

**IN THE SUPERIOR COURT  
OF FULTON COUNTY  
GEORGIA**

**Leonard Witt, Susan Raines,  
Anne Richards, Scott Ritchey,  
Nicki Ayon, Virginia Bellew,  
Erin Ann Exum, Lane Hunter,  
Amanda Harrell, Brian Lawler,  
Jessica Boudreaux, Tiffany  
Griffin, Valerie Dribble  
Joshua Goodwin, Sarah Larkin,  
Elizabeth Gordon, Dr. Ben  
Williams, and the Cobb Chapter  
Leadership Conference  
of the Southern Christian  
Leadership Conference,**

**Plaintiffs**

**vs.**

**Sam Olens, the Attorney  
General of Georgia, John Does,  
Hank Huckaby Steve Wrigley,  
Houston Davis, John Fuchko,  
The Board of Regents of the  
University System of Georgia,  
and Governor Nathan Deal**

**Defendants**

**CIVIL ACTION NO.**

**2016-CV-282020**

**JURY TRIAL DEMANDED**

**Second Supplement to Rule 60 Motion to Set Aside Judgment for Fraud**

Come now the Kennesaw State University Plaintiffs, file this Supplement to the pending motion under OCGA 9-11-60 to set aside the judgment in this action for fraud, on an emergency basis pursuant to OCGA 16-14-6(a&b) and OCGA 9-11-65, and show the Court as follows:

Though Sam Olens assumed duties as president of Kennesaw State University (KSU) on November 1, 2016, he has not yet been invested with the official powers of the office.

At the time Olens assumed those duties, this action for an injunction to bar Olens' from assuming the presidency and to rescind the appointment by the Board of Regents (BOR) of the University System of Georgia (USG), filed October 31, 2016, was pending.

In addition, in November of 2016, there was significant media attention questioning the appointment. Major protests by KSU students, faculty, and alumni were ongoing.

It appears Olens has been serving as KSU president in an interim capacity which cannot exceed one year, according to BOR policy.

It has recently been publicly announced that there is an investiture ceremony scheduled for October 19, 2017 at 10 a.m., at which time Olens is slated to officially assume authority as KSU president.

The action to enjoin Olens from being illegally appointed to the presidency was dismissed by this Court on November 14, 2016, on grounds of sovereign immunity, without ever addressing the waiver of sovereign immunity for injunctions against state agencies expressly stated in the Georgia RICO Act. OCGA 16-14-3(3) (criminal RICO enterprise defined to include governmental entities) & OCGA 16-14-6(a) (injunctions authorized to reorganize governmental entities and to rescind approvals by state agencies).

This dismissal without considering the governing statute prevented consideration of fraud documented in the removal of Olens' predecessor, Daniel Papp, as KSU president. Nor did the Court consider violations of BOR policy in the appointment of Olens, or the conflicts of interest that prevented the Chancellor and Chair from making the appointment.

A motion to set aside that judgment for fraud under OCGA 9-11-60, was filed on November 18, 2016, and supplemented on June 1, 2017.

That motion is due to be granted because of fraud by the Defendants in procuring the judgment, as well as in procuring the the illegal presidential appointment, which the Attorney General of Georgia (aka the Department of Law) has admitted by default.

## **PENDING MOTIONS UNRESOLVED**

The original Rule 60 motion--to set aside the judgment dismissing the action that sought an injunction to bar the Olens' appointment to the KSU presidency by the BOR—set forth specific allegations of fraud as reasons for the motion.

BOR and USG witnesses failed to respond to subpoenas to attend the November 7, 2016 hearing. At that hearing, the Department of Law misrepresented the reasons for the non-appearances.

The Department of Law also misrepresented the State's failure to respond to five separate requests for an independent investigation of the actions of Sam Olens and the Attorney General's office under his direction—in particular to investigate obstruction by Attorney General Sam Olens of criminal investigations into USG activities.

The trial court committed due process violations by failing to consider the statutory authority and reasons for the injunction under the Georgia RICO Act. OCGA 16-14-1 et seq.

