IN THE SUPERIOR COURT OF FORSYTH COUNTY

STATE OF GEORGIA

VINAY BOSE, MOMMIES PROPERTIES, LLC, FH PARTNERS, LLC,	)	
PLAINTIFFS,	)	
vs.	)	CASE NUMBER:
JOHN RICHARDS, CHATTAHOOCHEE RIVER CLUB HOMEOWNERS ASSOCIATION, INC., JOHN DOE, JANE DOE,	)	18CV-1887-1
DEFENDANTS.	)	

OPEN THE DEFAULT, DEFAULT JUDGMENT

BEFORE THE HONORABLE JEFFREY S. BAGLEY, CHIEF JUDGE
ON FEBRUARY 25, 2019, AT 10:54 A.M.
AT THE FORSYTH COUNTY COURTHOUSE, CUMMING, GEORGIA

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P R O C E E D I N G S

THE COURT: All right. We have the case of Bose, Mommies Properties, FH Partners versus Richards and the Chattahoochee River Club HOA, John Doe and Jane Doe, Civil Action 18CV-1887-1.

I have reviewed the case. I have reviewed the posture of the case. So I'm pretty familiar with it, but I do want to hear from all sides. The reason, as I said earlier, the precipitating event for having this hearing so soon on the default issue is because of the, I believe it was Mr. Bose who filed his request for production of documents and so forth that precipitated the county to file its motion for a protective order because, according to the motion, I believe that they are so voluminous that if the case is going to be -- if the motion for default judgment is going to be granted, that would eliminate the necessity for having the county to produce all of these voluminous documents.

That's the reason we're here. That is the reason we are having such a quick hearing on this.

I will now entertain -- I guess there is a motion to open the default, and then there is a motion for default judgment. So, I guess the logical way to look at it would be the motion to open the default would need to go first.

So I will hear from you then, Mr. Tallant, first.

MR. TALLANT: Thank you, Judge,

It's my pleasure to be here in front of you today. Thank you for taking us, and I'm glad, your Honor, there was a worry that we would get it all worked out. I know we had some scheduling snafus. We should have just let the Court take care of that to begin with because, my golly, you found a way to get us here and make sure it worked out.

THE COURT: There was the conflict of the 28th of February.

MR. TALLANT: Right. Yes, sir.

THE COURT: Then I said -- well, Mr. Oldham didn't have a leave of absence on file, but I still recognize --

MR. TALLANT: Yes, sir.

THE COURT: -- notwithstanding that, I still recognized it and so, okay, just tell him to come in on Monday.

MR. TALLANT: I think it works out great, Judge.

Your Honor, I think the Court will recognize pretty quickly this is not your ordinary default-type case. This is not a situation where we have an insurer or something like that who was given pleadings and then didn't forward them on. This is not the kind of case where we have somebody who miscalculated a deadline or anything like that.

This is a case, Judge, where the parties were working

well together, coming to an agreement about when a deadline was going to be to file an answer. They had an agreement.

There was an unopposed motion that was filed. This Court took that unopposed motion, and you issued an order setting a specific deadline for the filing of the answer. That deadline, Judge, was the 14th of December 2018.

What happened in this case is the answer was prepared, and the answer was given to a staff member for filing on that day.

The mistake in this case, Judge, was with regard to the procedural niceties of the Court. The understanding or the belief was that e-filing was available.

What is ironic about this, Judge, if that this case had been -- if a deadline had been a mere 18 days later, we wouldn't be here today. We're talking about an 18 day difference where e-filing was available versus when it wasn't available. That is what led to this issue.

Now, what nobody is going to dispute in this case, your Honor, is that the plaintiffs actually did receive on the 14th -- I believe they even said it in their own brief -- they actually received the answer of the defendants on the 14th.

That was not something that the defense counsel had to do. Defense counsel did not have to take the step of emailing this to everyone. But, again, counsel had been

working well together in this case, so they took that step and they gave that to them on the 14th, so that the plaintiffs' counsel could have as much advance notice of what was in the answers as possible.

But e-filing wasn't available. So what ended up happening was it ended up being UPS'd up here for filing at that point.

Plaintiffs' counsel then said nothing. They didn't do anything. They waited until the expiration of the 15 days, despite the fact they had the answer on the 14th. They did nothing, and they waited until the expiration of the 15 days, and then filed a motion for default judgment.

On the next day, my clients, with regard to the counsel who they had in this case and still have in this case, filed a motion to open the default the very next day.

Judge, what was interesting about this case is I am reminded, and I'm so glad Mr. Jarrard is here, and I warned him ahead of time I was going to talk about this case.

Twelve years ago, in this court -- actually, we were across the street when we did that -- 12 years ago I represented a gentleman named Tommy Harris. When I was representing Tommy Harris, I filed on behalf of him and his wife -- and I forget his wife's name now -- a suit against Forsyth County. For one reason or another, the county went into default and no answer was filed. Fifteen days past

and no answer was filed.

I know Mr. Jarrard doesn't like me talking about this. He's probably cringing over there as I talk about this case. But he won at the end of the day, so he's happy.

Twenty-four days past after the 30, so we're at 54 days now. No answer had been filed. We moved for a default judgment. Immediately, the county is on it. The county files an answer, and the county's defense is a plea in abatement.

The reason I point out the county's defense is a plea in abatement is because a plea in abatement, Judge, does not go to the merits of the case. A plea in abatement just says, even if everything they say is true, Judge, we still -- the outcome might be different if you open the default, and that's what the standard is.

A meritorious defense, which is what the plaintiffs want to focus on this action, is not a defense on the merits. It is a defense that if the default is opened, the situation or the outcome might be different.

The county raised a plea in abatement in that case, and this Court brought us in, and we had a hearing on the motion for default judgment and the county's motion to open the default.

I learned several things that day. The one thing I learned is that this Court does embrace this state's strong

policy of seeing that cases are decided on their merits, to see that people get a chance to actually litigate their case when they act promptly and they act with diligence.

The second thing I learned in that case, the Tommy Harris case, is that this Court recognizes that a meritorious defense is not necessarily always a defense on the merits.

Now, don't get me wrong. We believe we're going to have defenses on the merits, but a meritorious defense does not mean a defense on the merits. It means if the default is opened -- may, not will, might, doesn't have to be the outcome to be different.

The third thing, and probably the most valuable lesson that I learned that day is this, Judge. This Court does not like it when attorneys sandbag. When they know another party is in default, and they sit there and they wait until the 15 days are up.

There is a case I'm going to cite today, Judge. It deals with that specific issue, and the Court of Appeals finds fault with that as well. But that was the third important lesson that I learned on that day.

I will give credit where credit is due. Mr. Jarrard told me before we even got here to argue that day, I was 12 years younger and I had a lot less gray hair than I do now, and Mr. Jarrard told me that that was what the outcome was

going to be. That when you sandbag like that, that the courts of this state do not like that. That is what we have going on in this case -- even more so in this case, Judge.

Because in the case that I had in front of this Court involving Mr. Harris in Forsyth County, the county never even filed an answer until after we moved for a default judgment.

In this case, the answer was filed. The answer was served and still the defendants -- the plaintiffs, excuse me, lie in wait, let the time pass, and then file the motion for default judgment after those 15 days were up.

Judge, the standard we are here under is O.C.G.A. § 9-11-55(b). We have to show the justification options of providential cause preventing the filing of the required pleading or for excusable neglect or where from all the facts and all the circumstances taking everything into consideration -- and this is where we're going to focus our efforts -- this is a proper case for the opening of the default.

And, of course, there are conditions precedent. We have to make a showing under oath setting up a meritorious defense. We have offered plead instanter and shall announce ready to proceed with trial.

We filed two affidavits -- or my clients did -- filed

two affidavits with their motion to open default. Those affidavits set-up that --

THE COURT: Your client is the Chattahoochee River Club --

MR. TALLANT: Chattahoochee River Club and John Richards. Yes, sir.

THE COURT: Both?

MR. TALLANT: Yes. Yes.

I think initially we only filed our -- when we were asked to join the case, we were moving pretty quickly, Judge -- and when we initially filed, we only filed for Chattahoochee River Club. But in the reply brief that we filed on Friday, your Honor, we included Mr. Richards at that time. So that served as our entry of appearance on his behalf as well in order to represent him in this matter.

Now, the motion to open the default was filed though, was filed by my client's counsel out of Savannah, and Ms. Kim Cofer Butler and Mr. John Ratterree -- excuse me, Clay Ratterree. There's so many Johns in this case. There's a whole plethora of Johns out here but Clay Ratterree.

They filed that motion to open on behalf of those defendants. We then got involved a couple of weeks later, I guess is when we actually got involved in the case,

setting up that they are presenting their meritorious defense, that they are ready to proceed to trial, and they offered plead instanter. They've actually already pled because they filed the answer. It just wasn't filed on the day that the agreement that had been in the court's order had said that it actually would be filed because they thought the e-filing was available.

The meritorious defense argument is where I expect the plaintiffs are going to spend a bulk of their time; and again, I've already mentioned that the meritorious defense standard is that we have to show that if relief from the default is granted, the outcome of the suit may be different from the result if the default stands.

A case for that, Judge, is Legacy Hills Residential Association versus Colonial Bank, 255 Ga.App. 144. It's a 2002 case, but I'm sure the Court is very much familiar with that standard. I'm sure you hear these types of things all the time.

