

IN THE COURT OF APPEALS
STATE OF GEORGIA

CASE NO. A27A0001

JASON CERBONE,

Appellant,

vs.

**QUEENSBOROUGH NATIONAL BANK
AND TRUST COMPANY,**

Appellee

BRIEF OF APPELLANT JASON CERBONE

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TABLE OF CONTENTS

PART ONE	5
STATEMENT OF THE PROCEEDINGS BELOW	5
STATEMENT OF MATERIAL FACTS	7
PART TWO	11
ENUMERATION OF ERROR	11
JURISDICTIONAL STATEMENT	12
PART THREE	12
ARGUMENT AND CITATION OF AUTHORITIES	12
A. Standard of Review.....	12
B. Enumeration of Errors:.....	13
(1) The Trial Court Committed Reversible Error By Granting the Bank’s Motion for Summary Judgment Because Genuine Issues of Material Fact Existed Surrounding the Foreclosure.	13
i. The Bank’s conduct waived any strict compliance requirements for purposes of foreclosure.	13
ii. While Murphy may have operated as an agent on behalf of Cerbone, the scope of his authority was limited only to discussions, not agreements with the Bank.	15
iii. Unlike Murphy, no facts exist to suggest that Walker and Cerbone ever entered into an agency agreement authorizing Walker to act on Cerbone’s behalf.	17
iv. The Bank’s attorneys, Longley and McCorkle should have been disqualified because their affidavits contain facts which are in dispute, making them essential fact witnesses rather than attorney representative in this case, and Longley admitted this in open court.	19

(2) The trial court inappropriately attempted to modify a prior court judgment after expiration of the term of the court.	21
CONCLUSION	22

TABLE OF AUTHORITIES

Cases

<i>Atlanta Dwellings, Inc. v. Wright</i> , ...272 Ga. 231, 233, 527 S.E.2d 854, 856 (2000).....	13
<i>Burnett v. American Mut. Liab. Ins. Co.</i> , ...147 Ga. App. 269 (1), 248 S.E.2d 510 (1978).....	19
<i>C & S Nat. Bank v. Burden</i> , ...145 Ga. App. 402, 244 S.E.2d 244 (Ga. App. 1978).....	20
<i>Clough v. Richelo</i> , ...274 Ga.App. 129 (2005)	18
<i>Coleman v. United Health Services of Georgia, Inc.</i> , ...344 Ga.App. 682, 684-85, 812 S.E.2d 24, 27 (2018)	14, 15, 16
<i>Division Six Sports, Inc. v. Hire Dynamics, LLC</i> , ...348 Ga. App. 347 (2019)	15
<i>Matjoulis v. Integon Gen. Ins. Corp.</i> , ...226 Ga. App. 459 (1), 486 S.E. 2d 684, 685 (1997)	12
<i>Payne v. Harbin</i> , ...254 Ga. App. 402, 562 S.E. 2d 772 (2002)	11

<i>Reynolds v. CB&T</i> , ...342 Ga. App. 866 (2017)	15
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<i>Southland Propane, Inc. v. McWhorter</i> , ...312 Ga. App. 812, 813, 720 S.E.2d 270, 272-273 (2011)	11
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<i>State v. Scott</i> , ...370 Ga. App. 40, 45, 894 S.E.2d 512, 516, (Ga. Ct. App. 2023)	20
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Statutes

O.C.G.A. § 23-2-114	12
O.C.G.A. § 9-11-54(b)	20
O.C.G.A. § 9-11-56(h)	11

Rules

Georgia Rule of Professional Conduct 3.7(a)	18
Rule 3.7 of the Georgia Rules of Conduct	18

Constitutional Provisions

Ga. Const. Art. VI, § V, para. III	11
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PART ONE

STATEMENT OF THE PROCEEDINGS BELOW

Appellant Jason Cerbone (“Cerbone”) filed a First Amended, Restated and Verified Complaint and Jury Demand against Defendants Queensborough National Bank and Trust Company (“the Bank”), Lanier Management, (“Lanier”) and BLR Savannah, LLC on March 1, 2021¹ alleging claims for breach of contract and wrongful foreclosure in connection with a foreclosure sale of his home which occurred on January 5, 2021. (R.V2-202-25). Cerbone also requested an order quieting title to the property and for expenses of litigation. (Id.).

