

**IN THE COURT OF APPEALS
STATE OF GEORGIA**

Case No. A25A1959

MANNA ROOF AND CONSTRUCTION COMPANY, LLC,

Appellant,

v.

JONG HYUN YOUN,

Appellee.

BRIEF OF APPELLEE

-
-
Lubin C. An
LUBIN AN LAW LLC
1800 Peachtree Street, N.W., Suite 300
Atlanta, Georgia 30309
(404) 247-2030
Lubin@LubinAnLaw.com

Attorney for Appellee

TABLES OF CONTENTS

Introduction and Summary of Argument	1
Statement of the Case	3
Argument and Citation of Authority	3
I. The Final Order and Judgment Expressly Dismissed Appellant’s Complaint and The Matter Was Disposed	3
II. Appellant’s Void Judgment Argument Fails as the LLC Co-Plaintiff’s Complaint was Never Dismissed	4
III. The Appellant’s position on appeal contradicts its stance in the Superior Court’s Final Hearing	7
IV. Appellant Was Required to Directly Attack the Final Judgment	8
Conclusion	10
Certificate of Service	11

TABLE OF AUTHORITIES

Associated Doctors of Warner Robins, Inc. v. U.S. Food Service of Atlanta, Inc., 250 Ga. App. 878-79 (2001)	5
Brougham Casket & Vault Co., LLC v. Deloach, 323 Ga. App. 701, 705, 747 S.E.2d 707 (2013)	5
C&S Nat. Bank v. Burden, 145 Ga. App. 402, 403–04 (1978)	8
Heidler v. State, 273 Ga. 54, 61, 537 S.E.2d 44, 53 (2000)	7
Larkin v. Madison Cty. Sch. Dist., 364 Ga. App. 10, 15, 873 S.E.2d 471, 476 (2022)	3
Logan v. Nunnelly, 128 Ga. App. 43, 46 (1973), transferred, 230 Ga. 588 (1973)	8
Murray v. DeKalb Farmers Mkt., 305 Ga. App. 523, 525, 699 S.E.2d 942 (2010)	5
Sterling, Winchester & Long, LLC v. Loyd, 280 Ga. App. 416, 634 S.E.2d 188 (2006)	5
Strickland v. GEICO General Insurance Company, 358 Ga. App. 158, 160-61, 854 S.E.2d 348 (2021)	5
Winzer v. EHCA Dunwoody, LLC, 277 Ga. App. 710 (2006)	4
Statutes and Rules	
O.C.G.A. § 9-11-15	5
O.C.G.A. § 9-11-60	9

INTRODUCTION AND SUMMARY OF ARGUMENT

Appellant Manna Roof and Construction LLC appeals the Superior Court's dismissal of its complaint based on res judicata. This appeal turns on whether the prior action in the Superior Court resulted in a valid, binding Final Judgment. The initial action, *Bal Heo and Manna Roof & Construction LLC v. Jong Hyun Youn*, Civil Action File No. 20-A-00169-3, involved a Complaint by pro se Plaintiff Bal Heo (hereinafter “Mr. Heo”), who later voluntarily dismissed his claim. However, Manna Roof & Construction LLC (hereinafter “Manna” or “Appellant”, as a Plaintiff, filed an Amended Complaint, and the trial court subsequently held a final hearing. The Final Order and Judgment laid out the procedural posture of the initial case, acknowledges that the pro se plaintiff Mr. Heo voluntarily dismissed his Complaint on November 13, 2023, but recognizes Manna, an LLC co-plaintiff, as an active party to the suit based on the Amended Complaint, and that counsels for Manna and Appellee Jong Hyun Youn (hereinafter “Youn” or “Appellee”) respectively presented testimony and evidence on both the Amended Complaint and the Counterclaim. The Final Order concludes that each respective party failed to meet their burdens of proof, thereby dismissing both the counterclaim and the Appellant's Amended Complaint. Appellee argues the Superior Court correctly applied res judicata, as: (1) the Final Order and Judgment expressly dismissed Manna Roof and Construction LLC’s Complaint on the merits; (2) Appellant's

arguments do not rise to the level to void a prior judgment on its face for lack of subject matter jurisdiction; and (3) Appellant was required to, but did not, directly attack that Judgment. For these reasons, Appellee respectfully requests this Court affirm the Superior Court's decision.

STATEMENT OF THE CASE

Appellee agrees with the general factual background set forth in Appellant's Brief, except insofar as any referenced facts relating to the merits of the underlying claims in the original action, which are not at issue in this appeal.