We are not required to show we will win. We're not required to show we will win.

The issue here is not to test the sufficiency of our defenses. Today is not the trial of the case. The question here is not, at the end of all of the evidence that may be submitted in this case, are we going to win? The question is simply might we win if the default is open.

The fact is, Judge, it's not even might we win. It's just might the outcome be different somehow, in some way, shape, or form. It might be, Judge, that there is less relief granted than what the plaintiffs are seeking. It might be that the relief the Court would grant today would be different if we're allowed to open the default and go ahead and proceed to trial in this case.

It's not a might we win. The question is might the outcome be different; and if the outcome might, may, could possibly be different, then we have set out our meritorious defense argument.

The policy of not requiring us to show that we absolutely will win is because it is this Court and this state's strong policy that we decide these cases on the merits.

Default is an extreme remedy especially in a case like this where -- well, I've already set up the facts several times -- where we've got 600 homeowners and Chattahoochee River Club, whose HOA -- apparently the plaintiffs' desire is to have a default judgment against them prejudicing those 600 homeowners from their ability to have their HOA to present their defense in this case.

I've already mentioned, Judge, that we don't get to conflate meritorious defense with the defense on the merits. Those are absolutely two separate things.

The meritorious defense in this case, the first one that we raised is set up by the plaintiffs' own pleadings. The plaintiff actually pled in paragraphs 35 and 37 of their complaint the meritorious defense that we need to set up. We set it up as an affirmative defense number three in our answer, and that is the failure to join the indispensable or necessary parties. That is affirmative defense number three.

What the plaintiff said in paragraph 35 of their answer, they name all these John and Jane Does; and the plaintiff said in their own complaint all of these people, these 625 homeowners, a few of which were able to come here today, they may have rights. They may have interests that are going to need to be litigated, and the plaintiff said, but we have not added them as parties yet because Chattahoochee River Club holds all the lists of who these people are. So we have not added them as parties yet -- yet. They acknowledge they have not added the people to this case that they need to add.

Paragraph 37 then goes onto acknowledge, again that they have not included all of the parties and that they need to add more.

So we set up as defense number three in this case, failure to join the proper parties, failure to join the indispensable parties.

Now, Judge, I am very much aware because I have litigated this issue many times, that the initial remedy in this case, when you have failure to join the parties, is to order them, join the darn parties. That is the initial remedy.

However, the question is not is that the only remedy. Because at the end of the day, what is absolutely true when you have these parties that have not been joined, is that in appropriate circumstances, if they don't get these parties added, you're required to dismiss their case.

O.F.C. Capital versus Schmidtlein Electric, Inc., 289 Ga.App. 143, the pinpoint cite on that is 144. It's a 2008 case. They've got all these parties who they've said, we've not added yet. We raise that as a defense. It is possible. It might -- it may be, that if you open the default, eventually you end up dismissing their case because they've not added the people they are supposed to add.

That's a meritorious defense. If you open the default, the outcome might be different. It may be different. It could be different. It doesn't have to be, but it might, may, or could. That is a meritorious defense right there. We don't really have to go any further, but we will.

O.C.G.A. § 23-3-40, that's the conventional quia

timet. That's the one that says you've got to add these people. It tells them they have to add these people.

THE COURT: Isn't this a quia timet against all the world? Isn't that what it is?

MR. TALLANT: Well, it's a lot of things, Judge. It's a conventional quia timet. They've pled under § 23-3-40. They also pled under § 23-3-60. They have alleged interference with easement. They've alleged defamation. They've certainly alleged intentional infliction of emotional distress. I mean there are all --

THE COURT: There's tort claims.

MR. TALLANT: There's tort claims. There's all kinds of things that have been thrown together, cobbled together, and tossed into this case.

The reason I bring up § 23-3-40 is because it is a little bit different than § 23-3-60. § 23-3-40 says you add these people. These people are parties to the case. You have to add the people who may have adverse interest. They didn't do it.

That's why we've raised that defense. That's why they know they've got to add these people -- paragraphs 35 and 37 of their own complaint.

That's § 23-3-42 is where they have to add all the people whose cloud they are seeking to remove.

And then § 23-3-60 involves, not only all the people

who may have an adverse interest, it involves all of the adjoining landowners.

The first thing the special master is going to do, your Honor, the special master has to go out there and has to determine who are all the adjoining landowners to this case because you cannot have a quiet title against all the world until they get all those noticed parties in.

That's what the plaintiffs are trying to do, Judge. They are trying to circumvent this entire process by having this gotcha moment. Let's not make any mistake about it, that is what this is.

They had the answer on the 14th. They knew it had been filed. They waited until after the 15 days had expired, and then they moved for the default judgment. They are trying to circumvent § 23-3-40 and § 23-3-60 by trying to get this Court to rule in their favor before we ever even get to adding all of these other parties that we raise as a defense in our case. That is why that defense is absolutely, positively meritorious.

We also had several factual defenses, Judge. I don't know that I need to get into these factual defenses too much because I frankly believe that the failure to join parties -- because the ultimate sanction for that is dismissal. That is what gives us the meritorious defense, but we did have several factual defenses.

These were all done under oath, Judge. I want to mention that because the answer was verified, so we do have verified, sworn defenses that have been raised; not only the affirmative defenses but also the responses to the allegations.

THE COURT: Doesn't the party have to verify the answer?

MR. TALLANT: They do. The parties verified the answer.

THE COURT: The HOA did.

MR. TALLANT: Yes. I think it was actually Mr. Richards who signed it. So Mr. Richards is the individual, but he's also the president of the HOA.

THE COURT: Okay.

MR. TALLANT: So we had the verified answer of the case. The verified answer was raised, we raised the defenses, we raised the factual disputes denying that the covenants have no effect on their property, denying all of these pre-lawsuit communications and the harassment that has allegedly gone on, denying the construction of the fence, interfering with the easement.

And then frankly, Judge, denied every essential element in Counts 3, 4, 5, 6, and 7.

The plaintiffs in this case rely upon the Butterworth decision. In that case though, here is my Butterworth --

is not the same as what we're dealing with here. Butterworth found no meritorious defense. The reason Butterworth found no meritorious defense is because the defendant in the Butterworth case was being sued on a guarantee.

The question was the sufficiency of the guarantor as far as that defendant went. The only thing the defendant said in trying to assert their meritorious defense is that amount might have been different. They might be liable in a different amount. They didn't attack the guarantee. There was nothing that was attacking the guarantee.

The Court said, at best, you set up something that the amount might be different, not the enforceability of the guarantee itself. That is why the trial court and the Court of Appeals in that case said, no. This is not that kind -- this is not a meritorious defense under those circumstances.

That's why Butterworth doesn't apply because here we have an actual defense, several of them in truth, the factual defenses and then the failure to join parties defenses that all say the outcome of the case might be different if this Court opens the default.

When we get to the justifications for opening the default, of course, no final judgment has been entered. I've already gone over some of these issues where the

answer was extended to -- then the answer was extended to December 14th. The plaintiffs actually received it on December 14th.

So, Judge, one of the things I'm going to talk about in a second, one of the factors to consider is whether or not or how these plaintiffs are going to be prejudiced if the default is open.

There is no way under the sun, the plaintiffs can allege they are going to be prejudiced because they got the answer; frankly, earlier than they should have received it.

All my client had to do was drop the answer in the mail. They instead took the additional step of emailing it so they got it as soon as possible.

Frankly, I think to get to the reason we're here, not only the discovery on the county, but 27 requests for production of documents have been issued in this case. I counted them on the court's docket right before I came up here. They were coming in, I think all the way up until last Wednesday or Thursday. Twenty seven different ways the plaintiffs have engaged -- actually, it was Mr. Bose, but he is one of the plaintiffs -- has engaged in discovery in this matter. There is no way that anybody can claim prejudice.

Frankly, I would make the argument if you're -- because Mr. Bose was one of the movants for default

judgment in this case -- I would make the argument if you're going to engage in 27 rounds of discovery, there is a darn good argument that his issue of the default has been waived because that's where we are. You are acting as if this answer has been filed.

Certainly, that is something the Court needs to consider that why in the world are we conducting all of this discovery if the argument is, well, we're not going to have a case anyway. The aggressive discovery efforts certainly weigh in favor of this Court opening the default.

We acted promptly and sent the answer via UPS. Upon learning of the default, defense counsel one day after filed the motion and the brief to open the default.

As I've already mentioned several times now, not only did the plaintiffs' counsel wait for the 15 days to expire, but if it had just been 18 days later, e-filing was available. E-filing became available in this Court right after the first of the year. That's how many days we were away from e-filing. In fact, we could have filed up until midnight.

I did that the other day. I waited until after 5:00 to file something just for the heck of waiting until after 5:00 to file something, just because it felt good to do so, obviously.

A few cases, Judge, that make out proper case that I

think would be important for the Court to consider. I'm going to use the extreme one first. Samadi versus Federal Home Loan Mortgage Corp., the Court of Appeals in that case upheld a default being open.

Here are the facts of that case very briefly. Freddie Mac was served in May of 2015. The plaintiff filed a motion for a default judgment in September of 2015. A rule nisi, Judge -- they don't move as fast as you -- a rule nisi was issued in April of 2016 on the September of 2015 motion setting the hearing in May of 2016. So the hearing was a year after Freddie Mac was served.

