No. A25A1959

In the Court of Appeals
for the State of Georgia

MANNA ROOF AND CONSTRUCTION LLC,

Appellant-Plaintiff

v.

JONG HYUN YOUN,

Appellee-Defendant

Appeal from the
Superior Court of Gwinnett County
State of Georgia

Case No. 24-A-06575-3

APPELLANT'S OPENING BRIEF

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INTRODUCTION

This appeal presents a straightforward but critically important issue: whether a Georgia trial court may rely upon a prior ruling that is void for lack of jurisdiction as grounds to dismiss a subsequent complaint under res judicata.

Appellant Manna Roof and Construction LLC ("Manna") voluntarily dismissed its initial pro se case and its claims against Appellee Jong Hyun Youn without prejudice pursuant to § 9-11-41 (a)(1)(A) after the company's owner was unable to retain counsel within the deadline set by the court (V2-121). This voluntary dismissal immediately divested the original court of jurisdiction over Manna's claims. Nevertheless, the original court subsequently issued an order purporting to dismiss both parties' claims on the merits, despite explicitly recognizing that Manna's claims had already been dismissed and were no longer before it.

Because Manna's voluntary dismissal extinguished jurisdiction over its claims, the original court's subsequent order attempting to adjudicate those claims was void ab initio and without legal effect. Under well-established Georgia law, such jurisdictionally void judgments may be attacked at any time in any court and cannot serve as a basis for res judicata. After Manna's counsel filed a new well-pled complaint, the Superior Court's dismissal of Manna's subsequent action under res judicata based on the void prior adjudication constitutes reversible error.

Accordingly, Manna respectfully requests that this Court reverse the judgment below and remand this matter to allow Manna the opportunity to properly litigate its claims.

JURISDICTIONAL STATEMENT

This is a direct appeal under O.C.G.A. § 5-6-34 (a)(1) for which this Court has appellate jurisdiction because the trial court's dismissal order and denial of the motion to reconsider is a final judgment that decided all claims between the parties. *See* V2-9-11 (Order). It does not involve matters reserved to the Georgia Supreme Court under O.C.G.A. § 15-3-3.1. *See* Ga. Const. Art. VI, § V, ¶ 3.

The trial court entered its dismissal order on March 27, 2025, and Manna filed its motion to reconsider on March 31, 2025, which the trial court denied on April 24, 2025. This appeal is timely because Manna filed its notice of appeal on April 28, 2025. *See* V2-1-4 (Notice of Appeal).

ENUMERATION OF ERRORS

1. The trial court erred in dismissing Manna's complaint on res judicata grounds because, after Manna's voluntary dismissal of its case under O.C.G.A. § 9-11-41 (a)(1)(A), the first court lacked subject-matter jurisdiction to hear Manna's claims, so there was no prior adjudication by a court of competent jurisdiction.

2. Even if jurisdiction had existed, res judicata does not apply because Manna never had a full and fair opportunity to litigate its claims in the prior action.

STATEMENT OF THE CASE

A. Factual Background

1. Appellant-Plaintiff Manna Roof and Construction LLC ("**Manna**") was a small roofing company that completed one of its last jobs for Appellee-Defendant Jong Hyun Youn ("**Youn**") before Manna's owner, Mr. Heo, fell off a roof and was paralyzed from the waist down. V2-13 (Verified Complaint ("Compl.") ¶ 1).

2. Just prior to that, Mr. Youn hired Mr. Heo and Manna to replace his storm-damaged roof, and the $23,656.87 roof replacement was fully covered by his Farmers Insurance policy minus a $1,000 deductible. V2-13-14 (Compl. ¶ 2).

3. Mr. Youn paid the initial Farmers insurance payment of $10,918.59 to Manna as a deposit and agreed to pay the rest of the insurance proceeds—which turned out to be exactly $11,738.28—plus the $1,000 deductible to Manna after the job was completed. V2-13-14-15 (Compl. ¶ 2).

4. After Manna successfully completed the job, Mr. Youn received the other $11,738.28 from Farmers Insurance but refused to give it or the $1,000 deductible to Manna as promised. V2-21 (Compl. ¶¶ 59-64).

