

IN THE STATE COURT OF COBB COUNTY
STATE OF GEORGIA

COBB COUNTY, GA
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JAMES H. GREENE, and
MINNIE JOHNSON,
Plaintiffs,

DAANE C. WOOD
STATE COURT CLERK-02

vs.

Civil Action File
No. 2004A-7104-6

GEORGIA CASH AMERICA, INC;
CASH AMERICA INTERNATIONAL, INC.;
DANIEL R. FEEHAN; and
JOHN DOES 1-10,
Defendants.

ORDER

This case is before the court on three motions:

(1) Defendants' "Motion for Reconsideration of the Court's December 6, 2007 Order Denying Defendants' Motion for a Ruling on Defendant's Motion to Compel Arbitration and/or Stay Proceedings," filed August 4, 2011, and heard October 14, 2011;

(2) "Defendants' Motion for Summary Judgment," filed August 4, 2011, and heard October 14, 2011; and

(3) "Plaintiffs' Cross Motion for Partial Summary Judgment," filed October 13, 2011, and heard November 22, 2011.

Upon consideration of the motions, responses, briefs, arguments of counsel, and all matter filed of record, the court enters this order as follows.

1.

Defendants' Motion for Reconsideration of the Court's December 6, 2007 Order Denying Defendants' Motion for a Ruling on Defendant's Motion to Compel Arbitration and/or Stay Proceedings

In its order of December 6, 2007, this court denied defendants' motion to compel arbitration and/or stay this action. The order was based on this court's prior order of October 11, 2006, in which this court struck defendants' arbitration defenses. The court imposed this sanction upon finding "that defendants have deliberately and willfully failed and refused to produce the documents which were the subject of the April 18 and July 19 [2006] orders within the time set forth in those orders." The April 18, 2006, order had allowed the parties until June 30, 2006, "to conduct discovery on the factual issues

relating to whether the arbitration agreements are subject to the defenses of fraud in the factum and procedural unconscionability.”

Defendants rely in the present motion on the recent decision in AT&T Mobility LLC v. Concepcion, 131 S.Ct. 1740 (2011), in which the United States Supreme Court held that a California rule set forth in Discover Bank v. Superior Court, 36 Cal.4th 148, 113 P.3d 1100 (2005), which conditioned the enforceability of an arbitration agreement on the availability of class wide arbitration was preempted by the Federal Arbitration Act [“FAA”], 9 U.S.C. § 4. However, in invalidating California’s general rule regarding class arbitration the Supreme Court did not hold that a particular arbitration agreement containing a class waiver can never be held to be unconscionable. On the contrary, Section 2 of the FAA specifically provides that an arbitration clause shall be enforceable “save upon such grounds as exist at law or in equity for the revocation of any contract.” 9 U.S.C. § 2. In Rent-A-Center, West, Inc. v. Jackson, 130 S.Ct. 2772, 2776 (2010), the Supreme Court held that “[t]he FAA thereby places arbitration agreements on an equal footing with other contracts . . . and requires courts to enforce them according to their terms . . . Like other contracts, however, they may be invalidated by ‘generally applicable contract defenses, such as fraud, duress, or unconscionability.’” Id (citations omitted).

Also, plaintiffs asserted the unenforceability of the arbitration provision on two separate grounds: (1) fraud in the factum and (2) unconscionability. Even if the arbitration provision could not be the subject of an attack on the basis of unconscionability, the Concepcion decision does not speak to the matter of fraud in the factum which would constitute a viable defense to enforceability of the arbitration provisions.

In any event, the underlying order of October 11, 2006, is now conclusive in this particular case insofar as the Georgia Court of Appeals affirmed that order in Georgia Cash America, Inc. v. Strong, 286 Ga. App. 405 (2007), and the Georgia Supreme Court denied certiorari September 24, 2007. “[A]ny ruling by the Supreme Court or the Court of Appeals shall be binding in all subsequent proceedings in that case in the lower court and in the Supreme Court or the Court of Appeals as the case may be.” O.C.G.A. § 9-11-60(h). “If the decision of an appellate court thereafter becomes ‘incorrect’ because the law changes – either because of subsequent case law or because of later-enacted statutes – it may not be binding precedent for other situations. *However, between the parties to the original decision it remains the law of the case.*” Fulton-Dekalb Hospital Authority v. Walker, 216 Ga. App. 786, 787 (1995) (emphasis added). See Rice v. Lost Mountain Homeowners Association, 288 Ga. App. 714 (2007); Dicks v. Zurich American Insurance Co., 231 Ga. App. 448 (1998).