Freddie Mac skipped the hearing. Freddie Mac didn't even go to the hearing on the default. Instead, they filed a motion to dismiss the plaintiff's complaint in June of 2016. They finally got around to filing a motion to open the default in August of 2016. That is 15 months after they were served.

Their excuse for why they didn't answer the case was they got confused as to how many cases had been filed. That was their excuse. The Court said that was a proper case for opening default.

Bilbo versus Five Star Athlete Management, 334 Ga.App. 208, the defendant was one day late in filing the answer based on miscalculation. The plaintiffs again, lie in wait and did not file the motion for default judgment until

after the 15-day grace period had expired.

The defendant then moved to open and the proper case was made, according to the Court, that's a motion more kin to this case.

But here is the one I want to focus on, Albee versus Krasnoff, 255 Ga.App. 738, 2002. This was actually filed in the case, and in the reply brief that we filed on Friday, and I apologize to the Court for that being such a late filing. But as the Court knows, and I'm certainly not complaining, we got the rule nisi on Thursday. We did the best we could to get a reply in on Friday.

Of course, Albee notes, well, there were several lawsuits filed in that case in the Albee versus Krasnoff case, and the defense missed one. Again, that was their excuse. We didn't see it, so we didn't file an answer to it. In that case, no answer was filed within the statutory period or within the 15-day matter of right period.

So that is two ways that this situation is worse than the case we have at hand. Because here in this case, not did my clients file an answer, they filed it within the 15-day period.

The plaintiff then moved for a default judgment after the plaintiff had waited for the 15 days to expire. One day later, exactly as in this case, the defense moves to open the default.

The plaintiffs argued in that case that, quote, inattention to court procedures, closed quote, should not justify opening a default.

I think that is exactly the kind of situation we have here. This inattention to court procedures argument is at best what the plaintiffs can say because the defense thought e-filing was available.

The plaintiffs in the Albee case said, that's not enough. You cannot open a default when that's the issue, and the Court of Appeals and the trial court both disagreed, and said, yes, you can still have a proper case for opening a default.

The Albee case, the Court said, number one, you have very broad discretion when it comes to opening a default and allowing the case to be decided on its merits.

But here is the part from the Albee case, and I think it's important enough that I actually want to read this.

The rule permitting opening a default is remedial in nature and should be liberally applied for default judgment is a drastic sanction that should be invoked only in extreme situations.

Whenever possible, cases should be decided on their merits where default judgment is not favored in the law.

Here we go, generally, a default should be set aside where the defendant acts with reasonable promptness and

alleged a meritorious defense in determining whether or not the situation is extreme.

So in determining whether or not, Judge, you're going to actually allow a default judgment to enter against this HOA, the individual, and the 625 homeowners that make up the HOA

In determining whether a situation is extreme, among the factors, which may be considered, but which will not standing alone authorize opening of a default are: whether and how the opposing party will be prejudiced -- how would the plaintiffs be prejudiced by opening the default; whether the opposing party elected not to raise the default issue until after the time under O.C.G.A. § 9-11-55(a) had expired.

That is one of the things to consider. Did they lie in wait? Did they elect, did they choose to not raise this issue until after the 15 days had expired; and, whether the defaulting party acted promptly to open the default upon learning that no answer had either been filed or timely filed?

Every factor, Judge, in Albee is met in this case. We acted promptly. There was absolutely no issue of prejudice as to the defense, excuse me, as to the plaintiffs because they had the answer on the day that we said that we were going to file it. They had the answer on December 14th.

The plaintiffs did not raise this issue until after the time to open the default as a matter of right had expired.

I understand why they did it. I understand why they waited. But I also understand the courts of this state say that is something you consider, especially when the answer was filed. They had the answer, and they still waited until after the 15 days were up. The courts of this state say that is something you get to consider -- Judge, a matter within your discretion.

The four prerequisites have been met. We have made out a proper case to open the default. There is absolutely no prejudice whatsoever to these plaintiffs who actually received the answer faster than they were entitled to, and they've gone ahead and engaged in 27 rounds of discovery so far in this case; and the fact that they were silent, knowing the default situation, despite having that answer timely in their hands.

The default, Judge, should be opened.

Thank you.

MR. OLDHAM: Your Honor, I filed this motion on behalf of FH Partners and, of course, Mommies Properties and Mr. Bose joining in the filing of the motion. I know each one of them is probably going to want to provide the Court with some information.

I asked the Court when we started here, if the Court was inclined to take evidence because I think that's important in this particular matter. So I'm planning on putting on some evidence.

I will tell you this, Judge, I've never been called unprofessional. I don't think I was called unprofessional by Mr. Tallant. I've never been called a sandbagger. I have never sandbagged in my life. If anything else, I always try to be as straight up as possible.

Mr. Ratterree will tell you that when this issue came up, I did file the motion for default. I mean, the rules are the rules, Judge, and everybody knows them.

I've been practicing for 28 going on 29 years. Mr. Ratterree has been practicing for longer than that. Ms. Butler -- Cofer Butler has been practicing for a long time.

Every time an answer is due, I'm sweating bullets to make sure I file the dang thing when it's supposed to be filed. So to sit here and say we sandbagged them is ridiculous.

Now, another thing that Mr. Tallant apparently didn't really check his facts, we didn't have an answer on the 14th. We didn't get it from anybody. It was never emailed to us. It was never filed.

What happened is after the fact, when they learned --

I'm going to put her on the stand; I'm going to put him on the stand. They can sit here and tell us who emailed it because I sure as heck didn't receive it. I know Mr. Teague didn't receive it, and I know Mr. Bose didn't receive it. So we received nothing from them. I think that is important for the Court.

Mr. Tallant spent a lot of time talking about how we had it on the 14th. We got it before we were supposed to have it. Ridiculous. Okay. I want the Court to understand what the facts are.

If they can provide us with the email, then so be it. I sure didn't get it. I guess maybe all three of us lost it. So I think that is important for the Court to know.

Now, I would agree the Court has complete discretion with respect to opening the default. In all the cases that we're talking about, are cases where either a court has exercised their discretion and Court of Appeals or the Supreme Court has said, hey, that's fine. It was a valid exercise in discretion. There are other cases where they say, hey, the discretion was exercised the other way, and the decision was supported as well.

So the Butterworth case that I cited, I know you said that you and Mr. Feldman had reviewed the file, so you are aware of the authorities that have been cited and the reasoning in the briefs. The Butterworth case just stands

for the proposition that meritorious defense needs to be alleged.

The La-Mara case that they actually cited was a case where the Court of Appeals saw a factual situation and said, hey, because you didn't allege any facts -- it was a slip and fall case and I cited it and went through some detail in the brief. But because it was a slip and fall case and when the affidavits were filed, there was nothing presented that alleged any sort of meritorious defense.

There was nothing to say, hey, when the answer was filed, you know, there wasn't this or there wasn't that. So in that particular situation, the Court found there was no merit to the defense.

In this particular situation, one of the counts that we have -- and this is an expansive petition -- and there are some tort claims as the Court knows. So the quiet title aspect of this has everything to do with an agreement that was outside of the chain of title.

I know the Court is well aware of how real estate law works, and if something is outside the chain of title, it can't possibly bind somebody that had no notice of it. It was a BFE with no actual knowledge.

There is no evidence whatsoever that anybody is going to be able to present, and certainly none that anybody has presented, that say that Mr. Bose or anybody on behalf of

Mommies Properties had actual knowledge of the fact that this agreement regarding development, which if does bind the property, it would do what they say it does. Okay. If they had actual knowledge of it, it's an agreement that requires the property continue to be used for equestrian purposes. It's a pretty onerous document.

It's the type of document that is so onerous that Mr. Bose and Mommies never would have purchased the property had they seen it in the chain of title.

The evidence will show, your Honor, that they didn't have any notice of it until we were actually looking at some other property in January of last year is when I think it came up where -- I think it might have come up in the RC Acres litigation. So that's when he became aware of it as a possibility. Never knew about it, and the property was purchased in 2005. The document itself was filed in 2007.

We're going to have expert testimony from a seasoned title examiner, Brian Edwards, who is going to explain to the Court exactly what happens in those kind of situations.

There would be no reason and no possibility that a title examiner would ever had found this document. So there is no constructive knowledge of it; and unless they can show actual knowledge, it doesn't bind the property.

I felt terrible, quite frankly, your Honor, when I filed the motion for default judgment. It's not something

I do. I talked to Mr. Ratterree about it. He called me, and I said, look, I'm sorry I had to do this. He said, that's not the way we do it down in Savannah. That's not the way I do it, and that's not the way we do it around here, but I was faced with this sort of situation.

You see what can possibly happen. There are 618 possible defendants in this thing. This thing will take on a life of its own before you know it.

If there was an opportunity as counsel, opposing counsel made a mistake, I'm not saying they are responsible. Ultimately, we should be able to win this thing on summary judgment, but that's going to be a lot further down the road after facts have been developed, after everybody is doing their discovery, after local counsel gets involved in it, after insurance counsel gets involved in it, after Mr. Bose does what he does, after we have to do what we do. So at the end of the day, there is going to be a whole lot of time and expense involved.

We know there are 620 residents in this neighborhood that could possibly make the claims. We've got actually a video compilation that we want to provide to the Court from public hearings, from statements that have been made by these people that show exactly the reason that we are concerned about what this is going to become.

