

"APPENDIX A"

**SECOND DIVISION
MILLER, P. J.,
MARKLE and LAND, JJ.**

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>

August 1, 2024

**NOT TO BE OFFICIALLY
REPORTED**

In the Court of Appeals of Georgia

A24A0782. GUYTON v. GOLDEN DONUTS, LLC.

MILLER, Presiding Judge.

In this dispute arising from an automobile accident between Victor Guyton and an employee of Golden Donuts, LLC, Guyton seeks review of the trial court's order dismissing his negligence action for failure to timely serve Golden Donuts. On appeal, Guyton, who is proceeding pro se, raises numerous arguments that the trial court erred in making this ruling. We agree with Guyton that the trial court erred in dismissing his lawsuit against Golden Donuts with prejudice, and so we vacate that portion of the trial court's dismissal order and remand with instructions to dismiss the case without prejudice. We otherwise affirm the trial court's dismissal of the case.

"A trial court's ruling on a motion to dismiss a complaint for insufficient service of process will be upheld on appeal absent a showing of an abuse of discretion. Factual disputes regarding service are to be resolved by the trial court, and the court's findings will be upheld if there is any evidence to support them." (Citation omitted.) *Griffin v. Stewart*, 362 Ga. App. 669 (870 SE2d 3) (2022).

The record shows that on March 6, 2021, Guyton was driving his motorcycle at the intersection of Camp Creek Parkway and Old Fairburn Road in Fulton County when he was rear-ended by another vehicle. Guyton filed a civil complaint against Dunkin' Donuts Franchising, LLC, alleging that Dunkin' was the owner and operator of the vehicle. Guyton raised two claims of negligence, alleging that Dunkin' failed to upkeep and maintain the road and that Dunkin's insurance company did not properly handle his claim.

Dunkin' moved for summary judgment, arguing in part that Guyton had failed to produce any evidence that Dunkin' owned or operated the vehicle involved in the accident. In response, Guyton admitted that the vehicle was actually owned by Golden Donuts, and he moved to add Golden Donuts as a party. On April 21, 2023, following a hearing, the trial court granted Dunkin's motion for summary judgment and granted

Guyton's motion to add Golden Donuts as a party. The trial court gave Guyton until May 22, 2023, to serve Golden Donuts.

On June 6, 2023, Golden Donuts moved to dismiss the lawsuit because Guyton never served it and because the statute of limitations had expired. In response, Guyton submitted a sheriff's entry of service noting that Golden Donuts was served on June 30, 2023. The trial court granted the motion to dismiss and dismissed the complaint with prejudice, concluding that Guyton had failed to act with reasonable diligence to serve Golden Donuts after the two-year statute of limitations for personal injury claims expired. This appeal followed.

1. Guyton first argues that the trial court erred in granting Golden Donut's motion to dismiss. Guyton, however, does not meaningfully address the trial court's conclusion that he did not act diligently in serving Golden Donuts. Guyton summarily argues that the trial court erred by relying on hearsay from Golden Donuts' counsel, but he does not point to any specific statements that were allegedly improper and inadmissible hearsay. Guyton also briefly states that the late service was inadvertent and constituted excusable neglect, but he does not back up this statement with any details or facts from the record showing why the late service was excusable.

Accordingly, we are compelled to conclude that this argument is abandoned. See Court of Appeals Rule 25 (d) (1) ("Any enumeration of error that is not supported in the brief by citation of authority or argument may be deemed abandoned."). While we recognize that Guyton is proceeding pro se, "that status does not relieve him of the obligation to comply with the substantive and procedural requirements of the law, including the rules of this Court." (Citation and punctuation omitted.) *Higdon v. Higdon*, 321 Ga. App. 260 (739 SE2d 498) (2013). Further, to the extent that Guyton appears to argue that the trial court erred by dismissing his case for failure to state a claim, the trial court did not dismiss any part of his case on that basis.

Guyton, however, also argues that the trial court erred by dismissing his case against Golden Donuts with prejudice, rather than without prejudice, and we agree.

A dismissal for insufficiency of service of process is a finding by the trial court that service was not perfected in a reasonable and diligent manner within the prescribed statute of limitation and is not a ruling that the plaintiff's action is, in fact, barred by the running of the statute of limitation. On such a motion to dismiss, the trial court cannot determine on the merits that the plaintiff's action is barred by the running of the statute of limitation, because such issue is a factual issue and must eliminate the factual issue of tolling.

