this Court does not have jurisdiction, or if they complain that any other ruling by this court...was in error, if they comply with Georgia law, they may have the right to appeal when a final order is filed in this case.

Defendants thoroughly and repeatedly raised their objections which preserved their right to raise them in an appeal of the final judgment in this case, but these objections did not excuse them from attending the pretrial conference, the calendar call or the trial. David Sundy chose not to file an appeal at all. Tim Sundy filed a notice of appeal and a petition for discretionary appeal. The discretionary appeal was denied, and Tim Sundy abandoned the Notice of Appeal.

This enumeration is not a nonamendable defect that appears on the face of the record or pleadings.

#### **Conclusion**

Therefore, for all of the reasons stated above, Defendants' Motion to Set Aside is DENIED.

SO ORDERED, this 26 day of May 2020

A handwritten signature in black ink, reading "Martha C. Christian". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Martha C. Christian

Judge Hall County Superior Court

By Assignment

IN THE SUPERIOR COURT OF HALL COUNTY  
STATE OF GEORGIA

FRIENDSHIP PAVILION ACQUISITION  
COMPANY, LLC,

Plaintiff,

v.

MEDITERRANEAN DINING GROUP,  
INC., DAVID SUNDY AND TIM SUNDY,

Defendants..

Civil Action No. 2015-CV-1366B

FILED  
HALL CO., GA.  
2018 DEC -3 PM 1:18  
SUPERIOR COURT  
BY *LC*

**FINAL JUDGMENT**

This action came before the court on December 3, 2018, with the Honorable Martha C. Christian, presiding.

The issues having been duly heard in an evidentiary proceeding and a decision having been duly rendered, for reasons set forth on the record by the Court:

The Court issues this Final Judgment disposing of this case in its entirety as follows:

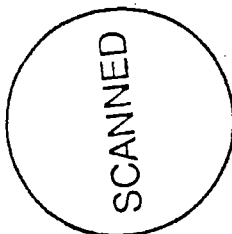
That the plaintiff Friendship Pavilion Acquisition Company recover of the defendants Mediterranean Dining Group, Inc., Tim Sundy, and David Sundy, jointly and severally, the sum of \$394,617.47, with post-judgment interest thereon at the rate of percent as provided by law. This sum is comprised of \$188,485.90 in unpaid lease obligations and contractually specified interest of \$206,131.57.

Dated this 3rd day of December, 2018.

*Martha C Christian*

The Honorable Martha C. Christian  
Presiding

Judge Hall County Superior Court, by  
Assignment



**A0036**

**IN THE SUPERIOR COURT FOR THE COUNTY OF HALL**

**STATE OF GEORGIA**

**TIM SUNDY,**

**PLAINTIFF,**


**VS.**

**FRIENDSHIP PAVILION  
ACQUISITION COMPANY,  
LLC., ET AL.**

**DEFENDANTS.**

**CIVIL ACTION FILE NUMBER:  
2016CV-982B**

**ORDER**

FILED  
HALL CO., GA  
2018 JUL 10 PM 3:05  
CHARLES BAKER, CLERK  
SUPERIOR-STATE COURT  
BY 

On Friday, the 6<sup>th</sup> day of July, 2018, the Plaintiff in the above-captioned and numbered case presented for filing with the Clerk of Court a pleading entitled Notice Of Dismissal By Plaintiff Tim Sundy Pursuant To 9-11-41(a)(1)(A). This pleading was presented for filing with the Clerk of Court by an individual identifying himself as Oliver Endsley.

Prior to stamp filing this pleading or any other pleading presented for filing in the above-captioned and numbered case by Tim Sundy, the judges of the Northeastern Judicial Circuit determined that the undersigned would review any pleading presented for filing by Tim Sundy in the above-captioned and numbered case or any other case pending in the Superior Court of Hall County wherein Tim Sundy is a party.<sup>1</sup>

Upon review of the pleading entitled Notice Of Dismissal By Plaintiff Tim Sundy Pursuant to 9-11-41(a)(1)(A), IT IS ORDERED that the Clerk of Court file the same in Hall County Superior Court Case Number 2016CV-982B with a stamp file date of July 6, 2018 at 10:52 a.m. Plaintiff Tim Sundy is ORDERED to provide a copy of this document to any party or former party and those parties' attorneys with an appropriate certificate of service.