Accordingly, defendants’ motion for reconsideration of the order of December 6, 2007, is denied.

2.

Defendants' Motion for Summary Judgment

Defendants contend that they cannot be liable to plaintiffs because the undisputed material facts show that Community State Bank, not Cash America, was the maker of the payday loans which are the subject of plaintiffs' claims in this case. Defendants contend also that they are entitled to summary judgment on plaintiffs' claims based on the Georgia check cashing statute, the Georgia RICO act, conversion, and the Georgia Industrial Loan Act ["GILA"]. Defendant Feehan seeks summary judgment as to the claims asserted against him individually.

(a) Identity of the True Lender

Defendants contend that Georgia Cash America, Inc., and Cash America International, Inc., (collectively "Cash America") was merely the in-state loan servicing agent for First National Bank ["FNB"], a federal bank located in South Dakota, for the period October 9, 2001, through March 15, 2003, and for Community State Bank ["CSB"], a South Dakota Bank chartered by the FDIC, for the period March 17, 2003, through April 1, 2006. Defendants contend that the true lenders of the subject loans in this case were FNB and CSB.

The court notes at the outset that defendants have asserted that plaintiffs are judicially estopped from making claims in this case relating to the purported FNB loans. Defendants rely in this regard upon excerpts from plaintiffs' reply to defendants' response in opposition to plaintiffs' motion to remand this case to this court after removal to the district court. This court has reviewed the plaintiffs' reply in the district court, a copy of which has been submitted to this court as Exhibit E to defendants' reply memorandum filed October 13, 2011. However, given the limited context represented by Exhibit E, this court is not able to conclude that plaintiffs sought remand on the basis of a contention or position in the district court that plaintiffs were foregoing claims against defendants as alleged actual lenders of the FNB loans. Accordingly, defendants' motion for summary judgment as to those loans based upon their claims of judicial estoppel is denied.

As to the merits of plaintiffs' claims, two distinct time periods are applicable to the loans in this case: (1) loans made through May 14, 2004, and (2) loans made after May 14, 2004. Effective May 1, 2004, the Georgia General Assembly enacted Senate Bill 157 ["SB 157"] which provides that

the use of agency or partnership agreements between in-state entities and out-of-state banks, whereby the in-state agent holds a predominant economic interest in the revenues generated by payday loans made to Georgia residents, is a scheme or contrivance by which the agent seeks to circumvent Chapter 3 of Title 7, the "Georgia Industrial Loan Act," and the usury statutes of this state.

O.C.G.A. § 16-17-1(c). In consideration of the enactment of SB 157, Cash America and CSB altered their administrative services agreement.

(1) Loans through May 14, 2004

Defendants contend that the payday loans were made by the South Dakota banks which were permitted by federal law, 12 U.S.C. § 21 and 12 U.S.C. § 1831(d), to export their interest rates to Georgia where the loans were made. They contend that the South Dakota banks were the true lenders, not Cash America. Defendants rely on the administrative services agreements between the banks and Cash America as well as the loan documents, including the promissory notes, all of which expressly identify the banks as the lenders, not Cash America.¹ Defendants cite Jenkins v. First America Cash Advance of Georgia, LLC, 400 F.3d 868, 875 (11th Cir. 2005), and In re Glasscock, No. 03-1037A (Bankr. S.D. Ga. Sept. 2005), as persuasive authority in support of their position in this regard. The courts in those cases based their decisions on the language of the underlying documents and procedural mechanisms set out in the documents but did not give weight to such matters as the respective percentages of revenues, liabilities, benefits and risks allocated to the parties which were deemed significant by the Georgia Court of Appeals in BankWest, Inc. v. Oxendine, 266 Ga. App. 771,775 (1) (2004). In making the determination as to the identity of the true lender, this court is not limited to a consideration of the documents themselves but may review the realities of the parties' relationships to the loans in light of the above factors, among others. Plaintiffs cite in this regard Pope v. Marshall, 78 Ga. 635, 640 (1887), where the Georgia Supreme Court stated that

whether a given transaction is a purchase of land, or a loan of money with title to the land taken as security, depends not upon the form of words used in contracting, but upon the real intent and understanding of the parties. No disguise of language can avail for covering up usury, or glossing over an usurious contract. The theory that a contract will be usurious or not according to the kind of paper-bag it is put up in, or according to the more or less ingenious phrases made use of in negotiating it, is altogether erroneous. The law intends that a search for usury shall penetrate to the substance.