(Citation omitted.) *Griffin*, supra, 362 Ga. App. at 674 (2). Because the trial court dismissed the case against Golden Donuts on the grounds of insufficient service of process, it did not reach the merits of the case, and so any dismissal should have been without prejudice, rather than with prejudice. "Accordingly, we vacate this portion of the trial court's judgment and remand with direction that the case be dismissed without prejudice. In making this ruling, we, of course, express no opinion whatsoever on whether a refiling of the action would now be barred by the applicable statute of limitation." *Id.*

1. In a related enumeration of error,¹ Guyton argues that the trial court erred in dismissing his case because the statute of limitations should have been tolled based on the defendants' alleged fraud and criminal negligence. Guyton, however, did not argue before the trial court that the statute of limitations should have been tolled, and the trial court did not address any tolling issues in its dismissal order. "[T]his Court will not address arguments raised for the first time on appeal." *Hall v. Ross*, 273 Ga. App. 811, 814 n.12 (616 SE2d 145) (2005).

¹ We address Guyton's enumerations of error in a different order than presented in his brief.

1. Guyton's remaining arguments concern the merits of his case, particularly placing emphasis on the alleged actions of Dunkin's and Golden Donuts' insurance carriers and his motions to apportion fault and add a fraud claim against an insurance carrier. The trial court, however, never ruled on any of these issues or the merits of Guyton's underlying case against Golden Donuts. "Our review on appeal is limited to those grounds presented to and ruled on by the trial court. Consequently, [these arguments present] nothing for our review." *Fredericks v. Hall*, 275 Ga. App. 412, 414 (2) (620 SE2d 638) (2005); see *Williams v. United Community Bank*, 313 Ga. App. 706, 708 (722 SE2d 440) (2012) ("An error of law has as its basis a specific ruling made by the trial court. There having been no rulings by the trial court on the issues raised on appeal, there are no rulings to review for legal error.") (citation and punctuation omitted).

Accordingly, we vacate the portion of the trial court's judgment dismissing the case against Golden Donuts with prejudice and remand with direction that the case be dismissed without prejudice. We otherwise affirm the trial court's dismissal of this case.

Judgment affirmed in part and vacated in part, and case remanded. Markle and Land, JJ., concur.

“APPENDIX B”

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

VICTOR GUYTON, II,

PLAINTIFF,

v.

GOLDEN DONUTS, LLC AND JOHN
DOE/JANE DOE,

DEFENDANTS.

CIVIL ACTION FILE NO. 2022CV369793

HON. KIMBERLY M. ESMOND ADAMS

FINAL ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

This matter came before the Court on Defendant Golden Donuts LLC's Motion to Dismiss Plaintiff's Complaint for two counts of negligence. Upon consideration of the pleadings and applicable authority, the Court hereby GRANTS Defendant's Motion to Dismiss for the reasons that follow.

FACTUAL ALLEGATIONS

Plaintiff, Victor Guyton, II, filed this case on September 6, 2022, against Dunkin Donuts Franchising, LLC (Dunkin) based upon an automobile collision which occurred on March 6, 2021. On April 21, 2023, this Court granted Dunkin's Motion for Summary Judgment, ordered that Golden Donuts, LLC be substituted as the proper party, and that the plaintiff serve Golden Donuts, LLC no later than May 22, 2023. On June 6, 2023, the defendant filed a Motion to Dismiss claiming insufficient service of process pursuant to O.C.G.A. § 9-11-12(b)(2) and (5). On June 7, 2023 the Plaintiff filed a Motion to Extend the court-ordered deadline for service of process. Prior to this Court ruling on the Motion to Extend, Plaintiff submitted the Sheriff's Entry of Service on July 3, 2023, demonstrating that the defendant was served on June 30, 2023, which was over thirty

(30) days after the Court imposed deadline of May 22, 2023 to perfect service on the proper defendant.

STANDARD OF REVIEW

A motion to dismiss for failure to state a claim upon which relief may be granted should not be sustained "unless (1) the allegations of the complaint disclose with certainty that the claimant would not be entitled to relief under any state of provable facts asserted in support thereof, and (2) the movant establishes that the claimant could not possibly introduce evidence within the framework of the complaint sufficient to warrant a grant of relief sought." *Anderson v. Flake*, 267 Ga. 498, 501, 480 S.E.2d 10, 12-13 (1997); *Osprey Cove Real Estate, LLC v. Towerview Constr., LLC*, 334 Ga. App. 436, 808 S.E.2d 425 (2017). "In deciding a motion to dismiss, all pleadings are to be construed most favorably to the party who filed them, and all doubts regarding such pleadings must be resolved in the filing party's favor." *Stendahl v. Cobb County*, 284 Ga. 525, 525, 668 S.E.2d 723, 725 (2008). A complaint may be dismissed on a motion if it is clearly without any merit. *Rossville Fed. Sav. & Loan Ass'n v. Ins. Co. of N. Am.*, 121 Ga. App. 435, 438-439, 174 S.E.2d 204 (1970).