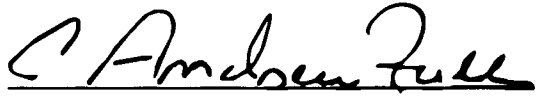
By allowing this pleading to be filed, the undersigned makes no ruling concerning the merits of the pleading. Any issues of any party concerning the merits of that pleading entitled

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<sup>1</sup>This judicial review prior to the filing of any pleading presented for filing by Tim Sundy is primarily for the purpose of allowing the court to determine whether a pleading presented for filing is a new case or properly filed in an existing case.

Notice Of Dismissal By Plaintiff Tim Sundy Pursuant To 9-11-41(a)(1)(A) will be heard at **1:00 p.m. on July 30, 2018 at the Hall County Courthouse by the Honorable Martha C. Christian, Judge of the Hall County Superior Court. Plaintiff Tim Sundy is ordered to appear before Judge Christian on July 30, 2018 at 1:00 p.m. at the Hall County Courthouse.**

SO ORDERED, this the 10<sup>th</sup> day of July, 2018.

  
C. ANDREW FULLER, JUDGE  
SUPERIOR COURT FOR THE  
NORTHEASTERN JUDICIAL CIRCUIT

CC: Honorable Martha C. Christian  
Tim Sundy, 227 Sandy Springs Place, Suite D-465, Sandy Springs, GA 30328  
Robert C. Khayat, Jr., 75 Fourteenth Street, Suite 2750, Atlanta, GA 30309  
Michael B. Weinstein, 3050 Amwiler Road, Suite 200-C, Atlanta, GA 30360  
David R. Dolinsky, 2870 Pharr Court South, Unit 2801, Atlanta, GA 30305  
Deirdre M. Stephens-Johnson, 1230 Peachtree Street, Suite 3750, Atlanta, GA 30309  
Christian A. Fuller, State of Georgia Law Department, 40 Capitol Square, SW, Atlanta, GA 30334

IN THE SUPERIOR COURT OF HALL COUNTY  
STATE OF GEORGIA

FRIENDSHIP PAVILION ACQUISITION  
COMPANY, LLC

Plaintiff,

v.

Mediterranean Dining Group Inc.,  
Tim Sundry and David Sundry

Defendants,

v.

ARSENAL REAL ESTATE FUND II-IDF, LP;  
Gary Picone; Thomas Ling; and, Michael Weinstein  
Defendants in Counterclaim

Civil Action Case No.:

2015CV001366

INTERVENORS' STANDING OBJECTIONS TO ALL VOID ORDERS AND  
PROCEEDINGS, AND NOTICE TO THE COURT OF PENDING MATTERS IN  
FEDERAL COURT

*Pro se* Defendants Tim Sundry and David Sundry (herein as "Intervenors"), in special appearance, prohibited by the Court and the Sheriff from filing papers directly, immediately and physically in the office of the Clerk of Court, deprived of equal protection and due process, subject to the bias and tyrannical partiality of the trial court and relegated to the U.S. mail to secure proof of delivery of papers to Hall County Superior Court, under duress and subject to possibly being put in jail if Intervenors fail to comply with the trial court's Orders of 30 October 2017 restyling the case, without waiver of any rights, privileges or immunities including but not limited to constitutional rights of due process, equal protection, and equal access, without waiver of the right to appeal with a full and complete record from the trial

Superior Court of Hall County  
State of Georgia

Friendship Pavilion  
Acquisition Co. LLC

Motion Sent  
to Judge by:  
XL Clerk  
\_\_\_\_ Attorney

Plaintiffs  
Mediterranean Dining  
Group Inc, David Sundry  
and Tim Sundry  
Defendants

Cue No.  
2015 CV 1366

Michael Weinstein,  
Arsenal Real Estate  
Fund II, Thomas Long  
and Gary Picone

FILED  
HALL CO GA  
2018 NOV 26 AM 11:38  
CHARLES BAKER, CLERK  
SUPERIOR STATE COURT  
BY XL

Defendants in  
Counterclaim

Order To File Pleading

The Clerk of the Superior Court of Hall County is hereby Ordered to file of record in this case the Document titled "Intervenor's Standing Objections To All Void Orders And Proceedings, and Notice To The Court of Pending Matters in Federal Court." Said document shall be stamped as filed on the date received by the Clerk.

