

18CV-1887-1

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Greg G. Allen, Clerk
Forsyth County, Georgia

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

**VINAY BOSE; MOMMIES PROPERTIES,
LLC; and FH PARTNERS, LLC,**

Plaintiffs,

v.

**JOHN RICHARDS; CHATTAHOOCHEE
RIVER CLUB HOMEOWNERS
ASSOCIATION, INC.; JOHN DOE; and
JANE DOE,**

Defendants.

CIVIL ACTION

FILE NO.: 18CV-1887-1

ORDER

The above-styled action came before the Court on February 25, 2019, pursuant to Rule Nisi. The Court considered the parties' oral arguments with regard to Plaintiffs' Motion for Default Judgment and Defendants' Motion to Open Default. Having considered the contents of the pleading file, the parties' respective briefing materials, and extensive oral argument, the Court finds and ORDERS as follows:

Plaintiffs commenced this action on October 24, 2018, with the filing of their Petition to Quiet Title. Despite the pleadings title, the action includes claims well outside the scope of a traditional quiet title action. The action includes the following claims: quiet title against all the world and conventional quiet title (Count 1); declaratory judgment (Count 2); defamation of title (Count 3); defamation of persons (Count 4); intentional infliction of emotional distress (Count 5); interference with easement (Count 6); and attorney's fees (Count 7).

Plaintiffs caused process to issue with respect to the named Defendants. Chattahoochee River Club Homeowners Association, Inc. ("CRC HOA") was served, via its registered agent, on

October 25, 2018. John Richards was personally served on October 25, 2018 and, apparently a second time, on October 30, 2018. As the Defendants' deadline within which to file their Answers approached, the parties entered into a Consent Order extending Defendants' Answer deadline until December 14, 2018. Despite the consent extension, Defendants failed to timely file their Answer(s) until December 18, 2018. Defendants fell into default status and failed to open the default as a matter of right as otherwise permitted by O.C.G.A. § 9-11-55(a). On January 7, 2019, after the O.C.G.A. § 9-11-55(a) period had expired, the Plaintiffs filed their Motion for Default Judgment. Defendants, on January 8, 2019, filed their Motion to Open the Default pursuant to O.C.G.A. § 9-11-55(b).

During oral argument, Plaintiffs and their counsel stated in their place that they were only seeking to have the Court to enter a default judgment against Defendants John Richards and CRC HOA with respect to Counts 1 and/or 2; that is, they did not seek entry of default judgment with respect to the tort and attorney's fees claims contained in Counts 3, 4, 5, 6, and 7.

O.C.G.A. § 9-11-55(b) provides:

At any time before final judgment, the court, in its discretion, upon payment of costs, may allow the default to be opened for providential cause preventing the filing of required pleadings or for excusable neglect or where the judge, from all the facts, shall determine that a proper case has been made for the default to be opened, on terms to be fixed by the court. In order to allow the default to be thus opened, the showing shall be made under oath, shall set up a meritorious defense, shall offer to plead instant, and shall announce ready to proceed with the trial.

Based upon this standard, Defendants argue that the Court should exercise its discretion and open the default because this is a proper case, the Defendants have made a proper showing under oath, they have set up a meritorious defense, and have offered to plead instant.

As to the quiet time claims asserted in Count 1, the Court finds that Plaintiffs have pled both a conventional quiet time claim as well as a quiet time claim against all of the world. With respect to the latter, the case of Woodruff v. Morgan County, 284 Ga. 651 (2008) applies. The Court finds that the appointed Special Master has not caused service to issue as contemplated by O.C.G.A. § 23-3-65. Accordingly, Defendants are not in default as to the quiet time against all of the world claim and the Motion for Default Judgment and Motion to Open Default are moot as they are not ripe. As to the conventional quiet time claim, the Court finds that additional parties may need to be joined. Specifically, for example, Bentwood Stables, LLC and the estate of Linda Allen. Defendants have therefore established a proper case. However, while CRC HOA set up a meritorious defense, offered to plead instant, and made a showing under oath, John Richards did not. The verification attached to the Defendants' joint Answer is signed by John Paximadis, under oath, on behalf of CRC HOA and with express permission and authorization by John Richards.¹ John Richards has not otherwise made a showing under oath. All affidavits, petitions, answers, defenses, or other matters required to be verified or sworn to under oath are sufficient when they are sworn to before any notary public where the oath is made who is authorized by the laws thereof to administer oaths. O.C.G.A. § 9-10-113. Here, the officer of the defendant corporation, CRC HOA, allegedly signed not only on behalf of CRC HOA but, also, John Richards. John Richards did not *personally* swear, under oath, to the contents of the Answer, or any other document in the pleading file, under oath. During oral argument, Defendants failed to identify any such document, other than the verification attached to the Answer, which this Court has found was ineffective as to John Richards. Therefore, John Richards has not satisfied all of the conditions precedent to the opening of default under O.C.G.A. § 9-11-55(b). The Court

¹ John Paximadis is alleged to be an officer of CRC HOA.

GRANTS CRC HOA and John Richard's Motion to Open Default as to the quiet title claim against all the world claim contained in Count 1. The Court GRANTS CRC HOA's Motion to Open Default as to the conventional quiet title claim contained in Count 1 and DENIES John Richard's Motion to Open Default as to the conventional quiet title claim contained in Count 1.

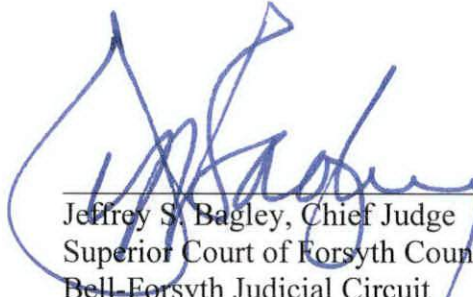
As to the Plaintiffs' claim for declaratory judgment asserted in Count 2, the Court finds that Defendants have failed to assert a proper case and set up a meritorious defense. There are no additional parties who should be joined in order to afford complete relief. Plaintiffs have pled for declaratory relief solely as to the two named Defendants. Moreover, as to John Richards, he has also failed to make a showing under oath. The Court DENIES the Defendants' Motion to Open Default and GRANTS Plaintiffs' Motion for Default Judgment. The Court DECLARES, with respect to Plaintiffs' declaratory judgment claim asserted against CRC HOA and John Richards, the terms of the covenants outside the Allen chain of title did not affect or bind Plaintiffs or the property located at 3450 Bentwood Drive, Forsyth County, Georgia.² Plaintiffs did not have actual or constructive knowledge of the covenants. The covenants outside the Allen chain of title³ were outside of Plaintiff's, and FH Partners, LLC's, chain of title with Linda Allen. No one searching title in the grantor index under the developer's name (Silver Creek Development, LLC) for the period of ownership, up to the date title to the property transferred to plaintiff Mommies Properties, LLC, could have seen the covenants outside the Allen chain of title in that they were not recorded in the relevant period of the chain of title.

² The property is more particularly described in the legal description attached as Exhibit "A" to the Petition to Quiet Title.

³ The covenants outside the Allen chain of title and the Allen chain of title are more fully described in paragraphs 1 through 30 of the Petition to Quiet Title.

Finally, based upon Plaintiffs' concession during oral argument, the Court GRANTS Defendants' Motion to Open Default with respect to Counts 3, 4, 5, 6, and 7.

SO ORDERED this 27th day of February, 2019, *nunc pro tunc* to February 25, 2019.



Jeffrey S. Bagley, Chief Judge
Superior Court of Forsyth County
Bell-Forsyth Judicial Circuit

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