

No. 20-565

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IN THE  
SUPREME COURT OF THE UNITED STATES

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George Matthews and Nina Matthews

*Petitioners,*

vs.

David Merbaum and Andrew Becker

*Respondents.*

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On Petition for a Writ of Certiorari to  
The United States Court of Appeals  
For the Eleventh Circuit

**PETITIONERS OBJECTION TO RESPONDENTS' MOTION FOR DAMAGES  
FOR FRIVOLOUS APPEAL PURSUANT TO RULE 42**

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Pro-Se Petitioners

IN THE UNITED STATES SUPREME COURT

**George Matthews and  
Nina Matthews**

Petitioners

**Case Number:  
20-565**

**David J. Merbaum and  
Andrew J. Becker,**

Appellees - Respondents

**PETITIONERS OBJECTION TO RESPONDENTS' MOTION FOR DAMAGES  
FOR FRIVOLOUS APPEAL PURSUANT TO RULE 42**

**COMES NOW**, Petitioners George Matthews and Nina Matthews (“Petitioners”) who object to David J. Merbaum and Andrew J. Becker (“Respondent”) motion pursuing damages and fees pursuant to Sup. Ct. R. 42.

**FACTUAL BACKGROUND**

**Basis of Original Dispute**

1. Petitioners George Matthews and Nina Matthews (hereinafter identified as The Mathews) hired Attorneys David Merbaum and Andrew Becker of Merbaum Law Group (hereinafter identified as The Attorney's). Attorneys filed a lawsuit against State Farm Fire and Casualty Company (hereinafter

identified as State Farm) for breach of contract and bad faith after their home was damaged [Matthews v State Farm., Civil Action File No. 1:10-cv-01641].

2. While in the discovery phase of Matthews v. State Farm Attorneys filed a Motion to Withdraw from the case. The District Court held a motions hearing on their withdrawal on October 25, 2010. Attorneys argued they were owed almost \$20,000 before Judge Willis Hunt (Motions Hearing Matthews v. State Farm , No. 1:10-cv-01641, October 25, 2010 Tr. 41).
3. Attorneys acknowledged in Open Court that they had sent a letter to the Matthews stating if the Matthews did not oppose their withdrawal from Matthews v. State Farm that they would only owe \$500. Attorneys also acknowledged that they had already been paid \$2,200 by the Matthews.
4. Judge Hunt entered instant orders which stated the parties were to first attempt reconciliation and attorneys were to agree to a contingency contract as opposed to a fee based contract . The order also stated that should attorneys decide to withdraw from Matthews v. State Farm they could only collect the \$500 which was also identified by the letter. The District Court also stated Attorneys could not pursue the Matthews for additional money other than the out-of pocket costs of \$500 (Motions Hearing Matthews v. State Farm , Civil Action File No. 1:10-cv-01641, October 25, 2010 Tr. 41).<sup>1</sup>

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<sup>1</sup> It was not until after the Matthews were sued by Merbaum Law Firm did they identify that the missing orders were contained in the certified transcript. However it was not filed to the District Court until 2012 which was after the Matthews v.

**Attorneys back out of their decision again filing to withdraw**

5. Attorneys indicated they would reconcile but never acted in good faith.
6. Judge Hunt entered an order for the attorney's decision to withdraw on January 4, 2011, The order specifically referenced "Plaintiffs' George and Nina Matthews did not oppose the withdrawal of their attorneys" which referenced the letter for \$500 . (Matthews v. State Farm Civil Action File No. 1:10-cv-01641, N.D. Ga, January 5, 2011).
7. Shortly after being released from the case attorneys began violating the order refusing to accept the District Court granted only \$500.

**Attorneys file Proof of Claim in US Bankruptcy Court to which they were not entitled**

9. On August 19, 2015 attorneys filed *Motion to Allow Late Proof of Claim* seeking to collect almost \$20,000 which the District Court had heard and denied in 2010 (US Bankruptcy Court N.D. Ga, Doc 57, August 18, 2015 p. 5-6).<sup>2</sup>
10. Attorneys were aware of the penalties for making a false claim based on the signed Proof Claim, however David Merbaum still signed the document which warned the penalty for presenting a fraudulent claim and that is a fine of up to \$500,000 or imprisonment for up to 5 years, or both. Pursuant to 18

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State Farm case was ruled for State Farm on appeal (Matthews v. State Farm (Docket Report) No. 1:10-cv-01641, N.D. Ga, Doc 103, April 11, 2012).