5. After the Defendant kept the insurance proceeds and refused all demands for payment, on January 8, 2020, Mr. Heo filed a pro se lawsuit against the Defendant on behalf of himself and Manna Roof & Construction LLC (DeKalb Superior Court, Case No. 20-A-00169-3). V2-108-12 (Pro Se Complaint). Because he was not a lawyer, on September 27, 2023, the court, sua sponte, entered an *Order*

Requiring Plaintiff to Retain Counsel, giving the company 30 days to retain counsel. V2-180 (Order to Retain Counsel).

6. For the next month, Mr. Heo tried to find a lawyer to handle his $12,738.28 lawsuit, but he could not. After the 30-day deadline, on November 13, 2023, Mr. Heo filed a handwritten dismissal of both cases. The notice of dismissal said, "Canceling the case. I need to cancel it please. I can't afford the lawyer." V2-121 (Voluntary Dismissal). This was Manna's first voluntary dismissal under O.C.G.A. § 9-11-41 (a).

7. Defendant Youn had filed a counterclaim but raised no objection to the dismissal under O.C.G.A. § 9-11-41 (a)(2). V2-271 (Fallon Affidavit ("Aff.") ¶ 12). However, on October 31, 2023, the court scheduled, sua sponte, a Final Hearing on the counterclaim for November 29, 2023, in person. V2-184 (Notice of Hearing).

8. Late on November 20, 2023, Mr. Heo first contacted the undersigned counsel, who filed his notice of appearance the next day. V2-192 (Entry of Appearance). Manna's counsel emailed a copy to the Defendant's counsel asking to discuss the case scheduled for a final hearing the very next week but did not get a reply. V2-194-96 (Email); V2-270 (Aff. ¶ 5).

9. On November 27, 2023, two days before the hearing, Plaintiffs' counsel was still unsure whether the hearing was about the whole case or, more likely, just the counterclaim. V2-270 (Aff. ¶ 8). Initially, counsel had refiled the existing complaint with an attorney's signature, but after researching the issue, it appeared to be a futile gesture as Manna's case had already been effectively dismissed under O.C.G.A. § 9-11-41 (a)(1)(A) before counsel entered, and as a matter of law, there

was no complaint for subsequent pleadings to relate back to. V2-270 (Aff. ¶ 7). However, under O.C.G.A. § 9-11-41 (a)(3), the prior dismissal was without prejudice because it was the first such dismissal and counsel understood that the case could be refiled properly in the future. V2-271 (Aff. ¶ 13).

10. On Monday afternoon at 2:47 p.m., November 27, 2023, Manna's counsel left a voicemail for Youn's counsel and emailed him again, noting that the trial was in two days and again asking to discuss the case. V2-271 (Aff. ¶ 9).

B. Original Final Hearing: Counterclaim Bench Trial

11. Because Manna was still not positive if the noticed hearing was about the case or merely the counterclaim, and counsel did not want to prejudice Manna's ability to present evidence at the hearing, he replied to the court's judicial assistant's email once more to relay that he had refiled the complaint and ask if there were any instructions for submitting exhibits for the hearing. V2-186 (Email); V2-270 (Aff. ¶ 10).

12. At 4:55 p.m. on November 27, 2023, Ms. Unger replied:

> Good afternoon Mr. Fallon,
>
> In response to your email, please note that we have Clickshare in the courtroom for electronic and recorded evidence. If you have any questions regarding how to use it, we advise that you please refer to AOC for their help. The contact person for courtroom technology assistance is Mr. Hayat Zamayar and he may be reached at 770-[555]-8680.
>
> **Please also note that a voluntary dismissal was filed by the pro-se petitioner prior to your Entry of Appearance in the case. The case was scheduled for a final hearing on the Respondent's counterclaim**, but any issues regarding that should be discussed with opposing counsel or can be addressed with the Judge at the hearing.

V2-190 (Email) (emphasis added); V2-271 (Aff. ¶ 11).

13. After that, Defendant's counsel called back and said he had not even been planning on going, and he also believed that the only thing left was the counterclaim and the case would be dismissed altogether, but that he would check into it. V2-271 (Aff. ¶ 12).