Id.

That Cash America was the true lender of the purported FNB loans is evidenced by the facts, among others, that Cash America retained 88 percent of the gross revenues of the Georgia loans; was required to provide initial funding for the loans and bear virtually all expenses of marketing, originating and processing the loans; was required to indemnify FNB for any claims asserted by borrowers or regulatory authorities with respect to the loans (but without any reciprocal indemnification requirement); was

¹ In their attempt to limit the discourse to the language set forth on the face of the documents, defendants are in essence advancing the concept of *ipse dixit*: "it is because I say it is."

required to immediately repurchase any loan in default; and was required to pay to FNB a monthly fee. Similar factors existed with respect to loans as to which CSB, FNB's sister bank, was the purported lender. In short, Cash America retained virtually all the benefits, risks and revenues of the loans and was responsible for virtually all the expenses and liabilities. Moreover, Cash America's chief executive officer and chief information officer admitted that Cash America retained the predominant revenue and expense interests in the loans [Feeney Dep. pp. 76-78; Kenny Dep. pp. 68-69].

On the basis of the foregoing, defendants' motion for summary judgment as to the identity of the true lender of the loans made through May 14, 2004, is denied.

(2) Loans made after May 14, 2004

An effect of SB 157 was to establish an express standard to assist in the determination of the identity of the lender. In order to address this new standard, Cash America and CSB altered their administrative services agreement to provide that "the total compensation payable to Cash America . . . shall be less than a predominant economic interest in the revenues generated by Georgia Loans." However, with the exception of the percentage of gross revenues allocated to Cash America, the above factors which applied through May 14, 2004, for the most part continued to remain in place after May 14, 2004. Moreover, notwithstanding the language the defendants used in drafting their own agreements or what might have been defendants' intentions, the evidence in the present record creates genuine issues of material fact as to whether Cash America's economic interest in the revenues generated by the Georgia payday loans was actually limited to forty-nine percent or whether Cash America in fact retained less than a predominant economic interest in such revenues.

The court concludes that genuine issues of material fact exist as to the identity of the true lender of the loans made after May 14, 2004, and defendants' motion for summary judgment as to this issue is denied.

(b) Georgia's Check Cashing Statute

Plaintiffs have asserted a claim against defendants based upon alleged violations of Georgia's check cashing statute, O.C.G.A. § 7-1-700, et seq. Plaintiffs have asserted this claim as an alternative theory of liability in the event it is determined that Cash America is not the true lender. Plaintiffs contend that the voucher issued by Cash America at the time of the transaction is in reality a check which brings the transaction within the purview of the statute and that the Cash America origination fee of eleven percent exceeds the maximum fee permitted by O.C.G.A. § 7-1-706.

The check cashing statute defines "check" as, among other things, any "instrument . . . or device for the payment . . . of money . . . whether or not it is a negotiable instrument," subject to an exception for any "credit card voucher[s], letter[s] of credit, or any other instrument that is redeemable by the issuer in goods or services." O.C.G.A. § 7-1-680(a)(1). Defendants contend that vouchers in this case are simply

receipts for the loan transactions and that in the event they fall within the general definition of a check, they are subject to the exception set out above.

However, even assuming that the subject transactions can be categorized as check cashing, the statute does not provide for a civil remedy. It provides that a violation of the statute constitutes a misdemeanor criminal offense. O.C.G.A. § 7-1-708. “[T]he public policy advanced by a penal statute, no matter how strong, cannot support the implication of a private civil cause of action that is not based on the actual provisions of the relevant statute.” Anthony v. American General Financial Services, Inc., 287 Ga. 448, 456 (2010).

Accordingly, the court grants defendants partial summary judgment as to plaintiffs’ check cashing claim, which claim is hereby dismissed.

(c) **Conversion**

Plaintiffs’ complaint, as amended, asserts a tort claim for conversion against Cash America. Plaintiffs allege that the defendants obtained their funds under a predatory lending scheme and have no right to retain those funds [Fourth Amended Complaint, ¶¶ 112-113].

