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APPENDIX A
SUPREME COURT OF GEORGIA
ORDER DENYING CERTIORARI
(CASE NO. S25C0979)



SUPREME COURT OF GEORGIA
Case No. S25C0979

September 16, 2025

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

VINCENT TERRY v. MCCALLA RAYMER LEIBERT PIERCE, LLC
et al.

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

All the Justices concur.

Court of Appeals Case No. A24A1348

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

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

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

Theresa A. Barnes, Clerk

APPENDIX B
GEORGIA COURT OF APPEALS
RULE 36 SUMMARY AFFIRMANCE
(CASE NO. A24A1348)

**FIRST DIVISION
BARNES, P. J.,
GOBEIL and PIPKIN, JJ.**

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

March 13, 2025

**NOT TO BE OFFICIALLY
REPORTED**

In the Court of Appeals of Georgia

**A24A1348. TERRY v. MCCALLA RAYMER LEIBERT PIERCE,
LLC et al.**

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. Barnes, P. J., and Pipkin, J., concur.

APPENDIX C
SUPERIOR COURT OF FULTON COUNTY ORDER
DISMISSING THE ACTION WITH PREJUDICE
(CASE NO. 2022CV372214)

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

VINCENT TERRY,)
)
 Plaintiff,) CIVIL ACTION FILE NO.:
) 2022CV372214
)
 v.)
)
 MCCALLA RAYMER LEIBERT PIERCE, LLC;)
 LISA A. FRANK; STUART S. GORDAN;)
 GREGORY S. KRIVO; SUSAN E. REID;)
 AND CARL B. MCGEHEE JR,)
)
 Defendants.)

ORDER

This case comes before the Court on two motions filed by Defendants: (1) Defendants' Motion for Judgment on the Pleadings as to Plaintiff's Second and Third Amended Verified Complaint and (2) Defendants' Motion to Cancel and/or For Order Compelling Plaintiff to Cancel Improperly Filed Lis Pendens Notices and for Injunctive Relief. The Court enters this Order having held a hearing on both motions on August 8, 2023, and having carefully considered the arguments presented at that hearing, Defendants' motions and related filings, Plaintiff's pleadings, all filings by Plaintiff in opposition to said motions, and the remainder of the record in this action.

Suggestion of Death: As a preliminary matter, a Suggestion of Death as to Susan E. Reid ("Ms. Reid") was filed on August 7, 2023. Consequently, this action stands suspended as to Ms. Reid only until another party is properly substituted as a Defendant for Ms. Reid. *Allen v. Cloudburst Manufacturing Co.*, 162 Ga. App 188 (1982). This matter proceeds with respect to Defendants McCalla Raymer Leibert Pierce, LLC, Lisa A. Frank, Stuart S. Gordan, Gregory S. Krivo, and Carl B. McGehee Jr. (the "Extant Defendants").

For the reasons set forth herein Defendants' Motion for Judgment on the Pleadings as to Plaintiff's Second and Third Amended Verified Complaint is **GRANTED** as to the Extant

Defendants. Accordingly, Plaintiff's Counts X and XI are **DISMISSED WITH PREJUDICE** as to the Extant Defendants. Moreover, for the reasons set forth herein Defendants' Motion to Cancel and/or For Order Compelling Plaintiff to Cancel Improperly Filed Lis Pendens Notices and for Injunctive Relief is **GRANTED** as it relates to the lis pendens filed in Fulton County, Georgia, and the Clerk of the Superior Court of Fulton County is hereby directed to cancel the lis pendens located at Lien Book 5491, page 271 of the official records of Fulton County. Defendants' Motion to Cancel and/or For Order Compelling Plaintiff to Cancel Improperly Filed Lis Pendens Notices and for Injunctive Relief for lis pendens filed in other jurisdictions is **DENIED**.

