

EXHIBIT A

REMITTITUR

SUPREME COURT OF GEORGIA

Case No. S21C0343

Atlanta, May 03, 2021

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

BATASKI BAILEY v. FAIR & WALKER UNIT OWNERS
ASSOCIATION, INC. et al.

Upon consideration of the petition for certiorari filed to review the judgment of the Court of Appeals in this case, it is ordered that the petition be hereby dismissed.

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

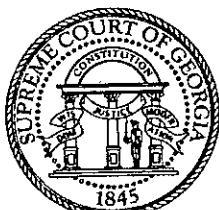
Associated Cases
A20A1179

Costs paid: \$300.00

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta May 18, 2021

I hereby 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.



See C. Ritter, Chief Deputy Clerk

EXHIBIT B

**FIFTH DIVISION
BARNES, P. J.,
REESE, P. J., and COLVIN, J.**

NOTICE: Motions for reconsideration must be physically received in our clerk's office within ten days of the date of decision to be deemed timely filed.
<https://www.gaappeals.us/rules>

DEADLINES ARE NO LONGER TOLLED IN THIS COURT. ALL FILINGS MUST BE SUBMITTED WITHIN THE TIMES SET BY OUR COURT RULES.

September 23, 2020

**NOT TO BE OFFICIALLY
REPORTED**

In the Court of Appeals of Georgia

A20A1179. BAILEY v. FAIR & WALKER UNIT OWNERS ASSOCIATION, INC. et al.

REESE, Presiding Judge.

In this case, the following circumstances exist and are dispositive of the appeal:

- (1) The evidence supports the judgment;
- (2) No reversible error of law appears, and an opinion would have no precedential value;
- (3) The judgment of the court below adequately explains the decision; and
- (4) The issues are controlled adversely to the appellant for the reasons and authority given in the appellees' briefs.

The judgment of the court below therefore is affirmed in accordance with Court of Appeals Rule 36.

Judgment affirmed. Barnes, P. J., and Colvin, J., concur.

EXHIBIT C

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

BATASKI BAILEY,)
v.)
Plaintiff,)
FAIR & WALKER UNIT OWNERS)
ASSOCIATION, INC.; AND ACCESS)
MANAGEMENT GROUP, L.P.; AND)
EMPIRE PARKING SERVICES, INC.)
Defendants.)

Civil Action File No.
2018-CV-308827

FINAL ORDER AND JUDGMENT DENYING PLAINTIFF'S MOTION TO STRIKE ANSWER
OF DEFENDANT EMPIRE PARKING SERVICES, INC., GRANTING DEFENDANT
EMPIRE PARKING SERVICES, INC.'S MOTION FOR SANCTIONS, AND
GRANTING DEFENDANT EMPIRE PARKING SERVICES, INC.'S MOTION FOR
SUMMARY JUDGMENT

This matter came before the Court on August 12, 2019, and the Court having reviewed Plaintiff's Motion to Strike Answer of Defendant Empire Parking Services, Inc.'s (Empire Parking) and Defendant Empire Parking's Motion for Sanctions and Motion for Summary Judgment, all supporting pleadings and documentation filed in this case, and having heard argument from Plaintiff and counsel for Defendant Empire Parking, this Court finds as follows:

Regarding Plaintiff's Motion to Strike Answer of Defendant Empire Parking, the Court notes that, “[t]he drastic sanctions of dismissal and default cannot be invoked under O.C.G.A. § 9-11-37 except in the most flagrant cases.” *Gen. Motors Corp. v. Conkle*, 226 Ga. App. 34, 43–44 (1997); *Porter v. Wellstar Health System, Inc.*, 299 Ga. App. 481, 483 (2009). The extreme sanctions of dismissal or default “may only be employed for a willful failure in bad faith or in total disregard of the court's order. Such a sanction is generally warranted only where a clear record of delay or contumacious conduct by the plaintiff exists and a lesser sanction would not better serve the interest of justice.” *Porter v. Wellstar*, 299 Ga. App. at 483. In this case, there is

no evidence of willful misconduct, bad faith, or a disregard of a Court Order by Defendant Empire Parking. Indeed, there is no Court Order at all because Plaintiff did not file a motion to compel. Rather, the record shows a timely discovery response by Defendant Empire Parking and an attempt to meet its discovery obligations by conferring with Plaintiff in an attempt to produce the requested information. Accordingly, the Court **denies** the Plaintiff's Motion to Strike Defendant Empire Parking's Answer to the Complaint.