Lanier filed a Motion for Summary Judgment, requesting a writ for possession of the property and claiming that BLR was a bona fide purchaser for value of the property on March 26, 2021. (R.V2-240-60). The Bank similarly filed a Motion for Summary Judgment on April 20, 2021, alleging that it was entitled to summary judgment since Cerbone breached the terms of the Note and it properly foreclosed on the property. (R.V2-272-320). On April 27, 2021, Cerbone filed a Motion for Extensions of Deadlines to Respond in Opposition to the Summary

¹ A *pro se* complaint was filed in this matter on January 20, 2021. However, the March Complaint is the controlling complaint for purposes of claims made in this action.

Judgment Motions, to Permit the Joinder of a Necessary Party (BLR), Consolidation of Actions, and For Discovery to Proceed. (R.V2-321-42). After it was added as a party, BLR filed its own Motion for Summary Judgment incorporating Lanier's Motion on July 9, 2021. (R.V2-460-61). Cerbone responded in opposition to Lanier and BLR's motions on April 28 and August 11, respectively. (R.V2-343-78; R.V2-462-68).

The trial court granted Lanier and BLR's motions on September 17, 2021, leaving only the Bank as a defendant in the litigation. (R.V2-506-11). Little meaningful action ensued in the matter after Lanier and BLR were released from the litigation, and the Writ of Possession of the Home was served on March 9, 2022.

On May 22, 2025, Cerbone filed a Motion to Disqualify Counsel, alleging that the Bank's attorneys, Colby Longley and Robert McCorkle, could not act as attorneys, but were instead fact witnesses in this litigation based on their involvement in the underlying dispute. (R.V3-25-47). The Bank responded on June 17, 2025. (R.V3-56-61). Over one year later, on June 8, 2026, the trial court entered summary judgment for the Bank, stating that there was no forbearance agreement

between the parties, and that the foreclosure sale was properly made. (R.V3-86-88).

Cerbone now appeals.

STATEMENT OF MATERIAL FACTS

Appellant Jason Cerbone (“Cerbone”) and Appellee Queensborough National Bank and Trust Company (“the Bank”) entered into a Loan Agreement for the purchase of real property located at 215 E. 48th St., in Savannah, Georgia (the “Home”) in January 2017. (R.V2-283-291); R.V2-337-342 ¶ 5²). On November 10, 2020, the Bank issued a letter to Cerbone declaring acceleration of the Loan, alleging that he had defaulted on his loan payments. (R.V2-295-300). Cerbone received the letter on November 14, 2020. (R.V3-26). Cerbone and the Bank continued (what Cerbone believed to be) discussions to forestall a foreclosure sale. (R.V2-202, ¶ 31). However, on December 10, 2020, the Bank began to advertise a January 5, 2021, non-judicial foreclosure of the Home in the Chatham County legal organ. (R.V2-202, ¶ 33). Further negotiation between Cerbone and the Bank

² In an affidavit by Jason Cerbone offered in support of his April 27, 2021, Motion for Extensions of Summary-Judgment Response Deadlines, Cerbone notes that the facts alleged in his “First Amended, Restated, and Verified Complaint and Jury Demand” set out the reasons why he believed he entered in a forbearance agreement with the Bank based on the conduct of the parties. Therefore, all other references to the Complaint necessarily infer reference to ¶ 5 of the affidavit.

culminated in the Bank's written offer to enter into a forbearance agreement with Cerbone. (R.V.2-306-314; R.V2-202, ¶ 34).

On December 22, 2020, the Bank emailed the forbearance agreement to Cerbone's purported agent, Ryan Murphy. (R.V2-316-17, ¶ 4). But the Bank's attorney admitted that he did not provide Cerbone's purported attorney, Josh Walker, with "the amount necessary to bring the loan current" nor the wiring instructions to the escrow account. (Id.).

