

STATE OF GEORGIA

CATE T. HOLLIFIELD, formerly)

Known as [REDACTED])

Plaintiff,)

vs.)

GO AMERICA, L.L.C.,)

Defendant.)

CIVIL ACTION FILE

NUMBER 2024RCCV00234

FINAL ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

This matter came before this Court for a hearing on December 22, 2025, on Plaintiff's Motion for Summary Judgment (the "Motion"). The following will provide Findings of Fact and Conclusions of Law along with a decision on the Motion.

Undisputed Findings of Fact

This Case concerns title to real property commonly known as 590 Seminole Avenue, Atlanta, Fulton County, Georgia 30307 (the "Property"), more particularly described in the Complaint. Go America is the current owner of the Property after purchasing it at a foreclosure sale. (See Order Granting Defendant Go America's Motion for Partial Summary Judgment affirmed on appeal).

On or about March 16, 2023, Go America initiated an eviction action against Plaintiff. After filing the eviction, Go America later inspected the Property and found it to be vacant with almost all of the personal property removed; consequently, Go America dismissed the eviction. Go America did not evict

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Plaintiff or anyone else from the Property, nor did it instruct any of its vendors to evict Plaintiff from the Property.

Go America is not aware of who may have evicted or removed the personal property from the Property, but Go America did not evict Plaintiff or remove the personal property of Plaintiff from the Property, nor did Go America instruct any of its representatives or vendors to evict Plaintiff or remove any personal property of Plaintiff from the Property, nor is Go America aware of who or even if anyone evicted Plaintiff or removed the personal property of Plaintiff from the Property. Go America assumed that Plaintiff removed her personal property from the Property.

Go America does have some tools stored at the Property that it has requested Plaintiff to pick up and remove from the Property, but to date Plaintiff has failed and refused to do so. Go America also did not remove an inoperable truck from the street in front of the Property, and the truck was later returned by whoever removed it and the truck was later towed away by the City of Atlanta and remains impounded as Plaintiff has not picked up the truck from Atlanta's impound.

On October 25, 2023, Plaintiff filed her Complaint initiating this civil action against Go America and Chase. In the Complaint, Plaintiff enumerates claims for wrongful foreclosure, wrongful eviction (against Go America only), attorneys' fees, and punitive damages. However, Go America did not foreclosure on the Property, nor did it evict anyone or

anything from the Property, nor did it instruct anyone to evict Plaintiff or anyone or anything else from the Property, nor is Plaintiff even aware who if anyone may have evicted Plaintiff from the Property.

Plaintiff does not even know who may have evicted Plaintiff or her belongings from the Property, nor did Plaintiff witness any representatives of Defendant evicting Plaintiff or her belongings from the Property and when Plaintiff was specifically asked whether it was correct that she "didn't witness anybody removing anything from your property," "Plaintiff specifically replied "That's correct'". (Depo. Of Cate Hollifield, pp. 116-119 filed herein on November 5, 2024) As a result, Defendant is entitled to have its Motion for Summary Judgment granted.

Conclusions of Law

The following will provide the Court's conclusions of law based on the undisputed facts in this case. The only claim remaining against Defendant is for wrongful eviction. In Georgia, the exclusive method that a landlord may use to evict a tenant is through a properly instituted dispossessory action filed under O.C.G.A. § 44-7-50 *et seq.* See Metro Atlanta Task Force for the Homeless, Inc. v. Premium Funding Solutions, LLC, 321 Ga. App. 100, 101(1), 741 S.E. 2d 225 (2013); (2013); accord Ikomoni v. Executive Asset Mgmt., LLC, 309 Ga. App. 81, 84(2), 709 S.E. 2d 282 (2011); and Steed v. Fed. Nat. Mortgage Corp., 301 Ga. App. 801, 805(1)(a), 689 S.E. 2d 843 (2009). A demand for possession is also a "condition

precedent to the landlord's right to dispossess the tenant summarily under O.C.G.A. § 44-7-50." Sandifer v. Long Investors, Inc., 211 Ga. App. 757, 758(2)(c), 440 S.E. 2d 479 (1994); see Metro Mgmt. Co. v. Parker, 247 Ga. 625, 629, 278 S.E. 2d 643 (1981) (holding that "in every case, a timely demand for possession is a condition precedent to the institution of dispossessory proceedings"); O.C.G.A. § 44-7-50.