The Court notes that O.C.G.A. § 9-11-37(4)(B) provides: "If the motion is denied, the court shall, after opportunity for hearing, require the moving party...to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust." The Court finds that the Plaintiff had no substantial justification for filing this drastic motion. There is no showing of willfulness on the part of Defendant Empire Parking and the Plaintiff has completely failed to meet any of the procedural requirements prior to filing this Motion to Strike Defendant Empire Parking's Answer.

Defendant has presented evidence of the time spent responding to this motion, the individual attorneys who prepared the response, their years of experience, their hour rates for the work, and the Court finds all the above to be reasonable and necessary under the circumstances. Therefore, the Court grants Defendant Empire Parking's request for attorney's fees as a sanction under O.C.G.A. § 9-11-37(4)(B) in the amount of \$802.50.

Regarding Defendant Empire Parking's Motion for Sanctions, the Court finds that Plaintiff's conduct in this case is subject to sanctions under O.C.G.A. §9-15-14(b). Specifically, the Court finds that Plaintiff threatened to file a bar complaint against counsel for Defendant

Empire Parking and on three occasions accused counsel for Defendant Empire Parking of committing perjury. Such threats were without basis in fact, based on the evidence and pleadings of record. The threats were also without basis in law. Perjury is defined by O.C.G.A. § 16-10-70 which provides as follows:

“(a) A person to whom a lawful oath or affirmation has been administered commits the offense of perjury when, in a judicial proceeding, he knowingly and willfully makes a false statement material to the issue or point in question.”

O.C.G.A. § 16-10-70(a). There is no indication in the record that counsel for Defendant Empire Parking ever made a false statement while under oath. Accordingly, the Court finds the accusations baseless and interposed for purposes of harassment.

Defendant Empire Parking has presented evidence of the time spent preparing its Motion for Sanctions, the individual attorneys who prepared the motion, their years of experience, their hour rates for the work, and the Court finds all the above to be reasonable and necessary under the circumstances. Therefore, the Court grants Defendant Empire Parking’s Motion for Sanctions and awards Defendant Empire Parking its request for attorney’s fees as a sanction against Plaintiff under O.C.G.A. § 9-11-37(4)(B) in the amount of \$1,070.00.

Finally, Defendant Empire Parking filed a Motion for Summary Judgment. The Court finds that this Motion should be granted. Contrary to the allegations made in his Complaint, Plaintiff testified at his deposition that he did not own the three vehicles that he claims were improperly booted by Defendant Empire Parking. Thus, the only evidence in the record is that Plaintiff did not own the three vehicles at issue. Georgia courts have examined the issue of standing in many contexts and routinely hold that a plaintiff must have a legal interest in the property or controversy at issue in the case in order to have standing. *See e.g. Associated Credit Union v. Pinto*, 297 Ga. App. 605, 607 (2009). Further, there is no evidence in the record that

the Plaintiff was required to pay for the removal of the boots on the vehicles he claims were improperly booted. On the contrary, Plaintiff voluntarily chose to make the payments and, as such, cannot recover. "Under Georgia Law, money voluntarily paid may not ordinarily be recovered." *Wallis v. B&A Constr. Co. Inc.*, 273 Ga. App. 68, 73 (2005).

The Court also finds that Plaintiff failed to present evidence of record that would support any other theory of recovery in this matter against Defendant Empire Parking.

The Court is also concerned about the allegations made in Plaintiff's Complaint that the Plaintiff's vehicle was improperly booted, when in his sworn deposition testimony he acknowledged he did not own the vehicle at issue. These misrepresentations are material because, as outlined above, without ownership of the subject vehicles, the Plaintiff lacked standing to bring this suit. These misrepresentations cost Defendant Empire Parking considerable money in defending against a meritless and frivolous action. As such, the Court finds that the Plaintiff should be sanctioned and Empire Parking should recover its attorney's fees incurred in preparing this Motion for Summary Judgment pursuant to O.C.G.A. § 9-15-14.

Defendant Empire Parking has presented evidence of the time spent preparing its Motion for Summary Judgment, the individual attorneys who prepared the motion, their years of experience, their hour rates for the work, and the Court finds all the above to be reasonable and necessary under the circumstances. Therefore, the Court grants Defendant Empire Parking's Motion for Summary Judgment and awards Defendant Empire Parking its request for attorney's fees as a sanction against Plaintiff under O.C.G.A. § 9-15-14 in the amount of \$2,990.00.

Accordingly, this Court issues the following **Order and Judgment**:

- 1) Plaintiff's Motion to Strike Answer of Defendant Empire Parking is **Denied**.
- 2) Defendant Empire Parking is awarded attorney's fees in the amount of \$802.50

against Plaintiff with respect to Plaintiff's Motion to Strike Answer of Defendant Empire Parking.