So Ordered This 26 day of  
November, 2018

Martha C Christian  
Judge Superior Court of Hall County  
(By assignment) A0040



Submitted 11-30-2019

**IN THE SUPERIOR COURT OF HALL COUNTY  
STATE OF GEORGIA**

**FRIENDSHIP PAVILION ACQUISITION  
COMPANY, LLC**

Plaintiff,

v.

**Mediterranean Dining Group Inc.,  
Tim Sundy and David Sundy**

Defendants,

v.

**ARSENAL REAL ESTATE FUND II-IDF, LP;  
Gary Picone; Thomas Ling; and, Michael Weinstein**

Defendants in Counterclaim

**Civil Action Case No.:**

2015CV001366

**STANDING OBJECTION TO INCONSISTENT DUE PROCESS AND  
FRAUD UPON THE COURT**

Tim Sundy, Intervenor-Third party Plaintiff ("Intervenor" or "Sundy"), by special appearance for the 2 March 2020 hearing while under threat and duress of jail upon failure to use the above-styled caption in the dispossessory proceedings of case 2015CV1366 Hall County Superior Court, ("HCSC"), and with the Clerk of Court ordered to not accept Intervenor's documents for filing if the above-styled caption is not used, submits this **STANDING OBJECTION TO INCONSISTENT DUE PROCESS AND FRAUD UPON THE COURT** to the trial court's 28 January 2020 order for a hearing on 2 March 2020. Adopting part of Wikipedia's definition of special appearance which states "*In a legal catch-22, if the defendant appeared solely to contest jurisdiction, the court would then be permitted to assert jurisdiction based on the defendant's presence...*", the Intervenor contends that he is not failing to "Appear" on 2 March 2020. Intervenor is "Appearing" by special appearance, challenging the Court's jurisdiction, avoiding a corrupt judicial system in the State of Georgia.

FILED  
HALL CO., GA

2020 MAR -9 AM 11:14

CHARLES BAKER, CLERK  
SUPERIOR STATE COURT

BY 

**IN THE SUPERIOR COURT OF HALL COUNTY  
STATE OF GEORGIA**

Friendship Pavilion Acquisitions Co., LLC     )  
Plaintiff

Civil Action  
No. 2015- CV -1366B

vs.     )

Mediterranean Dining Group, Inc.,     )  
David Sundry and Tim Sundry,  
Defendants

vs.     )

Michael Weinstein,     )  
Arsenal Real Estate Fund II,  
Thomas Ling,     )  
Gary Picone,  
Defendants in Counterclaim

**ORDER DISMISSING NOTICE OF APPEAL PURSUANT TO O.C.G.A. SECTION 5-6-48(c) AND**

**LIFTING STAY**

On January 28, 2020, this Court entered a Notice of Show Cause Hearing Regarding Itemized Appeal Costs. The Notice ordered Defendant, Tim Sundry (Defendant), to appear and show cause at 9:30 a.m. on March 2, 2020 as to why the Notice of Appeal filed by him should not be dismissed pursuant to O.C.G.A. Section 5-6-48(c). Defendant was put on notice that if he did not appear, his Notice of Appeal could be dismissed.

The Court held a hearing on March 2, 2020 at 9:30 a.m. and Defendant did not appear. Prior to the hearing, on February 21, 2020, Defendant did file a pleading titled "Standing Objection to Inconsistent Due Process and Fraud Upon the Court." This pleading has been considered by the Court.

The Court finds as follows:

On January 2, 2019, Defendant filed a Notice of Appeal to the Supreme Court of Georgia from the Final Judgment entered in this case on December 3, 2018 and "from the final disposition form with its attached Final Judgment that was filed in this court December 6, 2018."