Though properly served, the Department of Law never responded to this motion, and has not to this day, almost a year later. The Department of Law also failed to respond, and the Court has taken no action, in response to a Supplement filed on June 1, 2017.

That supplement documented fraud in after-the-fact policy changes by the BOR to disguise the violations committed in fraudulently ousting Papp—for policy violations that were actually committed by the BOR.

It documented similar violations in the USG/BOR's fraudulent ouster of Anthony Tricoli at Georgia Perimeter College (GPC) in 2012, supported by a similar fraudulent BOR "audit" and accompanying knowing misrepresentations to the media. This fake audit and series of misrepresentations camouflaged further misrepresentations by the USG/BOR concerning its advance knowledge of financial problems at GPC and efforts to hide that information from Tricoli while his ouster was arranged, also by fraudulent means including efforts to induce Tricoli to resign through knowing misrepresentations and character assassination by means of knowingly false representations to the media.

More importantly, it provided direct evidence through state records of obstruction of required public hearings and criminal investigation concerning at least \$9 million that was never accounted for at GPC.

Discovery was never allowed in the injunction action, and the scheduled hearing was aborted as subpoenaed BOR witnesses failed to appear. Since the filing of the Motion and Supplement, however, Plaintiff has uncovered additional reasons why the appointment of Olens was fraudulent, fraught with conflicts, and otherwise illegal.

## **Olens' involvement in Papp Ouster**

Upon information and belief, Olens' pursuit of the KSU job preceded the fraudulent ouster of Olens' predecessor at KSU, Daniel Papp.

As stated and documented in the injunction action, knowingly falsified grounds for Papp's ouster were promulgated by the BOR. Upon information and belief, these knowingly false grounds were forwarded to Olens' office for action, as part of the process of ousting Papp to make way for Olens—who had already expressed his interest in the position.

Papp announced his retirement on May 10, 2016, effective June 30 of that year.

Reports of Olens' angling for the position precede those dates. Moreover, neither Olens nor the Department of Law gave notice of the patently fraudulent grounds advanced for Papp's supposed financial improprieties leading to his ouster. In fact, the so-called audit by the USG documented violations by the USG/BOR.

Olens is reported to have experienced financial difficulties during that time, and took out multiple loans in succession on the same Cobb County property during his tenure as Attorney General. When Olens assumed Papp's position, his salary and benefits approached a half million dollars a year.

## **Attorney General and BOR Default**

The Department of Law has been served and has notice of the prior motion and supplement. These pleadings were filed through the Fulton County Superior Court e-file system which automatically transmits to Attorney General's office. The Attorney General and Board of Regents were both properly served with the complaint for injunctive relief in this action.

Under Superior Court rules the Attorney General had 30 days to respond to the motion and supplement. Yet the Attorney General has not responded in any fashion either to the November 18, 2016 motion or the June 1, 2017 supplement.

In those pleadings, Plaintiffs have alleged and documented fraud in the judgment by the Defendants. *Chevront v. Carter*, 263 Ga. App. 837, 838 (2003). *Bagwell v. Parker*, 182 Ga. App. 313, 315 (1987) (judgment may be set aside for fraud of party, counsel, or agent).

Plaintiffs have also demonstrated that the judgment that is due to be set aside depends on due process violations. In *Tricoli v. Watts*, previously relied on by the trial court, the Georgia Court of Appeals failed to consider the waiver language in the RICO statute and erroneously granted summary judgment on issues not appealed, without giving any notice or opportunity to respond, in violation of OCGA 9-11-12(b) & 9-11-56(b). The Georgia Supreme Court refused to hear the case in violation of OCGA 9-11-12(b), 9-11-56(h) & 9-15-14.

The trial court by its own action also denied due process by failing to consider the waiver language of the RICO statute. *Shuttlesworth v. City of Birmingham*, 382 US 87 (1965) (arbitrary judgment avoiding issues before the court violates due process). A judgment may be set aside as void under Rule 60 for due process violations. *Johnson v. Carrollton*, 249 Ga. 173, 175-76 (1982).