As stated by defendants in their brief, to establish a claim for conversion plaintiffs must prove the “unauthorized assumption and exercise of the right of ownership over personal property belonging to another, in hostility to his rights; an act of dominion over the personal property of another inconsistent with his rights; or an unauthorized appropriation.” Winterchase Townhomes v. Koether, 193 Ga. App. 161, 163 (1989) (citation omitted).²

As set out above and construing the evidence most favorably toward plaintiffs as non-movants, a jury could find that Cash America, a non-bank, was the true lender and violated Georgia’s usury laws by taking and retaining plaintiffs’ funds in the form of unlawfully charged interest. Funds that are specific and identifiable to the subject transaction may be the subject of a conversion claim even where the defendant no longer has possession of the disputed funds. Trey Inman & Associates, P.C. v. Bank of America, N.A., 306 Ga. App. 451 (4) (2010).

² In the Winterchase case, the plaintiffs, as purchasers, paid earnest money and a down payment in accordance with the parties’ contract to purchase a home. Jones, who was the president of both the corporation which owned the property and of the development corporation which built the home deposited the funds into his own personal account instead of into the account of the property owner who was “the party to whom the payment was due.” *Id.* at 163. Upon payment of the funds by plaintiffs pursuant to the contract the property owner acquired the possessory interest in those funds. The contract provided that if the property was destroyed prior to closing, the plaintiffs had the right to cancel the contract. The property burned prior to closing and plaintiffs cancelled the contract. Although several claims against various parties were asserted in the ensuing litigation, the Court of Appeals held that it was the owner of the property, not the plaintiffs, who had a conversion claim against Jones. In Winterchase Jones lawfully obtained the funds from plaintiffs and it was a party other than plaintiffs who thereafter had the possessory interest in the funds.

Again, construing the evidence most favorably toward plaintiffs as non-movants, and assuming therefore that Cash America was the true lender, Cash America wrongfully accepted and retained funds in the form of usurious interest.

Defendants' motion for summary judgment as to plaintiffs' tort claim of conversion is denied.

(d) Georgia RICO

Georgia's RICO statute provides as follows:

(a) It is unlawful for any person, through a pattern of racketeering activity or proceeds derived therefrom, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise, real property, or personal property of any nature, including money.

(b) It is unlawful for any person employed by or associated with any enterprise to conduct or participate in, directly or indirectly, such enterprise through a pattern of racketeering activity.

(c) It is unlawful for any person to conspire or endeavor to violate any of the provisions of subsection (a) or (b) of this Code section.

O.C.G.A. § 16-14-4.

"Pattern of racketeering activity" means: (A) Engaging in at least two acts of racketeering activity in furtherance of one or more incidents, schemes, or transactions that have the same or similar intents, results, accomplices, victims, or methods of commission or otherwise are interrelated by distinguishing characteristics and are not isolated incidents, provided at least one of such acts occurred after July 1, 1980, and that the last of such acts occurred within four years, excluding any periods of imprisonment, after the commission of a prior act of racketeering activity.

O.C.G.A. § 16-14-3(8)(A).

Effective May 1, 2004, Georgia's RICO statute was amended to provide that racketeering activity within the meaning of the Act would include commission of any crime under O.C.G.A. § 16-17-2 relating to payday loans. Ga. L. 2004, p. 60(§2). Although defendants deny having committed any such acts, jury issues exist as to whether defendants committed such acts after that date. Defendants' motion for summary judgment as to claims of Georgia RICO violations occurring after May 1, 2004, is denied.

As to Georgia RICO claims relating to defendants' conduct prior to that date, plaintiffs assert that defendants committed predicate acts under O.C.G.A. § 16-14-3

(9)(A)(ix) relating to theft offenses, including theft by taking, theft by deception and theft by conversion.

As to the criminal offense of theft by taking, O.C.G.A. § 16-8-2 provides that this offense occurs when a person “unlawfully takes or, being in lawful possession thereof, unlawfully appropriates any property of another with the intention of depriving him of the property, regardless of the manner in which the property is taken or appropriated.” As defendants point out, “the gravamen of the offense is the taking of the property of another against the will of such other.” Payne v. State, 301 Ga. App. 515, 519 (2009). However,

Georgia’s theft by taking statute contains the catch-all phrase “regardless of the manner in which the property is taken or appropriated,” which renders the statute broad enough to encompass theft by conversion, theft by deception or any other of the myriad, and even yet-to-be-concocted, schemes for depriving people of their property. Thus, the state may indict someone for theft by taking, but prove theft by deception, which is committed when a person obtains property by any deceitful means or artful practice with the intention of depriving the owner of the property. An accused deceives if he intentionally creates or confirms another’s impression of a fact or event which is false, and which the accused knows to be false.