There is no agreement between Murphy and Cerbone authorizing Murphy to enter into any agreements on Cerbone's behalf. As stated by Michael English, the Vice-President of the Bank who oversaw Cerbone's financing, Murphy was only authorized to "discuss payment terms for the Note" with Murphy. (R.V2-292-94, ¶ 8). Neither party confirmed Murphy's authority to enter into any agreements. In fact, Cerbone said that Murphy asked him for his permission to speak to (and not negotiate with) Mike English. Yet, the Bank emailed the forbearance agreement only to Murphy. Similarly, Cerbone did not have an agency of any kind with Walker. Walker inserted himself into the litigation on December 29, 2020, claiming to be

working on behalf of Cerbone. (R.V2-316-17, ¶ 4). Regardless, Cerbone did not receive the December 22 forbearance agreement until December 31, 2020.

The terms of the agreement involved a payment of “\$29,797.93, plus \$3,070.57 in late fees as of December 23, 2020” as consideration for suspending the foreclosure action and reinstating the Loan. (R.V.2-306-14). Cerbone accepted the December 31, 2020 offer by transmitting to the Bank, on the same day, a letter which included the following language:

As of now \$35,000 is inside another lawyer’s trust account from Adam Cerbone [Jason’s attorney father] to pay you. I want to pay you what I owe you I am sure that is a different amount from that agreement, but I am ready to pay you \$35,000 or whatever the real balance is. Please call me ASAP. My number is 912-657-1729. The money is waiting for you. I need to pay you what I owe you. I am not sure about the agreement. It says I must sign it today. That doesn’t seem reasonable as I just got it tonight. I need a lawyer to help me with this. Please call me and tell me what I owe you. Thank you for your time.

(R.V2-202-25, ¶ 38). Cerbone controlled \$35,000 in liquid funds and was prepared to offer them to the Bank to satisfy the \$32,868.50 arrearage figure stated in the Forbearance Agreement. (R.V2-202-25, ¶ 39). Ignoring Cerbone’s attempted tender, less than two days later, the Bank proceeded with the sale of the Home on January 5, 2021, at approximately 2:35 p.m. The Home sold in foreclosure for

\$332,415.00. The sale of the Home - for \$85,629 less than its fair market value - was shocking and surprising and circumstances that authorize a finding that the sale price was grossly inadequate.

Just hours before the foreclosure sale, Josh Walker, acting as Cerbone's agent asked if the Bank would take an amount less than the necessary amount to bring the Note Current. (R.V2-316-17, ¶ 6). The Bank's attorney responded that Cerbone could "obviously" bring it current per the amount provided. (R.V3-36-39). Even after this, the Bank still proceeded with the foreclosure sale to BLR.

Two days later, on January 7, 2021, a man named Jody Lanier left a note addressed to Cerbone at the Home claiming that BLR Savannah, LLC had been the highest bidder at the non-judicial foreclosure auction of the Home. (R.V2-337-342, ¶ 7). On January 20, 2021, Cerbone filed the first *pro se* complaint in this action against Queensborough, Lanier Management, and BLR. A First Amended, Restated, and Verified Complaint and Jury Demand was filed on March 1, 2021. (R.V2-202-25).

After several motions filed by all parties, the trial court granted the Bank's Motion for Summary Judgment on June 8, 2026. (R.V3-86-88). This appeal followed.

PART TWO

ENUMERATION OF ERROR

Enumeration of Error: The Trial Court committed reversible error in granting the Bank's Motion for Summary Judgment because genuine issues of material fact remain regarding (1) whether the conduct of the parties waived strict compliance with the forbearance agreement; (2) whether Murphy had apparent authority to enter into binding agreements on behalf of Cerbone; (3) whether Walker had apparent authority to enter into binding agreements on behalf of Cerbone;(4) whether the attorneys for the Bank acted in conflict with their fiduciary duties, and (5) whether the trial court inappropriately attempted to modify a prior court judgment after the expiration of the term of the court.