Defendant was given timely and proper notice of the amount he would have to pay for the record to be sent to the Supreme Court. He was mailed a statement of the Itemized Appeal Costs on January 15, 2019 by certified mail. The total due was \$2168.00.

On February 8, 2019, Defendant filed a Motion for Leave to Proceed In Forma Pauperis. On February 11, 2019, this Court entered a Rule Nisi setting a hearing on this Motion. In the Rule, the Court informed Defendant that the Court found that his affidavit of indigency was not sufficient for the Court to make a determination of his indigency. Defendant was ordered to appear at a hearing on March 7, 2019 to present evidence of his gross and net income; the fair market value of all of his property; the amount of all liens on such property; his monthly living expenses and all debt for which he claims he is responsible. He was ordered to present written documentation supporting his claim. The Court put Defendant on notice that if he did not appear and present such evidence, his Motion would be denied. The hearing was held, and Defendant did not appear.

On March 13, 2019, an Order was entered denying Defendant's Motion for Leave to Proceed In Forma Pauperis.

Defendant has not paid the Itemized Appeal Costs.

In the pleading Defendant filed on February 21, 2020 (Standing Objection), Defendant stated that he was "Appearing" by special appearance "challenging the Court's jurisdiction, avoiding a corrupt judicial system in the State of Georgia." Defendant continues to claim, as he has in numerous pleadings, that this Court does not have jurisdiction to hear this case. This Court has ruled and hereby rules that this court has not been deprived of jurisdiction nor has this Judge been disqualified to hear the case.

Defendant complains that he should not have to pay for a record that is "incomplete." He states that "the docket does not reflect several items legitimately and lawfully filed within the case." However, the only document he identifies as not being on the docket is a document titled "December 20, 2016 JOINT OBJECTION." A review of the docket and of the file shows that a document titled "JOINT OBJECTION TO SUMMARY JUDGMENT HEARING" is shown as filed on December 20, 2016 and is in the record (in his Objection, Defendant acknowledges that the document "was finally restored".) This document appears as item number 44 in Defendant's request regarding what should be sent to the Supreme Court by the Clerk. This Court is aware of Defendant's repeated claims regarding this document. Nevertheless, the document appears to be in the record. Defendant has not shown that the record in this case is incomplete or not accurate.

In his Standing Objection, Defendant also claims that this Court should have dismissed the Notice of Appeal "long ago". He bases this claim on a ruling made by the Georgia Court of Appeals which denied his interlocutory appeal filed the same day he filed the Notice of Appeal. He states that this Court should know that the Court of Appeals will deny his direct appeal. This argument has no merit.

The Court finds that there has been an unreasonable delay in the transmission of the record to the appellate court, that the delay was inexcusable and caused by Defendant's failure and refusal to pay costs in the trial court. O.C.G.A. §5-6-48(c).

Therefore, The Notice of Appeal filed by Defendant on January 2, 2019 is hereby DISMISSED.

On February 11, 2019, this Court entered an Order staying the case until determination of the Notice of Appeal. The Notice of Appeal having been dismissed, the stay is lifted. The Court will proceed to consider Plaintiff's pleading filed on December 13, 2018, "MOTION PURSUANT TO O.C.G.A. 9-1160(d)(2)(3) TO SET ASIDE THE DECEMBER 3, 2018 VOID FINAL JUDGMENT FOR FRAUD UPON THE COURT AND/OR NON-AMENDABLE EFFECTS."

SO ORDERED, this 2<sup>nd</sup> day of March 2020



Martha C. Christian

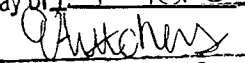
Judge Hall County Superior Court

By Assignment

STATE OF GEORGIA, COUNTY OF HALL  
I Charles Baker, Clerk of Superior Court in  
and for said County do hereby certify that the  
within is a true and correct copy of the original  
as it appears on file in this office.

Witness my official seal and signature of  
Superior Court

this 11 day of March 2020

  
Clerk, Deputy Clerk Hall Superior Court