Bradford v. State, 266 Ga. App. 198, 201-202 (2004). In this case, assuming that Cash America was the true lender, a jury issue exists as to whether defendants committed the predicate acts of theft by taking by deceiving the borrowers as to the true identity of the lender.

As to the criminal offense of theft by deception as a predicate act, that offense occurs when a person “obtains property by any deceitful means or artful practice with the intention of depriving the owner of the property.” O.C.G.A. § 16-8-3(a). “A person deceives if he intentionally . . . [c]reates or confirms another’s impression of an existing fact or past event which is false and which the accused knows or believes to be false.” O.C.G.A. § 16-8-3(b)(1). Again, assuming that Cash America was the true lender, a jury issue exists as to whether defendants committed the predicate acts of theft by deception in representing to plaintiffs that the banks were the lenders and therefore entitled to collect the interest charged.

In this case the plaintiffs allege, and the evidence supports, several predicate acts of racketeering activity consisting of several separate lending transactions.

Defendants’ motion for summary judgment as to the Georgia RICO claims is denied.

(e) Statute of Limitations

Plaintiffs have asserted claims under the Georgia Industrial Loan Act [“GILA”], O.C.G.A. § 7-3-1 et seq., contending that Cash America as lender charged interest on loans subject to the statute at interest rates in excess of the allowable rates. GILA provides a private right of action in the borrower for violations of GILA, O.C.G.A. § 7-3-29, although it does not provide a limitations period for such actions. Plaintiffs contend that because this right of action accrues to the individual borrowers under this statute, the limitations period for such actions is twenty years. “All actions for the enforcement of rights accruing to individuals under statutes or acts of incorporation or by operation of law shall be brought within 20 years after the right of action has accrued.” O.C.G.A. § 9-3-22.

Defendants contend that that the one-year limitation period of O.C.G.A. § 7-4-10(d) relating to claims of usury applies instead. Defendants argue in this regard that GILA did not create any new rights but codified and amplified the preexisting common law remedy for usury. Defendants argue that “where a statute [such as GILA] codifies a preexisting common law cause of action, the same statute of limitation that applied under common law shall apply to actions arising under the statute,” citing Houston v. Doe, 136 Ga. App. 583, 584 (1975).³ However, GILA does not codify a preexisting common law cause of action. On the contrary, the Georgia Supreme Court has held that GILA is “in derogation of the common law” and must therefore be strictly construed. Georgia Investment Co. v. Norman, 231 Ga. 821, 824 (1974). GILA provides that any person making a loan under the statute without first obtaining a license shall be guilty of a misdemeanor “and any contract made under this chapter by such person shall be null and void.” O.C.G.A. § 7-3-29(a). A borrower may therefore recover all interest and charges paid. Georgia Investment Co. v. Norman, supra. The case of Perry & Co. v. Knight Ins. Underwriters, Inc., 149 Ga. App. 128, 130 (2) (1979), involved a suit to recover unearned premiums relating to an insurance contract. The remedy was one created by statute and which did not exist at common law. The Court of Appeals held that “[t]he statutory remedy is not a codification of a remedy existing at common law. Because the obligation is one arising solely from the statute, Code Ann. § 3-704⁴, providing a 20-year limitation period, applies. See, e.g., Bankers Fidelity Life Ins. Co. v. Oliver, 106 Ga. App. 305, 310 (126 SE2d 887) (on motion for rehearing). Accordingly, the statute of limitation contained in Code Ann. § 3-706⁵ will not bar this action.” Id.

Plaintiffs’ claims are subject to the following limitation periods: GILA--20 years (O.C.G.A. § 9-3-22); Usury--1 year (O.C.G.A. § 7-4-10(d)); Conversion--4 years (O.C.G.A. § 9-3-32); and Georgia RICO--5 years (O.C.G.A. § 16-4-8).

Plaintiffs’ action was filed August 6, 2004, and seeks to recover with respect to the loans made beginning October 9, 2001, which is within the applicable limitations

³ Defendants’ Memorandum of Law in Support of Their Motion for Summary Judgment, p. 33.

