NO. 25-249

In the Supreme Court of the United States

CHRISTY POON-ATKINS, P.E. and CALVIN ATKINS,

Petitioner,

v.

RIVERSPRINGS HOMEOWNERS' ASS'N, INC., and GEOSAM CAPITAL US GEORGIA,

Respondent.

ON PETITION for a WRIT OF CERTIORARI To the United States Court of Appeals for the Eleventh Circuit

PETITION FOR REHEARING

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FEBRUARY 2, 2026

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QUESTIONS PRESENTED

1. Are the Appellees[']-Defendants['] inverse condemnation actions without eminent domain proceedings but for "*private benefit*" consistent with any proper United States property acquisition procedure?

2. Does local government noncompliant public administration under O.C.G.A. § 36-66-2 supersede the United States Constitution to take property interest for "*private benefit*?"

3. Should the trial court decide on Constitutionally protected property interests and due process?

4. Does the trial court order properly overlook the United States Supreme Court jurisdiction?

5. Is it proper to consider the Appellees-Defs., Geosam et al., and the United States or it's Departments or Agencies as the same entity?

6. Is Fed. R. Civ. P 71.1 for condemning real or personal (Indigenous) property appropriate for private benefit matters?

7. Should the PET'RS[']-APPELLANTS[']-PLS.['] Complaint for property deprivation conversion without due process be overlooked?

PARTIES TO THE PROCEEDINGS

Petitioner

- Christy Poon-Atkins, P.E.
- Calvin Atkins

Respondents

- Geosam Capital US Georgia; and
- Riversprings at Alcovy Homeowners Assoc. Inc.

LIST OF PROCEEDINGS

Supreme Court of the United States

No. 25-249
Christy Poon-Atkins, et. vir., Plaintiff-Petitioner, v.
River Springs at Alcovy Homeowners Ass'n, Inc., et al - Defendants-Respondents,
Defendants-Appellees.

Date of Order: November 10, 2025

United States Court of Appeals – Eleventh (11th) Circuit

No. 24-13607 [1:24-cv-02207-JPB]
Christy Poon-Atkins, et. al., Plaintiff-Appellant, v.
River Springs at Alcovy Homeowners Ass'n, Inc., et al - Defendants-Appellees,
Defendants-Appellees.

Date of Order: April 21, 2025 [Opinion: Mar. 14, 2025]

United States District Court Southern District of Georgia Atlanta Division

Civil Action No. 1:24-CV-02207-JPB (formerly 22-C-03435-S4 & 22-A-09497-10 & A23A1135)

Ancillary Civil Action Nos. 1:24-CV-02208-JPB & 1:24-CV-02209-JPB
Christy Poon-Atkins, et. al., *Plaintiff,* v.
Geosam Capital U.S., et. al., *Defendants-Consol Plaintiffs.*

Date of Order: October 23, 2024

Supreme Court of Georgia

Civil Action No. S24C0337

Secondary Civil Action No. S23A0689

Christy Poon-Atkins, et. al., *Plaintiff-Appellant,* v.
Geosam Capital U.S., *Defendants-Appellees.*

Date of Final Opinion: March 19, 2024

State Court of Gwinnett County, Georgia

Civil Action No. 24-C-00060-S7 / [1:24-cv-02209-JPB]

Riversprings at Alcovy Homeowners Ass'n Inc.,

Plaintiff, v.
Atkins, et. al., *Defendants*

Date of Action: January 4, 2024

Court of Appeals of Georgia

Civil Action No. A23A1135

Christy Poon-Atkins, et. al., *Plaintiff-Appellant,* v.
Geosam Capital U.S., et. al., *Defendants-Appellees*

Date of Final Opinion: October 17, 2023

Superior Court of Gwinnett County, Georgia

Civil Action No. 22-A-09497-10 / [1:24-cv-02207-JPB]

Christy Poon-Atkins, et. al., *Plaintiff,* v.
Riversprings Homeowners Ass'n, Inc, et. al.,
Defendants

Date of Order: January 26, 2023

Superior Court of Gwinnett County, Georgia

Civil Action No. 22-A-08764-10 / [1:24-cv-02208-JPB]

Geosam Capital U.S., *Plaintiff,* v.
Christy Poon-Atkins, et. al., *Defendants*

Date of Order: January 20, 2023

State Court of Gwinnett County, Georgia

Civil Action No. 22-C-03435-S4

Christy Poon-Atkins, et. al., *Plaintiff,* v.
Geosam Captial U.S., et. al., *Defendants*

Date of Order: November 1, 2022

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PETITION FOR REHEARING

Pursuant to Supreme Court Rule 44, the petitioner(s), hereby respectfully petitions for re-hearing of this case before the full nine-Member Court.

1. The heart of the issue before the court, in this case, exists in an essential common interest for peaceful coexistence in the best interest for all. Here, the wholeness of unbiased respect for Constitutionally Protected Interests is of essence.

International law not only confers on authorities but also reinforces the power and legitimacy of government while also barring boundary infringements, as proper. Here in also lies the unique circumstance that such international association applies for the Indigenous of America. Furthermore, in the essence of achieving welfare goals for populations, to no extent are there any instant of where Indigenous Black Americans excluded. Furthermore, with the fundamental intent of ensuring equal protection of all laws with complete avoidance of deprivation of life, liberty, and property without due process of law, the Petitioners must also be considered to the fullest extent of equal protections required by 42 U.S.C. Chap. 21 Sec. 1981. Furthermore, the Constitutional questions presented in this case pertain to case law that condones inverse condemnation actions without eminent domain proceedings but for "*private benefit.*" Here again this creation of noncompliant case law is an

example of weaponized law that causes acts of aggression and other breaches to peaceful coexistence. Furthermore, such a disruptive law creates a significant problem that begets repeated infractions with unconstitutional reliance with noncompliant administration embedded in operations. In the consideration of precedential value, an institutional misuse of authority associated with protected interests would elevate the gravity and the importance to the public for ensuring consistency for public administration under the doctrine of supremacy. The questions presented meet consideration of express preemption where post-judgment could reflect inconsistency with the United States Constitution and other positive legal authorities. Referencing the Supreme Court Rule 10, the Supreme Court "ha[s] jurisdiction to review any decision of the court of appeals by certiorari so long as the case presents an issue of great concern, gravity, and importance to the public. In this case, one entity is facilitated in taking the property interests of another without due process, as private interest inverse condemnation. This demonstrates departing from compliant judicial procedure and jurisdictional decision-making inconsistency for important federal question(s)." *Id.* There is no rule of law that substantiates depriving any person of life, liberty, or property without due process of law nor none that substantiates denying equal justice. To the extent of condoning free-range property taking on the basis of desire and private interests, there also lies an operational embedment of oppressive

infringement of rights inconsistent with the *Charter of the United Nations*, Chapter 1, Article 1. The *Charter* is intricately fundamental in the best interest of all and foundationally aligned, where sovereign acts rely on demonstrating the best interest through operations. Here, the Constitutional questions, in this case, involve infringement on the Constitutionally protected interests and rights of Black Indigenous descendants and show severe conflicts with the best interests.

In the instance that access to justice cannot be demonstrated within any of the structured lowest levels of judiciary review, the International Court of Justice, The Hague is reasonably sought.

2. Here granting a writ of certiorari would reflect public importance for Constitutionally protected interests in consideration of whether inverse condemnation is consistent with Federal laws. The Respondents argued privilege through local processes to deny the Petitioners[’] full uninfringed enjoyment of property rights for the Respondents[’] private development without new consideration for the Petitioners[’] owned property rights. The record shows judgment under arbitrary rule of privilege instead of substantiated rule of law that meets standards of International Law and Peace.

Additionally, the questions presented further show abuse of process to abridge the Petitioners[’] rights through discretion inconsistent with positive legal authorities, as reviewable for abuse of discretion. In ***Pierce v.***

Underwood, 487 U.S. 552 (1988), the Court of Appeals confirmed an abuse-of-discretion standard applied due to established reimbursement rates above the statutory minimum failing to meet "special factor" standards. Here, through the trial court decision, the Respondents are enabled to disregard Constitutional property interests with overlooking the Respondents[']' bad faith in undermining due process requirements. Such privilege granted by the United States Judiciary not only provides access to suppressing the Petitioners[']' rights to THEIR property interest but also infringes on the Petitioners[']' enjoyment of life and liberty.

3. Furthermore, the standard of review relates to a question of consistency with federal procedure directly related to foundational federal law, as reviewable de novo, *see* ***Harman v. Apfel***, 211 F.3d 1172, 1174 (9th Cir. 2000). In ***United States v. United States Gypsum Co.***, 333 U.S. 364 (1948), the complaint involved violations of the Sherman Act §1 and §2, where the defendants conspired to control and dominate gypsum product trading. The Sherman Act violation was born through the defendants orchestrating both patent licensing agreements, while simultaneously granting patent licenses. The co-defendant accepted licenses knowing the defendants[']' monopolizing actions would eliminate competition with price fixing, eliminating unpatented board production, regulating patented board distribution, and stabilizing the price of unpatented plaster. The United States appeal for the dismissed complaint

was heard by a three-judge court under the Expediting Act and reversed ***United States v. United States Gypsum Co.***, 67 F. Supp. 397 (D.D.C. 1946).

4. *In re Motion of Atlanta Journal-Constitution, 269 Ga. 589, 502 S.E.2d 720, 721 (1998)*, here, in the current case, the issues relate to denying the Petitioners, Indigenous descendants, THEIR inherent rights, as in the Fourteenth Amendment due process of law and equal protection of the law. Another relevant point from the case is that the Court found relevance in examining its own jurisdiction, as in (***Collins v. ATT***, 265 Ga. 37 (456 S.E.2d50) (1995)), confirming jurisdiction.

Here, as in ***Collins v. ATT***, 265 Ga. 37 (456 S.E.2d50) (1995), the due diligence of any court is recognized in examining jurisdiction as cognizant responsibility under judiciary purview. However, in this case, such an examination is questionable in addition to the inquisitive nature of how law equality and equity were applied for the Petitioners. To this point, the *Charter of the United Nations*, Chapter 1, Article 1 cites attention to the importance of avoiding a breach of peace.

Furthermore, under United Nations declaration on 1 January 1942, the highest standards of efficiency, competence, and integrity of staff responsible for decision-making are noted as paramount. Additionally, here also noting emphasis on the importance of recruiting staff on as wide a geographical basis in the *Charter of the United Nations*, Chapter 1, Article 101(3).

Similarly in this case, the Petitioners repeatedly prayed for relief from the Georgia Superior Court judgment or order, pursuant to Fed. R. Civ. P. 60 Here, the basis of relief for the Petitioners is due to (1) a lack of subject-matter jurisdiction, (2) improper venue, and (3) insufficient process, as also grounded with Constitutional standing.