14. At that point, Manna understood that the hearing was only going to be on the issue of Youn's counterclaim and Manna's potential exposure for all the allegations in the counterclaim, which would have to be defended before the Plaintiff could refile the case properly, utilize discovery, and add additional claims. V2-271 (Aff. ¶ 13).

15. On the morning of the hearing at 9:30 a.m. on November 29, 2023, the court began by calling multiple cases, and for parties who were present, asking them how long they anticipated needing for their cases. V2-271 (Aff. ¶ 14).

The Court Immediately Confirmed that the Parties' Hearing Was *Solely* About the Counterclaim.

When the Parties' case was called, the court:

a. **specifically stated that the hearing was only to consider the counterclaim**,

b. asked only Youn's counsel how much time he needed and did not ask Manna's counsel anything about time it might need.

c. The court also stated that **because the only issue being considered was the counterclaim, Defendant's counsel would get to argue first and last.**

V2-271-72 (Aff. ¶¶ 14-15).

16. When Youn's counsel answered, he estimated 30 minutes for his case V2-272 (Aff. ¶ 16). He also stated that he had not planned on there being a hearing today, and that he needed a Korean interpreter. (*Id.*)

17. The Notice of Hearing had said to "advise the Court at least three (3) days in advance if you would like your hearing to be taken down by a court reporter and if you need an interpreter." V2-271 (Aff. ¶ 16). The court said the notice of hearing was clear and the hearing was happening today, but that the court would see what it could be done to find an interpreter (*Id.*).

18. Manna did not object. As discussed below, after researching the issue, Manna's case had been dismissed–as was the plaintiff's right under O.C.G.A. § 9-11-41 (a)—before Manna's counsel ever entered the case. Counsel's attempt to file an amended complaint was made before he knew for sure that the hearing was solely to consider the counterclaim, and by the hearing, counsel knew it was purely ineffective. After the court's announcements at the hearing, it was clear that Manna's claims were not going to be considered today, but because it was the first dismissal and was without prejudice, Manna could file a new action under O.C.G.A. § 9-11-41 (a)(3) if a settlement could not be reached with Youn. V2-271 (Aff. ¶ 17).

19. At the hearing, a remote Korean interpreter was obtained who could appear by Zoom. Because the parties were there in person, all the Plaintiffs' exhibits had been printed with three copies, and nothing was organized for online presentation. Nevertheless, the parties were sent to the side rooms outside of the courtroom to attend the meeting with the interpreter over Zoom. V2-273 (Aff. ¶ 20).

At the Start of the Zoom Hearing, the Court
Stated Clearly that Only the Counterclaim Was Being Considered.

20. The court's own courtroom reporter was used to take down the hearing and in the Certified Transcript, the hearing is titled "**Counterclaim Bench Trial**." V2-198-267 (Certified Transcript ("Tr."), *Counterclaim Bench Trial,* November 29, 2023, at Ex. 7, *Plaintiff's Response in Opposition to Motion to Dismiss*).

21. After swearing in the interpreter, the Court began the hearing by stating the following:

> This is Case 20-A-00169-3. It is Manna Roof & Construction LLC v. Youn. The plaintiff is present on Zoom represented by his attorney, Brad Fallon, also on Zoom. The defendant is present on Zoom represented by his attorney, Lubin An, also on Zoom. Mr. Youn will be assisted during this hearing with the Korean interpreter, who has been sworn in. Both parties have asked the court reporter to take down this hearing for her hourly fee. … Each of the parties or their attorneys will need to settle up with the court reporter at the conclusion of the hearing.
>
> I will outline how this case was initiated. The plaintiff filed a complaint on January 8th, 2020. The defendant filed an answer and counterclaim on February 28th, 2020. **On November 13th, 2023, the plaintiff filed a voluntary dismissal of the complaint. The voluntary dismissal was filed prior to the plaintiff being represented by Mr. Fallon. The case is scheduled for a final hearing today on the defendant's counterclaim.**
>
> Mr. Youn, let me just confirm that you are understanding the Korean translation up until this point.
>
> MR. YOUN: (Through the interpreter) Yes.
>
> THE COURT: **Mr. An, <u>since we are proceeding on your counterclaim</u>, did you want to make any opening remarks?**
>
> MR. AN: Your Honor, I will –
>
> THE COURT: You have to wait for the interpreter.