Further, O.C.G.A. § 44-7-55(c) provides:

Any writ of possession issued pursuant to this article shall authorize the removal of the tenant or his or her personal property or both from the premises and permit the placement of such personal property on some portion of the landlord's property or on other property as may be designated by the landlord and as may be approved by the executing officer; provided, however, that the landlord shall not be a bailee of such personal property and shall owe no duty to the tenant regarding such personal property. After execution of the writ, such property shall be regarded as abandoned.

The courts have interpreted the latter portion of this statutory provision as being "contingent upon the landlord first placing the tenant's property on some portion of the landlord's property or on other specific property designated by the landlord and approved by the executing officer." Higgins v. Benny's Venture, Inc., 309 Ga. App. 102, 104, 709 S.E. 2d 207 (2011). Because in the absence of this requirement, the landlord would have "carte blanche to do whatever he or she liked with the tenant's personal property, including even destroying it, at the moment the writ of possession is issued." Id. Thus, if the landlord evicts a tenant without first filing a dispossessory action and obtaining a writ of possession, or without following the

dispossessory procedures for handling the tenant's personal property, then the landlord "can be held liable for wrongful eviction and trespass." Fennelly v. Lyons, 333 Ga. App 96, 775 S.E. 2d 587 (2015) citing Ikomoni v. Executive Asset Mgmt., LLC, 309 Ga. 81, 84(2), 709 S.E. 2d 282 (2011) and Steed v. Fed. Nat. Mortgage Corp., 301 Ga. App. 801, 805(1)(a), 689 S.E. 2d 843 (2009). ("[A] landlord who forcibly evicts a tenant without filing a dispossessory action and obtaining a writ of possession is subject to damages in tort for the wrongful eviction.").

A landlord-tenant relationship exists between a legal title holder and a tenant at sufferance such that the dispossessory procedures set forth in O.C.G.A. § 44-7-50 et seq. are applicable. See Frank v. Fleet Finance, Inc. of Ga., 227 Ga. App. 543, 547(1)(c), 489 S.E. 2d 523 (1997); Cloud v. Ga. Central Credit Union, 214 Ga. App. 594, 598(8), 448 S.E. 2d 913 (1994); Stevens v. Way, 167 Ga. App. 688, 690(5), 307 S.E. 2d 507 (1983). In contrast, because a landlord-tenant relationship must exist before a dispossessory action will lie, see Stevens, 167 Ga. App. at 690(5), 307 S.E. 2d 507; Crain v. Daniel, 79 Ga. App. 647, 651-652(3), 54 S.E. 2d 487 (1949), such an action is not a legal prerequisite to removing a mere intruder from the premises. See Block v. Brown, 199 Ga. App. 127, 130(1), 404 S.E. 2d 288 (1991).

"Where former owners of real property remain in possession after a foreclosure sale, they become tenants at sufferance." (Emphasis supplied.) Bellamy v. Fed. Deposit Ins.

Corp., 236 Ga. App. 747, 750(1), 512 S.E. 2d 671 (1999). See also Frank, 227 Ga. App. at 547(1)(c), 489 S.E. 2d 523; Cloud, 214 Ga. App. at 598(8), 448 S.E. 2d 913. However, in Durden v. Clack, 94 Ga. 278, 21 S.E. 521 (1894), the Supreme Court of Georgia held that when a former owner yields possession of the property at some point after the sale, but then later reenters the property, he is an intruder. See also Baker v. Downing, 69 Ga. 746 (1882) (when an occupant formally surrenders possession of certain property, but later reenters the property in contravention of the surrender, he is an intruder). Applying these principles, the court concluded that if a former owner is not in possession of the property at the time of the foreclosure sale or subsequently goes out of possession, but then later reenters the property aware that a foreclosure sale has already taken place, the former owner is a mere intruder, and the legal title holder is not required to follow the dispossessory procedures set forth in O.C.G.A. § 44-7-50 et seq. See also Steed v. Fed. Nat. Mortg. Corp., 301 Ga. App. 801, 689 S.E. 2d 843 (2009)