In ***Tobi Goldoftas, Abuse of Process***, 13 Clev.-Mar. L. Rev. 163 (1964), "abuse of process" means perversion of process to accomplish some illegal purpose for which the process was not legally intended, such as a property transaction that circumvents due process. Here, the Respondents continue to fail to substantiate inverse condemnation without due process.

When it comes to a decision on property related entitlement, in ***Goldberg v. Kelly***, 397 U.S. 254 (1970), the Supreme Court of the United States' position confirmed a person's right to protected property interest in a benefit if he or she has a "legitimate expectation of receiving that benefit." Here, the subject Superior Court Order violates U.S. Supreme Court ***Goldberg*** case law, the U.S. Constitution, the Laws of NATURE, and Georgia Laws.

I. ARGUMENT IN SUPPORT FOR PETITIONERS[']STANDING:

The Petitioners have (1) suffered "injuries in fact" through unlawful aggressions towards THEIR property interests, (2) the Petitioners['] injuries are within the zone of Constitutionally

protected interests, and (3) it has been repeatedly shown that it is likely that a favorable decision would redress the Petitioners[']s injuries.

A. The essential elements of eminent domain include (1) the inherent power of a governmental entity to take privately owned property, esp. land, and (2) conversion of the land taken to a "*public use.*" Furthermore, 28 U.S.C. § 1403 states eminent domain as the proceedings to condemn real estate for the use of the United States or its departments or agencies, as such proceedings that must be brought in the district court of the district where the land is located.

B. Referencing the Respondents[']s Oct. 6, 2022, motion, the Respondents state "Georgia law as being clear on condemning property" (see Superior Ct. ROA, V2-213) yet have never presented such Georgia law.

C. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority. Here, the significant question about the legality of inverse condemnation for private benefit through depriving the Petitioners of due process was not addressed in the District Court's October 23, 2024, Order and not in the trial court January 26, 2023, Order. Furthermore, pursuant to 28 U.S.C. §1331. Federal question, the district court shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

D. Pursuant to U.S. Constitution Article III, Section 2, the U.S. Constitution Article III, Section 2 clarifies the subject issue as federal jurisdiction or higher. Furthermore, as stated the U.S. Constitution Amendment XIV, nor shall any State deprive any person of life, liberty, or property, without due process of law. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or shall be made, under their Authority. For any action, judge made law / case law, noncompliant implementation is in direct conflict with the fundamental intent of foundational Laws and conflicts with Human Rights of Black Indigenous persons, with international noncompliance.

E. Referencing 5 U.S.C. § 4501, the definitions for Government Organization and Employees include public service / public interests entities only.

F. The Respondents[’] actions fail to meet the merits of eminent domain, as Fed. R. Civ. P 71.1 governs proceedings to condemn real and personal property for “public use.”

Pursuant to Article I, Section I, Paragraphs I & II of the Const. of the State of Georgia, no person shall be deprived of life, liberty, and property without due process of law.

The Petitioners further clarify such relevance to all cited legal authorities by and through O.C.G.A. § 36-66-2 “due process,” where “The Zoning Procedures Law,” cited under O.C.G.A. § 36-66-1 does not, in any way, exclude

the Petitioners from due process protections, reaffirming the U.S. Constitution Amendment XIV.

State of Georgia zoning due process requirements. "The Zoning Procedures Law," cited under O.C.G.A. § 36-66-1 does not in any way exclude the Petitioners from due process protections. Whereas the grant of a permit relating to special use of property is absolutely not without the responsibility of due process. Here, a failure to address Constitutional issues on part of trial court resonates, as in ***Southern States-Bartow County, Inc. v. Riverwood Farm Prop. Owners Ass'n, Inc.***, 331 Ga. App. 878, 769 S.E.2d 823 (2015), the Georgia Court of Appeals held that the trial court erred because "a genuine issue of material fact [existed] as to whether Southern States' 2004 application constituted a new permit such that any vested rights resulting from the 1989 application were waived." Yet the same consideration is not in this case.

A key factor, here, must be the recognition of vested interests related to property matters. In ***S. States-Bartow Cnty, Inc. v. Riverwood Farm Prop. Owners Ass'n***, Inc., due process was also at issue and the trial court judgment was reversed. Here, the Petitioners raised Constitutional concerns throughout all cases and further highlighted a related United States Supreme Court decision in ***Goldberg v. Kelly***, 397 U.S. 254 (1970).

CONCLUSION

It is the unique capacities upon which the full extent of the population relies on the highest consideration of all legal doctrines. Additionally, to deliver to the people the best interpretations through which social norms are formulated in the best interest of the people with trust in due process provisions and equal protection

The Respondents and Respondents[']' attorneys have been the impetus of a significant number of days, throughout the past seven (7) years, that severely and negatively infringed on the Petitioners[']' enjoyment of life, liberty, and property with THEIR family. The impact is so great that, no matter the number by which the list of interested persons increases, there are no defenses nor justification for the Respondents and Respondents[']' noncompliant actions and unethical participation to deprive the Petitioners of THEIR inherent rights by and through the sovereign Laws of Nature, to which the Petitioners yield. For common law of unlawful intent demands proper jurisdictional intervention.

The Petitioners[']' Complaint shows the Respondents[']' duty of care, as documented in the Declaration of Protective Covenants, Conditions, Restrictions, and Easements for River Springs ("covenants"), as violated. The Respondents[']' site development plan sheet marked the subject Constitutionally protected property encroachment with an "X" line type, shown in Compl. exhibits. The plan sheet marking show

clear deviation from maintaining the existing property lines as provided for other homeowners.

Furthermore, the Petitioners[’] more than fifteen-year investment in THEIR real property located at 1866 Alcovy Trails Drive, Dacula, GA 30019 has been harmed by the Respondents[’] intentional actions with complete disregard to the Petitioners[’] disagreement. The Defs. confirmed their willful intent to unconstitutionally take property with inverse condemnation for private use without due process of law. There has not been any dispute to the fact of the Respondents using inverse condemnation for private use, which is also an indisputable violation of the United States Constitution and U.S. Code, as well as unprotected willful participatory noncompliant procedures.

Petitioners pray that the court grants $500,000 for damages due to the harm to the Petitioners’ and THEIR property. The Petitioners further request that the court grant punitive damages per O.C.G.A. § 51-12-5.1(b) due to the Respondents[’] frivolous, untruthful, and unjustified noncompliant interference of Justice.

The Petitioners further request that the court grant punitive damages per O.C.G.A. § 51-12-5.1(b) and sanctions for Respondents and Respondents[’] attorneys retaliating with frivolous actions and pleadings.

The Respondents and Respondents[’] leave Petitioners with no choice but to pursue universal options for remedy due to ill-advised

pursuits with systemic waste and abuse that only substantially show major breaches to foundational requirements and agreements. In the most basic form of comprehending U.S. contract formation, at any level, the Respondents HAVE NOT and absolutely CANNOT produce any valid contractual agreement with the Petitioners nor any such documentation from the Petitioners['] ancestors, in THEIR ancestors original civilization language, for taking the subject Petitioners['] Constitutionally protected property interests. *Error qui non resistitur approbator,* where *"an error that is not resisted is approved,"* which renders any perceived agreement(s) concerning Constitutionally protected interests as INVALID and VOID. Here, *contractus legem ex conventione accipiunt*, where *contracts receive legal validity from the agreement of the parties.*

The inevitable VOID for any perceived agreement is due to any failed performance and willful reluctance to correct noncompliance against productive competent BLACK INDIGENOUS descendants. As seen with the Intestate Succession Act of 1987, in THEIR own capacity as competent executors and beneficiaries of THEIR properties, under the United States Constitution as intended in alignment with the Laws of Nature. Here, as *Natura appetit perfectum, ita et lex,* as *curia novit jura. Nature aspires to perfection and so does the law, as the court knows the law.* Any law written or rewritten based on manipulation to evade or avoid Commands of NATURE is absent of conformance and void, avoiding law as an

instrument for harm.

The Petitioners further reiterate the fact that the record shows the original statement for the contract requirements that the Respondent-Geosam MUST avoid encroachment on adjacent properties is in the Respondents[']motion and in the trial court order, as stated here. (*See* trial ct.order at I, pg.4 of 11, App. 34a)

> *An undisturbed 50-foot buffer shall remain around the subject property on all sides (including Ewing Chapel Road frontage) and shall be marked with orange tree save fence prior to any grading.*

Here, the original language simply shows a line through the statement. Once again, the Petitioners did NOT agree for the Respondents to cause the Petitioners[']property detrimental harm. Furthermore, the record shows that the courts must construe a 'motion to dismiss' with the exhibits attached to and referenced in the Complaint. (*See* trial ct.order at II, pg.6 of 11)

> As recognized above,[6] the pleadings to be construed on a motion to dismiss include any exhibits attached to and incorporated into the Complaint and Geosam's Answer. O.C.G.A. § 9-11-10(c)...

However, the trial court order does not show reference to the Complaint exhibits.

The Petitioners did not enter contract for THEIR property and property interests with the expectations that THEY would have to fight to preserve THEIR rights to enjoy THEIR property

and become trapped in unjust erred legal procedures. *Error juis nocet, an error of law injures.* The Defs.[’] actions and pleadings are seriously and significantly flawed and must not continue. Furthermore, the trial court order fails in the fact that the order allows state law to supersede Supreme Law, which again overlooks jurisdiction, and overlooks the Petitioners[’] prayer for relief and punitive damages. (*See* trial ct.order at II. A., pg.6 of 11, App. 34a) and (II. B., pg.8 of 11)

> Geosam first contends that the Complaint should be dismissed with prejudice under O.C.G.A. § 9-11-12(b)(l) **because this Court lacks subject matter jurisdiction** to hear these claims. The Court agrees.

Here, the trial court order shows abuse of authority.

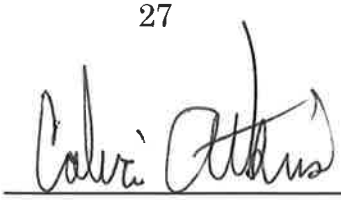
The Petitioners respectfully pray a resolution with fair remedy in well overdue JUSTICE by the court, as always known to be a quality closely associated with GOD.

For the foregoing reasons, the petition for rehearing should be granted.

This, the 2ND day of February 2026.

Respectfully submitted,

CHRISTY POON-ATKINS, P.E.
PETITIONER PRO SE, ET. AL.
PROFESSIONAL ENGINEER (P.E.)
NO. PE031751



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FEBRUARY 2, 2026

CERTIFICATE OF COUNSEL – PRO SE

I hereby certify that this petition for rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in Supreme Court Rule 44(2).

This, the 2ND day of February 2026.