R. AN: And, Your Honor, just briefly -- I will do so briefly.
May I start, Your Honor?

THE COURT: Yes.

V2-202-03 (Tr.) (emphasis added).

22. Specifically, Mr. Youn alleged that the roof replacement had not been repaired properly, V2-210 (Tr.), that the Plaintiff had left the job site with a bunch of trash all around that Youn had to pay to remove, V2-208 (Tr.), and that nails left on the ground by the Manna had punctured two of his tires that needed to be replaced. V2-209 (Tr.); V2-273 (Aff. ¶ 22).

23. Manna argued that it did not owe Youn any money for what he claimed. Because Youn's claim for money revolved around leaving trash at the property after the job, including nails all over the place, Manna brought a witness named Adilo Hernandez to the hearing. V2-273 (Aff. ¶ 21).

24. Mr. Hernandez is an independent contractor who supervised Youn's roofing job and more than 200 other roofing jobs for the Plaintiff. Mr. Hernandez testified that in their industry, it is very important to remove all the trash from job sites after the jobs. He testified that he would always make sure this was done, and that he personally made sure that all the trash was removed after the Defendant's job. V2-240-42 (Tr.); V2-273 (Aff. ¶ 21).

25. Mr. Hernandez testified that he and a crew of 6 people accomplished the roof replacement in two days. V2-240 (Tr.).

26. Moreover, Mr. Hernandez testified that after all the trash had been removed, he had personally been the one who walked all around the job site with a big magnet to make sure that all the nails were removed. V2-241-42 (Tr.).

27. Additionally, Mr. Youn had no receipts to support the $200 that he alleged that he spent to replace two lawnmower tires that were punctured and ruined by nails left at the job. V2-211-12 (Tr.).

28. As to the allegation that the roof had not been repaired properly, the Plaintiff brought pictures of the new roof after it had been replaced, which were authenticated by the Plaintiff who took them. V2-218-20 (Tr.). Additionally, it became apparent that the Defendant's complaint was not actually with the brand new roof itself. Rather, the Defendant had a problem with a weird pipe sticking out of part of his roof in an unusual way. V2-212 (Tr.).

29. After the roof was replaced, when Manna's Mr. Heo was trying to get Youn to pay him—after Mr. Heo knew Youn had received the check from Farmers, which had given the final approval—testimony developed that Youn wanted the Mr. Heo to perform additional work for him for free that was not part of the roof replacement or part of the contract. V2-225-26 (Tr.).

30. At the close of evidence, the court stated, "The evidence is closed on both sides. **Since we have proceeded on Mr. An's counterclaim**, he would have the right to give an initial and concluding argument." V2-242 (Tr.) (emphasis added).

31. Once again, Manna did not object because it was clear from the beginning that the hearing was only about the remaining counterclaim. V2-271 (Aff. ¶ 17).

32. Manna argued that Youn's counterclaim about substandard work and trash left all over had no merit, based on the testimony of Mr. Hernandez, who had personally supervised the trash removal and personally walked around the site with the magnet to pick up any extra nails. V2-272 (Aff. ¶ 25).

33. Plaintiff also argued that "to the extent the Plaintiff owes the Defendant any money, it should be set off by the amount the Defendant owes the Plaintiff. V2-272 (Tr. ¶ 25). In the final closing argument, when Plaintiff's counsel mentioned that the amount that the Defendant owed the Plaintiff was $12,738.28, the court stated, **"Mr. Fallon, you understand that the complaint was voluntarily dismissed, so you cannot ask for a money judgment. Your side of the case was dismissed."** V2-246 (Tr.) (emphasis added).