JURISDICTIONAL STATEMENT

This Court has jurisdiction pursuant to Ga. Const. Art. VI, § V, para. III, in that the issues presented are not reserved for the Georgia Supreme Court. The trial court's Order Granting Queensborough's Motion for Summary Judgment, filed on June 8, 2026, is appealable pursuant to O.C.G.A. § 9-11-56(h). Cerbone filed a timely Notice of Appeal on June 20, 2026.

PART THREE

ARGUMENT AND CITATION OF AUTHORITIES

A. Standard of Review

All questions of law shall be reviewed de novo, with the Court applying the plain legal error standard of review. *Southland Propane, Inc. v. McWhorter*, 312 Ga. App. 812, 813, 720 S.E.2d 270, 272-273 (2011); *Payne v. Harbin*, 254 Ga. App. 402, 562 S.E. 2d 772 (2002). A de novo standard of review applies to an appeal from a grant of summary judgment, and the reviewing court must review the evidence and all reasonable conclusions and inferences drawn from it in the light most favorable to the non-movant. *Matjoulis v. Integon Gen. Ins. Corp.*, 226 Ga. App. 459 (1), 486 S.E. 2d 684, 685 (1997).

B. Enumeration of Errors:

(1) The Trial Court Committed Reversible Error By Granting the Bank's Motion for Summary Judgment Because Genuine Issues of Material Fact Existed Surrounding the Foreclosure.

Judge Turner committed a reversible error in finding that the foreclosure sale was conducted in accordance with Georgia law and that there was no enforceable forbearance agreement entered into between the parties. Georgia's wrongful foreclosure statute, O.C.G.A. § 23-2-114, authorizes equitable relief where a foreclosure has been conducted improperly. Under applicable Georgia law and equity principles, the Bank's motion for summary judgment should have been denied.

i. The Bank's conduct waived any strict compliance requirements for purposes of foreclosure.

The Bank's continued conduct in negotiating with Cerbone and his purported agents showed an intent to enter into the forbearance agreement. The intent to enter into the forbearance agreement thus showed no intent to foreclose on the home. The Georgia Supreme Court has affirmed an interlocutory injunction against foreclosure when it found that "significant questions concerning the

construction of the forbearance agreement and course of conduct, both of which, if proved, could constitute a waiver of strict performance of the deed to secure debt.”

Atlanta Dwellings, Inc. v. Wright, 272 Ga. 231, 233, 527 S.E.2d 854, 856 (2000).

In *Atlanta Dwellings*, the plaintiff had tendered certain funds into the registry of the court as security for the alleged debt and foreclosure. *Id.* When reviewing the plaintiff’s case, the Court held that “if there is ***any*** question as to the construction of a deed to secure debt either by virtue of its original terms ***or a course of conduct which waives strict performance***, a question for the jury is presented.” *Id.*

Here, the Bank’s conduct waived strict performance at several points before the foreclosure sale. First, the Bank continued negotiations with Cerbone after its November 10, 2020, letter concerning the arrearages and its intent to accelerate the Loan. The parties attempted to reach an agreement on what was owed. One month later, on December 10, the Bank began advertising the foreclosure sale. However, while advertising the foreclosure sale, the Bank continued to negotiate with persons purporting to be agents acting on behalf of Cerbone (Walker and Murphy) to reach an agreement on forbearance and to prevent foreclosure. All of this happened throughout December, well after the November 10 letter. The Bank negotiated with

Cerbone's agents up until the day of the foreclosure action. This conduct all but confirms that the Bank was, at a minimum, willing to allow Cerbone to pay the minimally required arrearages on the property.

The Bank cannot now contend that a valid foreclosure sale was made when it was in the midst of negotiations and potential acceptance of the forbearance agreement. The parties' conduct creates a fact question that can only be resolved by a jury trial in this matter.

ii. While Murphy may have operated as an agent on behalf of Cerbone, the scope of his authority was limited only to discussions, not agreements with the Bank.