I. Motion for Judgment on the Pleadings

Standard of Review. A motion for judgment on the pleadings "is proper where the undisputed facts that appear from the pleadings establish that the movant is entitled to judgment as a matter of law." *Holland Ins. Grp., LLC v. Senior Life Ins. Co.*, 329 Ga. App. 834, 836 (2014). Although all well-pleaded facts are to be accepted as true, this Court "is not required to adopt a party's legal conclusions based on those facts." *Id.* In considering a motion for judgment on the pleadings, a trial court may consider exhibits attached to and incorporated into the pleadings, including exhibits attached to the complaint or the answer. *Lapolla Indus., Inc. v. Hess*, 325 Ga. App. 256, 258 (2013). If "in reviewing these documents, there is a complete failure by the plaintiff to state a cause of action," then the defendant is entitled to judgment as a matter of law. *Early v. MiMedx Grp., Inc.*, 330 Ga. App. 652, 654 (2015), cert. denied (May 11, 2015) (internal citations omitted).

Accepting all well-pled factual allegations as true in both Plaintiff's Second and Third Amended Verified Complaint, Plaintiff fails to state a claim upon which relief can be granted as a matter of law. Plaintiff's Second and Third Amended Complaints fail to identify which allegations

support each individual claim, and also fail to distinguish between the various Defendants regarding the claims. The Complaint, as amended, lacks the "short plain statement of the claims showing that the pleader is entitled to relief" as required by O.C.G.A. § 9-11-8(a)(2)(A). *Moore v. Goldome Credit Corp.*, 187 Ga. App. 594 (1988). Consequently, this deficient pleading would force Defendants to engage in guesswork and speculation as to the facts upon which Plaintiff relies and what wrongdoing Plaintiff alleges.

The Court now turns to the individual Counts.

i. Negligence Claims (Count X)

Count X in Plaintiff's Complaint, as amended, seeks recovery against the Defendants based on negligence, negligence per se, negligent hiring, and negligent supervision.

Negligence. As it relates to Plaintiff's claim of negligence, Plaintiff's claim fails. "In order to have a viable negligence action, a plaintiff must satisfy the elements of the tort, namely, the existence of a duty on the part of the defendant, a breach of that duty, causation of the alleged injury, and damages resulting from the alleged breach of the duty." *Stanley v. Garrett*, 356 Ga. App. 706, 709 (2020). The basis of Count X is alleged violations of Georgia's Rules of Professional Conduct related to Defendants' alleged representation of Plaintiff. See Third Amended Complaint. However, bar rule violations do not by themselves create a cause of action for legal malpractice. *Davis v. Findley*, 262 Ga. 612, 613 (1992).

While the Code of Professional Responsibility provides specific sanctions for the professional misconduct of the attorneys whom it regulates, it does not establish civil liability of attorneys for their professional misconduct, nor does it create remedies in consequence thereof.

Id.; see also *Allen v. Lefkoff, Duncan, Grimes & Dermer, P.C.*, 265 Ga. 374, 375 (1995) ("Having said that an attorney's conduct will not support a legal malpractice action solely because the conduct violates the Bar Rules. . ."). Having failed to plead an actionable claim for negligence, that claim fails as a matter of law.

Plaintiff's negligence claims also fail because he did not comply with O.C.G.A. § 9.11.9.1. A plaintiff seeking damages for professional malpractice against an attorney must file with the complaint an affidavit setting forth at least one negligent act or omission and the factual basis for each claim. O.C.G.A. § 9-11-9.1(a), (g)(2). Whether a claim is for simple or professional negligence "is a question of law for the court to decide." *Baskette v. Atlanta Ctr. for Reprod. Med., LLC*, 285 Ga. App. 876, 879 (2007). Plaintiff's negligence claims arise out of Defendants' alleged violations of Georgia's Rules of Professional Conduct while performing legal services for Plaintiff, the NCUA, and the CO Credit Union. See Third Amended Complaint. As such, they are claims for professional malpractice.

As explained by the Georgia Court of Appeals,

"Not every claim which calls into question the conduct of one who happens to be a lawyer is a professional malpractice claim requiring expert testimony or an OCGA § 9-11-9.1 affidavit. It is only where the claim is based upon the failure of the professional to meet the requisite standards of the subject profession that the necessity to establish such standards and the violation thereof by expert testimony for the guidance of the jury arises."

Hodge v. Jennings Mill, Ltd., 215 Ga. App. 507, 508 (1994) (emphasis added) (internal citation omitted). Plaintiff, however, did not file an expert affidavit with his amended complaint. Accordingly, Plaintiff's negligence claim also fails as a matter of law. O.C.G.A. § 9-11-9.1(a).