34. At that point, Manna's counsel said, "Your Honor, I would like to place an objection on the record because I don't think that he was authorized to speak for the company when he dismissed it." V2-246 (Tr.); V2-274 (Aff. ¶ 26). But then, thinking better of it, counsel said, slowly and haltingly, "But, I understand that's the ruling here," (as it had been the whole time) V2-246 (Tr.); V2-274 (Aff. ¶ 26). After a pause, rather than stating any objection or arguing for the initial off-the-cuff thought, which seemed baseless after two seconds of thought, he said instead, "I guess my point would be that to the extent they're asking for any money, they've already gotten $12,700 that they weren't supposed to get," as if to say that finding

for the Defendant would be unjust. V2-246 (Tr.); V2-274 (Aff. ¶ 26). Because it was at the end of the list of the Defendant's requests for damages, and the Plaintiffs were not allowed to recover any money, Manna's counsel just left it at that, saying, literally, "So that's all we have to say about that." V2-246-47 (Tr.); V2-274 (Aff. ¶ 26).

35. This was not a claim or argument that the entire proceeding should have been different than it was. V2-246-47 (Tr.); V2-274 (Aff. ¶ 27). Nor did the court appear to take it as such. V2-246-47 (Tr.); V2-275 (Aff. ¶¶ 28–29). On the contrary, the court did not treat the statements as an objection, nor did the court or rule on it as such. V2-246-47 (Tr.); V2-275 (Aff. ¶¶ 28–29).

36. The court appeared to take the statement the way it came out, as it was intended—as a statement at the end of plaintiffs' counsel's summary of what the evidence had shown—that the roofing job was successfully completed, that the plaintiffs had not left trash and debris on the job site, that they had picked up all the nails, and that the plaintiffs thought the defendant's counterclaim should be denied. V2-247 (Tr.); V2-275 (Aff. ¶¶ 27–29).

37. Without treating it as anything else, in the very next sentence, the court said, "Mr. An, your final argument, please." V2-247 (Tr.).

C. Procedural History

38. After the hearing, the court said it would issue a written ruling. V2-247 (Tr.).

39. Later that afternoon, November 29, 2023, the court entered a written Final Order and Judgment that dismissed both the counterclaim and, purportedly,

Manna's complaint, stating that "neither side met their respective burden of proof." V2-127 (Final Order and Judgment). The clerk was directed to mark the case "DISPOSED." (*Id.*)

40. Manna, now represented, filed a new action in the Gwinnett State Court on December 30, 2023, docketed as Civil Action No. 23-C-09726-S5. V2-13-70 (Compl.). The verified complaint sought $ 12,738.28 in unpaid contract proceeds and statutory penalties, including attorney's fees. (*Id.*)

41. Youn answered on February 2, 2024. V2-78-92 (Answer).

42. On February 22, 2024, Manna served its first discovery requests, including interrogatories, requests for admissions, and document requests, and filed a Rule 5.2 Certificate. V2-93 (Rule 5.2 Cert.).

43. On June 10, 2024, Youn filed an amended answer to plaintiff's verified complaint, in which the sole amendment was to verify the pleading. V2-99-101 (Amended Answer).

44. On the same day, June 10, 2024, Youn filed his Motion to Dismiss Under the Doctrine of Res Judicata. V2-102-07 (Motion to Dismiss).

45. On July 9, 2024, Manna filed Plaintiff's Response in Opposition to Motion to Dismiss. V2-130-49 (Response).

46. On July 18, 2024, the State Court entered an order transferring the case to Superior Court Division 3 as Civil Action No. 24-A-06575-3 because it was "related" to the original case, 20-A-00169-3. The court ordered that the case be transferred to the Hon. Deborah R. Fluker, the original Superior Court Judge. V2-70-71 (Transfer Order).

47. On January 24, 2025, Manna filed a request for a hearing on Youn's motion to dismiss on res judicata grounds. V3-337-38 (Manna's Request for Hearing).

48. Upon Manna's request, the hearing was scheduled for March 26, 2025, in front of the Hon. Jon W. Setzer. V2-9 (Hrg. Notice). Due to an unfortunate email and office calendaring issue, Manna's counsel, after requesting the hearing and being in communication with the court's office, never saw the notice of hearing and did not attend the hearing. V3-352 (Mtn. to Reconsider).