The Bank had no reason to rely upon the representations made by Murphy, which exceeded the scope of the discussion of the loan terms. Neither Cerbone nor the Bank ever argue that Murphy was unequivocally granted the right to enter into terms on behalf of Cerbone. The only thing Murphy could do was discuss the loan with the Bank. For anything beyond that, the Bank should have communicated directly with Cerbone. In *Coleman v. United Health Services of Georgia, Inc.*, 344 Ga.App. 682, 684-85, 812 S.E.2d 24, 27 (2018), this Court reaffirmed that “any manifestations of implied agency or apparent authority arising only through the

words or acts of the purported agent are insufficient to authorize a finding that an agency existed.” In a medical malpractice action, this Court held that a patient’s brother-in-law did not have apparent or implied authority to bind the patient to an arbitration agreement with a nursing home where the patient permitted the brother-in-law to make health care decisions on his behalf, but the nursing home director did not speak to the patient himself prior to his admission to the home, nor review the arbitration agreement with him. *Id.*

This Court has made similar findings when reviewing agency questions. *In Division Six Sports, Inc. v. Hire Dynamics, LLC*, 348 Ga. App. 347 (2019), the Court of Appeals held that genuine issues of material fact as to whether the principal knew of the allegedly unauthorized act of its agent in entering into a contract precluded summary judgment on the ratification issue. Similarly, in *Reynolds v. CB&T*, 342 Ga. App. 866 (2017), the Court of Appeals reversed the grant of summary judgment on a wrongful foreclosure claim, finding genuine issues of material fact regarding the parties’ course of dealing.

The same problem is presented here. Just as the *Coleman* brother-in-law exceeded the scope of his authority, so too did Murphy by making any statements

that would bind Cerbone to any agreement with the Bank. 344 Ga.App. 682, 812 S.E.2d 24 (2018). Whether the Bank should have reasonably relied upon Murphy's statements on behalf of Cerbone, and whether the Bank should have emailed the forbearance agreement to Murphy instead of Cerbone, are issues of fact material to the validity of the foreclosure sale. At a minimum, a jury should determine if the Bank was reasonable in its reliance upon Murphy as Cerbone's agent for purposes of negotiation and for delivering the forbearance agreement through Murphy rather than emailing it to Cerbone, such that a timely response and tender could have been made. As such, summary judgment was improper.

iii. Unlike Murphy, no facts exist to suggest that Walker and Cerbone ever entered into an agency agreement authorizing Walker to act on Cerbone's behalf.

The Bank acted unreasonably by continuing negotiations with everyone but Cerbone himself. At 12:47 p.m. on the day of the foreclosure sale, a lawyer named Josh Walker, whom Cerbone did not know, sent two text messages to the Bank's lawyer about Cerbone's loan. (R.V3-36-39). Importantly, though, during that text conversation, the Bank's lawyers sent a text message to Walker that said

“[o]bviously they can bring it current per the amount provided and keep paying the payment if they need time but I will ask.” (Id.).

Coleman, as outlined above, is even more analogous to the facts surrounding Walker’s actions. 344 Ga.App. 682, 812 S.E.2d 24 (2018). The Bank had no authorization to negotiate the forbearance agreement with Walker. To do so left Cerbone unequipped to negotiate for himself and ethically disadvantaged as the Home was literally taken from him after his attempt to tender funds, without his consent. The Bank did not contact Cerbone by cell phone, text, or phone call from April 2020 to the present. Yet, it communicated with unauthorized agents, alleging those agents had apparent authority to contract on Cerbone’s behalf. (R.V3-25-32). The Bank’s own attorney, Robert McCorkle, confirmed that he was messaging Walker about Cerbone’s loan on the date of the foreclosure. (R.V2-316-17, ¶¶ 5-6). At minimum, a jury is necessary to determine if Walker did in fact have apparent authority to act on Cerbone’s behalf and if those actions constituted binding agreements on behalf of Cerbone. For this reason, Appellee’s Motion for Summary Judgment should have been denied.

iv. The Bank's attorneys, Longley and McCorkle should have been disqualified because their affidavits contain facts which are in dispute, making them essential fact witnesses rather than attorney representative in this case, and Longley admitted this in open court.