<sup>2</sup> US Bankruptcy Court Doc 57 is mislabeled in the court docket as Motion to Extend Time but this is incorrect. The actual documents posted behind this incorrect label filed by Attorneys are Part 1) Motion to Allow Late Filed Claim and 2) Exhibit Proof of Claim

U.S.C §§ 152 and 3571 (*Merbaum Law Group v. George E Matthews III*, No. 11-63910-BEM, US Bankruptcy Court, N.D. Ga, August 19, 2015)

11. The Bankruptcy Court granted attorneys 19,928.83 as unsecured creditors for which it was a violation under OCGA 15-19-14. The Bankruptcy Court also ordered Nina Mathews released to face Merbaum Law Group in Cobb Superior Court for a case the District Court had already heard and ordered \$500.

**Attorneys pivot their claim for attorney fees which had already been heard by the District Court to the State Court**

12. In August 2017 Cobb Superior Court entered judgment against Nina Mathews for \$39,902.66 which was comprised of a principal amount of \$22,579.08 (attorney fees and expenses) and \$17,323.58 for interest and late fees.

13. On December 12, 2019 Judge Reuben Green dismissed Merbaum Law Group v. Nina Mathews without prejudice (Merbaum Law Group v. Nina Mathews, No.15-1-3498-51, Cobb Superior Court Ga, December 19, 2019, Doc #260 ). Attorneys did not refile their case to this court. At this point the statute of limitations would have made the re-filing action a moot issue.

**Motion for Contempt filed against attorneys to the District Court**

14. In January 2019 Mathews sent a letter to Judge Steve Jones of the District Court providing evidence that insurance fraud had occurred on the Mathews v. State Farm case. The letter also informed Judge Jones that the Mathews

prior Attorneys David Merbaum and Andrew Becker appeared to be involved in leading a retaliation by filing a false lawsuit in Cobb Superior Court.

15. In July 2019 the Matthews filed a Motion for Contempt against their prior attorneys David Merbaum and Andrew Becker and also filed a Motion to Recuse Judge Jones based on the extrajudicial information he had received in the Matthews letter.
16. When the Motion for Contempt was filed to the District Court the court did not open a new case or order a show cause to David Merbaum and Andrew Becker. Judge Jones entered a decision to deny both motions filed by the Matthews ([Matthews v. State Farm](#) No. 1:10-cv-01641, N.D. Ga, Doc #116 ORDER). David Merbaum and Andrew Becker were also never identified as a party to the [Matthews v. State Farm](#) case which is where Judge Jones entered his decision.
17. The Matthews appealed the decision of the District Court.

#### **ARGUMENT AND CITATIONS TO AUTHORITY**

18. The petition for certiorari filed before this Court is a factual account supported by evidence and appropriate statutes. Each argument made to this Court by Petitioners has been made in good faith.
19. The Respondents *Motion For Damages and Frivolous Appeal Pursuant to Rule 42* has been brought before this court in bad faith and is frivolous.

20. "An appeal is frivolous if the results are obvious, or the arguments of error are wholly without merit." Maisano v. United States, 908 F.2d 408, 411 (9th Cir. 1990) (citation omitted). To be frivolous, a claim must be so clearly untenable or manifestly insufficient that its character may be determined by a bare inspection of the record, without argument or research.

21. The Respondents have excluded significant detail in their Motion for Damages which if revealed expose that their filing to sanction the Matthews was frivolous.

**Respondents Case was dismissed in Cobb Superior Court and was not upheld as the attorneys have claimed before this Court**

22. Specifically Respondents have excluded the fact that their case before Cobb Superior Court was dismissed without prejudice and never re-filed. Petitioners owe nothing to Respondents David Merbaum, Andrew Becker or Merbaum Law Group.

23. The Respondents have excluded the outcome of their filing before Cobb Superior Court. Merbaum Law Group v. Nina Matthews was dismissed from Cobb Superior Court *sua sponte* which means it was Cobb Superior Court who exercised its power to dismiss the case and not the Plaintiffs. The dismissal of a case *sua sponte* also means that the court has stepped out of its passive role in the litigation process and taken action to ensure proceedings are fair and proper (Cobb Superior Court Cobb County State of

Georgia, No. 15-1-3498-51, December 12, 2019, Doc #260, *Final Order Dismissing Case Without Prejudice*).

24. OCGA 9-11-41, which governs dismissal of actions, contemplates both voluntary dismissals upon plaintiff's motion of stipulation, pursuant to OCGA 9-11-41(a), and involuntary dismissals pursuant to OCGA 9-11-41(b) for, *inter alia*, the "failure of the plaintiff to....comply with...any order of court." The trial court's *sua sponte* dismissal order does not specify under which it operates, but our Supreme Court has found that a *sua sponte* dismiss may function as an involuntary dismissal. Such an involuntary dismissal is authorized by OCGA 9-11-41(b)"(emphasis supplied), citing *Cramer, Inc. v. Southeaster Office Furniture Wholesale Co.*, 171 Ga.App.514,515(1), 320 S.E.2d 223 (1984)(where party made no formal motion to dismiss, this Court found that "while it is true that OCGA 9-11-41(b) contemplates a motion by a defendant, the court may exercise inherent power to dismiss *sua sponte*)(citations omitted). Although OCGA 9-11-41(b) imposes certain requirement for its application, neither party objected or moved for reconsideration of its dismissal.