49. After the hearing, the Superior Court granted Youn's motion to dismiss on March 27, 2025. V2-9-10 (*Order Granting Motion to Dismiss Under the Doctrine of Res Judicata,* "Order"). Relying exclusively on the language contained in the 2023 order, the court found that the matter of Plaintiff's breach of contract and Defendant's counterclaim was litigated in a final hearing on November 29, 2023. V2-9 (Order).

50. The Superior Court quoted the original Final Order and Judgment, which stated that "counsel presented testimony and evidence on both the Counterclaim and Plaintiff Manna's Amended Complaint, and the Court finds that neither side has met their burden of proof," and noted that the original order "further specifies that both Plaintiff's Complaint and Defendant's Counterclaim were dismissed." V2-9-10 (Order).

51. The Superior Court concluded that all Manna's present claims "could have been brought" in the first action, that the parties and causes of action were identical, and that res judicata barred the suit. V2-10 (Order).

52. Manna first learned of the hearing it had requested on the motion to dismiss for res judicata when the order dismissing the case was served. Manna promptly moved for reconsideration on March 31, 2025. V3-352-539 (Mtn. to Reconsider).

53. On April 13, 2025, Youn filed its response to Manna's motion for reconsideration. V3-540-45 (Response).

54. On April 23, 2025, Judge Jon W. Setzer denied the motion to reconsider. V2-9-10 (Order Denying Mtn. to Reconsider).

55. On April 28, 2025, Manna filed its notice of appeal designating the entire record and any and all transcripts. V2-1-4 (Notice of Appeal). On June 3, 2025, Manna filed an amended notice of appeal when it was learned there was no transcript for the March 26, 2025, motion hearing. V2-5-8.

56. This appeal was docketed June 4, 2025, and on June 23, 2025, Manna filed its request for oral argument, which was granted on June 26, 2025. Oral argument is tentatively scheduled for September 24, 2025.

57. The clerk transmitted the record to this Court on July 4, 2025. When the certified transcript of the November 29, 2023, "Counterclaim Bench Trial" in the original action was discovered missing, Manna filed a "Notice of Filing Certified Transcript" and the "Certified Transcript (Case No. 20-A-00169-3, "Counterclaim Bench Trial," 11/29/2023)" in the Superior Court on July 12, 2025 and moved in this Court to supplement the record on July 13, 2025.

58. On July 14, 2025, this Court granted Appellant's Motion to Supplement Record, ordering the Superior Court of Gwinnett County to submit the certified transcript from the "Counterclaim Bench Trial" held November 29, 2023.

SUMMARY OF THE ARGUMENT

Res judicata applies only where there has been a prior adjudication by a court of competent jurisdiction. Under O.C.G.A. § 9-11-41(a)(1), a voluntary dismissal without prejudice divests the trial court of jurisdiction over those claims. Here, Manna's pro se complaint was voluntarily dismissed before any hearing, so the original court had no jurisdiction to adjudicate Manna's claims. It was therefore reversible error for the Superior Court to treat that void "adjudication" as the basis for dismissing Manna's later complaint on res judicata grounds.

Moreover, even if the original court's order were somehow valid, Georgia law requires that the party must have had a "full and fair opportunity" to litigate its claims in the first action. *See Grant v. Franklin,* 244 Ga. App. 370, 371 (2000). Manna never had such an opportunity. It remained unrepresented until eight days before the counterclaim hearing, had no chance to conduct discovery, and was repeatedly barred by the court from presenting its own claims, as the court expressly limited the hearing to "the defendant's counterclaim." V2-203, 242, 246 (Tr.). Indeed, when Manna's counsel attempted to mention that Youn still owed Manna money, the court interrupted: "Mr. Fallon, you understand that the complaint was voluntarily dismissed, so you cannot ask for a money judgment. **Your side of the case was dismissed.**" V2-246 (Tr.) (emphasis added).

Because Manna lacked both a competent prior adjudication and a full and fair opportunity to litigate, the Superior Court's res judicata dismissal should be reversed and the case remanded for a proper adjudication on the merits.