⁴ O.C.G.A. § 9-3-22.

⁵ O.C.G.A. § 9-3-25.

periods for their GILA, Georgia RICO and tort claims. Defendants' motion for partial summary judgment based upon the running of the limitations period is therefore denied.

(f) Individual Liability of Defendant Feehan

A genuine issue of material fact remains for jury determination regarding the claims against defendant Daniel R. Feehan individually. Construing the evidence most favorably toward plaintiffs as non-movants, a jury could find that defendant Feehan personally was actively and directly involved in designing, creating and administering a scheme which resulted in the wrongdoing set out in plaintiffs' claims in this case. Although defendants Georgia Cash America, Inc., and Cash America International, Inc., are corporate entities, personal liability may attach to a corporate officer or agent on the basis of such personal involvement. See BTL COM Ltd., Co. v. Vachon, 278 Ga. App. 256, 260 (2006) ("a corporate officer may be held liable for a corporate tort when he cooperated or participated in the tort or directed it to be done"); DCA Architects, Inc. v. American Building Consultants, Inc., 203 Ga. App. 598 (2)(1992).

Defendant Feehan's motion for summary judgment is denied.

3.

Plaintiffs' Cross Motion for Partial Summary Judgment

Plaintiffs seek partial summary judgment as to their claims concerning loans made from October 9, 2001, through May 14, 2004. Plaintiffs contend that during this period Cash America was the true lender.

Defendants contend that the merits of the motion cannot be reached for the reasons that (1) the motion is untimely and (2) plaintiffs are judicially estopped from asserting claims as to loans made through March 15, 2003, involving FNB.

As to timeliness of the motion, defendants point to the April 27, 2011, case management order which provided that dispositive motions shall be filed no later than August 4, 2011. Plaintiffs' present cross-motion for partial summary judgment was not filed until October 3, 2011, two months after the deadline. Defendants cite Eudaly v. Valmet Automation (USA), Inc., 201 Ga. App. 497 (1991), for the proposition that it would be reversible error for this court to consider the motion under these circumstances. However, the facts in Eudaly are unique. The trial court in that case set a deadline for motions and for a pre-trial order but permitted defendant to file counterclaims late, effectively preventing plaintiff from conducting discovery with respect to those claims prior to trial. The Court of Appeals held that under the circumstances the trial court abused its discretion in allowing defendant to file late counterclaims "without a showing of necessity or justice pursuant to O.C.G.A. § 9-11-13(f)." Id. at 498. In the present case, plaintiffs state that they filed the cross-motion for partial summary judgment on the basis, in part, of information developed during discovery related to defendants' motion

for summary judgment. Also, no trial date had yet been set when the motion was filed, and defendants have not shown that they would be prejudiced by permitting the late filing of plaintiffs' motion. The court will therefore permit the late filing of the present motion in the exercise of the court's discretion.

As to defendants' claim of judicial estoppel, for the reasons set out above in part 2(a) of this order the court finds that plaintiffs are not judicially estopped from asserting these claims.

As to the merits, for purposes of plaintiffs' cross-motion for partial summary judgment the court adopts and restates what is set out above in part 2(a)(1) of this order concerning the identity of the true lender of those loans made through May 14, 2004. The agreements in the evidentiary record which governed the relationships between Cash America and the South Dakota banks establish as a matter of law that the identity of the lender of the subject loans through May 14, 2004, was Cash America and not the banks. No rational trier of fact could find otherwise. The evidence establishes that there is no genuine issue of material fact as to the identity of the lender of those loans, and this court hereby grants plaintiffs' motion for partial summary judgment as to that issue, that is, that the Cash America defendants were the true lenders of the subject loans through May 14, 2004.

So ordered, this 23^d day of November, 2011.


Toby Producers, Judge
State Court of Cobb County

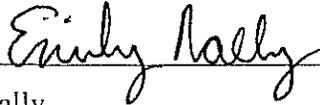
CERTIFICATE OF SERVICE

This is to certify that I have this date served copies of the within and foregoing Order by mailing same (through the Cobb County Mail System) to the parties in this case as follows:

John R. Bevis, Esq.
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This 23 day of November, 2011.



Emily Nally
Judicial Clerk to Judge Toby Prodggers
State Court of Cobb County
(770) 528-1782