25. The dismissal of a lawsuit generally deprives the trial court of jurisdiction to take further action in a case. A dismissal "deprive[s] the trial court of jurisdiction and [leaves] the parties in the same position as if the suite had never been filed." (Citation omitted.) *Lakes v. Marriott Corp.*, 264 Ga. 475, 478, 448 S.E.2d 203 (1994).

26. Attorneys David Merbaum and Andrew Becker and Merbaum Law Group

know or should understand the ramifications of Cobb Superior Court's action when their case was dismissed and the impact of their decision not to re-file their case. Effective December 12, 2019 Cobb Superior Court divested itself of jurisdiction to take further action on Merbaum Law Group v. Nina Matthews.

27. Attorneys did not re-file their case or file an appeal. In fact Attorneys took absolutely no legal action after Cobb Superior Court dismissed their case without prejudice. The claims by Respondents before this Court that somehow their case was preserved or upheld are false (Cobb Superior Court Cobb County State of Georgia, No. 15-1-3498-51, December 12, 2019, Doc #260, *Final Order Dismissing Case Without Prejudice*).

**Respondents were not identified by the District Court as Defendants to the action but were switched out after the case reached appeal**

28. Respondents have not been forthcoming to this Court. They are aware they were not identified as Defendants originally by the District Court. They were added to the action only after the case was submitted to the appeal court.

29. In the conclusion of the decision entered by Judge Jones he concluded that Matthews v. State Farm No. 1:10-cv-01641 was an old case which ended in 2012 and this statement was correct, however the Matthews filed a new case against their former attorneys David Merbaum and Andrew Becker for a Motion for Contempt.

30. The Mathews served by sheriff David Merbaum and Andrew Becker. David Merbaum and Andrew Becker received the complaint from Fulton Sheriff. (Matthews v. State Farm No. 1:10-cv-01641, N.D. Ga, Case Docket, *Motion for Contempt Against Attorneys David Merbaum and Andrew Becker with Brief in Support*, July 2, 2019, Doc 111).

31. David Merbaum and Andrew Becker filed their reply *Response in Objection to Motion for Contempt* as Merbaum Law Group, PC and their reply was signed by Plaintiffs' former attorneys David Merbaum and Andrew Becker (Matthews v. State Farm No. 1:10-cv-01641, N.D. Ga, Case Docket, *Response in Objection to Motion for Contempt*, July 17, 2019, Doc 115).

32. David Merbaum and Andrew Becker's objected that they should not be held in contempt because they should not be held in violation based on Judge Hunt's October 25, 2010 ex parte hearing.

33. Although Judge Jones heard arguments by the Plaintiffs the Mathews and David Merbaum and Andrew Becker of Merbaum Law Group Judge Jones concluded that the Mathews argument was based on an old case Matthews v. State No. 1:10-cv-01641).

34. In Judge Jones conclusion he stated "Plaintiffs are cautioned and warned that any future filings that are without a plausible legal basis in the case *sub judice* (that has been closed since 2012) may be subject to monetary and other sanctions deemed appropriate by this Court and applicable rules/law." However, the Judge erred when he concluded the matter presented before

him was between the Matthews and State Farm who were the Defendants in the original case which ended in 2012 (Matthews v. State Farm No. 1:10-cv-01641)

35. Additionally State Farm's attorneys are identified on Matthews v. State Farm as Mark Dietrichs and Kathleen Marsh and they were not served by the Matthews nor did they file any reply to the court.

36. The Matthews filed an appeal to the District Court because of the errors on the case and served David Merbaum and Andrew Becker who represented Merbaum Law Group.

37. When the Matthews became aware that David Merbaum and Andrew Becker representing Merbaum Law Group had not filed an appearance into the case or any response they contacted the Eleventh Circuit Court of Appeal. Shortly after the appeal court was notified the court terminated State Farm as the Defendants on the appeal action and added David Merbaum and Andrew Becker of Merbaum Law Group as the Interested Party - Appellee. This action removed the original Defendants State Farm for which Judge Jones had entered his decision. George Matthews et al v. Andrew Becker, Docket Report, No. 19-15001, shows: State Farm and Fire & Casualty Company status as Terminated: 02/11/2020).