Negligence Per Se. In Georgia, "negligence per se arises when a statute is violated, the person injured by the violation is within the class of persons the statute was intended to protect, and the harm complained of was the harm the statute was intended to guard against." *Goldstein, Garber & Salama, LLC v. J.B.*, 300 Ga. 840, 845 (2017). The statute provides the standard of care "so that its violation becomes negligence per se." *Central Anesthesia Associates, P.C. v. Worthy*, 173 Ga. App. 150, 152 (1984). Defendants' motion points out that Plaintiff's Second and Third Amended Complaints fail to allege the breach of any such statute. In response, Plaintiff alleges that Defendants have violated O.C.G.A. § 16-10-70 and 18 U.S.C. § 1001. However, those statutes

concern knowingly and willfully making false statements, which are perjury statutes concerning *intentional* acts. O.C.G.A. § 16-10-70; 18 U.S.C. § 1001. They do not set out standards of care for a *negligence* claim. Therefore, this claim fails as a matter of law.

Negligent Hiring and Negligent Supervision. These claims also fail as a matter of law. First, Plaintiff's failure to comply with O.C.G.A. § 9-11-9.1 is fatal to his claims for negligent hiring and supervision. A plaintiff must comply with the affidavit requirement of O.C.G.A. § 9-11-9.1 when asserting negligent hiring and supervision claims arising out of an employee's alleged professional negligence. *Blackwell v. Goodwin*, 236 Ga. App. 861, 864 (1999). Therefore, having determined that Plaintiff's negligence claims are subject to the requirements of O.C.G.A. § 9-11-9.1 and given that Plaintiff filed no such affidavit with his Complaint, as amended, these claims also fail because Plaintiff did not comply with O.C.G.A. § 9-11-9.1. Second, "[a] claim for negligent retention is necessarily derivative and can only survive. . . to the extent that the underlying substantive claims survive the same." *MARTA v. Mosley*, 280 Ga. App. 486, 489 (2006). Accordingly, Plaintiff's negligent hiring and supervision claims fail as a matter of law because the predicate negligence claim has failed as a matter of law. *Oswell v. Nixon*, 275 Ga. App. 205, 208 (2005).

For these reasons, each of Plaintiff's claims in **Count X** fail as a matter of law and are **DISMISSED WITH PREJUDICE** as to the Extant Defendants.

ii. Abusive Litigation (Count XI)

Count XI of Plaintiff's Third Amended Complaint is for Abusive Litigation. This claim also fails for two independently sufficient reasons. First, prior to filing a claim for Abusive Litigation the Plaintiff must comply with the notice provisions of O.C.G.A. § 51-7-84(a). That section states:

[a]s a condition precedent to any claim for abusive litigation, the person injured by such act shall give written notice by registered or certified mail or statutory

overnight delivery or some other means evidencing receipt by the addressee to any person against whom such injured person intends to assert a claim for abusive litigation and shall thereby give the person against whom an abusive litigation claim is contemplated an opportunity to voluntarily withdraw, abandon, discontinue, or dismiss the civil proceeding, claim, defense, motion, appeal, civil process, or other position. Such notice shall identify the civil proceeding, claim, defense, motion, appeal, civil process, or other position which the injured person claims constitute abusive litigation.

OCGA § 51-7-84(a) (emphasis added). Plaintiff failed to allege that he satisfied the statutory requirement to give this required written notice. In response to Defendants having pointed to that omission as grounds for dismissal of this claim, Plaintiff points the Court to a "Settlement Demand Letter" that Plaintiff attached at Exhibit E to his original Verified Complaint, which he reattached to his Brief in Objection to Defendants' Motion for Judgment on the Pleadings filed August 7, 2023. That letter, however, is a demand for recompense for alleged damages. It is not the notice and opportunity to withdraw the alleged abusive civil proceeding required by the statute as a condition precedent to asserting this claim. OCGA § 51-7-84(a) (emphasis added). Second, Plaintiff admits that the 2021 lawsuit was dismissed. *See* Verified Complaint, p. 12 at final paragraph. The voluntary withdrawal of a claim is a complete defense to a claim for abusive litigation. O.C.G.A. § 51-7-82(a).