Respectfully submitted,

CHRISTY POON-ATKINS, P.E.
PETITIONER PRO SE, ET. VIR.
PROFESSIONAL ENGINEER (P.E.)
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FEBRUARY 2, 2026

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OPINION OF THE UNITED STATES COURT
OF APPEALS FOR THE ELEVENTH CIRCUIT
(MARCH 14, 2025)

No. 24-13607
Non-Argument Calendar
DO NOT PUBLISH

CHRISTY POON-ATKINS,
P.E., CALVIN ATKINS
Plaintiffs-Consol Defendants
Consol
Counter Claimants-Appellants
GEOSAM CAPITAL US
(GEORGIA) LLC,
versus
Consol
Plaintiff,

RIVERSPRINGS AT
ALCOVY HOMEOWNERS
ASS'N, INC.
Defendant-Consol Plaintiff Consol Counter
Defendant-Appellee,
GEOSAM CAP. US. GA
Defendant-Appellee.

Appeal from the United States District Court
For the Northern District of Georgia
D.C. Docket No. 1:24-cv-02207-JPB

Before JILL PRYOR, NEWSOM, and KIDD, Circuit Judges.

PER CURIAM:

24-13607

Christy Poon-Atkins and Calvin Atkins, proceeding *pro se*, appeal from the district court's October 23, 2024, order remanding three consolidated cases to Georgia state court. The appellees filed a motion to dismiss this appeal for lack of jurisdiction.

We lack jurisdiction to review the district court's order because it remanded two of the cases based on procedural defects raised in Geosam Capital US (Georgia) LLC's timely motion to remand and remanded the third case for lack of subject matter jurisdiction. *See* 28 U.S.C. § 1447(c), (d); *MSP Recovery Claims, Series LLC v. Hanover Ins. Co.*, 995 F.3d 1289, 1294 (11th Cir. 2021) (explaining that, under the statute, remand orders for which review is barred include those based on motions to remand because of procedural defects filed within 30 days of the removal and those based on a lack of subject matter jurisdiction); Whole Health Chiropractic & Wellness, Inc. v. Humana Med. Plan, Inc., 254 F.3d 1317, 1319 (11th Cir. 2001) (explaining that remand orders are only reviewable if they are based on grounds other than those specified in § 1447(c)). Additionally, the appellants did not invoke 28 U.S.C. §§ 1442 or 1443 in their notices of removal. See 28 U.S.C. § 1447(d); *BP P.L.C. v. Mayor of Balt.*, 141 S. Ct. 1532, 1538 (2021).

Accordingly, the appellees' motion is GRANTED, and this appeal is DISMISSED. All other pending motions are DENIED as moot.

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001
(NOVEMBER 10, 2025)

No. 24-249

Clerk
United States Court of Appeals for
the Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, GA 30303

Re: Christy Poon-Atkins, et vir
v. Riversprings at Alcovy
Homeowners Association,
Inc., et al.
No. 25-249
(Your No. 24-13607)

Dear Clerk:

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

The petition for a writ of certiorari is denied.

Sincerely,

/s/ Scott S. Harris
Scott S. Harris, Clerk

ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
(MAY 13, 2025)

No. 24-13607

CHRISTY POON-ATKINS, P.E.,
CALVIN ATKINS
Plaintiffs-Consol Defendants
Consol
Counter Claimants-Appellants

GEOSAM CAPITAL US (GEORGIA) LLC,
Consol Plaintiff,

versus

RIVERSPRINGS AT ALCOVY
HOMEOWNERS ASS'N, INC.
Defendant-Consol Plaintiff Consol Counter
Defendant-Appellee,
GEOSAM CAP. US. GA
Defendant-Appellee.

24-13607

Appeal from the United States District Court
For the Northern District of Georgia
D.C. Docket No. 1:24-cv-02207-JPB

ORDER:

The motion of Christy Poon-Atkins to stay the issuance of the mandate pending a petition for writ of certiorari is DENIED.

DAVID J. SMITH

Clerk of the United States Court of

Appeals for the Eleventh Circuit

ENTERED FOR THE CT. – BY DIRECTION

ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
(APRIL 21, 2025)

No. 24-13607

CHRISTY POON-ATKINS,
P.E., CALVIN ATKINS
Plaintiffs-Consol Defendants
Consol Counter Claimants-Appellants

GEOSAM CAPITAL US
(GEORGIA) LLC,
Consol Plaintiff,

versus

RIVERSPRINGS AT ALCOVY
HOMEOWNERS ASS'N, INC.
Defendant-Consol Plaintiff Consol Counter
Defendant-Appellee,

GEOSAM CAP. US. GA
Defendant-Appellee.

Appeal from the United States District Court
For the Northern District of Georgia
D.C. Docket No. 1:24-cv-02207-JPB

Before JILL PRYOR, NEWSOM, and KIDD,
Circuit Judges

PER CURIAM:*

*The Petition for Panel Rehearing filed by Appellants Christy Poon-Atkins and Calvin Atkins is DENIED.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION
(OCTOBER 23, 2024)

ORDER

CHRISTY POON-ATKINS, P.E. et al, Plaintiffs, vs. GEOSAM CAP. U.S. (GEORGIA) LLC, et al., Defendants	CIVIL ACTION NO.: 1:22-CV-02207-JPB

This matter is before the Court on several pending motions, including: Christy Poon-Atkins, P.E.'s and Calvin D. Atkins's (together, "Homeowners" or "Atkinses") Motion for Default Judgment as a Matter of Law for Justified Relief from a Judgment or Order [Doc. 2]; Homeowners' Motion for Permission to File Electronically as a Pro Se Party [Doc. 4]; Geosam Capital US (Georgia) LLC's Motion to Remand and Brief in Support and Response to Motion for Default Judgment [Doc. 7]; Homeowners' Motion for Relief [Doc. 9]; Homeowners' Motion for Joinder [Doc. 10]; Homeowners' Motion for Default Judgment as a Matter of Law [Doc. 25]; Riversprings at Alcovy Homeowners Association, Inc.'s Motion to Remand and Brief in Support and Response to Motion for Default Judgment [Doc. 27]; and Homeowners' Motion for Sanctions [Doc. 29].

This Court finds as follows:

BACKGROUND

This case arises out of Homeowners' claims that Riversprings at Alcovy Homeowners Association, Inc. ("Riversprings HOA") and Geosam Capital US (Georgia) LLC ("Geosam Capital") infringed upon Homeowners' property rights. The instant case is the consolidation of three federal cases, each of which the Court will discuss in turn. See [Doc. 5].

A. Overview of the Underlying Facts

Homeowners allege that in late 2020, they received a "Notice of Change in Condition" letter from the Gwinnett County Department of Planning and Development and Geosam Capital ("Notice Letter"). [Doc. 1, p. 8]. Homeowners claim that the Notice Letter informed them about plans to encroach upon their rights to hold and possess a perpetual fifty-foot drainage easement located across the exterior of their property. Id. at 9. After receiving the Notice Letter,Homeowners allege that they sent a response letter dated October 30, 2020, to Geosam Capital and to the Gwinnett County Department of Planning and Development objecting to the proposed change. Id. Homeowners also claim that they sent a letter to Riversprings HOA reiterating their objections to the proposed change and citing a covenant which Homeowners purport binds Riversprings HOA and prevents it from allowing the alleged encroachment on Homeowners' easement rights. Id. Broadly, Homeowners express concerns that reducing their easement to the drainage ditch

behind their home will devalue their property and potentially cause harmful flooding. Id. at 10–11.

B. Homeowners' Gwinnett County Superior Court Case, Which Became Federal Case No. 1:24-cv-02207

On June 22, 2022, Homeowners, proceeding *pro se*, filed suit against Geosam Capital and Riversprings HOA in the State Court of Gwinnett County, Georgia, alleging harm to their property interests stemming from the above incident (Civil Action No. 22-C-03435-S4) ("Homeowners v. Geosam Capital, et al."). In their complaint, Homeowners requested $150,000 in compensatory damages as well as punitive damages stemming from Geosam Capital's and Riversprings HOA's "heinous actions that stripped away the [Atkinses'] homeownership enjoyment . . . ." Id. at 12. Homeowners' case was eventually transferred to the Superior Court of Gwinnett County and later dismissed with prejudice.[1] Thereafter, Homeowners filed an appeal with the Georgia Court of Appeals, and the appellate court affirmed the lower court's dismissal of Homeowners' claims (Case No. A23A1135). Homeowners then filed a petition for certiorari with the Supreme Court of Georgia, which the Georgia Supreme Court denied on March 19, 2024 (Case No. S24C0337).

On May 20, 2024, Homeowners filed a Notice

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[1] When Homeowners v. Riversprings HOA, et al. was transferred to the Superior Court of Gwinnett County, it was designated as Civil Action No. 22-A-09497-10.

of Removal whereby they removed Homeowners v. Riversprings HOA, et al. to this Court. [Doc. 1]. Upon removal, the Clerk designated Homeowners v. Riversprings HOA, et al. as federal Case No. 1:24-cv-02207. The same day, Homeowners also filed their Motion for Default Judgment as a Matter of Law for Justified Relief from a Judgment or Order [Doc. 2]. In their motion, Homeowners request that this Court set aside Gwinnett County Superior Court's judgment against them and impose default judgment against Geosam Capital and Riversprings HOA. See id. Homeowners base their arguments on O.C.G.A. § 9-11-55 and upon a claim that the Gwinnett County Superior Court lacked jurisdiction to adjudicate Homeowners' claims. See id.

C. Geosam Capital's Gwinnett County Superior Court Case, Which Became Federal Case No. 1:24-cv-02208

On October 7, 2022, Geosam Capital filed suit against Homeowners in the Superior Court of Gwinnett County, Georgia, bringing claims for slander of title pursuant to O.C.G.A. § 59-9-11, injunctive relief and attorney's fees (Case No. 22-A-08764-10) ("Geosam Capital v. Homeowners"). See [Case No. 1:24-cv-02208, Doc. 1, pp. 27–33]. On May 20, 2024, Homeowners filed their Notice of Removal as to Geosam Capital v. Homeowners, seeking to remove the case "pursuant to 28 U.S.C. §§ 1331, 1358, 1403, 1441, 1446, 1447." Id. at 1. Once removed to this Court, Geosam Capital v. Homeowners became federal Case No. 1:24-cv-02208. After they removed the case to federal

court, Homeowners filed an answer and a motion to dismiss the complaint and a motion for permission to file electronically. See [Civil Action No. 1:24-cv-02208, Doc. 2]; [Civil Action No. 1:24-cv-02208, Doc. 4].

D. Riversprings HOA's Gwinnett County Superior Court Case, Which Became Federal Case No. 1:24-cv-02209

Finally, Riversprings HOA also filed suit against Homeowners on January 4, 2024, seeking assessments, late charges, interest, attorney's fees, costs and expenses pursuant to the Declaration of Protective Covenants, Conditions, Restrictions and Easements for Riversprings and the Bylaws for Riversprings at Alcovy Homeowners Association, Inc. (Case No. 24-C-00060-S7) ("Riversprings HOA v. Homeowners"). [Civil Action No. 1:24-cv-02209, Doc. 1, pp. 33–36]. On the same day that they removed the two cases discussed above, Homeowners also filed a Notice of Removal as to Riversprings HOA v. Homeowners. See [Civil Action No. 1:24-cv-02209, Doc. 1]. Once Homeowners removed the case, the Clerk designated Riversprings HOA v. Homeowners as federal Case No. 1:24-cv- 02209. After they removed the case, Homeowners filed an answer, a motion to dismiss the complaint and a motion for permission to file electronically. See [Civil Action No. 1:24-cv-02209, Doc. 2]; [Civil Action No. 1:24-cv-02209, Doc. 3]; [Civil Action No. 1:24-cv-02209, Doc. 5].