In this case, however, the Defendant did file a dispossessory, but never removed any personal property from the premises. Instead, when Defendant checked the house, all of the personal property was gone and the small part that was left was consolidated into storage on the premises and remains there to this day. Even though Defendant has specifically informed Plaintiff that she can get those tools and the other few minimal

items remaining at the premises, Plaintiff has continuously failed and refused to remove that personal property and instead seeks to be paid for the value of such personal property that is still on the premises, plus other property which Plaintiff did not move or take possession of.

There was no wrongful eviction by the Defendant in this case as there was no eviction, at least not by the Defendant herein. In fact, Go America is not aware of who may have evicted or removed the personal property from the Property, but it is uncontroverted that Go America did not evict Plaintiff or remove the personal property of Plaintiff from the Property, nor did Go America instruct any of its representatives or vendors to evict Plaintiff or remove any personal property of Plaintiff from the Property, nor is Go America aware of who or even if anyone evicted Plaintiff or removed the personal property of Plaintiff from the Property. In fact, Defendant believed that Plaintiff had removed her personal property, which occurs often in these matters. Additionally, Plaintiff did not witness who removed any personal property as he was not living there, and as a result yielded possession of the property.

Additionally, Defendant did not and has not converted any of Plaintiff's property. Conversion consists of an 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. Thus, any distinct act of dominion and control wrongfully asserted over another's personal property, in denial of his right or inconsistent with his right, is a conversion of such property. Williams v. National Auto Sales, 287 Ga. App. 283, 285(1), 651 S.E. 2d 194 (2007); Parris Properties, LLC v. Nichols, 305 Ga. App. 734, 700 S.E. 2d 848 (2010). See also O.C.G.A. § 51-10-1. The unauthorized removal and disposal of personal property can constitute conversion. See Washington v. Harrison, 299 Ga. App. 335, 339(1), 682 S.E. 2d 679 (2009) (unauthorized removal of personal property from land by salvage crew at the behest of landlord "with no consideration given as to its ultimate fate," and in violation of dispossessionary statute, constituted conversion); Thakkar v. St. Ives Country Club, 250 Ga. App. 893 896(5), 553 S.E. 2d 181 (2001) (conversion could be found based upon unauthorized removal of trees from land and placement in "trash heap"). Defendant did none of the above with respect to Plaintiff's property. In fact, the only items remaining have been stored and Defendant has repeatedly requested that Plaintiff take control of that personal property (and which Defendant reiterated its request that Plaintiff take control of that personal property in its Brief in Support of Plaintiff's Motion for Summary Judgment), which Plaintiff has continuously failed and refused to take control of that personal property.

As a result, Defendant did not wrongfully evict anyone or anything from the Property as when Defendant inspected the

Property while the eviction was pending, Defendant discovered that the personal property at the Property had been removed, which happens all the time when an eviction is filed against a tenant and that tenant moves out thereafter prior to being formally evicted. Plaintiff even testified that he has done the same with his tenants. Defendant also never converted Plaintiff's property. Consequently, there was no wrongful eviction or conversion by the Defendant in this case and Defendant's Motion for Summary Judgment should be granted. Accordingly, it is hereby

ORDERED that Defendant's Motion for Summary Judgment is hereby GRANTED. It is further

ORDERED that this Order is final order with respect to all remaining claims and issues raised herein.

SO ORDERED this 30th day of December, 2025.



Hon. Ashley Wright
JUDGE, SUPERIOR COURT OF
RICHMOND COUNTY, GEORGIA

Prepared and Presented by:

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