The Attorney General has never responded to any of these issues and allegations. Plaintiffs' counsel called attention to this omission, the failure to respond at all to the motion, in correspondence, to which the Attorney General never replied. By all appearances, the Department of Law is evading the pending motion as if it did not exist.<sup>1</sup>

A Rule 60 motion is not a separate action that requires separate service of process. *Herringdine v. Nalley Equipment Leasing*, 238 Ga.App. 210 (1999). Therefore, Plaintiffs' motion, bolstered by a supplement, gave compete and sufficient notice of the motion and triggered the Attorney General's duty to respond. 238 Ga. App at 210-11.

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<sup>1</sup> In related litigation, the Attorney General refused to accept service as a party-defendant and the Cobb Sheriff claimed he was not able to locate Sam Olens within the county to serve Olens with process. Apparently, the Cobb Sheriff is only able to locate Olens to complain about KSU cheerleaders taking a knee



## **Authority for the Relief Sought**

Olens' investiture, like his appointment, is illegal and should be enjoined. The BOR and Department of Law have immediate notice of this filing through the e-file system, so no action by this court is *ex parte* without notice.

The injunctive relief sought by Plaintiffs is specifically authorized by the RICO statute. OCGA 16-14-6(a&b). The RICO statute specifically provides for interlocutory injunctive relief or a temporary restraining order against a state agency or to rescind a state agency approval. OCGA 16-14-6(a)(3&4). That injunctive relief, with one exception, is otherwise available under the same terms as injunctive relief under 9-11-65. OCGA 16-14-6(b).

The likelihood of success on the merits is demonstrated by the Attorney General's default, the failure to answer the documented allegations of the motion and supplement for almost a year.

According to the statute, such injunctive relief may be granted without a showing of irreparable harm. OCGA 16-14-6(b). Rather, focus is on harm to state and citizens by state agencies being run like racketeering enterprises that operate by way of fraud, intimidation,<sup>2</sup> and obstruction of justice. OCGA 16-14-2.

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<sup>2</sup> As in the intimidation applied to both Papp and Tricoli to try to coerce them into leaving their positions to make way for unfettered corruption and prevent the responsible state officials from being held accountable.

Therefore, Plaintiffs can show significant damage. OCGA 16-14-6(b). Plaintiffs who legitimately applied for the job will be further foreclosed from that goal by Olens' investiture. Without intervention by the Court the BOR will be conferred an injurious impunity to violate its own policies and deny due process without concern for the hundreds of thousands of students, faculty, and staff who rely on the policies to be followed faithfully and with integrity. More importantly, the State of Georgia and its citizens, and all students, faculty and alumni of Kennesaw State University will be harmed by the illegal investiture of an illegitimate president who obstructed criminal investigation of the University System of Georgia, including its Chancellor and Board of Regents, and was installed in a closed selection process violating its own policies by the very same Chancellor and Board of Regents.

*Wherefore*, premises considered, Plaintiff request the court to enter an order, pursuant to the motion pending since November 18, 2016, to award the following relief in an order:

- setting aside the judgment of November 14, 2016;
- barring the KSU presidential investiture on October 19, 2017;
- rescinding the illegal BOR approval of Olens' appointment to the presidency;
- awarding costs of the action and investigation under OCGA 16-14-6(c); and

-providing any other relief the Court deems just and proper,  
Until such time as there can be a final adjudication on the merits of the original  
action.

Respectfully submitted this 17th day of October, 2013.

STEPHEN F. HUMPHREYS, P.C.

/s/ Stephen F. Humphreys

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## CERTIFICATE OF SERVICE

I do hereby certify that I have this day served the Second Supplement to the pending Rule 60 Motion, contemporaneous with submitting the same to the court, through the Odyssey e-file system and by sending a copy to counsel for Defendants at:

Russell Willard, Esq.  
[rwillard@law.ga.gov](mailto:rwillard@law.ga.gov)  
Office of the Attorney General  
40 Capitol Square, SW  
Atlanta, GA 30334

This 17th day of October, 2017.

STEPHEN F. HUMPHREYS, P.C.

/s/ Stephen F. Humphreys

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