E. History of the Consolidated Case

On May 23, 2024, this Court entered an order consolidating the following cases: 1:24-cv-02207

(Homeowners v. Riversprings HOA, et al.); 1:24-cv-02208 (Geosam Capital v. Homeowners); and 1:24-cv-02209 (Riversprings HOA v. Homeowners). [Doc. 5]. The next day, Homeowners filed a Motion for Permission to File Electronically as a Pro Se Party. [Doc. 4]. Thereafter, Geosam Capital filed its Motion to Remand and Brief in Support and Response to Motion for Default Judgment ("Geosam Capital's Motion to Remand"). [Doc. 7].

Thereafter, Homeowners filed their Motion for Relief [Doc. 9], their Motion for Joinder [Doc. 10] and their Motion for Default Judgment as a Matter of Law [Doc. 27] on June 21, 2024. Then, on June 27, 2024, Riversprings HOA filed its Motion to Remand and Brief in Support and Response to Motion for Default Judgment ("Riversprings HOA's Motion to Remand"). [Doc. 27]. Finally, on July 10, 2024, Homeowners filed their Motion for Sanctions. [Doc. 29]. These matters are all ripe for review.

ANALYSIS

At the outset, the Court will address Geosam Capital's and Riversprings HOA's respective Motions to Remand because, if the Court finds that remand is appropriate, all other pending motions will be rendered moot. See [Doc. 7]; [Doc.27].

Under 28 U.S.C. § 1441(a), any civil case filed in state court may be removed to federal court by a defendant if the case could have originally been filed in federal court. When a case is removed, the party seeking removal bears the burden of establishing federal jurisdiction by a

preponderance of the evidence at the time the notice of removal is filed. Leonard v. Enter. Rent a Car, 279 F.3d 967, 972 (11th Cir. 2002). Notably, "[b]ecause removal jurisdiction raises significant federalism concerns, federal courts are directed to construe removal statutes strictly." Griffith v. Wal-Mart Stores E., L.P., 884 F. Supp. 2d 1218, 1221 (N.D. Ala. 2012) (quoting Univ. of S. Ala. v. Am. Tobacco Co., 168 F.3d 405, 411 (11th Cir. 1999)).

A. Geosam Capital's Motion to Remand

The Court will first address Geosam Capital's Motion to Remand. In its motion, Geosam Capital requests that this Court remand Homeowners v. Riversprings HOA, et al. and Geosam Capital v. Homeowners because: (1) Homeowners' removal was untimely as to both cases; (2) Homeowners cannot remove Homeowners v. Riversprings HOA, et al.—a case in which they are the plaintiffs—to federal court; and (3) Homeowners failed to include a short and plain statement of the grounds for removal. See [Doc. 7].

First, as to the untimeliness of removal, 28 U.S.C. § 1446(b)(1) requires that "[t]he notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant . . . of a copy of the initial pleadings setting forth the claim for relief upon which such action or proceeding is based....." Here, Homeowners filed Homeowners v. Riversprings HOA, et al. on June 22, 2022. [Doc. 1, p. 14]. It was not until May 20, 2024, almost two years later, that Homeowners filed their Notice of Removal. See id. As such, removal of

Homeowners v. Riversprings HOA, et al. was untimely and this Court must remand the case. As to the second case, Geosam Capital v. Homeowners, Homeowners filed the case in Gwinnett County Superior Court on October 7, 2022. [Case No. 1:24-cv-02208, Doc. 1, p. 33]. Once again, Homeowners removed the case to federal court on May 20, 2024, over a year and a half later. Id. at 5. As such, Homeowners' removal of Geosam Capital v. Homeowners was also untimely, and this Court must remand the case.[2]

1. Geosam Capital's Request for Costs and Fees Related to Removal

In its motion to remand, Geosam Capital also moved under 28 U.S.C. § 1447(c) for costs and expenses, including attorney's fees, incurred as a result of the removal. [Doc. 7, pp. 5–7]. Where a

[2] Further, as to Homeowners v. Riversprings HOA, et al., a case in which Homeowners are the plaintiffs, they cannot remove the case to federal court, nor can they properly seek appellate review of the state court's decision before this Court. See Davis v. Florida, No. 8:10-CV-0860, 2010 WL 2025874, at *1 (M.D. Fla. Apr. 26, 2010) (finding that a *pro se* plaintiff could not remove her own action—which had already been dismissed with prejudice in state court—to federal court) (citing Riguad v. Broward Gen. Med. Ctr., 346 F. App'x 453, 454 (11th Cir. 2009)); see also 28 U.S.C. § 1441 (providing that a defendant—and, by implication, not a plaintiff—may remove a civil action to federal court); Williams v. Marks, No. 3:22-cv-519, 2022 WL 18767960, at *3 (M.D. Fla. Oct. 5, 2022) (considering plaintiffs' removal of their own case from state court after the state case was dismissed with prejudice and noting that, to the extent the removal was an attempt to appeal the state court's dismissal, the federal district court "does not have jurisdiction to hear appeals of state court decisions").

court grants a party's motion to remand, § 1447(c) allows courts to "require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal." In Martin v. Franklin Capital Corporation, the United States Supreme Court clarified the purpose of an award of fees under § 1447(c), noting that:

The appropriate test for awarding fees under § 1447(c) should recognize the desire to deter removals sought for the purpose of prolonging litigation and imposing costs on the opposing party, while not undermining Congress' basic decision to afford defendants a right to remove as a general matter, when the statutory criteria are satisfied.

546 U.S. 132, 140 (2005). Further, the Supreme Court in Martin held that "absentunusual circumstances, attorney's fees should not be awarded when the removing party has an objectively reasonable basis for removal." Id. at 136. However, "[t]he purpose of § 1447(c) is not to punish defendants for improper removal, but to compensate plaintiffs for expenses associated with obtaining a remand order." HSBC Mortg. Servs., Inc. v. Williams, No. 1:07-CV-2863, 2007 WL 4303725, at *2 (N.D. Ga. Dec. 10, 2007) (citing Publix Supermarkets, Inc. v. United Food & Com. Workers Int'l Union AFL-CIO & CLC, 900 F. Supp. 419, 422 (M.D. Fla. 1995)). Further, district courts "retain discretion to consider whether unusual circumstances warrant a departure from the rule in a given case." Martin, 546 U.S. at 141; see also Lost Mountain

Homeowners Ass'n, Inc. v. Rice, 248 F. App'x 114, 115 (11th Cir. 2007) (reviewing a district court's award of attorney's fees pursuant to § 1447(c) under an abuse of discretion standard).

Here, Geosam Capital seeks an award of fees in relation to Homeowners' removal of Homeowners v. Riversprings HOA, et al. and Geosam Capital v. Atkinses. [Doc. 7, pp. 5–7]. As an initial matter, the Court notes that Geosam Capital failed to provide any indication of the amount of costs and expenses it seeks under the statute, thus allowing the Court no opportunity to assess whether such an award is "just" and providing Homeowners no opportunity to object to the reasonableness of the amount requested or the methods of calculation. See Chakravarty v. Sims, No. 1:22-CV-3177, 2022 WL 17544385, at *1 (N.D. Ga. Sept. 30, 2022) (refusing to award attorney's fees and costs under § 1447(c) against a *pro se* party that did not have an opportunity to object as to the fees or rates assessed against it). Moreover, although Homeowners' removal as to both cases was far from timely, in both notices of removal, Homeowners referenced 28 U.S.C. § 1331—which provides federal courts with original jurisdiction for cases arising under federal law. See [Doc. 1, p. 3]; [Case No. 1:24-cv-02208, Doc. 1, p.4]. In their notices of removal, Homeowners claimed that Geosam Capital was infringing upon their property rights in violation of the United States Constitution. Despite the many defects in Homeowners' removals, the Court finds that Homeowners at least attempted to make a good faith allegation of federal subject matter jurisdiction, especially given their *pro se*

status. As such, the Court finds that an assessment of costs and expenses is not appropriate here. See MSP Recovery Claims, Series LLC v. Hanover Ins. Co., 995 F.3d 1289, 1296 (11th Cir. 2021) (noting that "[t]here is no presumption in favor of awarding attorney's fees and costs under Section 1447(c)" and upholding a district court's denial of fees where the fee-seeking party did not allege that the removing party made "factual misrepresentations . . . frivolous legal arguments, or anything similar that might have rendered their removals objectively unreasonable"); HSBC Mortg. Servs., Inc., 2007 WL 4303725 at *3 (refusing to grant an award of attorney's fees against a *pro se* litigant proceeding "without the benefit of legal training or counsel" and where the party made a "good faith assertion of a colorable argument for federal jurisdiction"); SNF Prop., LLC v. Seoane, No. 8:20-cv-1896, 2020 WL 6194190, at *2 (M.D. Fla. Oct. 22, 2020) (refusing to award costs and fees against a *pro se* party where it did not appear that the party removed the case for improper purposes and noting that "leniency must be given to parties proceeding *pro se*"); Konduar Cap. Corp. v. Gaspareto, No. 3:12-cv-750, 2012 WL 6765728, at *3 (M.D. Fla. Nov. 14, 2012) (refusing to award costs and fees against a *pro se* party under § 1447(c) and collecting cases finding the same).

Accordingly, the Court **DENIES IN PART** Geosam Capital's Motion for Remand [Doc. 7] insofar as it requests an award of fees and costs, but **GRANTS IN PART** the motion as to its request for remand.

B. Riversprings HOA's Motion to Remand

Now, the Court turns to Riversprings HOA's Motion to Remand. As an initial matter, this Court has already determined above that remand is appropriate as to Homeowners v. Geosam Capital, et al. As such, the Court will only address Riversprings HOA's Motion to Remand insofar as the motion requests that this Court remand Riversprings HOA v. Homeowners.