LEGAL ANALYSIS

I Failure to Timely Serve

Defendant argues that the complaint should be dismissed because Plaintiff failed to perfect service by the May 22, 2023 deadline. In civil cases, a trial court has broad discretion to control pretrial procedure, including "scheduling deadlines and other matters of case management." See O.C.G.A. § 9-11-16 (a) (5). *Lee v. Smith*, 307 Ga. 815, 821, 838 S.E.2d 870, 875 (2020). However, this discretion is not unlimited. *Id.* "No harsher sanctions should be imposed than are necessary to vindicate the court's authority." *Cortez v. Ga. Power Co.*, 361 Ga. App. 103, 104, 863 S.E.2d 376,

378 (2021). Only in extreme cases should the plaintiff's action be dismissed because this remedy is too drastic if less harsh sanctions are appropriate. *Lee*, 307 Ga. at 824. Dismissing a case based solely upon a failure to meet a deadline without considering other factors is improper. *Id.* at 822; see also *Cortes*, 361 Ga. App. at 105 (vacating dismissal order and remanding case with directions that the court re-evaluate its ruling after considering plaintiff's explanation for failure to meet deadline). Here, Plaintiff did not serve the Defendant by the court-ordered deadline on May 22, 2023, but dismissal on this basis alone is not appropriate.

II. Expiration of the Statute of Limitations

The defendant also contends that this Court should dismiss Plaintiff's complaint because the statute of limitation expired before Defendant was served. The alleged collision occurred on March 6, 2021. Plaintiff filed his Complaint on September 6, 2022 but did not serve the proper party until June 30, 2023. Pursuant to O.C.G.A. § 9-3-33, a personal injury suit must be filed and served within two (2) years of the date of the incident. Where service is made after the statute of limitation expires, "the timely filing of the complaint tolls the statute only if the plaintiff shows that he acted in a reasonable and diligent manner in attempting to ensure that a proper service was made as quickly as possible." *Lipscomb v. Davis*, 335 Ga. App. 880, 880, 783 S.E.2d 398 (2016) (citing *Slater v. Blount*, 200 Ga. App. 470, 472, 408 S.E.2d 433, 435 (1991)). However, when the statute of limitation has expired, and a defendant raises the issue of defective service, the plaintiff must act with the "greatest possible diligence" from that point forward in order to serve the defendant. *Id.* at 880.


Therefore, a plaintiff has the burden of showing the required diligence and that there are no unexplained lapses in the attempts to serve the defendant. *Id.* A plaintiff must provide specific dates or details to show diligence and cannot rely on conclusory statements. *Van Oman v. Lopresti*,

357 Ga. App. 9, 16, 849 S.E.2d 758, 764 (2020). Here, the plaintiff has not provided specific dates nor details to show that he diligently attempted service on the defendant from the date of the Court order to Defendant's filing of the Motion to Dismiss. Notably, it appears Plaintiff failed to act altogether until prompted by the filing of Defendant's Motion to Dismiss on June 6, 2023. Specifically, Plaintiff has failed to demonstrate that he exercised due diligence to serve the proper party prior to the statute of limitations. In Plaintiff's Motion for Extension, he contends that he misinterpreted the court order directing him to perfect service by May 22, 2023. However, this explanation is not sufficient as it does not give specific dates nor details showing that the plaintiff acted with any diligence to serve the defendant. Even if the Court had granted Plaintiff's Motion for Extension, service would have still been perfected outside of the statute of limitations and Plaintiff must show sufficient diligence to serve Defendant. Accordingly, dismissal is proper because Plaintiff failed to demonstrate that he exercised due diligence to serve the proper party prior to the expiration of the statute of limitations.

CONCLUSION

For the foregoing reasons, Defendants' Motion to Dismiss is hereby **GRANTED**. Plaintiff's Complaint is hereby **DISMISSED WITH PREJUDICE**.

SO ORDERED, this 31st day of October, 2023.


HONORABLE KIMBERLY M. ESMOND ADAMS
SUPERIOR COURT OF FULTON COUNTY
ATLANTA JUDICIAL CIRCUIT

Distribution List:

Filed and Served Electronically via eFileGA

Served via USPS Mail: Victor Ginyon, 15001 NW 12 Avenue, Miami, FL 33168

Ginyon v. Golden Donuts et. al.

Final Order Granting Defendant's Motion to Dismiss

Civil Action File No. 2022CV369793

Page 4 of 4

“APPENDIX C”

6/23/2000



SUPREME COURT OF GEORGIA
Case No. S25C0001

September 17, 2024

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

VICTOR GUYTON, II v. GOLDEN DONUTS, LLC.

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

All the Justices concur.

Court of Appeals Case No. A24A0782

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.