So, if there was a way to nip it in the bud, it would

be completely irresponsible for us as counsel to not try to do that.

So when I talked to Mr. Ratterree, I said, look, if you guys had the meritorious defense, I wouldn't have a problem, but you don't.

Now, with respect to some of the tort issues and some of the other claims, I'm not asking for default with respect to those because I don't know that the Court could actually -- you know, maybe there is some merit to those defenses. But what I know for sure, is that there is no merit whatsoever to a claim that this property is bound by the agreement regarding development.

So we're looking for a situation where the Court will exercise its discretion to limit some of the fiasco that this case can become because the opportunity now exists.

They had their opportunity in filing their motion to open default to provide any sort of factual information that would show that they have a meritorious defense. They can show nothing to this Court that is going to show that that agreement regarding development suddenly becomes a document that binds the property. They're not going to be able to do it. So it's something that this Court can exercise its discretion.

In a perfect world, I would love for the only hearing to be about -- because if you look at what these folks have

done in this neighborhood, they've gotten Forsyth County involved as well.

The whole reason we're here on this motion for a protective order is because Forsyth County and the District Commissioner for this district is doing everything that that commissioner can do to make life difficult.

They've done it through, you know, you've got another case here that was recently transferred to you, which Mr. Teague is handling and can speak to, but it was a number of appeals from the ZBA. Five different appeals where all Mommies was looking to do was to obtain, you know, a residential permit.

It's an equestrian facility. These people want it to stay an equestrian facility, and, yet, they won't even cooperate to allow Mr. Bose and Mommies to have a reasonable-sized residence on the property that would allow caretakers, you know, actually have somebody come and work the property.

You know, they're really nice. What they did say is that they would agree that, hey, 1,000 square feet is fine. So if you look at the different pleadings or the different things that have been said in these hearings and whatnot, they don't oppose a caretaker's residence, right? What they oppose is one of 2,500 square feet, located within the barn, that would be completely out of sight.

They've gotten people from the county crawling through the fence, Judge, breaking and entering onto the property to take pictures to try to cause a problem, and all they did was haul in some truckloads of fill dirt to try to get their pastures ready for the next horse season.

I think your Honor knows a little bit about farming and horses presumably. So how in the world can somebody be hit with a stop-work order for hauling in some top soil to try to get some pastures ready for the next season. But that's what Mr. Bose and that's what Mommies have been dealing with this entire time.

You've got a neighborhood full of people that think that they've got rights to the private piece of property. This is 18 acres that doesn't belong to the neighborhood, is not part of the neighborhood. I mean, yeah, when it was developed, there was an equestrian center. It makes sense for there to be one, but there aren't any covenants that bind the property that way.

There was a zoning condition, you know, that did, and Mr. Bose and Mr. Teague have tried to make some changes just to allow the operation of a reasonable business on the property. So they've asked for some changes. The county has not been cooperative in that regard. I guess it's their prerogative, and it's the prerogative of the neighbors to try to do everything they can to put it out of

business.

But it's not right; it's not the way it works. So when people are playing dirty -- we didn't do anything dirty here, your Honor.

My obligation, when somebody doesn't file an answer in a timely fashion, doesn't ask me, you know, I don't believe and I don't want to say anything about affidavits that were provided because I do believe if you look at the affidavits and look at the actual content, what did Mr. Ratterree say? He didn't say anything other than he gave the answer to go out for filing. That's what he said in his affidavit.

He didn't say he looked at the e-file system, and he couldn't e-file the thing. He didn't call me. I certainly would have said, hey, we've been cooperative all along. Why wouldn't we have been cooperative with them?

I can tell you this. When the answer wasn't filed on the 14th -- because I've got access to the court system -- so we just figured, okay, the answer will be filed. Who is going to make a copy of it for Mr. Bose because he doesn't have access to the system. It didn't come in on the 14th. Okay, fine, it could have been mailed. We did say -- there is no doubt it was served on the 14th.

Unfortunately, that is not what the law requires, right? The law requires that it be served and filed within the 30 days. So it wasn't served. We didn't get it until

actually Mr. Teague's assistant went on -- I was checking on it. I checked on it Monday, I guess. I figured it was in, but sometimes it takes a day for the clerk's office to upload everything into the system. Didn't see it Monday. Didn't see it Tuesday.

Mr. Teague's assistant actually pulled it up, I guess Tuesday, it got filed in. So Mr. Bose is the one that sent it to me, and said, hey, they filed this thing. Okay, fine, you know, here's their answer.

I looked at it and I said, you know what, they didn't file this thing when they were supposed to file it. So this is a potential opportunity, but surely they will figure it out. It's not that hard, right? I mean, we're all seasoned professionals. We all should know what to do.

So I said, look, there is a possibility that they're in default, but they can open the default as a matter of right within 15 days. We all know that. I mean, everybody that's ever practiced knows that. So I figured, okay, maybe they will open this as a matter of right.

So we waited. Did we lay in wait? Sure, we did. It's an adversary system. Is it my responsibility to actually call Mr. Ratterree and say, hey, y'all didn't file your answer. Is there something wrong? I guess I could have done that; maybe that would have been nice and professional.

I probably would have done that 99 times out of a 100, but in this context, under these circumstances with these people and with what he's been up against, both with the county and with the residents of the neighborhood, I wasn't going to do it.

I said, look, surely they will figure it out. Well, they didn't. They didn't figure it out. So why did they even file a motion to open default? They did everything they were supposed to once they knew they were in default, right? They filed it the next day. He called me.

In that situation, I don't think the Court has really got discretion to open the default, right, under the circumstances we're talking about because there is no meritorious defense.

I talked to Mr. Ratterree, of course, everything I'm saying here is stated in my place. I'm an officer of the court. I said, look, the problem y'all have got -- this wasn't the first time I had communicated with anybody or Mr. Teague had communicated with anybody representing the Association, right?

They said, hey, we've got this agreement regarding development. We've got this trail easement that affects the property. We said, look, they're trying to interfere with this request to change a conditional use permit. We said, look, those agreements don't actually do what they

say they do.

What you always worry about is an attorney, and especially whenever you are dealing with homeowners associations, and you're dealing with attorneys that represent them who have their own agenda perhaps. Some would say it's a good turn in exercise, right? I'm not saying that is being done in this case, and maybe the attorneys that were reviewing the documents felt like they were right.

But the Court is going to have a chance to look at those documents. I couldn't tell you how they think any of this binds the property.

So I went to the trouble -- Kimberly Gaddis was the attorney representing the Association -- I went to the trouble of sending her a letter, which you will get a copy of in evidence, saying, hey, what are we missing? I've been doing this for a long time, and I think I know what I'm doing. So what am I missing? If I'm missing something, we'll be happy to work with you, right? Just tell us what we're missing.

Didn't want to do that. Then what we said is, hey, you know what, Mr. Jarrard, I actually sent a letter to Commissioner Samenson. I'm not sure how you say her name. I heard the Chair refer to her as -- but anyway District 5 Commissioner, and I said, you know what, wouldn't it be

nice for the commissioner to hold a Town Hall meeting, so we can meet with all of these people. Because the thing that I am most worried about is that you have all these people that, for us to do our jobs, we're going to have to bring them in as parties to the case, or we're going to have to get a quitclaim deed out of them, right?

What we first did back in March is we sent a mass mailing or Mr. Bose did to all of the residents of the Chattahoochee River Club Association and said, look, there's a problem. I've got this document that was outside my chain of title. I represent as lender, okay, so it's a problem for us, trust me. We know it's going to be a problem as Mr. Edwards will testify for on a refi, on a future sale. I mean, if the document binds the property, we're hosed. The property is valueless.

So I said, you know, let's send this out. Let's just get a quit claim deed, and all we were asking for out of the residency association is just give us whatever interest you have by virtue of that agreement; not give us whatever interest you have in this equestrian property, nothing like that. It was, all you're doing is quitclaiming whatever rights you have under the agreement regarding development.

It's the best way to do it. It's simple. It should be a way that lay people can understand. You know, I don't want to cost anybody any money here. I mean, it's

ridiculous. But, you know, if somebody acts in bad faith, if they are stubbornly litigious, if they cause you unnecessary trouble and expense, what are you supposed to do? You will come and try to prove that to a judge or a jury at the end of the day.

But I don't know what else you can do other than say, look, folks, here is the deal. So, first Mr. Bose did that. Then we said, you know what, we're going to have to file a quiet title petition. We don't need all of these people as part of it.

If you look at the law, you will know for sure that that document doesn't bind the property. There is never going to be any evidence. We're going to get a decree saying that document is outside the chain of title. You don't have to add 620 people and a suit to get that.

But we've got to do it for sure because if you look at some of the video and you look at some of the things that are said at these public hearings, Mr. Richards, who is an individual defendant, he said, we had a meeting at the Chattahoochee River Club, and 100 percent -- 100 percent of our people say you can't do it. That thing has got to be an equestrian facility, and we're going to oppose other than that, right?

I mean, I believe, you know, I'm one of these rare guys I think these days that I believe somebody ought to be

able to do whatever they want to do with their property. At the end of the day, you know, we don't live in that type of society anymore. You live in a neighborhood, you've got covenants. It's like, well, what about the guy that's going to have his car up on blocks? Well, you know what, if he bought the property, and he paid for it, and that's how he wants to keep his property, I don't have a problem with it.