Homeowners removed Riversprings HOA v. Homeowners on May 20, 2024. See [Case No. 1:24-cv-02209, Doc. 1]. However, Riversprings HOA did not file its Motion to Remand until June 27, 2024. See [Doc. 27]. Under 28 U.S.C. § 1447(c), "[a] motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after filing of the notice of removal . . . ." As such, Riversprings HOA's Motion to Remand was not timely and this Court cannot remand Riversprings HOA v. Homeowners based on the procedural arguments set forth in the untimely motion. See In re Bathesda Mem'l Hosp., Inc., 123 F.3d 1407, 1410–11 (11th Cir. 1997) (finding that a district court "acted outside of its statutory authority by remanding for a procedural defect after thirty days of the notice of removal"); Advanced Bodycare Sols., LLC v. Thioine Int'l, Inc., 524 F.3d 1235, 1237 n. 1 (11th Cir. 2008) (finding that untimely removal was a "procedural" defect in removal, rather than a "jurisdictional" one); see also Whitfield v. Mia.-Dade Cnty. Police Dep't, 535 F. App'x 772, 774 (11th Cir. 2013) (finding that a district court erred by granting an untimely motion to remand

based on a procedural defect).

C. Subject Matter Jurisdiction

However, the Court's inquiry does not end with the arguments set forth in Riversprings HOA's Motion to Remand. In every case, federal courts must assess whether they have subject matter jurisdiction to entertain an action. See 28 U.S.C. § 1447(c) ("If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded."); see also Univ. of S. Ala., 168 F.3d at 410–11 (noting that "removal jurisdiction is no exception to a federal court's obligation to inquire into its own jurisdiction" and finding that remand is mandatory when a court determines that it lacks subject matter jurisdiction, regardless of whether there are other motions pending before the court).

Here, Homeowners state in their Notice of Removal as to Riversprings HOA v. Homeowners that they are removing the action from state court "pursuant to 28 U.S.C. §§ 1331, 1358, 1403, 1441, 1446, 1447." [Case No. 1:24-cv-02209, Doc. 1, p. 1]. Further, Homeowners argue that Geosam Capital and Riversprings HOA have "wrongfully forced unlawful infringement on [their] Constitutionally protected property interests for over two (2) years." Id. Homeowners also assert that this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1441.

Federal district courts are courts of limited jurisdiction. See Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 84 (1998) (noting that when a federal court lacks subject matter jurisdiction it

"cannot proceed at all, but can only note the jurisdictional defect and dismiss the suit"). There are two main types of federal subject matter jurisdiction: federal question jurisdiction and diversity of citizenship jurisdiction. See 28 U.S.C. §§ 1331, 1332. As to the former, § 1331 provides that "[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." The Supreme Court has further added that, when assessing federal question jurisdiction, courts must follow the "well-pleaded complaint" rule, which provides that federal jurisdiction only exists when a federal question is presented on the face of the state court plaintiff's properly-pleaded complaint. See Okla. Tax Comm'n v. Graham, 489 U.S. 838, 840–41 (1989). In other words, the basis for federal question jurisdiction can only arise from the plaintiff's complaint, not from the defendant's answer, defenses or counterclaims. Moreover, "[b]ecause removal jurisdiction raises significant federalism concerns, federal courts are directed to construe removal statutes strictly Indeed, all doubts about jurisdiction should be resolved in favor of remand to state court." Univ. of S. Ala., 168 F.3d at 411 (internal citation omitted).

Here, examining the state court complaint in Riversprings HOA v. Homeowners, it is clear that Homeowners' allegations of federal question jurisdiction fail in light of the well-pleaded complaint rule. Riversprings HOA's state court complaint seeks assessments, late charges, interest, attorney's fees, costs and expenses pursuant to the Declaration of Protective

Covenants, Conditions, Restrictions and Easements for Riversprings and the Bylaws for Riversprings at Alcovy Homeowners Association, Inc. [Civil Action No. 1:24-cv- 02209, Doc. 1, pp. 33–36]. These claims arise entirely from contracts between Riversprings HOA and Homeowners, which are matters of state law, and thus fail to invoke federal question jurisdiction. See Diaz v. Sheppard, 85 F.3d 1502, 1505 (11th Cir. 1996) ("As a general rule, a case arises under federal law only if it is federal law that creates the cause of action."). Although, in their Notice of Removal, Homeowners cite several federal statutes and claim that Riversprings HOA's actions encroach upon their Constitutional rights, under the well-pleaded complaint rule, such claims are not considered for purposes of assessing federal question jurisdiction. See Merrell Dow Pharm. Inc. v. Thompson, 478 U.S. 804, 808 (1986) ("A defense that raises a federal question is inadequate to confer federal jurisdiction."). Therefore, this Court cannot exercise jurisdiction over Riversprings HOA v. Homeowners on the basis of federal question jurisdiction.

Moreover, Homeowners did not allege, and the Court does not find, that diversity of citizenship can serve as a basis for federal subject matter jurisdiction in Riversprings HOA v. Homeowners. In its complaint, Riversprings HOA alleges that it "is a nonprofit corporation incorporated under the laws of the State of Georgia" and that Homeowners are both "Georgia resident[s] . . . ." [Case No. 1:24-cv-02209, Doc. 1, p. 33]. "Defendants may remove an

action on the basis of diversity of citizenship if there is complete diversity between all named plaintiffs and all named defendants, and no defendant is a citizen of the forum State."[3] Lincoln Prop. Co. v. Roche, 546 U.S. 81, 84 (2005). Here, to the extent that the Court can assess citizenship of the parties based on the record before it, the rule does not appear to be met because Homeowners reside in Georgia and have lived in Georgia for the past 14 years, while Riversprings HOA is incorporated under the laws of Georgia.[4] Therefore, this Court cannot exercise federal subject matter jurisdiction over Riversprings HOA v. Homeowners based on diversity of citizenship.

Accordingly, because the Court finds that it lacks federal subject matter jurisdiction over Riversprings HOA v. Homeowners, this case should also be remanded to the Superior Court of Gwinnett County, Georgia. Further, because this

[3] In addition to the other defects in Homeowners' removal, a removal based on diversity of citizenship would also improper because Homeowners appear to be citizens of the forum state. See Lincoln Prop. Co. v. Roche, 546 U.S. 81, 84 (2005).

[4] To determine whether the complete diversity rule is met, federal courts look to the citizenship of the parties, rather than mere residence. See Taylor v. Appleton, 30 F.3d 1365, 1367 (11th Cir. 1994) ("Citizenship, not residence, is the key fact that must be alleged in the complaint to establish diversity for a natural person."). For purposes of diversity jurisdiction, citizenship is equivalent to domicile, which "requires both residence in a state and 'an intention to remain there indefinitely . . . .'" Travaglio v. Am. Exp. Co., 735 F.3d 1266, 1269 (11th Cir. 2013) (quoting McCormick v. Aderholt, 293

Court finds that all the consolidated cases in the instant action should be remanded, the pending motions remaining in this action are denied as moot.

CONCLUSION

For the foregoing reasons, Defendant Geosam Capital US (Georgia) LLC's Motion to Remand [Doc. 7] is **GRANTED IN PART** as to remand and **DENIED IN PART** as to its request for costs and fees. Further, Defendant Riversprings at Alcovy's Motion to Remand and Brief in Support and Response to Motion for Default Judgment [Doc. 27] is **GRANTED**. This action is **REMANDED** to the Superior Court of Gwinnett County, Georgia.

As such, the following motions are **DENIED** as **MOOT**: Homeowners' Motion for Default Judgment as a Matter of Law for Justified Relief

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F.3d 1254, 1258 (11th Cir. 2002)). Although neither Homeowners nor Riversprings HOA allege that Homeowners are citizens of Georgia, Homeowners do assert in their original 2022 Gwinnett State Court complaint that they have "been residents of the River[s]prings Community for more than twelve years with vested property interest" in their home located at 1866 Alcovy Trials Drive, Dacula, GA 30019. [Doc. 1, p. 11]. Given that— across three parties and three underlying state court actions—there is no allegation that Homeowners reside in or are citizens of any other state, the Court finds that there is, at best, insufficient information to assess Homeowners' citizenship and, potentially, sufficient evidence to find that Homeowners are citizens of the State of Georgia, which would run afoul of the complete diversity rule. Either way, the Court cannot find, based on the record before it, that the complete diversity requirement is satisfied.

from a Judgment or Order [Doc. 2]; Homeowners' Motion for Permission to File Electronically as a Pro Se Party [Doc. 4]; Homeowners' Motion for Relief [Doc. 9]; Homeowners' Motion for Joinder [Doc. 10]; Homeowners' Motion for Default Judgment as a Matter of Law [Doc. 25]; and Homeowners' Motion for Sanctions [Doc. 29]. The Clerk is **DIRECTED** to close this case.

SO ORDERED this 23rd day of October, 2024.

/s/ J.P. BOULEE
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CHRISTY POON-ATKINS, P.E. et al, Plaintiff, v. RIVER SPRINGS AT ALCOVY HOMEOWNERS ASS'N, INC., et al., Defendants.	CIVIL ACTION NO.: 1:22-CV-02207-JPB

GEOSAM CAPITAL US (GEORGIA)LLC, Plaintiff, v. CHRISTY POON-ATKINS, P.E. et al, Defendants.	CIVIL ACTION NO.: 1:22-CV-02208-JPB

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION
(MAY 23, 2024)

RIVER SPRINGS AT ALCOVY HOMEOWNERS ASS'N, INC., et al., Plaintiff, v. CALVIN ATKINS, et al, Defendants.	CIVIL ACTION NO.: 1:22-CV-02209-JPB

ORDER

Because consolidation is proper under Federal Rule of Civil Procedure 42(a), the Court hereby **ORDERS** the Clerk to consolidate Poon-Atkins, P.E. et al v. River Springs at Alcovy Homeowners Ass'n, Inc. et al., No. 1:24-CV-02207-JPB with Geosam Capital US (Georgia) LLC v. Christy Poon-Atkins et al., No. 1:24-CV-02208-JPB and Riversprings at Alcovy Homeowners Association, Inc. v. Atkins et al., No. 1:24-CV-02209-JPB. The Clerk is further **ORDERED** to close Geosam Capital US (Georgia) LLC v. Christy Poon-Atkins et al., No. 1:24-CV-02208-JPB and Riversprings at Alcovy Homeowners Association, Inc. v. Atkins et al., Case No. 1:24-CV-02209-JPB. All future filings shall occur only in 1:24-CV-02207-JPB.

SO ORDERED this 23rd day of May, 2024.

/s/ J.P. BOULEE
United States District Judge

SUPREME COURT OF GEORGIA

Case No. S24C0337

March 19, 2024

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

CHRISTY POON-ATKINS et al. v. GEOSAM CAPITAL U.S. (GEORGIA), LLC.

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

All the Justices concur.

Court of Appeals Case No. A23A1135

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/ Thérèse S. Barnes
Clerk, Georgia Supreme Court

October 17, 2023
NOT TO BE OFFICIALLY REPORTED

In the Court of Appeals of Georgia

A23A1135. POON-ATKINS et al. v. GEOSAM CAPITAL U.S. (GEORGIA), LLC.

GOBEIL, 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 appellee's brief.

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

Judgment affirmed. Doyle, P. J., and Senior Judge C. Andrew Fuller concur.