Theresa A. Barnes
. Clerk

"APPENDIX D"

the accident and was not the employer of the driver involved in the accident.³ In his response, Plaintiff did not dispute that Golden Donuts was the proper party.⁴ Moreover, at the hearing, Plaintiff admitted that Golden Donuts, not Dunkin, was the proper party.⁵ Plaintiff has also filed a Motion for Summary Judgment based upon the insurance policies.

"Summary judgment is warranted when the material facts, as shown by the pleadings and record evidence, are undisputed and these facts entitle the moving party to judgment as a matter of law." Higginbotham v. Knight, 312 Ga. App. 525 (2011); O.C.G.A. §9-11-56(c). In order to establish a negligence claim against Dunkin, Plaintiff must prove that Dunkin either owned the vehicle involved in the accident or employed the driver of the vehicle.⁶ Plaintiff never presented any evidence, admissible or otherwise, to support any cause of action for negligence against Dunkin.⁷ If there is no legal duty, there is no breach.⁸ There is no evidence, admissible or otherwise, that Dunkin owed Plaintiff any legal duty, breached that duty, or in any way caused his alleged damages. Furthermore, Plaintiff has admitted on the record that Golden Donuts not Dunkin was the proper party.⁹ Accordingly, the undisputed evidence shows that there is no genuine dispute regarding Dunkin's liability to Plaintiff and Dunkin's Motion for Summary Judgment is therefore GRANTED.

³ Defendant's Motion for Summary Judgment

⁴ Plaintiff's Response in Opposition.

⁵ Transcript

⁶ Brown v. All-Tech Investment Group, 265 Ga. App. 889, 893 (2003); City of Richmond Hill v. Maia, 301 Ga. 257, 258 (2017) (a plaintiff "must show four elements: a duty, a breach of that duty, causation and damages."); Royal v. Ferrellgas, Inc., 254 Ga. App. 696 (2002); Berry v. Hamilton, 246 Ga. App. 608, 609 (2000); Haynes v. McCambray, 203 Ga. App. 464, 465 (1992).

⁷ Complainant, Response in Opposition

⁸ Kraft General Foods, Inc. v. Maxwell, 219 Ga. App. 211 (1995).

⁹ Given that the Court finds that DD's Motion is due to be Granted, Plaintiff's Motion for Summary Judgment is moot because DD is not the proper defendant.

As both parties concede that Golden Donuts is the proper Defendant, it is further ORDERED that Golden Donuts, LLC shall be substituted as a party Defendant in this action and Plaintiff's claim shall proceed against Golden Donuts LLC only.

As all of Plaintiff's remaining motions are also directed at an improper party, it is further ORDERED that Plaintiff's Motion for Summary Judgment, Motion for Declaratory Judgment and Motion for Partial Judgment are DENIED as MOOT.


Wherefore, for the aforementioned reasons, the Court hereby GRANTS Defendant Dunkin Donuts Franchising, LLC's Motion for Summary Judgment, DENIES Plaintiff's Motion for Summary Judgment, DENIES Plaintiff's Motion for Declaratory Judgment, DENIES Plaintiff's Motion for Partial Judgment as MOOT, and GRANTS Plaintiff's Motion for Joinder.

It is further ORDERED that Plaintiff shall refrain from filing any additional motions until the proper party is served in this case and until the entry of a case management order in this matter. Plaintiff is hereby ORDERED to serve Defendant Golden Donuts, LLC no later than thirty (30) days from the date of this order or May 22, 2023.

It is further ORDERED that the CLERK OF COURT shall amend the case style as follows:

VICTOR GUYTON, II, v. GOLDEN DONUTS, LLC and JOHN DOE/JANE DOE

SO ORDERED, this 21st day of April, 2023.


KIMBERLY M. ESMOND ADAMS
SUPERIOR COURT OF FULTON COUNTY
ATLANTA JUDICIAL CIRCUIT

Distribution List:
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*Guyton v. Dunkin Donuts, LLC,
Omnibus Order*

"APPENDIX E"



**Office of Commissioner of
Insurance and Safety Fire**

Protect | Enforce | Educate | Inform

JOHN F. KING
*Commissioner of Insurance
and Safety Fire*

Two Mason Luther King Jr. Drive
West Tower, Suite 702
Atlanta, Georgia 30334

March 17, 2023

Mr. Victor Guyton
2618 Tyson Avenue
Tifton GA 31794

RE: Our Case Number: 555269724

Dear Mr. Guyton:

Thank you for contacting The Office of Commissioner of Insurance and Safety Fire. Our Office forwarded your complaint to Selective Insurance Company of South Carolina and enclosed is their response.

