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**APPENDIX A**

**SUPREME COURT OF GEORGIA**

**Case No. S21C0007**

**March 15, 2021**

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

**TIM SUNDY** v. **FRIENDSHIP PAVILION ACQUISITION  
COMPANY, LLC. et al.**

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

All the Justices concur, except Bethel, Ellington, and McMillian, JJ.,  
disqualified.

Court of Appeals Case No. A20D0398

**SUPREME COURT OF THE STATE OF GEORGIA**

Clerk's Office, Atlanta

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

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

/s/ Therese S. Barnes, Clerk

**APPENDIX B**

Court of Appeals  
of the State of Georgia

ATLANTA, July 07, 2020

*The Court of Appeals hereby passes the following order*

A20D0398. TIM SUNDY v. FRIENDSHIP PAVILION ACQUISITION COMPANY  
LLC et al.

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

LC NUMBERS:  
2015CV1366

Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, July 07, 2020.

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

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

**/s/ Stephen E. Castlen, Clerk**

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APPENDIX C

IN THE SUPERIOR COURT OF HALL COUNTY  
STATE OF GEORGIA

FRIENDSHIP PAVILION ACQUISITION  
COMPANY, LLC,  
Plaintiff,

v.

Civil Action No. 2015-CV-1366B

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

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.

/s/ Martha C. Christian  
The Honorable Martha C. Christian  
Presiding  
Judge Hall County Superior Court,  
by Assignment

**APPENDIX D**

Supreme Court of the United States  
Office of the Clerk  
Washington, DC 20543-0001

March 22, 2021

Scott S. Harris  
Clerk of the Court  
(202) 479-3011

Mr. Tim Sundy  
227 Sandy Springs Place Suite D-465  
Sandy Springs, GA 30328

Re: Tim Sundy  
v. Friendship Pavilion Acquisition Company, LLC,  
et al. No. 20-6868

Dear Mr. Sundy:

The Court today entered the following order in the above-entitled case:

The motion of petitioner for leave to proceed in for ma pauperis is denied, and the petition for a writ of certiorari is dismissed. See Rule 39.8. As the petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin v. District of Columbia Court of Appeals*, 506 U.S. 1 (1992) (per curiam).

Sincerely,  
/s/ Scott S. Harris

**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

2020 JUN -3 PM 1:03  
FILED  
CLERK OF SUPERIOR COURT  
HALL COUNTY, GEORGIA

**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 Sundy'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 Sundy 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 Sundy, 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 overreaching 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 Sundy appeared and argued, but neither David Sundy 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 Sundry filed a "Notice of Filing Brown v. Johnson Action by David Sundry" and filed an amendment to that notice on January 7, 2017. In the Notice, David Sundry 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 Sundy was present at this hearing, Mr. David Sundy 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. Sundy 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 Sundy and Tim Sundy 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 Sundry'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 Sundy, 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 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." 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 Sundy and not David Sundy. 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 Sundy's ability to immediately file documents in pending litigation does not totally deprive Tim or David Sundy 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 Sundy 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 Sundy 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



Martha C. Christian

Judge Hall County Superior Court

By Assignment