Now, I do live in a neighborhood that has some covenants, and I've dealt with that. If they get unreasonable or irrational, it can be fun for an attorney as the Court would know. But at the end of the day, we just want to be left alone. We want to be able to do what we can do.

But the problem we're going to have is we're going to have to go forward with this thing.

Now, in this situation, if your Honor were to say, you know what, I'm going to look at the facts, and I know there is a cloud on the title that's going to have to be removed, and I know that there's no meritorious defense with respect to that. I'm going to go ahead and grant a default say with respect to that issue. Let's just say that we did that.

Then what does that do? That still doesn't obligate us for me to bring all the other people in. But what it

does do -- you know, this Association doesn't represent those people. I can guarantee you that. This Association represents Mr. Richards. You will see them on testimony. That's what they represent. They represent special interests there. They don't care anything about everybody else in the neighborhood.

All they care about is trying to bind this man and keep him from doing whatever he wants to do with his property.

So let's say the Court goes ahead and issues a default judgment with respect to just the narrow issue of the quiet title issue. You're going to have enough evidence today to be able to do that, your Honor.

Then what we do, is we go back to the people in the neighborhood. Mr. Tallant doesn't represent them. Mr. Ratterree doesn't, you know, Ms. Butler -- nobody represents them right now. They are all on their own.

They represent the Association, right? It's curious to me how they can represent the Association, and they can represent at the same time an individual member of the Association, who has run amuck obviously if you look at the pleadings, and has his own agenda.

So now he's putting everybody in that neighborhood at risk, and these guys are representing both the Association and him. So you get a situation where there is a default,

which there actually is, and you let everybody in the neighborhood know this is what we will do. Hey, you either got a choice now, you know, Mr. Bose asked you nicely before. We're now asking you under these circumstances with this information, do you want to fight or do you not want to fight? There is nothing to fight about, your Honor.

You know, what I always do in these situations, I've got an informational website. It's going to go live. We just wanted to get to a certain point. It will go live and people can inform themselves. They can look at every one of these pleadings, every one of the communications, and they can decide for themselves whether or not it is in their best interest to litigate with us.

But there is no way we can do anything but what we're getting ready to do. So the Court's got an opportunity, under these particular circumstances, to allow this thing to work the way it needs to.

The only other thing -- and I am going to put on some evidence -- okay, I want to put these witnesses on. I've got a couple of other things I want to talk about.

You know, I like Mr. Tallant a lot, but I don't really care for sitting over here having to listen about how I've been sandbagging or how I've been doing this or how I've been doing that, right; or how Mr. Bose, who is just trying

to get a head start on things, how he somehow waived his rights because he engaged in third-party, none-party discovery. He is just getting out ahead of the curve.

He started to send some things out to people. Every one of those people, the evidence will show posted something on a website, told somebody not to cooperate with respect to the quit claim deed, told them to come to the public hearings, and show the commission how they shouldn't allow any of this stuff to happen with the conditional use permit now.

He's going to do what he needs to do to head in the right direction, but there is nothing about that that is a waiver. It doesn't make any sense, your Honor, that it could be like that.

Let me just make sure I haven't missed anything.

You know, I'm going to put on the evidence, and I'm going to let the Judge -- obviously, let you decide, your Honor, with respect to, you know, how important is it -- I can tell you this. If I had had that answer on the 14th, you wouldn't have heard a peep out of me, even if it wasn't filed on the 14th. That would have been ridiculous. That would have been unprofessional.

There's no way in the world that any of us received anything from this firm.

So I would like to call Mr. Ratterree as my first

witness.

MR. TALLANT: Now, before we get into evidence, I would like to be heard on whether or not it's appropriate under these circumstances.

Here's why, Judge, Mr. Oldham is trying to try this case now. What he said is, you're going to have enough -- he intends to put up evidence for you to be able to issue, I guess a directed verdict or summary judgment.

The meritorious defense argument that we raised, which is the only question that I think that's really at issue in this case, is the failure to join the indispensable parties when the Court looks at, not only his own pleadings, in fact, Mr. Oldham said -- I wrote it down -- there are 618 possible defendants in this case. He also said that I don't represent them. Ms. Cofer Butler doesn't represent them. Mr. Ratterree doesn't represent them, and the HOA doesn't represent them.

What Mr. Oldham just did was he made my argument for me. There is no privity. We have to get these people in the case. They are parties that have to be brought into the case. We raised that issue --

THE COURT: Why? Why do they have to be brought into the case?

MR. TALLANT: Well, for a couple of reasons, number one, under § 23-3-40, they have an interest in the

property. The plaintiffs own pleadings admitted, Judge. The plaintiffs own pleadings they are deemed to admit what they put in their pleadings, and certainly, the argument that he just made, they have to be added. They're defendants in the case. They are possible defendants in the case.

MR. OLDHAM: Just for clarification, as the Court knows, all the quiet title action requires is a list of possible people, which we added that list. We didn't add the people as parties to the case because that would be absurd.

THE COURT: I'm not sure about § 23-3-40, but I know § 23-3-60, which I, as a lawyer, filed a whole lot of those, and I know all you've got to do is -- it's the ones that are adjoining landowners, ones that may have created some kind of cloud on the title. You know, you don't have to -- all of these other people, no.

Go ahead.

MR. TALLANT: But they are bound, Judge, I think by what they say in this courtroom and by what they put in their pleadings, which is that these are other parties to the case that they have not added yet.

Mr. Oldham said we've got 618 defendants in this case.

So if the Court were to determine that they are necessary parties at some point in the future for them to

add them and they don't add them, that's where we get to the dismissal.

Our point is this, Judge, Mr. Oldham is trying to put up a title expert today. That is not part of the meritorious defense issue that we just raised. I mean, frankly, Judge, we were trying to get something done before we got here today.

I don't know why we're going to be putting up -- all the evidence is going to come up in the case on a motion to open the default.

I will say this, Judge, if I'm mistaken about this, I apologize. My understanding, there are two different places where it was mentioned that they were served on the 14th.

In Mr. Oldham's brief, in support of his motion for default judgment and in his reply brief or his response brief to the motion to open the default, he says he was served on the 14th.

I understood that to mean that he got it on the 14th. That is the way I understood that. That is the way I speak. That is the way I do things, and so I understood that is what it was.

I will go ahead and tell you so that you don't have to call them, Larry, that me or Ms. Butler nor Mr. Ratterree -- the two of them didn't send an email. They gave it to a

paralegal. She's not here, so he's not going to be able to --

MR. OLDHAM: I will state in my place she didn't send an email either, your Honor.

THE COURT: I will let him finish, and then I will let him --

MR. TALLANT: I think you can state in your place that you didn't receive it. I don't think you can state in your place that she didn't send it. That's for her to state whether or not she ever sent it.

Judge, I'm concerned that we are about to get into a real mess of the evidence that will eventually come out in this case, and we're about to go beyond the meritorious defense issue that is the appropriate inquiry for a motion to open default.

This is not a trial. A motion to open a default judgment is not a trial of the case. I'm concerned that's where we're heading.

With that, I will sit down and be quiet.

MR. OLDHAM: The La-Mara case itself that they cited and that I looked at and that I addressed in my brief, essentially the problem with that case is they didn't assert anything factually.

You know, they had two chances here. Look, we all make mistakes. Okay. I've made mistakes myself as an

attorney, so that's not the issue.

The issue is that once you make the mistake, you've been slapped, you've been warned. You need to do something to fix it, right?

So what would be required under these circumstances to fix it, is not just, hey, this answer we filed, you know, that's a meritorious defense. It's look at what you've actually got to do, and a meritorious defense, there's different prongs to it. That is what the Court gets to decide.

But basically, you've got to allege something, and that is what La-Mara stands for. You can't just throw up your defenses. Most of these defenses, if you look at the answer, are just without information or belief. I've never seen an answer, which actually had the complaint recited within the answer itself, but it keeps it together.

So at the end of the day, they are not asserting any facts.

Look, Judge, it's your decision obviously. You can use your discretion, and we can never argue with you if you said, you know what, I'm going to let them open the default. I get it.

I really did feel bad about it. Mr. Ratterree, I think would acknowledge that. I mean, I did apologize to him when I was talking to him. I said but, look, if this

is a way to nip this thing in the bud and if we're not prepared to go forward with the evidence today, if Mr. Tallant is not, then let's set it up for a hearing.

THE COURT: I'm going to let you call the witnesses who may have some knowledge about the filing of the answer or lack thereof.

But as far as the title examiner, that goes to the ultimate merits of the case and what the Court would hear later on down the road if the Court were to allow the default to be opened.

But I think you hit on -- the salient point is that they've got to present something to say, rather than to just simply deny, deny, deny. You pointed out that they haven't.

I agree with Mr. Tallant about putting up the title examiner. I don't believe that is something that I need to get into. That is not for today.

MR. OLDHAM: Okay. Can Mr. Edwards be released, your Honor.

THE COURT: I've already said I'm not going to hear from him. Yeah.

MR. OLDHAM: Thank you, Brian.

THE COURT: I will hear from the other witnesses that have some knowledge about --

MR. OLDHAM: Well, I think it's fair to say, I don't

want to drill -- at the end of the day, I just want to make it clear and this is what I thought actually when I first received the thing is it was served. I mean, the certificate of service was attached to it. It was served on the 14th. So I was like maybe they think that's enough.