Court of Appeals of the State of Georgia

ATLANTA, May 10, 2023

The Court of Appeals hereby passes the following order:

A23A1408. CHRISTY POON-ATKINS v. GEOSAM CAPITAL US (GEORGIA), LLC.

In this civil action, defendant Christy Poon-Atkins filed the instant direct appeal from the trial court's order denying her motion to dismiss the plaintiff's complaint.[1] We lack jurisdiction.

Because this action remains pending below, the defendant was required to use the interlocutory appeal procedures — including obtaining a certificate of immediate review from the trial court — to appeal the denial of her motion to dismiss. See OCGA § 5-6-34 (b); *Boyd v. State*, 191 Ga. App. 435, 435 (383 SE2d 906) (1989).

The defendant's failure to follow the required appellate procedure deprives us of jurisdiction over this appeal, which is hereby DISMISSED.

Court of Appeals of the State of Georgia Clerk's Office, Atlanta, 05/10/2023 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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[1] The defendant directed her appeal to the Supreme Court of Georgia, which transferred it here. Case No. S23A0689 (Apr. 4, 2023).

SUPREME COURT OF GEORGIA
Case No. S23A0689
(April 4, 2023)

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

CHRISTY POON-ATKINS v. GEOSAM CAPITAL US (GEORGIA), LLC.

This appeal arises from an order denying appellant's motion to dismiss appellee's complaint in a property dispute between the parties. Appellant appears to indicate in her notice of appeal that she believes that her appeal invokes this Court's jurisdiction over cases involving constitutional questions. See Ga. Const. of 1983, Art. VI, Sec. VI, Par. II (1). However, this Court's jurisdiction over cases involving constitutional questions is invoked only where an appellant seeks either a first-impression construction of some provision of the Georgia or federal constitutions or to have some law or ordinance declared unconstitutional and where her arguments were distinctly raised before and ruled upon by the trial court. See *Zepp v. Mayor & Council of City of Athens*, 255 Ga. 449, 450 (339 SE2d 576) (1986) (stating that a constitutional question within the jurisdiction of this Court "involves either a construction of some federal or state constitutional provision, or an attack upon the constitutionality of some law of this state or the United States (or an ordinance)"); *State v. Davis*, 303 Ga. 684, 687-688 (814 SE2d 702) (2018) (noting that this Court has interpreted Ga. Const. of 1983, Art. VI, Sec. VI,

Par. II (1) "to extend only to constitutional issues that were distinctly ruled on by the trial court and that do not involve the application of unquestioned and unambiguous constitutional provisions or challenges to laws previously held to be constitutional against the same attack"). No such argument is present here. Accordingly, as this Court's jurisdiction over cases involving constitutional questions is not invoked by this appeal, and as no other basis for the exercise of this Court's jurisdiction is apparent from the record, see Ga. Const. of 1983, Art. VI, Sec. VI, Par. II-III; OCGA § 15-3-3.1, this appeal is transferred to the Court of Appeals.

All the Justices concur.

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/ Thérèse S. Barnes
Clerk, Georgia Supreme Court

ORDER OF THE SUPERIOR COURT GWINNETT
CO. STATE OF GEORGIA
(JULY 12, 2024)

ORDER OF STAY

GEOSAM CAP. U.S. GA., Plaintiffs, vs. CIIRISTY POON ATKINS, CALVIN ATKINS, Defendants	CIVIL ACTION NO.: 22-A- 08764-10

It appearing that this matter has been removed to the United States District Court for the Northern District of Georgia, Atlanta Division, in case number 1:34-CV-02207-JPB,

IT IS ORDERED that the Clerk administratively terminate the action in his records, at this point, without prejudice to the right of the parties to petition the Court to reopen the proceedings for good cause shown.

SO ORDERED, this 7/12/2024

/s/ WARREN DAVIS,
WARREN DAVIS, Judge
Gwinnett Superior Court

IN THE SUPERIOR COURT GWINNETT COUNTY

STATE OF GEORGIA

CHRISTY POON-ATKINS, P.E. and CALVIN ATKINS, Plaintiffs, vs. RIVER SPRINGS AT ALCOVY HOMEOWNERS ASS'N, INC. and GEOSAM CAP. U.S. GA., Defendants	CIVIL ACTION NO.: 22-A-09497-10

(JANUARY 26, 2023)

ORDER GRANTING DEFENDANT GEOSAM'S MOTION TO DISMISS

This matter comes before the Court on Defendant Geosam Capital US (Georgia) LLC's ("Geosam") Motion to Dismiss Plaintiffs' Complaint (the "Motion to Dismiss"). Upon review of the record and applicable authority, and for good cause shown, the Court hereby GRANTS the Motion to Dismiss the entire Complaint with prejudice under O.C.G.A. § 9-11-12(b)(l) because this Court lacks subject matter jurisdiction to hear Plaintiffs' claims and under O.C.G.A. § 9-11- 12(b)(6) for failure to state a claim upon which relief can be granted.

I. BACKGROUND

Construed in the light most favorable to Plaintiffs, the following allegations and facts set

forth in the pleadings and exhibits attached thereto are relevant to Geosam's Motion to Dismiss:

Although "PLAINTIFFS' COMPLAINT AGAINST DEFENDANTS' PERPETUAL DRAINAGE EASEMENT VIOLATION PER DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS FOR RIVER SPRINGS" (the "Complaint"), which was originally field in the state court of Gwinnett County,[1] does not identify any specific cause of action under Georgia law, construed in the light most favorable to Plaintiffs, as set forth in the pleadings and the exhibits attached thereto,[2] the

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[1] This action was transferred to this Court pursuant to the Order Transferring Case to Superior Court entered by the Gwinnett County State Court on November 1,2022. Before the Gwinnett County State Court, this action was styled as case number 22-C-03435-S4. This action is now styled before this cou11 as Civil Action File Number 22-A-09497-10.

[2] These Exhibits - and any others attached to the Complaint and Geosam's Answer – are properly considered upon ruling on a motion to dismiss. ***See, e.g., Poole v. In Home Health, LLC,*** 321 Ga. App. 674,674 n.1,742 S.E.2d 492,493 n. 1(2013); ***Baba/ola v. HSBC Bank, USA, N.A.,*** 324 Ga. App. 750, 751,S.E.2d 545, 547 (2013) ("[T]he pleadings to be construed include any exhibits attached to and incorporated into the complaint and the answer."); ***Gold Creek SL, LLC v. City of Dawsonville,*** 290 Ga. App. 807, 809, 660 S.E.2d 858, 861 (2008) ("A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes and thus,a trial court is authorized to consider exhibits attached to and incorporated into the pleadings in its consideration of a motion to dismiss." ***(citing*** OCGA § 9-11-10 (c) (quotation marks omitted)).

Complaint alleges injury to Plaintiffs' real property (the "Plaintiffs' Property") that consists of 16,169 +/- square feet in unincorporated Gwinnett County, is identified as Gwinnett County Tax Pared Number ("TPN") 5249 180, is more particularly described in that certain Warranty Deed recorded in Deed Book 49972,Page 51 of the Real Estate Records of the Clerk of this Court (the "Plaintiffs' Vesting Deed"),[3] and is contiguous with the real property of Geosam along the rear (northern) property line of Plaintiffs' Property. *See e.g.*, Geosam's Special Appearance and Answer and Defenses of Defendant Geosam Capital US (Georgia) LLC ("Geosam's Answer"), Ex. 7. The legal description in Plaintiffs' Vesting Deed is as follows:

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 249 OF THE 5TH DISTRICT, GWINNETT COUNTY,GEORGIA,BEING LOT 94, BLOCK D, UNIT 1, PHASE 2, RIVERSPRINGS, AS PER PLAT RECORDED IN PLAT BOOK 110, PAGES 269-270, GWINNETT COUNTY RECORDS, SAID PLAT BEING INCORPORATED HEREIN BY REFERENCE THERETO.

Id., Ex. 4. The plat referenced in Plaintiffs' Vesting Deed (the "Riversprings Phase 2 Plat")

shows no "drainage easement" on the Plaintiffs' Property or the Geosam Property. Id, Ex. 5 (the "Riversprings Phase 2 Plat"). Geosam's real property (the "Geosam Property") that is the subject of the above-styled civil action consists of

[3] The Plaintiffs' vesting deed is attached to Geosam's Answer as Exhibit 4.

54 +/- acres in unincorporated Gwinnett County, is identified as TPNs 5248 052 and 5248 054, fronts on Waterchase Drive, and is more particularly shown and described on that certain ALTA/NSPS LAND TITLE SURVEY (the "**Geosam** Property Survey"), prepared by J. Chris Whitley, GA Registered Land Survey, and dated December 10, 2021. *Id*, Ex.2 (the Geosam Property Survey), Ex.3 (Geosam's vesting deed).

On September 9, 2020, Geosam filed an application with Gwinnett County, Georgia to modify the zoning conditions attached to the Geosam Property. *Id.*, Ex. 6.In response thereto and after the required public hearing and input (including that of the Plaintiffs), on November 17, 2020, the Gwinnett County Board of Commissioners (the "Gwinnett BOC") adopted the "Change in Conditions of Zoning" (the "Resolution") upon which the Complaint is premised. Id., Ex. 1 (the Resolution) at 2 ("NOW, THEREFORE, BE IT RESOLVED by the Gwinnett County Board of Commissioners, on this the 17th day of NOVEMBER 2020, that the aforesaid application to amend the Official Zoning Map is hereby APPROVED.").

The Resolution reduced a zoning buffer with respect to the Geosam Property and real properties (the "Buffer Parcels") owned by third parties in a separate residential subdivision and identified as TPNs R5248 040 and R5248 041. ***See generally*** Geosam's Answer, Ex. 1 at 2, § l(g) (The "[A]pplication ... is hereby APPROVED subject to the following enumerated conditions: (1) To restrict the use of the [Geosam] [P]roperty

as follows: .. . (G) Provide an undisturbed ten-foot buffer adjacent to tax parcels R5248 040 and R5248 041 [i.e., the Buffer Parcels] and provide an undisturbed 50-foot buffer around the remaining sides of the subject property . ... "); ***id.***, Ex. 6 (the Application) at 3 ("The Application requests to modify ... Condition 1(G) [to require] ... **an undisturbed 10-**foot **buffer adjacent to tax parcels R5248 040 and R5248 041 [(i.e., the Buffer Parcels)] and provide an undisturbed 50-foot buffer around the remaining sides of the [Geosam] [P]roperty (including Ewing Chapel Road).** ~~An undisturbed 50-foot buffer shall remain around the subject property on all sides (including Ewing Chapel Road frontage) and shall be marked with orange tree save fence prior to any grading.~~ (emphasis in original) (additions to the original zoning conditions in **bold and underline**; deletions in strikethrough)).

Thus, the exhibits attached to the pleadings demonstrate that the Resolution did not involve or alter any buffer with respect to the Plaintiffs' Property; the Resolution only altered the required buffer between the Geosam Property and the Buffer Parcels.