Selective Insurance Company of South Carolina provided our agency with a detailed timeline of your claims handling and maintain their position.

The company maintains the settlement offered is fair and reasonable. They also advised your retaining of legal counsel to assist in the adjudication of your claim.

We appreciate you allowing us the opportunity to review your inquiry.

Sincerely,

Frederick Bruton

Complaints Analyst
Consumer Services Division
Phone: 404-651-9947; Fax: 404-657-8542

/FB

SELECTIVE

BE UNIQUELY INSURED®

Edwin Cotton
Complex Claims Unit Manager

March 16, 2023

UPLOADED VIA DOI PORTAL

The Honorable John F. King
Office of Commissioner of Insurance and Safety Fire
Consumer Services Division
2 Martin Luther King, Jr. Drive
West Tower, Suite 716
Atlanta, GA 30334

RE: File No.: 22204429
Complainant: Victor Guyton
Policyholder: Golden Donuts, LLC dba Dunkin Donuts
Policy No.: S368592
Effective Date: 09/01/2020 to 09/01/2021
Date of Loss: 03/06/2021
NAIC No./Co.: 19259/Selective Insurance Company of South Carolina ("Selective")

Dear Commissioner King:

Thank you for inquiring about this complaint we received on February 22, 2023, from a third-party claimant, Victor Guyton, under a commercial auto policy issued to our Policyholder, Golden Donuts, LLC (dba Dunkin Donuts).

As detailed below, we thoroughly reviewed Mr. Guyton's claims and confirm our handling of this matter. We paid the actual cash value of Mr. Guyton's damaged property and have offered a reasonable settlement of Mr. Guyton's bodily injury claim based on the information provided to date. Mr. Guyton has chosen to initiate suit against our Policyholder.

Detailed below is a summary chronology of significant events in our handling of Mr. Guyton's claim:

- **March 6, 2021:**
 - Our Policyholder's employee was reportedly operating a covered auto in Fulton County when they rear-ended Mr. Guyton on his scooter.
 - An ambulance transported Mr. Guyton to Wellstar Atlanta Medical Center for treatment. Records we subsequently received on January 11, 2021, described abrasions, road-rash, soft tissue, and lower extremity pain. The hospital performed six C.T. scans and x-rays of Mr. Guyton, the results of which were all normal. These charges totaled \$63,995.
- **March 10, 2021:** Mr. Guyton was admitted to Grady Memorial Hospital's ICU for two days because of infections in his back, buttock, and left heel from the road rash. The charges submitted for this visit totaled \$15,466.

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- March 22, 2021:
 - We received notice of the loss, which was assigned to an adjuster for handling.
- March 24, 2021: We received notice that Mr. Guyton had retained an attorney to represent him in his bodily injury claim.
- April 8, 2021: We completed our appraisal process for Mr. Guyton's property damage claim, and a breakdown of the total loss offer of \$1,323.59 was sent via regular mail to Mr. Guyton. Mr. Guyton agreed to the settlement amount and forwarded his title to allow Selective to complete the salvage process.
- May 4, 2021: We received signed copies of the salvage documents, and Mr. Guyton was paid \$1,408.52, representing the total loss and loss of use values, for the damage to his scooter.
- May 5, 2021: We received notice that Mr. Guyton had retained new counsel to represent his interest in his bodily injury claim.
- December 6, 2021: Mr. Guyton's second attorney withdrew his representation.
- January 11, 2022: Mr. Guyton submitted his medical bills and records from Wellstar for his injuries as a result of the accident. These records include the six C.T. scans and X-rays taken of Mr. Guyton on the date of the accident. The results were all normal and showed medical bills totaling \$63,995.
- February 4, 2021: We completed our evaluation of Mr. Guyton's injuries, including a review of the "normal" results of the various C.T. scans and X-rays and incurred medical expenses of \$79,461, and based on this information, offered Mr. Guyton \$125,000 settlement for his bodily injury claim. This settlement offer was rejected.
- February 8, 2022: We countered with a \$130,000 offer.
- February 16, 2022: Mr. Guyton subsequently made a \$681,000 demand, which we countered with a \$140,000 offer.
- March 3, 2022: Mr. Guyton subsequently lowered his demand to \$600,000, and we countered with a \$147,000 settlement offer, which included costs for past and future medicals, lost wages, and pain and suffering. A breakdown of the offer was sent to Mr. Guyton. (copy attached)
- May 11, 2022:
 - We received notice that Mr. Guyton retained another attorney to represent him in his bodily injury claim.
 - We emailed Mr. Guyton copies of the primary commercial auto and umbrella policies declaration pages showing combined limits of \$5 million, \$1 million on the primary, and \$4 million on the umbrella.