38. The result of the Eleventh Circuit COA action meant that Plaintiff's Matthews were not appropriately appealing the decision as entered by the District Court because the Defendants were replaced with David Merbaum

and Andrew Becker which was not the same case as Matthews v. State Farm. The action taken by the Eleventh Circuit COA to remove the Defendant State Farm resulted in the Eleventh Circuit COA being presented with a different argument than what Judge Jones had entered a decision on.

39. It was alarming that the Eleventh Circuit thought it appropriate to create an appeal for an entirely different Defendant once the case reached the appeal court which. (Matthews v. State Farm No. 1:10-cv-01641, N.D. Ga, December 11, 2019, Doc 117)

40. When the Eleventh Circuit COA sent out the original Briefing Notice it was sent to Defendant State Farm which was the wrong party. On February 11, 2020 and re-noticed the appropriate party which had responded to the Motion for Contempt in the District Court which was David Merbaum and Andrew Becker of Merbaum Law Group (Matthews et al v. Andrew Becker (Docket Report) No. 19-15001, Briefing Notice to David Merbaum and Andrew Becker, February 11, 2020).

41. This restarted the court rule which required attorneys to file into the case within 14 days. Pursuant to 11th Cir. R. 46-5 All attorneys (except court appointed attorneys) must file an Appearance of Counsel Form in each appeal in which they participate within 14 days after notice is mailed by the clerk. Additionally the 11th Cir. R. 46-6 outlines the Clerk's Authority to Accept Filings. (a) Filings from an Attorney Who Is Not Authorized to Practice Before this Court. (1) Subject to the provisions of this rule, the clerk

may conditionally file the following papers received from an attorney who is not authorized to practice before this court, unless the attorney has been suspended or disbarred from practice before this court or has been denied admission to the bar of this court. Attorneys were due to file an appearance by February 26, 2020. The next day February 27, 2020 David Merbaum and Andrew began filing into the case violating without making an appearance as attorneys which violated 11th R. 46-5.

42. The Mathews filed a motion to the appeal court requesting they require David Merbaum and Andrew Becker to adhere to the rule (Matthews et al v. Andrew Becker, No. 19-15001, *Motion to Disqualify Attorney's Filing Certificate of Interested Persons Form Due to Failure to File an Appearance of Counsel Form*). Attorneys responded by filing an objection stating that they would not file an appearance unless required by the appeal court. Attorneys also filed a sanction against the Mathews for raising the issue that they were not adhering to the rule. (Matthews et al v. Andrew Becker, No. 19-15001, *Objection to Motion to Disqualify Attorney's Filing Certificate of Interested Persons Form Due to Failure to File an Appearance of Counsel Form with incorporated motion for sanctions*).

43. The Eleventh Circuit COA denied the attorneys request to sanction but also denied the Mathews motion and did not rise to require attorneys to sign an entry of appearance in order to proceed before the court.

44. The appeal sent to the Eleventh Circuit COA was obviously flawed upon arrival from the District Court. State Farm should not be allowed to use Judge Jones conclusion in an future litigation because the Matthews did not file a Motion for Contempt against State Farm. The Motion for Contempt was filed against David Merbaum and Andrew Becker. As such the warning entered by Judge Jones was entered in error. The conclusion entered by Judge Jones was also not applicable to David Merbaum and Andrew Becker of Merbaum because it was entered for Defendant State Farm. The concerning issue before this court is that David Merbaum and Andrew Becker have filed to use the flawed ruling by Judge Jones to sanction the Matthews.

45. Judge Jones ruling should not have been upheld, but overturned once it reached the appeal court

#### **Respondents statements unrelated to their Motion for Sanction**

46. Petitioners have experienced a continuous barrage of harassment which began shortly after the Respondents filed against the Matthews in Cobb Superior Court. There is an ongoing investigation into the suspicious mail incidents USPS. Petitioners fail however to see how this is related to the Respondents motion for sanctions.

#### **Conclusion**

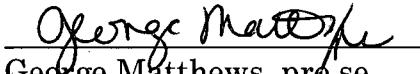
47. The Respondents have failed to demonstrate that the Petitioners filed a frivolous appeal before this Court or in any other court.

48. The Respondents have also not demonstrated how Petitioners who have adversely impacted them or delayed any legal options they have the right to pursue.

49. Petitioners pray Respondents Motion for Damages is denied the \$3,000 requested is also denied.

Dated This 31st day of January, 2021.

Respectfully submitted,

  
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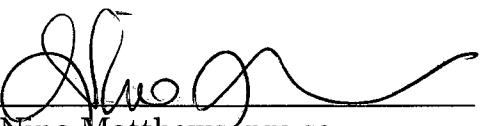
## CERTIFICATE OF COMPLIANCE

The undersigned certifies that this document complies with the word or page limit of Sup. Ct. R. 33 because this document contains **2920** words.

Dated This 1st day of February 2021.

Respectfully submitted,

  
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