In contradiction to the undisputed facts demonstrated in the exhibits attached to the pleadings,[4] and when construed in the light most favorable to Plaintiffs, the Complaint conflates the zoning buffer that the Resolution reduced with respect to the Geosam Property and the Buffer Parcels with a non-existent "50-foot undisturbed perpetual drainage easement buffer

... located along the back of the [Plaintiffs'] [P]roperty." *See* Complaint at 3-4.

Further, the Complaint does not identify or seek any relief from the Resolution against the entity that approved the same, namely, the Gwinnett BOC, or Gwinnett County. Instead, despite conceding throughout the Complaint that the Gwinnett BOC was the entity that adopted the Resolution, ***see, e.g., id*** at 1, 3, the only named defendants in the Complaint are:

(1) Riversprings at Alcovy Homeowners Association, Inc., the homeowners' association to which the Plaintiffs' Property and the Geosam Property belong;[5] and (2) Geosam, the entity that sought the Resolution, ***see generally id.*** The face of the Complaint demonstrates it was filed on June 22, 2022, twenty-one (21) months after the Gwinnett BOC adopted the Resolution. ***Id*** at 8. The Complaint further sets forth that, during the zoning process prior to the Gwinnett BOC's adoption of the Resolution, the

Plaintiffs sought identical relief to that sought by the Plaintiffs in the Complaint. ***See, e.g., id*** at 3 ("The real property homeowners' October 30, 2020, letter notified the Gwinnett Cnty. Dep't Plan. & Dev. and the private developer, Geosam Cap. U.S. Ga., of the harm to real property and the enjoyment of real property, that their drastic

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[4] The Georgia Supreme Court has long recognized that a written instrument attached as an exhibit to a pleading will prevail over allegations of a pleading. ***E.g., H & R Block, Inc. v. Asher,*** 231 Ga. 780,781,204 S.E.2d 99,100 (1974).

[5] The homeowners' association has also filed a motion to dismiss the Complaint for failure to state a claim upon which relief can be granted.

proposal would impose on the homeowners.").

Consistent with Plaintiffs' failure to identify any specific cause of action or injury under Georgia law in the Complaint, Geosam moved to dismiss the entire Complaint pursuant to: (1) O.C.G.A. § 9-11-12(b)(l), arguing this Court lacks subject matter jurisdiction to hear Plaintiffs' claims; and (2) O.C.G.A. § 9-11-12(b)(6) for failure to state a claim upon which relief can be granted.

II. CONCLUSIONS OF LAW

Under O.C.G.A. § 9-1 l-12(b)(6),

A motion to dismiss for failure to state a claim upon which relief can 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 the relief sought. 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.

Anderson v. Daniel, 314 Ga. App. 394, 395, 724 S.E.2d 401, 402 (2012) (citation and punctuation omitted). In considering the Motion to Dismiss, this Court is not bound by the legal conclusions raised in the Complaint. ***Harper v. Patterson,*** 270 Ga. App. 437, 439, 606 S.E.2d 887, 891 (2004). Plaintiffs are required to set out "a short and plain statement of the claims showing that [they are] entitled to relief." O.C.G.A. § 9-11-8.

Plaintiffs are bound by the material allegations made in their Complaint so long as they remain in the Complaint, and the Plaintiffs' contradictory pleadings, if any, are to be construed in favor of Geosam. ***Hendry v. Wells,*** 286 Ga. App. 774, 781-82, 650 S.E.2d 338,345 (2007).

As recognized above,[6] the pleadings to be construed on a motion to dismiss include any exhibits attached to and incorporated into the Complaint and Geosam's Answer. O.C.G.A. § 9-11-10(c) ("A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes."); ***accord Babalola v. HSBC Bank, USA, N.A.,*** 324 Ga. App. 750, 751, S.E.2d 545, 547 (2013); ***Creek SL, LLC v. City of Dawsonville,*** 290 Ga. App. 807, 809, 660 S.E.2d 858, 861(2008). A trial court's consideration of exhibits attached to and incorporated in the pl1eadings in considering a motion to dismiss for failure to state a claim does not convert the motion into one for summary judgment. ***Stendahl v. Cobb County,*** 284 Ga. 525, 526 n. 2, 668 S.E.2d 723, 725 n. 2 (2008); ***Hendon Properties, LLC v. Cinema Development, LLC,*** 275 Ga. App. 434., 435, 620 S.E.2d 644, 647 (2005); ***Lewis v. Turner Broadcasting System,*** 232 Ga. App. 831, 832, 503 S.E.2d 81, 83 (1998).

A. The Court lacks subject matter jurisdiction to hear Plaintiffs' claims.

Geosam first contends that the Complaint should be dismissed with prejudice under

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[6] *See* n.1,***supra.***

O.C.G.A. § 9-1 l -12(b)(l) because this Court lacks subject matter jurisdiction to hear these claims. The Court agrees.

A motion to dismiss based upon the trial court's lack of subject matter jurisdiction, rather than on the merits of the Plaintiffs' claim, is decided under a very different standard from a motion to dismiss for failure to state a claim. A motion under O. C. G .A. § 9- l 1- l 2(b)(1) must be granted "whenever it appears, by suggestion of the parties or otherwise, that the court lacks jurisdiction of the subject matter." ***Dep 't of Transp. v. Kovalcik,*** 328 Ga. App. 185, 190, 761 S.E.2d 584, 588 (2014) ***(citing*** O.C.G.A. § 9-11-12(h)(3)). A court's lack of subject matter jurisdiction "cannot be waived" and, therefore, a motion to dismiss on this basis "may be raised at any time either in the trial court, in a collateral attack on a judgment, or in an appeal." ***Id.***

Georgia law is clear that any attack on a zoning decision-as the Complaint must be construed[7]-must meet three (3) separate, unassailable prerequisites: (1) it must be a petition for certiorari or a declaratory judgment action; (2) it must be filed in the superior court; and (3) it must be "filed within 30 days of the date the judgment, order, or decision complained of was entered." O.C.G.A. §§ 5-4-1, ***et seq.,*** 5-3-20(a); ***City of Cumming v. Flowers,*** 300 Ga. 820, 820, 797 S.E.2d 846, 848 (2017); ***Fortson v. Tucker,*** 307 Ga. App. 694, 696, 705 S.E.2d 895, 896 (2011) ("Pursuant to O.C.G.A. § 5-3-20, appeals to superior court must be filed 'within 30 days of the date of the judgment, order, or

decision complained of was entered.' This Code section applies to an appeal from a county zoning board's decision. The requirement is jurisdictional, so that a superior court lacks jurisdiction when such an appeal is filed beyond the time allowed by law." (emphasis added) (internal citations omitted)); ***Hollberg v. Spalding County,*** 281 Ga. App. 768, 771, 637 S.E.2d 163, 168 (2006) ("It was incumbent upon [Plaintiffs] to file a timely appeal if [they] wished to challenge the [Gwinnett BOC's] decision on the merits. Having failed to do so, [Plaintiffs are] precluded from attacking th[at] .. . decision"). Here, the Complaint is not a petition for a writ of certiorari or declaratory judgment, and it was filed in June of 2022, well over thirty (30) days after November 2020, when the BOC adopted the Resolution. ***Compare*** Complaint at 9; *with* Geosam's Answer, Ex. 1 at I.

Therefore, the Court finds that Plaintiffs have satisfied none of the requirements set forth by Georgia law for collaterally attacking the Resolution, and it is now impossible for them to timely do so. Accordingly, the Complaint must be

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[7] *Here, the Complaint can only be construed as an attempt to appeal the Gwinm:tt BOC's adoption of the Resolution. While the Court acknowledges and understands that Plaintiffs are proceeding* ***pro se,*** *under Georgia law, not only is it "not the trial court's responsibility to make out a pro se party's case,"* ***Howell v. Styles,*** *221 Ga. App. 781, 782-83, 472 S.E.2d 548, 550 (1996), but the Georgia Supreme Court has fitmly acknowledged that "in a civil case the court* ***cannot*** *put a pro se litigant on a different standard from one represented by counsel."* ***Long v. Marion,*** *257 Ga. 431, 433-34, 360 S.E.2d 255, 257-58 (1987) (emphasis added).*

dismissed pursuant to O.C.G.A. § 9-11-12(b)(l) because the Court finds it lacks subject matter jurisdiction to hear the claims set forth in the Complaint. ***See City of Cumming,*** 300 Ga. at 820, 797 S.E.2d at 848 (overturning the Georgia

Court of Appeals and trial court after finding that, because the homeowners in that case sought review by mandamus rather than a petition for certiorari, the city's and developer's motion for summary judgment should have been granted); ***Fortson,*** 307 Ga. App. at 696-697, 705 S. E.2d at 896-97 (finding that property owners' claims against a county, the county's board of commissioners, and the county's officials were time-barred because, although the owners appeared and objected throughout a zoning process, the owners failed to file an appeal within 30 days of the zoning resolution that formed the basis of the owners' complaint as required by O.C.G.A. § 5-3-20(a)).

B. The Complaint does not state a claim upon which relief can be granted.

Construed in a light most favorable to the Plaintiffs, the Court finds, that in the alternative to the reasons set forth in Section Il(A), ***supra,*** the Complaint is dismissed with prejudice for Plaintiffs' failure to state a claim on which relief can be granted. In consideration of the facts, and alleged harm, described in the Complaint, the Court finds the Complaint identifies neither a cognizable cause of action under Georgia law against Geosam, nor alleges any cognizable injury that can be attributed to actions on behalf of Geosam. While the Court understands the

Plaintiffs are proceeding ***pro se,*** "[i]t is not the trial court's responsibility to make out a pro se party's case." ***Howell v. Styles,*** 221 Ga. App. 781, 782-83, 472 S.E.2d 548, 550 (1996). The Georgia Supreme Court has firmly acknowledged that "in a civil case the court cannot put a pro se litigant on a different standard from one represented by counsel." ***Long v. Marion,*** 257 Ga. 431, 433-34, 360 S.E.2d 255, 257-58 (1987).