- 3) Defendant Empire Parking's Motion for Sanctions against Plaintiff is **Granted**.
- 4) Defendant Empire Parking is awarded attorney's fees in the amount of \$1,070.00 against Plaintiff with respect to Defendant Empire Parking's Motion for Sanctions against Plaintiff.
- 5) Defendant Empire Parking's Motion for Summary Judgment is **Granted**.
- 6) Defendant Empire Parking is awarded attorney's fees in the amount of \$2,990.00 against Plaintiff with respect to Plaintiff's Motion for Summary Judgment.

SO ORDERED this the 15 day of August, 2019.



Hon. Jane Barwick
Superior Court of Fulton County

Prepared By: _____

Lawrence B. Domenico
State Bar of Georgia No. 003260
Attorney for Defendant Empire Parking Services, Inc.

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

BATASKI BAILEY,)
v.)
Plaintiff,)
FAIR & WALKER UNIT OWNERS)
ASSOCIATION, INC.; AND ACCESS)
MANAGEMENT GROUP, L.P.; AND)
EMPIRE PAKING SERVICES, INC.)
Defendants.)

Civil Action File No.
2018-CV-308827

FINAL ORDER GRANTING FAIR & WALKER UNIT OWNERS ASSOCIATION, INC.
PARTIAL SUMMARY JUDGMENT

This matter came before the Court on August 12, 2019, and the Court having reviewed Defendant, **Fair & Walker Unit Owners Association, Inc.**'s ("Association") Motion for Partial Summary Judgment, all supporting pleadings and documentation filed in this case, and having heard argument from counsel for the Association and the Plaintiff, finds that there exist no genuine issue of material fact remaining for determination and, accordingly, the Association is entitled to a judgment as follows:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Association's Motion for Partial Summary Judgment be **GRANTED** and **JUDGMENT** be entered as follows:

Money Judgment

A. That Association have a judgment against Plaintiff for the following amounts, including post-judgment interest at the rate of 10% per year from the date of the judgment:

Principal	\$ 7,550.56
Water - 7/27/2019	\$ 1,741.89
Interest	\$ 803.07
Attorney's Fees (P&H)	\$ 13,490.00
Costs & Expenses (P&H)	\$ 333.87
Court Appearance Fee - 8/12/2019	\$ 525.00
Total	\$ 24,444.39

Total = \$ 12,575.26 JRB

2,085.87 JRB
JRB

Judicial Foreclosure

B. The Association is hereby authorized to foreclose the statutory lien on Plaintiff's property located at **238 Walker Street, Unit #36, Atlanta, Fulton County, GA 30313**, for all amounts secured by the statutory lien through the date of foreclosure, subject to all superior liens and encumbrances, as provided in O.C.G.A. § 44-3-109;

C. It is **ORDERED** that as of the date of this Order, the value of the statutory lien is as follows:

Principal	\$ 7,550.56
Water - 7/27/2019	\$ 1,741.89
Interest	\$ 803.07
Attorney's Fees (P&H)	\$ 13,490.00
Costs & Expenses (P&H)	\$ 333.87
Court Appearance Fee - 8/12/2019	\$ 525.00
Total	\$ 24,444.39

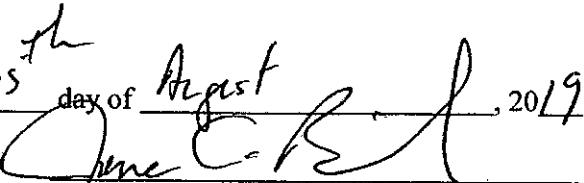
\$ 2085.87 JCB
JCB
\$ 12,575.26 JCB

D. The Fulton County Sheriff is hereby ordered to conduct the judicial sale of **238 Walker Street, Unit #36, Atlanta, Fulton County, GA 30313** in accordance with O.C.G.A. § 44-3-109 and convey the property via a Sheriff's Deed.

E. It is **ORDERED** that in the event Plaintiff or any third party seeks through the Fulton County Sheriff's Office to pay off the statutory lien before the date of the judicial foreclosure sale, the Sheriff's Office is directed to contact the Association (i.e. Fair & Walker Unit Owners Association, Inc.) or the Association's counsel for the payoff amount of the statutory lien;

F. It is **ORDERED** that if the Association is the successful bidder, the Association may bid its statutory lien as of the date of the judicial foreclosure sale, or any portion of the statutory lien, in lieu of cash.

SO ORDERED this the 15th day of August, 2019.