-

ARGUMENT AND CITATION OF AUTHORITY

I. The Final Order and Judgment is final and binding as it expressly dismissed Appellant's Complaint on the merits.

"A judgment is final only when it disposes of the entire controversy, leaving nothing for the Court to do in the case." Stated another way, "[a] verdict or judgment cannot be final where it is dependent on a later judgment for final determination. *Larkin v. Madison Cty. Sch. Dist.*, 364 Ga. App. 10, 15, 873 S.E.2d 471, 476 (2022). On November 29, 2023, the Superior Court of Gwinnett County conducted a final hearing in which both litigants, each represented by counsel, presented witness testimony and introduced exhibits into evidence for the court's consideration. The Final Order expressly recites that both parties presented evidence and argument, and both failed to carry their respective burdens of proof. After reviewing all the evidence and hearing arguments from both sides, the Court rendered its decision in a Final Order and Judgment filed that same day, stating: "Accordingly, as the Plaintiff Manna failed to prove the Complaint for damages, Manna Roof and Construction LLC's Complaint is hereby **DISMISSED**," and concludes with "The

Clerk is hereby **DIRECTED** to mark this case as **DISPOSED**. R.17–128. Since the entry of that judgment, it has been the order of the Court that both Manna’s Amended Complaint and Youn’s Counterclaim are dismissed and fully disposed of. On its face, the Final Order plainly details the parties’ participation at the hearing, demonstrating that the matter was fully litigated and adjudicated on the merits, addressed attorney’s fees, leaving nothing for the court to do in the case, and it is not dependent on a later judgment for final determination. Hence, the Final Order and Judgment is FINAL.

II. Appellant’s void judgment argument fails as the LLC Co-Plaintiff’s Complaint was never dismissed.

Manna is a limited liability company (LLC). The law is clear in Georgia that limited liability companies must be represented by a licensed attorney. *Winzer v. EHCA Dunwoody, LLC*, 277, Ga. App. 710 (2006). On September 27, 2023, the Superior Court issued an order directing Manna to retain counsel within thirty (30) days. R.25-384. This directive was a procedural measure and did not divest the court of jurisdiction over Manna, but instead confirmed the court’s jurisdiction over the party. Rather than dismissing Manna from the action, the court afforded Manna additional time to secure counsel. The order was directed solely to Manna and contained no directive to, responsibility for, or even reference to Mr. Heo.

Subsequently, Mr. Heo voluntarily dismissed his own claim through a handwritten pleading that contained no reference to Manna and no indication of any

intent to dismiss Manna's claim. R.25-386. Notably, Manna was not even included in the portion of the pleading reflecting the style of the case. Under Georgia law, a limited liability company may appear in court only through licensed counsel, and a non-attorney member has no authority to represent or take legal action on behalf of the LLC. *Sterling, Winchester & Long, LLC v. Loyd*, 280 Ga. App. 416, 634 S.E.2d 188 (2006). Accordingly, Mr. Heo's handwritten dismissal could not and did not operate to dismiss Manna's claims, and Manna remained an active party in the action.

While the Appellant does not contend that the original complaint was defective, which could support the argument that the court lacked jurisdiction, the Appellee finds it important to address this issue for the purposes of this appeal. An LLC's lack of representation is an ***amendable*** defect, and pursuant to O.C.G.A. § 9-11-15, the ***amendment*** would relate back to the date of the original pleading's filing. *Associated Doctors of Warner Robins, Inc. v. U.S. Food Service of Atlanta, Inc.*, 250 Ga. App. 878-79 (2001)(Emphasis supplied). An LLC's, like a corporation's, defective [pleading] signed by a non-attorney may be cured by a properly filed amended [pleading] pursuant to O.C.G.A. § 9-11-15. *Brougham Casket & Vault Co., LLC v. Deloach*, 323 Ga. App. 701, 705, 747 S.E.2d 707 (2013); *Strickland v. GEICO General Insurance Company*, 358 Ga. App. 158, 160-61, 854 S.E.2d 348 (2021) (citing *Murray v. DeKalb Farmers Mkt.*, 305 Ga. App. 523, 525, 699 S.E.2d

942 (2010) ("although corporation's original answer was deficient because it lacked the signature of an attorney, amended answer that contained the appropriate signature related back to date of original filing."). In the present case, counsel for Manna formally entered an appearance and, on November 27, 2023, duly filed an Amended Complaint in full compliance with applicable procedural rules. The pleading was prepared by retitling the original complaint as "Amended Complaint" and affixing Appellant counsel's signature as a licensed attorney of record for Manna. R.17-123-124. These actions cured any prior procedural defects and established the validity of the operative pleading. Given that the Amended Complaint was filed by licensed counsel in strict accordance with Georgia's procedural requirements prior to any pretrial ruling, any challenge to its sufficiency on technical grounds lacks merit. Georgia law recognizes that the substitution of counsel and the proper signing of a pleading cure prior defects related to representation or form. Moreover, because the amended pleading did not introduce new claims beyond the permissible scope but merely perfected the form and compliance of the original complaint, Defendants cannot demonstrate prejudice or procedural harm. Accordingly, the Amended Complaint stands as a valid operative pleading. R.17-123–124. At that point, Manna was in compliance with the court's directive to retain counsel. Although Manna did not secure counsel within the 30-day deadline set by the court, no order was ever entered dismissing Manna from the

action. Accordingly, Manna remained an active party, and the court continued to exercise jurisdiction over both Manna's Amended Complaint and Youn's Counterclaim.