ARGUMENT AND CITATION OF AUTHORITIES

Standard of Review

This Court reviews de novo a trial court's dismissal under the doctrine of res judicata. *Choi v. Immanuel Korean United Methodist Church,* 327 Ga. App. 26, 27 (2014) (citing *Clarke v. Freeman*, 302 Ga. App. 831, 832 (2010)).

I. Res judicata cannot bar this action because the original court lacked jurisdiction once Manna voluntarily dismissed its claims.

A. Legal standard

Res judicata prevents "the re-litigation of all claims which have already been adjudicated, or which could have been adjudicated, between identical parties or their privies in identical causes of action." *Coen v. CDC Software Corp.,* 304 Ga. 105, 112 (2018). Its elements are: (1) identity of the cause of action, (2) identity of the parties, and (3) a prior adjudication on the merits by a court of competent jurisdiction. *Id.*

B. Manna's voluntary dismissal divested the original court of jurisdiction to consider Manna's claims.

Under O.C.G.A. § 9-11-41(a)(1)(A), a plaintiff may, as a matter of right, file a notice of voluntary dismissal before the first witness is sworn. Once filed, the trial court "is immediately divested of jurisdiction" over those claims. *Gallagher v. Fiderion Grp., LLC,* 300 Ga. App. 434, 435–36 (2009). A first-time voluntary

dismissal is without prejudice and "does not constitute an adjudication on the merits." *Joyner v. Leaphart,* 314 Ga. 1, 7 (2022).

Here, Manna's pro se complaint was dismissed on November 13, 2023, because it could not afford counsel. V2-121. Any later statements or findings by the original court purporting to dispose of Manna's claims were void for want of subject-matter jurisdiction and cannot support a finding of res judicata. *Wilbanks v. Bowman,* 212 Ga. 809, 810 (1957) ("A judgment that is void for want of jurisdiction does not afford any ground for applying the doctrine of res judicata or estoppel.).

C. The post-hearing order is void ab initio.

When the court held a "Counterclaim Bench Trial," it repeatedly confirmed that only Youn's counterclaim was at issue and that Manna's complaint had already been dismissed. V2-203, 242, 246 (Tr.). Yet the written order dismissed "both" the counterclaim and "Plaintiff's Amended Complaint" for failure of proof. That portion of the order is mere surplusage and void. "'When a trial court enters a judgment where it does not have jurisdiction, such judgment is a mere nullity . . .' and must be reversed." *Gallagher,* 300 Ga. App. at 437 (citing *In the Interest of A.D.B.,* 232 Ga. App. 697, 698 (1998)).

Under O.C.G.A. § 9-11-60 (a), "a judgment void for lack of jurisdiction may be attacked in any court by any person." *Murphy v. Murphy,* 263 Ga. 280, 282 (1993). That void sentence cannot supply the "competent jurisdiction" element required for res judicata.

D. The trial court's reliance on a void judgment was reversible error.

Because the original court lacked jurisdiction to adjudicate Manna's claims, its later "adjudication" is a nullity. *Gallagher,* 300 Ga. App. at 436–37. The Superior Court's reliance on that void order to apply res judicata was reversible error.

Because the original court's order after the hearing on the counterclaim purporting to adjudicate Manna's claims was void, the Superior Court's reliance on the original court's order as the basis for applying res judicata constitutes reversible error.

II. Even if the original court's order were valid, res judicata is precluded because Manna never had a "full and fair opportunity" to litigate its claims.

A. Georgia requires a "full and fair opportunity" to litigate.

Georgia law bars res judicata unless the party against whom it is asserted had "a full and fair opportunity to litigate the issues" in the prior action. *Grant v. Franklin,* 244 Ga. App. 370, 371 (2000). As this Court has explained, "[f]or a prior action to bar a subsequent action under the doctrine of res judicata, several requirements must be met: the first action must have involved an adjudication by a court of competent jurisdiction, . . . and the party against whom res judicata is raised must have had a full and fair opportunity to litigate the issues in the first action." *Id.* (quoting *Fowler v. Vineyard,* 261 Ga. 454, 455–56 (1991)). In short, it is not enough that the claim existed before; the litigant must have had a genuine chance to present evidence, conduct discovery, and meaningfully argue its position before res judicata can apply.