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- May 23, 2022: We received notice that Mr. Guyton's third attorney had withdrawn his representation. While the \$147,000 counteroffer was still pending, we were advised that Mr. Guyton's personal representative, Lynn Pierre, would handle communications on his bodily injury claim. Ms. Pierre never contacted us, nor did she or Mr. Guyton at that time respond to our pending counteroffer.
- September 7, 2022: Mr. Guyton, as a pro se plaintiff, filed suit in the Superior Court of Fulton County in a case captioned *Victor G. Guyton II v. Dunkin' Donuts Franchising, LLC*. We retained counsel to represent our Policyholder's interests in the suit, and the matter proceeded in litigation.
- March 7, 2023: Mr. Guyton verbally accepted our \$147,000 counteroffer.
- March 10, 2023: Three days later, and without explanation, Mr. Guyton emailed us a new demand of \$4,999,999.
- March 13, 2023, to Present: We received this complaint and undertook a re-review of the handling of Mr. Guyton's claims. We conclude that our payment of Mr. Guyton's property damage claim is supported by the evaluation, a copy of which is included in this communication. Mr. Guyton received this breakdown of the loss and seemingly agreed, as he surrendered his title to us.

As for the bodily injury claim, Mr. Guyton has not produced any additional information or medicals to support his demands. Mr. Guyton verbally accepted our last offer of \$147,000, based on our evaluation of Mr. Guyton's injuries, including a review of the "normal" results of the various C.T. scans and X-rays and incurred medical expenses of \$79,461. Mr. Guyton believes that the liability limit of the Policyholder's policy is the amount he is lawfully owed. We have attempted to explain our valuation and educate Mr. Guyton on the process.

We will continue to pursue a reasonable resolution of this matter. Should you have any questions or require additional information, please get in touch with Latashia Gage, Claims Compliance Specialist, at (973) 250-6817 or DOI.Inquiry@selective.com.

Sincerely,

Edwin Cotton
Complex Claims Manager – Domiciled in South Carolina
Selective Insurance Company of America
P.O. Box 7264
London, KY 40742
Direct Dial: 704-972-1228
Cell: 704-621-3155
Email: Edwin.Cotton@selective.com

Encs. Total loss Valuation
Email communications

60 Waverly Ave., Springfield, NJ 07080
973 948-3000
www.selective.com

"APPENDIX F"

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

VICTOR GUYTON II,

PLAINTIFF,

v.

DUNKIN' DONUTS FRANCHISING,
LLC.

DEFENDANT.

CIVIL ACTION FILE NO. 2022CV369793

HON. KIMBERLY M. ESMOND ADAMS

**ORDER DENYING IN PART AND GRANTING IN PART
PLAINTIFF'S MOTION TO ADD PARTY**

This matter came before the Court on Plaintiff's Motion to Add Party. Upon consideration of the pleadings and applicable authority, the Court hereby **DENIES** Plaintiff's motion. Plaintiff seeks to join additional parties pursuant to O.C.G.A. § 9-11-20. Plaintiff seeks to add an individual defendant. Plaintiff avers that "he is personally liable to the [p]laintiff" and "Plaintiff now wishes to join him, individually as a Defendant." The Court is unable to ascertain the identity of "individual defendant" Plaintiff seeks to add as a party or the nature of the alleged involved. Accordingly, Plaintiff's Motion as to the "individual defendant" is **DENIED**. To the extent Plaintiff wishes to add the Dunkin Donuts driver vaguely referenced in Plaintiff's Motion, Plaintiff's motion is **GRANTED** and he may add a John Doe/Jane Doe Defendant until the identity of the driver is discovered. Absent allegations and argument in Plaintiff's motion which would reveal the identity of the individual Plaintiff seeks to add, the Court is unable to evaluate the individual's interest in the case.

The case style shall be amended to include a John/Jane Doe Defendant as follows:

Guyton v. Dunkin' Donuts Franchising, LLC.

Order Denying in Part and Granting in Part Plaintiff's Motion to Add Party

Civil Action File No. 2022CV369793

Page 1 of 2

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

VICTOR GUYTON II,

PLAINTIFF,

v.


DUNKIN' DONUTS FRANCHISING,
LLC., and JOHN DOE/JANE DOE,

DEFENDANTS.

CIVIL ACTION FILE NO. 2022CV369793

HON. KIMBERLY M. ESMOND ADAMS

SO ORDERED, this 29th day of December, 2022.