I first thought, well, okay, whatever, but then I really started looking at it, and it was like it's not enough. It's something that I sweat bullets about all the time. I mean every time an answer is due, you know, let's go back and recheck it.

So Mr. Teague and I conferred about it, and it was like, you know, I don't think they actually filed this thing when they were supposed to, and they didn't. It's like what do we do? It's like, well, it's an opportunity.

So I'm fine with the fact that they served it, and we never got it by email. Mr. Tallant sort of corrected that, and we're good to go as far as that goes, your Honor.

So I don't want to put on any witnesses in that regard.

Mr. Teague, do you have anything you would like to add?

MR. TEAGUE: No, your Honor, just that I didn't get it on the 14th. I've looked at my email, and there's nothing that came in on the 14th.

MR. OLDHAM: I don't think it turns on -- I don't

think your decision turns on that whether we -- you know, if they didn't send it to us that day, and they said they did. I mean, your decision really turns on what is right under the facts and circumstances.

So it's clear to me, as soon as they found out about it, they did something about it. I mean my sole argument here and our sole argument is that there is really not a meritorious defense here; and because there's not, at least with respect to this agreement regarding development, it does bring up this property unbelievably. I think you could at least enter a default with respect to that limited issue.

MR. TEAGUE: Frankly, I don't know if that's possible, Judge. That's for you to figure out. But I certainly think you have the discretion within the confines of the case to enter appropriate rulings, and one of those could be to enter a default with respect to that limited issue.

If you don't have anything to add, Ms. Bose -- nothing to add?

THE PLAINTIFF: I just wanted to say, hello, your Honor.

THE COURT: Hello, Mr. Bose.

MR. OLDHAM: We're good on that.

I guess the motion for protective order, Mr. Teague will argue that whenever we --

MR. TALLANT: A very brief reply, Judge?

THE COURT: Yes.

MR. TALLANT: The only thing I would say, Judge, is that I mean, I'm happy to say that I'm not the only one that apparently might have made a mistake today about what's in the pleading because Mr. Oldham mentioned he wasn't seeking a default onto the tort claims.

His motion for default judgment actually does seek a judgment on tort claims as well, but I don't think that's proper. He asked for a hearing on damages, and I don't think we're there.

Judge, I'm just going back to paragraphs 35 and 37 in their complaint, and the representations here today before this Court all show that there is merit to his failure to join a parties defense.

The Court does not have to find today that we're right. We haven't even got a chance to file that motion yet. That is still for us to come. The question is, is that a defense that might, may cause a different outcome, and if it is --

THE COURT: Don't you have to put something up other than deny, deny, deny, deny. Don't you have to give me something more than that?

MR. TALLANT: Well, Judge, in the La-Mara case, it's a meritorious defense may be shown by filing an answer in

which defenses are asserted to the plaintiffs' claim.

We did, Judge, and the defenses that we asserted was that one, also pointing to the sworn complaint -- not only the sworn answer, but also the sworn complaint in this case where the plaintiffs came out and the plaintiffs said, we've got all of these other defendants. We haven't added them as parties yet. These people all have an interest in this case, but we haven't added them as parties because the River Club knows who they are.

So they actually need my client in this case, Judge, to do discovery on them so they can figure out who all the parties to the case are.

The question, Judge, isn't at this juncture, whether or not we're going to succeed on that motion. The question is just is that a meritorious defense that we have raised at this point; and not only do we have our own sworn answer, we have their sworn complaint where they allege those things?

We have Mr. Oldham's representations to the Court today. He wasn't in a robe, but he's an officer of the Court saying that there are 618 possible defendants.

And, Judge, I want to emphasize this. It's not about what this case may become. Mr. Oldham said that several times. He said this case may become something big.

It's not the question. The question is have we

asserted a meritorious defense, and have we made a proper case, that's at least the questions that we're wrestling with, and have we made a proper case for opening the default.

And I certainly, Judge, believe that we have.

THE PLAINTIFF: Your Honor, just one point --

THE COURT: Go ahead.

THE PLAINTIFF: If you don't mind, this was sort of important. Vinay was a plaintiff in the case, your Honor.

What Mr. Tallant is saying is that the 618 defendants here will be in here. Look at it like the RC Acres case. It's a trifurcated case. You have the quiet title piece in which once you put in a decree, everybody is gone.

Then you have the slander and all the other nonsense that the defendants have done, which we will adamantly add. So if the quiet title takes away 90 percent of the possibility of bringing all 618 into the case, which is not necessary.

If Chattahoochee River Club Homeowners Association represents all of the 620, I sent out a quit claim deed request. Two people did sign it, your Honor. The other 618 did not. Then I took this to Mr. Teague. He tried really hard to talk to these people, and they wouldn't listen to him.

Then we brought in Mr. Oldham to go and talk to them.

They didn't listen to him either. That's what brought us to this suit. This case, just like the RC Acres, shouldn't have happened to me.

So what I'm saying is in the quiet title piece, we have this opportunity to make this case go around the quiet title piece.

What Mr. Tallant is arguing that 618 people will be brought into the case is not true because only about three or four dozen of them are the ones who have been aggressive towards me and the property, not all 618.

There are lovely people in that subdivision, but they are deathly afraid of the Chattahoochee River Club Homeowners Association's president, office bearers. They are afraid. They have told me that. Some people have told me that. Because they are walking around, they take pictures, they send these notices. So nobody goes up against them.

One of them says in a Facebook posting or a next-door posting, that don't sign something, don't do something, all of them don't do it.

So, quiet title piece is the big dog in this fight, and that can go away if the default is granted. Otherwise, your Honor, we will end up with 618 defendants because we will have to add them. There is no need to add them.

One other thing, your Honor, December 16th, 2010, you

had told a pro se party that you are entered into this case. You will follow the rules. They are equal for everyone. Are you sure you want to be in the case, and the pro se litigant said, yes. That was me, December 16th, 2010.

I have been in front of you for ten years myself just like the other lady attorney who has been here in front of you for 20 years.

Following that, there was another situation where Mr. Matthew Dominic, I was deposing him. I was eight minutes late, and you disallowed that because you said rules are rules. You said 4:00. I was there eight minutes late, and he knew that because you sent us for mediation in that case to Hall County to Judge Smith.

So I was rushing back, traffic. I was eight minutes late. You struck that thing. I couldn't depose him.

So you're pretty good at this, what is good for the goose is good for the gander, follow the rules.

One other interesting one, your Honor, there was a Holliman case, Jennifer Holliman. RC Acres sued them. I intervened in that case. There was a dismissal that Ms. Rogers had filed, and I agreed to it.

All I did not do in that case was file my dismissal in there. She filed a motion in front of you. You whacked me with $1,560. I still have the check, a copy of the

canceled check. Because, you said rules are rules, and that case was to be dismissed. It went away. You should be happy, but, no, you held my feet to the fire.

All I'm asking, your Honor, is rules are meant to be followed.

For every case there is an opposite case reaction. So this will keep going on.

But, your Honor, this is a good opportunity for saving the court's resources, especially because the quiet title piece, this agreement regarding development is outside the chain of title. I never had notice. It was not in the deed record, and I'm pretty good to know that if there's something that bound the property, I would not buy it. Now, we can't sell it without that thing going away.

These people, actually Chattahoochee River Club folks, they still insist that the agreement is valid, and they want to enforce it, and that's how they've used the county.

A couple of other -- no, that's fine.

Thank you so much, your Honor.

THE COURT: So, Mr. Oldham, Mr. Bose says if the default is not granted, that he's going to have to add 618 people to the lawsuit.

So what do you say to that?

MR. OLDHAM: I'm not so sure that's correct, your Honor. I mean, we've talked about the way the quiet title

can proceed. But in the end, we're going to do what we need to do.

The concern that we have, and you'll see it in some of the video footage you're going to have. There is testimony from a lady that has lived -- I think lives in the second house going into the neighborhood, a Carrie Stone, or something like that is her name. But she says that was always nature trails and there was signage up, and I relied on all of that. That's the only reason I moved there.

So I don't know how many other folks like that we're going to have who are going to claim some sort of quasi-prescriptive right or something like that.

I mean, if you look at the documents, even if you look at the trail way -- there is a trail way easement agreement, right, that they cite. Good luck if you can figure out where the trails are that the easement is supposedly over.

The equestrian center that we own is just shown on there -- is like a -- it looks like a stable. It's just in that area, but it was never a part of the thing. It wasn't part of the whole plan development.

So I don't really think that the Court is going to have to deal with 618 additional defendants. I mean, I certainly don't want to do that.

I consider myself the epitome of the reasonable man.

People may not agree with that, but I certainly feel that way about myself.

I feel like if we had an opportunity to have a Town Hall meeting like we asked Commissioner Samenson. This is what was funny about the request of Commission Samenson. Mr. Jarrard sent me a letter and says she doesn't want to get involved in private affairs, you know, private matters. But guess what, she is all over this thing. She is a big part of the problem. She is the one calling the county inspectors to go on there and mess with Mr. Bose.

At the end of the day, it is going to be what it is. You've dealt with Mr. Bose long enough to know he is a man of principle.

THE COURT: Let me make sure I understand.