B. The record shows Manna never had such an opportunity.

1. Manna was never represented by counsel in any prior action to litigate its own claims.

Under Georgia law, a corporation must appear through counsel in state and superior courts—but Manna's pro se complaint was dismissed before its counsel ever entered the case. V2-269 (Aff. ¶ 2); V2-270–71 (Aff. ¶¶ 5–9). Thus, Manna had no lawyer to add or defend its own claims, and cases involving corporate parties represented from the start are simply inapposite.

2. There was no opportunity for discovery.

With counsel appearing only eight days before the counterclaim hearing, there was zero time to propound or obtain discovery. V3-477–78 (Aff. ¶¶ 27–29). Without basic discovery, critical proof was never developed. Manna could not even prove that Youn received the insurance money and kept it, for example, demonstrating Manna's lack of opportunity to fully litigate its own claims. If the case is remanded to consider the merits of the new complaint filed by its counsel, discovery will allow Manna to properly litigate its claims for the first time.

3. Defending Youn's counterclaim did not adjudicate Manna's claims.

Although Manna marshaled evidence to defeat the counterclaim, that does not equate to a full and fair chance to prosecute its own breach-of-contract claim, which the court repeatedly confirmed was not before it.

For example, Manna offered the Hernandez testimony about how the job's supervisor personally used a big magnet to sweep for any nails left behind when the job was finished. V2-241–42 (Tr.). With that, Manna was able to defend itself

against Youn's claim that his tires were damaged by nails left behind. But successfully defending against the counterclaim does not mean that Manna had a full and fair opportunity to prove its own claims, especially when the court declared, correctly, that it had no right to do so.

4. The original court explicitly limited the hearing to only consider Youn's counterclaim.

At the very beginning of the "Counterclaim Bench Trial," the court stated, "On November 13th, 2023, the plaintiff filed a voluntary dismissal of the complaint. The voluntary dismissal was filed prior to the plaintiff being represented by Mr. Fallon. The case is scheduled for a final hearing today on the defendant's counterclaim." V2-203 (Tr.).

After the evidence was concluded, the court stated, "Since we have proceeded on Mr. An's counterclaim, he would have the right to give an initial and concluding argument." V2-242 (Tr.). Furthermore, at the end of Manna's final argument, the court reiterated that (1) the complaint was voluntarily dismissed, and (2) Manna could not even ask for damages for itself. V2-246 (Tr.).

For example, in arguing against an award of damages for Mr. Youn, Manna's counsel tried to mention that, if anything, Youn still owed substantial money to Manna. But the court immediately interrupted, declaring explicitly, "Mr. Fallon, you understand that the complaint was voluntarily dismissed, so you cannot ask for a money judgment. Your side of the case was dismissed." (*Id.*)

In the end, regardless of any dicta or surplusage in the original order, Manna's claims were already dismissed prior to the hearing, and the original court treated them that way. For example, that is why the original court did not even ask Manna's counsel how much time it needed for its side. The hearing was structurally—and deliberately—confined to Youn's claim, not Manna's.

In Georgia, however, the law is well settled that res judicata does not apply unless Manna had a full and fair opportunity to litigate the issues related to its own claim. *Grant v. Franklin,* 244 Ga. App. at 371. Despite the surplusage or dicta in the original final order, the record demonstrates that Manna did not have any such opportunity. It had no counsel, no discovery, and no forum to present its own issues. As a result, res judicata cannot bar Manna's later breach-of-contract action, and the trial court's dismissal for res judicata was reversible error.

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CONCLUSION

No competent prior adjudication exists—and, in any event, Manna never had a full and fair opportunity to litigate its own claims. The Superior Court's dismissal on res judicata grounds should be reversed and the case remanded for a decision on the merits.

Respectfully submitted this 18th day of July, 2025.

This submission does not exceed the word count limit imposed by Rule 24.

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CERTIFICATE OF SERVICE

I certify that there is a prior agreement with LUBIN AN LAW LLC, counsel for the appellee, to allow documents in a PDF format sent via email to suffice for service. I further certify that I have this day served a true and correct copy of the foregoing *Appellant's Opening Brief* upon counsel for the appellee via email to the following:

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