HONORABLE KIMBERLY M. ESMOND ADAMS
SUPERIOR COURT OF FULTON COUNTY
ATLANTA JUDICIAL CIRCUIT

Distribution List:

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“APPENDIX G”



**Office of Commissioner of
Insurance and Safety Fire**
Protect | Enforce | Educate | Inform

JOHN F. KING
*Commissioner of Insurance
and Safety Fire*

Two Martin Luther King Jr. Drive
West Tower, Suite 702
Atlanta, Georgia 30334

September 6, 2023

Via Certified Mail
Return Receipt Requested

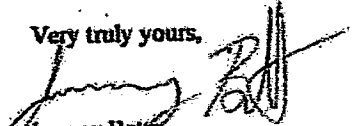
Selective Insurance Company of South Carolina
C/O CSC of Stephens County, Inc.
597 Big A Rd.
Toccoa, GA 30577

RE: Victor G'Guyton II v. Dunkin' Donuts Franchising LLC
Civil Action No. 2022CV369793

Dear Mr. Mulligan:

The Department is in receipt of a Summons, Complaint, and other related pleadings in the above-styled matter, received in this office on or about September 1, 2023. These pleadings were served on the Georgia Insurance Commissioner pursuant to O.C.G.A. § 33-4-3. The Department is forwarding these documents to your attention. Should you have any questions, please contact me at 404.651.6501.

Very truly yours,


Jeremy Bell
Legal Division
Georgia Department of Insurance

Enc.

Date: 9/7/2022 2:43 PM
Cathelene Robinson, Clerk

IN THE SUPERIOR COURT OF FULTON COUNTY, GEORGIA
136 PRYOR STREET, ROOM C-103, ATLANTA, GEORGIA 30303
SUMMONS

VICTOR G GUYTON II

100-2022 CV 369793

Plaintiff,

13. DUNKIN' DONUTS

FRANCHISING LLC
Defendant

TO THE ABOVE NAMED DEFENDANT(S):

You are hereby summoned and required to file electronically with the Clerk of said Court at hans.schiffert@clerk.uscourts.gov (unless you are exempt from filing electronically) and serve upon plaintiff's attorney, whose name and address is: VICTOR G. GUTTON II

15001 NW 12 AVE
MIAMI, FL 33148

An answer to the complaint which is herewith served upon you, within 30 days after service of this summons upon you, exclusive of the day of service; unless proof of service of this complaint is not filed within five (5) business days of such service. Then time to answer shall not commence until such proof of service has been filed. **IF YOU FAIL TO DO SO, JUDGMENT BY DEFAULT WILL BE TAKEN AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT.**

This 9/6/2022 day of 20

Honorable Catherine "Lisa" Robinson
Clerk of the Court
By *[Signature]*
Deputy Clerk

To defendant upon whom this petition is served:
This copy of complaint and summons was served upon you

Deputy Sheriff:

Instructions: Always add an address for a different portion if needed, under existing one this sheet if address is used

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

VICTOR GUYTON
II,

Plaintiff,

v.

DUNKIN'DONUTS
FRANCHISING
LLC

Defendant,

CIVIL ACTION
FILE NO.
2022CV369793

COMPLAINT FOR DAMAGES

COMES NOW, VICTOR GUYTON II, Plaintiff hereby files Complaint for Damages against
DUNKIN'DONUTS FRANCHISING LLC. Complaint pursuant to O.C.G.A. 33-34-1

JURISDICTION AND VENUE

1.

Plaintiff is the victim of multiple severe injuries and has suffered significant damages due to the
Defendant DUNKIN'DONUTS FRANCHISING LLC. Defendant DUNKIN'DONUTS
FRANCHISING LLC mailing address 130 Royall Street, Canton, MA, 02021. The Defendant
registered agent for service of process is Corporation Service, 2 Sun Court, Suite 400, Peachtree
Corners, GA 30092 USA.

2.

1



Defendant is subject to the jurisdiction of this Court as the driver of the motor carrier operated the commercial vehicle in Georgia pursuant to O.C.G.A. 40-1-112.

3.

Defendant was transacting business in the State of Georgia and in Fulton County on the date of the accident and is subject to the venue of this court pursuant to O.C.G.A. 33-4-1. This court has personal jurisdiction over Defendant in pursuant to O.C.G.A. 40-1-117.

STATEMENT OF FACTS

4.

On March 6, 2021, approximately 03:33 am, the Plaintiff was driving a motorcycle on Camp Creek Pkwy going southbound and reached the intersection on Old Fairburn Rd SW in Fulton County, Georgia. Latitude (y) 21862.3625 Longitude (x) 13312.4763.

5.

At the same time, the Defendant was operating on the same road. As Plaintiff was traveling, he unexpectedly without time to avoid. Without warning was rear ended by Defendant O.C.G.A 40-6-49. Without sufficient time to react or avoid the collision.

6.

Plaintiff was ejected from vehicle. Plaintiff was unable to stop or otherwise maneuver his motorcycle to avoid negligence. Subsequently, Plaintiff lost control of his motorcycle and forced the motorcycle to slide from beneath him.