You are not opposing opening the default with regard to the defamation of persons, intentional infliction of emotional distress, and interference with easement claims?

MR. OLDHAM: Correct.

THE COURT: You're not opposing --

MR. OLDHAM: No. We're not opposing.

That's what I'm saying, your Honor, Mr. Tallant -- I did say, obviously when I filed my motion, I'm asking for a hearing on damages and whatnot.

But I mean, under the circumstances, I'm not looking for an unfair result here. We're just looking for -- if

they were to come forth with anything that said that Bose somehow knew about, you know, had actual knowledge, right, that there was some way that agreement could bind the property, then I would even argue with that.

I mean, if they've done it, and, hey, if they can produce a witness right now, that would be fine. But, they haven't done that, and they can't do that because it doesn't exist.

I know Mr. Bose wasn't under oath, but he will raise his right hand and swear that what he said up here is the truth, the whole truth, and nothing but the truth.

THE PLAINTIFF: I'll take the stand if you want.

MR. OLDHAM: Yeah. What I'm saying is he had no knowledge of this agreement. That agreement goes away, that eliminates a lot of the potential issues in this case.

But, it's not going to get rid of all of them because there are some serious slander and title claims. These people have been messing with his business for years. They've tried to put him out of business. It ain't right.

Like I said, as you know, he's a man of principle. So we wouldn't object to you allowing the opening of the default with respect to those, the tort claims and those other things. They ought to be able to provide a defense, and if they can provide a meritorious defense, great.

We're not looking to handle it that way, but what we

are looking for, especially in this quiet title issue, it's a no-brainer. I think you've got the discretion to do that.

Thank you.

THE COURT: Giving you the last word, Mr. Tallant.

MR. TALLANT: Judge, the only thing I will say is Mr. Oldham has talked about the additional defendants. Mr. Bose has talked about the additional defendants. Mr. Oldham talked again about additional defendants. He talked about Carrie Stone, and he says he doesn't know how many more people out there are like her.

The lady who has got some kind of quasi-easement rights because of signs that were up and everything else that was there on the property, that is the reason that she moved there.

I'm going to grant Mr. Jarrard again. It sounds like we're talking about the Pine Lake Dam case now. We have quasi-easement rights in a lake or quasi-easement rights in the equestrian facility.

Mr. Oldham says, I don't know how many more out there are like that, but he's acknowledging again -- that's at least the third time today plus the pleadings.

THE COURT: Isn't that their problem though if they don't join an individual who may have some -- who may think they have some interest in the property, and they don't

join that individual? Then that individual's rights are not precluded if the Court were to grant the quiet title action, and they can bring an action against them?

MR. TALLANT: Perhaps, but it's also a defense that we have. You didn't join all of the parties that are necessary to this case. If you don't join all the parties that are necessary to this case, we can file a motion on that. You can order them to join them. If they don't join them, the ultimate sanction is dismissal.

MR. OLDHAM: Your Honor --

MR. TALLANT: It may be their problem, but it's also our right to file a defense on that, and that's what we did in this action, Judge.

MR. OLDHAM: And I can guarantee you if that is a defense that these guys think they have to assert, we're taking no chances, and there will be 618 additional defendants.

I mean, we're not -- but it doesn't make any sense.

MR. TALLANT: That's my point. I get the last word, Larry, come on.

THE COURT: Go ahead. Yeah.

MR. OLDHAM: Can I go?

THE COURT: Yeah. Go ahead.

MR. OLDHAM: Thanks.

So at the end of the day, what we're talking about is

something that nobody has. Okay, let's say there is some quasi-easement rights, which I don't even believe exits, right, I mean, you know how strict the law is. I guess it's possible somebody can assert those claims, but that's going to be somebody to affirmatively assert those claims.

What we're talking about is the court entering a decree saying that an agreement regarding development that is outside of the chain of title that has nothing to do, that has no actual knowledge, that it doesn't bind the property anymore. That settles that issue. There is no reason to add anybody.

Now, I'm not going to add the lady just because she goes to a Board of Commissioners meeting and says, you know, if you're going to tell the commissioners whatever you're trying to achieve your result, oh, I love all the lizards and the -- you're going to hear that from her in this video compilation we've put together.

It's like, okay, great, but that doesn't mean you have an easement right. I'm sorry that you thought you did. I'm sorry that you got hoodwinked by the developer, who sold this thing as an equestrian -- you know, we all know -- I mean, it's just like the Lanier Golf Club case, right, where just because you live around the golf course, doesn't mean you own an interest in the golf course.

That's the society we live in these days. Everybody

thinks that it's all about themselves anyway. It's about what they want. I mean, at the end of the day, that's why we have property law, and that's why we have, you know, restrictions on use have to be definite and certain and whatnot.

So I'm not telling you we won't have 618 people, but I doubt it because I don't see any reason to have them in here. We're not going to bring them in. If they want to intervene, if they want to do whatever, but I can guarantee you that we're going to have more than just Mr. Richards, right, because there are some others that have actively worked against us to try to slander the title and affect the property.

That's all I've got. I won't say anything else.

MR. TALLANT: Last word and I will be very brief so as not to invite any counter response.

You just got a guarantee we're going to add more defendants. We have the right, Judge, to say you have to add them. That is the meritorious defense we're talking about.

Judge, we filed a verified answer to their verified complaint where they swore things about all of these additional defendants. We said, number three, failure to join the parties -- in addition to other defenses -- but that is what I'm focused on though. Frankly, it is the low

hanging fruit here.

You've heard it now guaranteed to you that there are other defendants out there.

Judge, let us open the default. Thank you.

THE COURT: I'm going to take a break now. Actually, I think I'm going to go ahead and take a lunch break at this time. So let's take an hour for lunch, then I will be back with a ruling. Take an hour for lunch.

MR. TALLANT: Thank you, Judge.

(A recess was taken and the proceedings resumed as follows:)

THE COURT: Before I issue a ruling in this case, I do have a question. We attempted to address all of the counts in the complaint, but I don't think we addressed the declaratory judgment count.

So what do the parties say about the declaratory judgment count? Is that something we need to be concerned about or what, Mr. Oldham?

MR. OLDHAM: Your Honor, I think Mr. Tallant furnished us with a case. So we would agree that with respect to opening the default in a quiet title situation, that there is no default here.

THE COURT: Right.

MR. OLDHAM: That with respect to that --

THE COURT: I'm going to get to that.

MR. OLDHAM: So I mean, we concede that and agree with it. It would have been nice -- you know, we didn't do the research -- but it would have been nice to have had that ahead of time. But, the case is on point and so it's done.

But with respect to the declaratory judgment count of the relief, it's basically seeking the same thing as the quiet title with respect to that agreement regarding development, which is again what we're looking for. So under the Court's declaratory judgment, ours, we ought to get to the same result.

So to the extent that the Court was inclined to enter a default with respect to that particular issue, then nothing really changes. If the Court were to enter a default based on the fact that an answer -- there was a default that occurred; in other words, our argument would be that there is no -- the Court's got the discretion to determine whether or not the default should be opened with respect to the declaratory judgment count of the complaint.

I think it's pretty straightforward.

THE COURT: What do you say?

MR. TALLANT: Judge, a couple of things about that, I mean the declaratory judgment, we're talking about something essentially -- and Mr. Oldham said this, it's essentially the same thing.

The Court appointed a special master in this case, and

the Court did reference the fact that we're dealing with § 23-3-60, but the Court also specifically said you're authorizing a special master to hold trial proceedings, to make recommended findings of fact and issues to be decided by the Court without a jury. Having determined his appointment was warranted because the matter involves issues for which special substantive competence would be beneficial.

So your appointment of Mr. Neville wasn't just because of § 23-3-60, you specifically went on to say that because of the nature of these proceedings and Mr. Neville's extensive experience in those, I realize -- I think he may have withdrawn because of conflict. I'm not 100 percent sure of that.

Judge, I think we get to the same place. For all of the reasons we've argued previously that the default should be opened, we also think that the default should also be opened as to the declaratory judgment count as well because it is essentially the same thing just in a different guise.

While there is not a default at this point clearly on the quiet title actions, we already have a concession that they are not seeking to have the default issued on many of the other counts.

At some point, Judge, I think we get to the point we just need to open the case, and that's where I think we are

in this instance. We have not default on some, not seeking default on others, and then we get to this one at the very end, and again, I think it's just time to open the case up at this point. It is equitable as well. So it's going to be for the Court to decide at the end of the day.

Just for the record, Judge, the case that Mr. Oldham referred to was Woodruff versus Morgan County, 284 Ga.App. 651.

At some point, I guess at this point in addition to everything else I've already said about the reasons to open the default, the case is now 99 percent open. We're going to try the case. The case is going to be up for trial whether it's against these defendants or other defendants to be added later.

It would seem to me what makes the most sense is to have the entire case decided on its merits, rather than trying to pigeon hole one particular claim out of many, many claims that are present in the case.

MR. OLDHAM: Your Honor, it is a dispositive claim with respect to this issue of this agreement regarding development that is outside the chain of title.

The only reason I didn't cite the case, I understood the Court had been provided with it, and you were already aware of the case.

What was decided under that case is it was narrowly

construed because it was a special statutory proceeding, the quiet title proceeding was. So that we're talking about a default under the Georgia Civil Practice Act, which is obviously a different animal and give the Court the discretion to do whatever.