Colby Longley explicitly stated as soon as the hearing began on May 27, 2026, that counsel was going to withdraw if the case went past summary judgment because they recognized the conflict.

In his Motion to Disqualify, Cerbone noted that attorneys Longley and McCorkle were key fact witnesses to this case. Indeed, both communicated extensively with Cerbone's purported agents up until the foreclosure sale was completed. Under Rule 3.7 of the Georgia Rules of Conduct, a lawyer "shall not act as an advocate at a trial where the lawyer is likely to be a necessary witness ..." except under narrow circumstances which are not implicated here. Thus, both attorneys should have disqualified themselves.

Georgia Rule of Professional Conduct 3.7(a) provides that "a lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness." The purpose of this rule is "to prevent an attorney from being in the awkward position of acting as both a witness and an advocate at trial," which creates problems

including “the possibility that, in addressing the jury, the lawyer will appear to vouch for his own credibility” and the “unfair and difficult situation which arises when an opposing counsel has to cross-examine a lawyer-adversary and seek to impeach his credibility.” Clough v. Richelo, 274 Ga.App. 129 (2005). To prove disqualification is warranted, the moving party must demonstrate two things: (1) that the lawyer’s testimony is relevant to disputed, material questions of fact, and (2) that there is no other evidence available to prove those facts. Id.

It is undisputed that both Longley and McCorkle engaged in negotiations on behalf of the Bank with Murphy and Walker. Text messages conversations show the negotiation and intent to allow forbearance, and there is no other available evidence to prove these facts. In fact, Longley explicitly stated in court at the hearing on May 27, 2026 that counsel was going to withdraw if the case went past summary judgment because they recognized the conflict.

Thus, as Longley and McCorkle are intimately aware of and a part of the facts of this case, their representation in this matter was inappropriate, and Cerbone’s Motion to Disqualify should have been granted and ruled upon to further inform why summary judgment should have been denied.

(2) The trial court inappropriately attempted to modify a prior court judgment after expiration of the term of the court.

It is a long-standing principle of Georgia law that, if summary judgment is granted on one claim or to one party, leaving others pending, that judgment is a final summary judgment under Rule 56(h), and therefore is not subject to modification. *Burnett v. American Mut. Liab. Ins. Co.*, 147 Ga. App. 269 (1), 248 S.E.2d 510 (1978). Summary judgment in the instant matter was entered in favor of Defendants Lanier Management and BLR Savannah on September 17, 2021. That order provided that a writ of possession regarding the subject property be issued to BLR Savannah. This was a final order of the court.

The trial court's order of June 8, 2026 amounts to an attempt to modify the September 7, 2021 order after the expiration of the term in which it was entered. Under Georgia law, a court has the inherent power to revise, revoke, modify, or vacate its judgments. *See*, O.C.G.A. § 9-11-54(b). That power, however, ends with the term at which the judgments were entered. *C & S Nat. Bank v. Burden*, 145 Ga. App. 402, 244 S.E.2d 244 (Ga. App. 1978). The trial court's authority to change its judgment ended with the term in which it was entered. An order

done without authority is therefore void. *State v. Scott*, 370 Ga. App. 40, 45, 894 S.E.2d 512, 516, (Ga. Ct. App. 2023). The order granting summary judgment in favor of Defendant Queensborough, having been entered without authority, has no effect.

CONCLUSION

For the reasons outlined above, Appellant respectfully requests this Court correct the Trial Court's errors as identified herein and reverse the Trial Court's Order Granting Queensborough's Motion for Summary Judgment, filed on June 8, 2026. This submission does not exceed the word count limit imposed by Rule 24.

Word Count: 3427.

Respectfully submitted this 7th day of August, 2026.

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Certificate of Service

I certify that I have this day served a copy of the foregoing Brief of Appellant upon all parties to this appeal by certified mail, email, and by electronically filing the same, which will automatically send an email notification to the attorneys of record, to the following opposing counsel:

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Respectfully submitted this 7th day of August, 2026.

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