Hon. Jane Barwick
Superior Court of Fulton County

Prepared By: _____
E. Berk Sauls
Pankey & Horlock, LLC
1441 Dunwoody Village Parkway, Suite 200
Atlanta, GA 30338
(770) 670-6250

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

BATASKI BAILEY,)
)
 Plaintiff,)
 v.)
)
 FAIR & WALKER UNIT OWNERS)
 ASSOCIATION, INC.; AND)
 ACCESS MANAGEMENT GROUP,)
 L.P.; AND EMPIRE PAKING)
 SERVICES, INC.)
)
 Defendants.

**Civil Action File No.
2018-CV-308827**

**FINAL ORDER AND JUDGMENT GRANTING DEFENDANT EMPIRE
PARKING SERVICE'S MOTION FOR ATTORNEY'S FEES AND
EXPENSES PURSUANT TO O.C.G.A. §9-11-68 AND DENYING
PLAINTIFF'S "MOTION FOR NEW TRIAL."**

This matter came before the Court on October 28, 2019, and the Court having reviewed Defendant Empire Parking Services, Inc.'s (Empire Parking) Motion for Attorney's Fees and Expenses pursuant to O.C.G.A. §9-11-68, Plaintiff's "Motion for New Trial," all supporting pleadings and documentation filed in this case, and having heard argument from Plaintiff and counsel for Defendants, this Court finds as follows:

On November 6, 2018, Empire Parking served "Defendant Empire Parking Service's, Inc.'s Offer of Settlement to Plaintiff." The offer of settlement stated that it was pursuant to O.C.G.A. § 9-11-68 and was in the amount of \$600.00

Empire Parking's offer of settlement complied with the statutory requirements as set forth in O.C.G.A. § 9-11-68(a).

On November 8, 2018, Plaintiff rejected the offer of settlement.

On August 15, 2019, this Court issued an order granting Empire Parking summary judgment.

Georgia law provides:

[i]f a defendant makes an offer of settlement which is rejected by the plaintiff, the defendant ***shall*** be entitled to recover reasonable attorney's fees and expenses of litigation incurred by the defendant or on the defendant's behalf from the date of the rejection of the offer of settlement through the entry of judgment if the final judgment is one of no liability ...

O.C.G.A. § 9-11-68(b)(1) (emphasis added). Further:

[t]he court ***shall*** order the payment of attorney's fees and expenses of litigation upon receipt of proof that the judgment is one to which the provisions of . . . paragraph (1) of subsection (b) of this Code apply ...

O.C.G.A. § 9-11-68(d)(1) (emphasis added).

Therefore, pursuant to O.C.G.A. §§ 9-11-68(b)(1) and (d)(1), Empire Parking is entitled to its reasonable attorney's fees and expenses of litigation because the Court's final judgment is one of no liability.

Empire Parking has submitted evidence of its attorney's fees and litigation expenses incurred since November 8, 2018, the date the Offer of Settlement was rejected by the plaintiff, through the date of the Court's final judgment. The Court

finds that Defendant Empire Parking has incurred a total of \$15,428.93 in attorney's fees and expenses and that these attorney's fees and expenses are reasonable considering the complexity of the work performed, the experience of the attorneys who performed the work, and rates charged by the attorneys who performed the work.

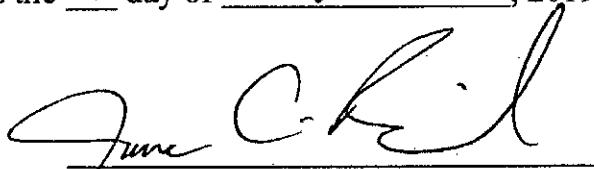
This Court notes that it previously awarded attorney's fees to Empire Parking in the amount of \$4,862.50 for time spent responding to Plaintiff's Motion to Strike Answer of Defendant Empire Parking and for filing Empire Parking's Motion for Summary Judgment and Motion for Sanctions. All of these fees were incurred after November 8, 2018 and, therefore, are included in the total of \$15,428.93 referenced above. Therefore, the total amount of attorney's fees and expenses awarded to Defendant Empire Parking in this motion, and against Plaintiff, is \$10,566.43, so as to prevent a double-recovery to Empire Parking.

Accordingly, this Court issues the following **Final Order and Judgment**:

Defendant Empire Parking Services, Inc.'s Motion for Attorney's Fees and Expenses Pursuant to O.C.G.A. §9-11-68 is **granted** in the amount of \$10,566.43.

In addition, the Court finds that Plaintiff's "Motion for New Trial" is not well founded and that motion is **denied**.

SO ORDERED, this the 29th day of October, 2019.



Hon. Jane Barwick
Superior Court of Fulton County

Prepared at Court's request by: s/Lawrence B. Domenico

Lawrence B. Domenico
State Bar of Georgia No. 003260
Attorney for Defendant Empire Parking Services, Inc.