So it's up to your Honor, of course. We just think with respect to something that there really shouldn't even be an argument about, we could eliminate this cloud on the title. We get there under either the quiet title provisions or under the declaratory judgment provisions.

The Court may think there is some merit to the claim. I don't know what possible merit there is to the claim. It's clearly outside of the chain of title. Nobody argued that it wasn't, and it's still a potential issue, which is going to require, your Honor, us to do whatever we do.

We're sitting here with face and argument, well, we didn't go into indispensable party, we didn't do this or that. So I just think it would really promote some judicial economy for the Court to decide it under the declaratory judgment ground. They can take it up if they don't like the result with the appellate courts at some point in the future, or you could give them a Certificate of Immediate Review if it is such an important issue to the case for them.

MR. TALLANT: Judge, I'm only going to speak if you

want to hear from me.

THE COURT: No.

We will take these in order. The quia timet against all the world, it's clear that under the Woodruff case, which by the way, we already had, Mr. Tallant. Thank you for your response. We already had it. We already had that case.

Under the Woodruff versus Morgan County case, really the defendants are not -- they are not in default. No one is in default yet because the special master has not caused process to issue.

I'm trying to remember back to years ago when I did these things, and I do remember us having a form where we had the special master sign authorizing process to issue. I vaguely remember that now after all these years. We had this down to every detail, obviously doing a quiet title against all the world.

So no one is in default of Count 1, quiet title against all the world under § 23-3-60.

They also threw in here § 23-3-40, which is a conventional quia timet. So they are just trying to throw everything up there and see what is going to stick. But a conventional quia timet deals with a specific removal of a cloud on the title that is some kind of instrument. It's not like you're trying to prevent somebody who is adversely

possessed against you from having a claim to the property and whatnot. This is intended to remove a specific cloud on title to the property.

The signatories to this document, oddly enough, are Bentwood Stables, LLC and Linda Allen, who I believe is deceased, and it can now be her estate. Arguably, these entities and people have nothing to do with this now, but I guess the residents of the Chattahoochee River Club are, in effect, some sort of third-party beneficiary to the agreement.

But, there is some authority -- I'm trying to remember a case that I had where I found that I think an HOA was a third-party beneficiary to an agreement, but I don't know who the Homeowner was.

Anyway, I was reversed on that, and so I'm trying to -- but I'm thinking here that not everybody has been joined that needs to be joined. I'm going to find that the defendant, Chattahoochee River Club Homeowners Association, having raised that defense of not having joined indispensable parties is a meritorious defense, and I'm going to allow Chattahoochee River Club to open the default as to the quia timet against or the quia timet, the conventional quia timet. So they will be allowed to open the default as to the conventional quia timet.

Contrary to your statement, Mr. Tallant, John Richards

never did sign the verification of the answer. He just didn't. That was another John in the case. You said there were many Johns. That was another John, and I'm assuming on behalf of Chattahoochee River Club, CRC. John Richards is in default. He is straight in default. His motion to open the default is denied. So that is that on the conventional quia timet.

Now, moving to the declaratory judgment action, a declaratory judgment action is one in which it is sought for the Court to declare something. In their declaratory judgment count, Count 2 of the complaint, in addition to or in the alternative to previously requested relief, the allegations of paragraphs one through 39 are incorporated herein by reference as if rewritten in their entirety.

So I have to go back and look at paragraphs one through 39 in addition to 40, 41, and 42.

Paragraph 13 states that the terms of the covenants outside the Allen chain of title did not affect or bind plaintiffs of the property. It goes on to say that the covenants outside the Allen chain of title were outside of plaintiffs and FHPs chain of title with Linda Allen.

No one searching title in the grantor index under developer's name for the period of ownership up-to-date title to the property transferred to plaintiff, Mommies, could have seen the covenants outside of the Allen chain of

title, and that they were not recorded in the relevant period of the chain of title.

That is something that the plaintiffs are seeking the Court to declare. There is no need for other -- there are no other defendants that need to be, well, if the Court grants the declaratory judgment, it only binds the defendants who are named in the complaint; such a declaratory judgment would only bind those defendants.

There has not been a meritorious defense set up to this. There just hasn't. I'm going to grant the declaratory -- I'm going to deny the motion to open the default as to the declaratory judgment, grant the motion for default as to the declaratory judgment, specifically the paragraph 13, which is the crux of the case, which deals with the covenants not affecting or binding the plaintiffs. I want to make that in form of a declaratory judgment again.

This is only with respect to the defendants who have been named in this case -- the Homeowners Association and Mr. Richards. There may be others who seek to, you know, would seek to challenge that, but I'm going to grant the default judgment as to that.

The rest of them are tort actions that have been agreed to that the opening of the default would be granted as to the tort actions and the attorney's fees count.

So that is the order of the Court.

MR. OLDHAM: And, your Honor, with respect to the torts because you know that Mr. Richards didn't --

THE COURT: Oh, yeah, he's in default.

MR. OLDHAM: He's in default.

THE COURT: He's in default. He's not even -- he didn't even sign the verification. So he can't raise a meritorious defense.

MR. TALLANT: Judge, I would just like to raise though, the answer was filed on his behalf. He didn't sign a verification, but it was filed on his behalf; and the affidavits that were submitted, were submitted on his behalf as well.

So I understand the Court saying that he didn't sign the verification, but the answer was filed on his behalf and in the affidavits of counsel as well as counsel's assistant, both, were filed on his behalf as well.

I think I need to raise that, Judge.

THE COURT: You can raise it.

MR. TALLANT: I understand.

MR. OLDHAM: And as your Honor knows, we've asked for injunctive relief, declaratory relief, those things, and you've got to verify -- verification is required. So it would be required by Mr. Richards as well as the Association.

THE COURT: It certainly would. Of course, damages are --

MR. OLDHAM: Would have to try that issue.

THE COURT: You would have to try the issue of damages against Mr. Richards. But as far as the torts themselves, the default judgment is -- I'm going to go ahead and grant the default judgment.

MR. TALLANT: Judge, and I would also like to point out one more thing, that Mr. Oldham said he wasn't seeking default on any of the tort claims. That is what he stood here in front of the Court and said.

THE COURT: He did stand here and state that. Yeah.

MR. TALLANT: So I don't think it would be -- Judge, I don't think it would be appropriate to issue a default judgment against somebody when -- I don't think it would be appropriate to issue a default judgment when we have counsel for the plaintiffs stand here in front of the Court, in front of me, and front of my client and say, I'm not seeking default judgment on that here today, Judge.

That's what was stated.

THE COURT: Uh-huh (affirmative). He did state that.

MR. OLDHAM: I can change that, can't I, Judge?

THE COURT: Well, I mean, you did state that. I thought that was off the table, and then you brought up about Mr. Richards. I don't know, you did state that.

What do you say, Mr. Teague?

MR. TEAGUE: The plaintiff, Mommies Properties, would seek a default with regard to the tort claims against Mr. Richards arising out of the default.

As to the essential issue in the case alleged in paragraph 13, which he was making representation in regard to title that were untrue at the time they were made, that's the same issue that's at issue with the defamation of title claim and the other defamation claims that are in there.

So we would request that.

MR. TALLANT: Judge, they were given the opportunity. You asked him if he had anything to say, and he had nothing to offer after Mr. Oldham said, we're not seeking default on any of those tort claims. That is what they said, Judge.

Then Mr. Teague was given the opportunity to say something, and he didn't say anything about it. Ms. Bose was given the opportunity, and he didn't say, but, Judge, I want default on the tort claims. Everybody on the plaintiffs' side, either Mister -- well, through Mr. Oldham said, we're not seeking default judgment on the tort claims.

THE COURT: Yeah. That was before they knew I was going to find that Mr. Richards didn't sign the

verification; and thus, would not have the ability to set up a meritorious defense.

But, I think that tort claims really --

MR. OLDHAM: Still got pretty good damages.

THE COURT: Yeah. But they are mainly geared toward Mr. Richards anyway as an individual as opposed to -- I'm sure they want to say that the HOA, through its representative, may have defamed or intentionally inflicted emotional distress.

I am going to recognize representation of counsel, and I am not going to find Mr. Richards in default as to the tort claims. So I will allow the tort claims to remain in the case. The tort claims will remain in the case, notwithstanding Mr. Richards' apparent default.

But according to representations of counsel, they would not be seeking a default on the tort claims.

Questions?

What does that do, Mr. Jarrard for you?

MR. JARRARD: Thank you, your Honor. We've been listening to everything that has been said. I still think we have a motion for protective order that we need to argue and we are prepared.

(End of proceedings.)

CERTIFICATE

STATE OF GEORGIA

COUNTY OF HALL

I, Janet Beranek, Certified Court Reporter, 2753, hereby certify that the foregoing transcript was taken down by me and transcribed under my supervision, and that the same is a true, accurate and complete transcript.

I further certify that I am a disinterested party to this action, and that I am neither of kin nor counsel to any of the parties hereto.

This certification is expressly withdrawn and denied upon disassembly, photocopying or duplication in any manner or upon certification of the foregoing transcript or any part thereof by any person or entity other than by me. This certification is further expressly withdrawn and denied absent my original signature and original seal appearing hereon below.

In witness hereof, I hereby affix my hand on this the 12th day of March, 2019.

Janet Beranek, CCR 2753