7.

On March 6, 2021, and prior to Defendant was responsible for the upkeep and maintenance of the roadway and breached that duty.

8.

2



At the time of the incident Defendant has actual and/or constructive notice of Plaintiff. Being there were two individuals inside the insured vehicle and therefore it was negligent. As a result of the incident, Plaintiff has incurred medical bills in excess of \$100,000.00 as well as future medical expenses and lost wages. As a result, Plaintiff is in pain and suffering from severe bodily injuries. Causing grave illnesses.

COUNT I-NEGLIGENCE

9

Plaintiff hereby re-alleges and incorporates paragraphs one (1) through nine (9) as if fully set forth herein

10.

Defendant insurance administered a check for \$1408.52 for property damage per accident. O.C.G.A 33-7-11. (A) Not less than \$25,000 because of bodily injury to or death of one person in any one accident, and subject to such limit for one person, \$50,000.00 because of bodily injury to or death of two or more persons in any one accident, and \$25,000.00 because of injury to or destruction of property.

11.

As a direct and proximate result of negligence of Defendants failure to repair.

COUNT II-NEGLIGENCE

12.

Plaintiff hereby re-alleges and incorporates (1) through (11) as if fully set forth

13.



Defendant is liable for the negligent actions pursuant to implement the insurance laws of this State with respect to the Georgia Motor Vehicle Accident Reparations Act O.C.G.A. 33-34-1 developing minimum standards and forms for the handling of motor vehicle liability insurance claims; Defendant was negligent in the following ways.

14.

According to rule 12-2-28-.07. No insurer shall issue a policy providing coverage for liability arising from the operation or use of motorcycle on public streets or highways unless the policy provides liability coverage on account of accidents of not less than \$15,000 because of bodily injury or death of one person in any one accident and subject to such limit for one person, to a limit of not less in any one accident; and \$30,000 because of bodily injury or death of two (2) or more persons in any one accident; and \$10,000 because of injury or destruction of property of others in any one accidents, including its loss of use.

15.

The Defendant was negligent in the requirement for making of a claim has not been made satisfied.

COMPLAINT FOR DAMAGES

16.

Plaintiff hereby re-alleges and incorporates (1) through (15) as if fully set forth herein.

17.

This complaint asserts claims against Defendant. Under Georgia law, O.C.G.A. 33-34-2

Defendant insured motor vehicle caused severe bodily injuries.

18.



Defendant neglected responsibility regarding the insured's liability for the accident. Expenses have been incurred from the accident. Plaintiff rear ended by a commercial motor vehicle. Designed primarily for operation upon the public streets, roads and highways and driven by muscular power.

19.

Defendant motor vehicle liability insurance in the state.

20.

O.C.G.A. 33-33-1 Plaintiff incurred severe bodily injury and property damage liability coverage.

Plaintiff incurred and has reoccurring medical payments uncovered.

21.

O.C.G.A. 40-9-1 Minimum damages for liability because severe bodily injuries have been negligent. Minimums because of injury to or destruction of property have been negligent.

22.

O.C.G.A. 33-7-11 Defendant has been negligent for severe bodily injury liability.

23.

Defendant deposit of cash lieu of property damage liability does not meet Georgia requirements.

Direct negligence by the insurer paying a claim against Plaintiff. Damages for severe bodily injuries have not been made available.

24.

O.C.G.A. 33-34-3.1(b) Defendant provides coverage referenced in a way that is ambiguous, misleading. Medical payment limits in addition to has not been made available. Plaintiff is suffering from severe bodily injuries caused by a commercial motor vehicle. This complaint asserts claims against Defendant under Georgia law.



BREACH OF DUTY

25.

Plaintiff hereby re-alleges and incorporates paragraph (1) through twenty-four (24) as if fully set forth herein.

26.

O.C.G.A. 33-7-11(a)(1)(A) Rules of the road dictate that drivers owe one another a duty to keep a safe distance.

27.

Breach the duty owes to the Plaintiff. In failing to exercise reasonable care in fulfilling duty.
Causing severe bodily injuries to Plaintiff.

28.

For the Defendant negligent acts, the Plaintiff would not have been injured. The responsibility lies only for those harms.

PRAYER FOR RELIEF

Defendants' actions were in bad faith, stubbornly litigious.

WHEREFORE, Plaintiff prays for judgement and relief as follows:

1. Past, present and future pain and suffering; past, present, and future medical expenses; loss of earnings, earning capacity; loss of enjoyment of life and loss consortium.
2. For punitive or exemplary damages



3. For all applicable damages of the state whose laws will govern this action

4. For any such other relief as the Court may deem just and proper.

Respectfully Submitted by:

UNGZ

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