The Court finds the exhibits attached to the pleadings further affirmatively demonstrate the Complaint fails to state a claim upon which relief can be granted against Geosam. The Exhibits attached to the Complaint and Geosam's Answer are properly considered upon ruling on a motion to dismiss. ***See, e.g., Poole,*** 321 Ga. App. at 674 n.l, 742 S.E.2d at 493 n.1; ***Babalola,*** 324 Ga. App. at 751, S.E.2d at 547 ("And the pleadings to be construed include any exhibits attached to and incorporated into the complaint and the answer."); ***Gold Creek SL, LLC,*** 290 Ga. App. at 809, 660 S.E.2d at 861 ("A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes and thus, a trial court is authorized to consider exhibits attached to and incorporated into the pleadings in its consideration of a motion to dismiss." ***(citing*** OCGA § 9-11-l0(c) (quotation marks omitted)). Moreover, a written instrument attached as an exhibit to a pleading will prevail over allegations of the pleading. ***H & R Block, Inc. v. Asher,*** 231 Ga. 780,781,204 S.E.2d 99, 100 (1974).[8]

With this in mind, construing the pleadings set forth in Plaintiffs' Complaint in the best light, and, assuming, ***arguendo,*** Plaintiffs properly filed the Complaint within the proper time period (i.e., within 30 days), in the proper form (i.e., a petition for a writ of certiorari or declaratory judgment), and in the proper court (i.e., this Court), the Court finds the only conceivably proper defendants and/or respondents for the claims and relief in the Complaint would be Gwinnett County and/or the Gwinnett BOC. Georgia law is clear on this point. ***E.g., City of Sandy Springs Bd. of Appeals v. Traton Homes, LLC,*** 341 Ga. App. 551,558, 801 S.E.2d 599, 606 (2017). ("Accordingly . . . because Traton Homes failed to name the [local government] as an opposite party and, likewise, failed to serve the City with a copy of the petition ***and*** with a copy of the writ (which . . . . was never issued) in the time required by the statutes [i.e::., five (5) days], the trial court erred in denying the . . . motion to dismiss. And that motion should have been granted with prejudice."); ***Fielder v. Rice Constr. Co.,*** 239 Ga. App. 362, 364, 522 S.E.2d 13, 15 (1999) ("[w]here a county causes, creates, or maintains a nuisance which amounts to an inverse condemnation," and it is accordingly "the county is liable in damages that would be

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[8] For instance, despite the representations in the Complaint, the Court finds that the Exhibits attached to the pleadings demonstrate Plaintiffs have no legal right in the Geosam Property. ***See*** Answer,Ex. 2 (an ALTA/NSPS Land Survey of the Geosam Property) (the "Geosam Survey"), Ex. 4 (Plaintiffs' Vesting Deeds),and Ex. 5 (the Riversprings Phase 2 Plat).

recoverable in an action for inverse condemnation." (***citing DeKalb County v. Orwig,*** 261 Ga. 137,138,402 S.E.2d 513,514 (1991)).

Here, however, the Complaint was not filed within the 30-day statute of limitations, in the proper form, in the proper court, or against the proper defendant. Additionally, the exhibits to the pleadings demonstrate that the Plaintiffs have not and cannot establish an easement interest in the Geosam Property which could be subject to a cognizable injury. Moreover, as found above, the Complaint fails to allege any other harm or injury attributable to Geosam.

Accordingly, the Court finds the Complaint fails to state a claim upon which relief can be granted and must be dismissed with prejudice.

III. CONCLUSION

For the foregoing reasons and for good cause shown, this Court hereby instructs the Clerk of Court to enter a Dismissal with Prejudice upon the docket of this case as to Defendant Geosam, as no causes of action exist in the present action following the execution and filing of this Order.

SO ORDERED this 26 day of January 2023

/s/ KIMBERLY A. GALLANT
HON. KIMBERLY A. GALLANT
Superior Court of Gwinnett County (by designation)

Respectfully prepared and presented by:

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IN THE SUPERIOR COURT GWINNETT COUNTY
STATE OF GEORGIA
(JANUARY 20, 2023)

GEOSAM CAP. U.S. GA., Plaintiffs, vs. CHRISTY POON-ATKINS, and CALVIN ATKINS, Defendants.	CIVIL ACTION NO.: 22-A-08764-10

ORDER DENYING MOTION TO DISMISS

The above-styled case having regularly come before the Court, and the same having been read, and considered, it is HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

Under Georgia law 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 the relief sought. *Austin v. Clark,* 294 Ga. 773, 774–775 (2014)(quoting *Anderson v. Flake,* 267 Ga. 498, 501 (1997)). 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. *Id;* see also *Campbell v. Ailion*, 338 Ga.App. 382 (2016).

A Complaint is sufficient to withstand a Motion to Dismiss for failure to state a claim, when the Complaint puts the parties on notice as to the nature of the action in a short and plain statement of the claim, upon which the Plaintiffs rely for recovery and a general indication of the type of litigation involved. See *ALW Mktg. Corp. v. Hill*, 205 Ga. App. 194, 198 (1992) citing (*Dillingham v. Doctors Clinic*, 236 Ga. 302 (1976); see also *Lathem v. Hestley*, 270 Ga. 849, 850 (1999). Further, it is well established that a Plaintiff is not required to plead facts sufficient to set out each element of a cause of action in the Complaint, so long as it puts the opposing party on reasonable notice of the issues that must be defended against. See *TechBios, Inc. v. Champagne*, 301 Ga. App. 592, 593 (2009); *Islam v. Wells Fargo Bank, N.A.*, 327 Ga. App. 197, 202, (2014). The Trial Court must treat all material allegations set forth in the Complaint as true, all denials set forth in the Answer as false, and resolve any doubts in favor of the Plaintiff. *Campbell v. Ailion*, 338 Ga. App. 382, 383 (2016) (quoting *Wylie v. Denton*, 323 Ga.App. 161, 162–163 (2013)).

This Court finds Defendant has not shown under the allegations of Plaintiff's complaint, Plaintiff would not be entitled to relief under any state of provable facts or that Plaintiff could not possible introduce evidence within the framework of the Complaint sufficient to grant the relief sought. Therefore, Defendant's motion

to dismiss is HEREBY DENIED.

So Ordered, this 1/20/2023.

/s/ WARREN DAVIS, Judge
WARREN DAVIS, Judge
Gwinnett Superior Court

IN THE STATE COURT GWINNETT COUNTY
STATE OF GEORGIA
(NOVEMBER 1, 2022)

CHRISTY POON-ATKINS, P.E. and CALVIN ATKINS, Plaintiffs, vs. RIVERSPRINGS AT ALCOVY HOMEOWNERS ASSOCIATION, INC. AND GEOSAM CAP. U.S. GA., Defendants.	CIVIL ACTION NO.:22C-3435-4

ORDER TRANSFERRING CASE TO SUPERIOR COURT

The parties were before this Court on Defendant GeoSam Cap U.S. GA's Motion to Dismiss Plaintiffs Complaint. After review of the issues, all matters ofrecord and the applicable law, this Court finds that it lacks subject matter jurisdiction. Therefore, the case is hereby transferred to Superior Court of Gwinnett County.

Any costs of court associated with the transfer shall be waived.

SO ORDERED this 1st day of November, 2022.

/s/ Ronda Colvin Leary, Judge
Ronda Colvin Leary, Judge
State Court of Gwinnett County

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Certificate of Compliance With Type-Volume Limit

Certificate of Compliance With Type-Vol. Limit, Typeface Requirements, and Type-Style Req.

1. The attached Petition for a Writ of Certiorari complies with the type-volume limit of Supreme Court Rule 33(g)(i) for the word limit and the 4 1/8" by 7 1/8" text field dimensions because, excluding the parts of the document exempted:
   - this document contains 2998 words, **or**
   - this petition contains 462 lines of text.

2. This document complies with the type-style and typeface requirements of Supreme Court Rule 33(1)(h) and consistent with Supreme Court Rule 33(1) for the 6 1/8" by 9 ¼" booklet format because:
   - this document has been prepared in a proportionally spaced typeface using Microsoft Word in 12pt Century Schoolbook.

Respectfully submitted,

CHRISTY POON-ATKINS, Pro Se

CALVIN ATKINS, Pro Se

Dated: February 2, 2026

State of Georgia County of Gwinnett This instrument was acknowledged before me this 2 day of February (month), 2026 (year), by Christy Poon Atkins & Calvin Atkins (name of signer). ____ Personally Known ____ Produced Identification Type and # of ID Drivin license 049205340 057398935

(Seal)

Acknowledgment: State of Georgia County of Gwinnett

(Signature Notary)

Rushit Patel Name of Notary Typed, Stamped or Printed) Notary Public, State of Georgia

RUSHIT PATEL
Notary Public, Georgia
Gwinnett County
My Commission Expires
01/03/2028

CERTIFICATE OF SERVICE

I do hereby certify that I have this date, February 2, 2026, sent the forgoing via UPS courier service to:

Respondents, ***Geosam Cap. U.S. Ga.*** through Respondent-Defs.['] att'y Steven Jones & att'y Matthew P. McKagen McKagen Jones *Law Firm*, at 1441 Dunwoody Village Parkway, Suite 100, Dunwoody, GA 30338.

Respondents, ***Riversprings Homeowners' Ass'n, Inc.*** through Respondents-Defs.['] att'y Brandon Wagner, *Lueder, Larkin & Hunter, LLC Law Firm*, at 12600 Deerfield Pkwy, Alpharetta, GA, 30004, and Respondents-Defs.['] att'y D. Lee Clayton, *Swift / Currie Law Firm* at 1420 Peachtree Street, N.E. Suite 800, Atlanta, GA 30309.

Ancillary Civil Action 24-C-00060-S7 [1:24-cv-02209-JPB]

Respondent, ***Riversprings Homeowners' Ass'n, Inc.*** through Respondents-Defs.['] att'y Harrison J. Woodworth, *Lueder, Larkin & Hunter, LLC Law Firm*, at 12600 Deerfield Pkwy, Alpharetta, GA, 30004.

This Certificate of Service confirms that three (3) copies of the Petitioners['] Writ of Certiorari – Petition for Rehearing booklets were sent to each party via attorney/attorneys of record for the

respective law firm. The booklets, developed to Supreme Court Rule 33 content standards sized for 1/8" by 9 1/4" booklet format, with 3 booklets per party mailed in properly addressed envelopes with fully prepaid UPS service label affixed thereon, and tracked with UPS numbers: 1ZTKG5250310357053 to Steven Jones & Matthew Mckagen, 1ZV1033K0315749556 to Brandon Wagner, 1ZV1033K0310218969 to D. Lee Clayton, and 1ZV1033K0322844180 to Harrison J. Woodworth.

This, the 2nd day of FEBRUARY 2026.

Respectfully submitted,

CHRISTY POON-ATKINS, Pro Se

CALVIN ATKINS, Pro Se

I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on February 2, 2026.

[Pub. L. 94–550, §1(a), Oct. 18, 1976, 90 Stat. 2534.]

This, the 2nd day of FEBRUARY 2026.

Respectfully submitted,

CHRISTY POON-ATKINS, Pro Se

CALVIN ATKINS, Pro Se

State of Georgia County of Gwinnett This instrument was acknowledged before me this 2 day of February (month), 2026 (year), by ~~Calvin Atkins~~ Christy Atkins (name of signer). ____ Personally Known ____ Produced Identification Type and # of ID Driving license #049205340 #057398935

(Seal) RUSHIT PATEL Notary Public, Georgia Gwinnett County My Commission Expires 01/03/2028

Acknowledgment: State of Georgia County of Gwinnett. _____ (Signature Notary) Rushit Patel Name of Notary Typed, Stamped or Printed) Notary Public, State of Georgia