Accordingly, the claim for Abusive Litigation (Count XI) fails to state a claim upon which relief may be granted and is **DISMISSED WITH PREJUDICE** as to the Extant Defendants.

II. Motion to Cancel and/or For Order Compelling Plaintiff to Cancel Improperly Filed Lis Pendens Notices and for Injunctive Relief.

Defendants' Motion to Cancel and/or For Order Compelling Plaintiff to Cancel Improperly Filed Lis Pendens Notices and for Injunctive Relief seeks an order (1) cancelling Plaintiff's lis pendens filed in Fulton County, Georgia and (2) enjoining Plaintiff from maintaining the lis pendens filed in DeKalb County, Georgia and Hamilton County, Alabama.

The purpose of a notice of lis pendens “is to inform prospective purchasers that real property is directly involved in a pending lawsuit, in which lawsuit there is some relief sought in regard to that particular property.” *Boca Petroco, Inc. v. Petroleum Realty II, LLC*, 285 Ga. 487, 488 (2009). Therefore, “[u]nder Georgia law, when property is the subject of a lawsuit, a party may file a notice of lis pendens to alert property owners and potential purchasers that the property is involved in litigation.” *Phillips v. Almont Homes NE, Inc.*, 365 Ga. App. 65, 67 (2022) (citations omitted). “[P]roperty is ‘involved’ in pending litigation when it is ‘actually and directly brought into the litigation by the pleadings in a pending suit and as to which some relief is sought respecting that particular property.’” *Id.* at 67 (internal citation omitted).

However, “[a] lis pendens may not be based upon a suit for money damages only....” *Hutson v. Young*, 255 Ga. App. 169, 170 (2002) (emphasis added). “Where the litigation does not assert an interest in land, filing a lis pendens is improper.” *Id.* (emphasis added) (citing *South River Farms v. Bearden*, 210 Ga. App. 156, 157–158 (1993)). Georgia trial courts are empowered to remove by court order a lis pendens notice that was not properly filed. *See Hill v. L/A Mgmt. Corp.*, 234 Ga. 341 (1975).

Plaintiff’s claims are for money damages only and none of them seek relief as to any real property. (See Plaintiff’s Second Amended Complaint and Plaintiff’s Third Amended Complaint.) Therefore, the filing of lis pendens relating to this action is improper and not permitted under Georgia law even if Plaintiff’s remaining claims had survived Defendants’ Motion for Judgment on the Pleadings. For these reasons, the Motion to Cancel the lis pendens filed in Fulton County is **GRANTED**.

This motion also sought an order enjoining Plaintiff from continuing to maintain his lis pendens filed in DeKalb County, Georgia and Hamilton County, Indiana. Although those lis pendens are also subject to the fact that this action is for money damages only and not for claims

respecting any real property, the Court has determined that the courts located in DeKalb County, Georgia and Hamilton County, Indiana are the proper venue to address those lis pendens and, therefore, this portion of the motion is **DENIED** on that ground.

III. Conclusion

For the foregoing reasons, it is hereby **ORDERED** that Defendants' Motion for Judgment on the Pleadings as to Plaintiff's Second and Third Amended Verified Complaint is **GRANTED** and Plaintiff's Counts X and XI are hereby **DISMISSED WITH PREJUDICE** as to the Extant Defendants. Defendants' Motion to Cancel and/or For Order Compelling Plaintiff to Cancel Improperly Filed Lis Pendens Notices and for Injunctive Relief is **GRANTED** as to the Lis Pendens filed in Fulton County, Georgia, and the Clerk of the Superior Court of Fulton County is hereby directed to cancel the lis pendens located at Lien Book 5491, page 271 of the official records of Fulton County. Defendants' Motion to Cancel and/or For Order Compelling Plaintiff to Cancel Improperly Filed Lis Pendens Notices and for Injunctive Relief as to the lis pendens filed in DeKalb County, Georgia and Hamilton County, Indiana is **DENIED**.

IT IS SO ORDERED, this 22nd day of August, 2023.



JUDGE JANE C. BARWICK
Superior Court of Fulton County

**Additional material
from this filing is
available in the
Clerk's Office.**