III. Appellant's position on appeal contradicts its stance in the Superior Court's final hearing.

More compelling is that the appellant's position on appeal directly contradicts the position he advanced at the final hearing. During the hearing, following his closing argument, the appellant interposed a limited objection, contesting the court's statement that the hearing was confined solely to the counterclaim and that the Appellant's claims had been dismissed. The Appellant responded that he does not "think that Mr. Heo was authorized to speak for the company (Manna) when he dismissed it (the complaint)." V2-246 (Tr.). This statement reflects Appellant's contention that Mr. Heo's voluntary dismissal did *not* operate to dismiss Manna's claims and that Manna's claims remained active. This position directly undermines Appellant's current argument on appeal that the trial court lacked jurisdiction over Manna at the time of the final hearing asserting that Manna had voluntarily dismissed its claim prior to the hearing. Georgia courts have long held that a party may not assume a particular position in the trial court and then take a contrary position on appeal. A party cannot request a ruling from the trial court and then, on appeal, take the contrary position and complain that the ruling was error. *Heidler v. State*, 273 Ga. 54, 61, 537 S.E.2d 44, 53 (2000). The crux of Appellant's argument

is that Manna divested from the court's jurisdiction thereby nullifying the Final Order and Judgment. Appellant's contradictory stance on appeal underscores the weakness of its position. The trial court acted well within its authority in relying on the Final Judgment of the original case to bar the second complaint under the doctrine of res judicata. No error, let alone reversible error, has been shown.

IV. Appellant was Required to Directly Attack the Final Judgment.

Appellant nails down the issue that the Final Judgment in the initial action is void and that it can be collaterally attacked at any time. Moreover, Appellant largely relies on the transcript of the final hearing emphasizing the fact that the court expressly notified the parties that the hearing would be solely for the counterclaim. However, Appellant fails to acknowledge that the Final Judgment at issue does not have any defects on its face to render it void. Collateral attacks are appropriate *only* if the judgment is void on the judgment's face, i.e., within its four corners; otherwise, judgments are subject to direct attack only in the court of rendition by motions to set aside or for new trial or complaint in equity. *C&S Nat. Bank v. Burden*, 145 Ga. App. 402, 403, 404 (1978). If a judgment itself does not show on its face that it is void for lack of jurisdiction of the subject matter or of the parties, it will only be subject to attack by a direct proceeding brought for that purpose. *Logan v. Nunnelly*, 128 Ga. App. 43, 46 (1973), transferred, 230 Ga. 588 (1973). Despite the characterization of the final hearing as being solely for the

counterclaim, the Final Order and Judgment – previously discussed – expressly recognized Manna as a party, noting that Manna’s counsel had entered an appearance and filed an Amended Complaint. R.17-128. Nothing on the face of the judgment or in the record suggests a jurisdictional defect that would render the judgment void. The Final Order and Judgment plainly reflects the parties’ actions, confirming that the litigation was adjudicated on the merits. R.17-128. The Appellant, upon reviewing the order, should have recognized that a second, identical claim would be subject to preclusion. Prior to initiating a second suit, post-judgment remedies, such as those available under O.C.G.A. § 9-11-60, were available, and challenges to subject matter jurisdiction would have been the proper approach prior to initiating a second lawsuit.

CONCLUSION

The Superior Court's final judgment definitively resolved all claims on the merits, properly dismissed the complaint, and was supported by the record and applicable law. The Appellant's arguments lack merit, contravene its position during the final hearing, and improperly attempt to challenge a valid, final judgment through collateral attack. This Court should reaffirm the Court's sound ruling, uphold the doctrine of res judicata, and deny any relief sought by the Appellant. Therefore, the judgment should be affirmed in its entirety.

Respectfully submitted this 13th day of August 2025.

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

/s/ LUBIN AN
LUBIN C. AN
Attorney for Appellee
Georgia Bar No. 157228

LUBIN AN LAW LLC
1800 PEACHTREE ST NW STE 300
ATLANTA GA 30309
(404) 247-2030
Lubin@LubinAnLaw.com

CERTIFICATE OF SERVICE

I certify that there is a prior agreement with Brad Fallon, Esq, counsel for Appellant, to allow documents in a PDF format sent via email to suffice for service. It is hereby certified that I have this day served a true copy of the foregoing BRIEF OF APPELLEE to the following:

C. Brad Fallon, Esq.
FALLON LAW PC
1201 W. Peachtree St., N.W.
Suite 2625
Atlanta, Georgia 30309
Brad@fallonbusinesslaw.com

This 13th day of August 2025.

Respectfully submitted:

/s/ LUBIN AN
LUBIN C. AN
Attorney for Appellee
Georgia Bar No. 157228

LUBIN AN LAW LLC
1800 PEACHTREE ST NW STE 300
ATLANTA GA 30309
(404) 247-2030
Lubin@LubinAnLaw.com