No. S26C0033

In the Supreme Court of Georgia

Samsung Electronics America, Inc.,
Petitioner,

v.

Jordan Brewer
Respondent.

On Appeal from the Court of Appeals, Nos. A25A0272 & A25A0292, and the State Court of Chatham County, No. STCV20-01141

Amicus Curiae Brief of Georgia Defense Lawyers Association in Support of Petitioner Samsung Electronics America, Inc.

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Table of Contents

Table of Authorities

Cases **Page(s)**

Statutes **Page(s)**

Statement of Interest

The Georgia Defense Lawyers Association (GDLA) is an association of more than 1,000 lawyers, including sole practitioners and members of law firms of all sizes, who engage in litigation, mainly for defendants in civil lawsuits. The GDLA is dedicated to, among other purposes, supporting and improving the civil defense bar, strengthening the adversary system of jurisprudence in our courts, and otherwise promoting improvements in the administration of justice.

GDLA members routinely represent businesses and individuals who — often like the Petitioner here — may be subject to default, despite having a meritorious case to present. Before the holding of the Court of Appeals below, parties in cases like this could rely on courts who would see default as an extreme remedy within a system that favors a resolution of cases on the merits rather than a system where defendants are subject to a trial judge's subjective assessment of how good a party's or their lawyer's excuse is for failing to answer a complaint timely.

The language from the Court below is likely to create confusion in trial courts about exactly what to do when faced with facts such as

these. Before this case, the Courts could look to principles of equity, fairness, and justice to favor resolving cases on the merits. The Court of Appeals has now shifted the focus to a subjective judgment of the lawyer's conduct for why the deadline was missed, to the exclusion of the equity of the result to the party, particularly a party like Samsung, who is not a proper party to the case. After securing a default judgment against Samsung in the millions, the Plaintiff now seeks to recover even more in a separate suit against the proper defendant.

When plaintiffs name the wrong party, the system should balance strict legalistic insistence upon procedural rules with encouraging open communication such as what Samsung attempted to do here, in an effort to resolve issues without litigation. Accordingly, GDLA submits this brief in support of Samsung's Petition for Writ of Certiorari.

Introduction

The GDLA fully supports Samsung's well-reasoned petition and aims not to repeat what has already been said. Rather, GDLA supplements Samsung's petition with two discrete arguments. First, the simple failure to file a responsive pleading should not subject an innocent defendant to a multi-million-dollar judgment, despite ongoing

communications with Plaintiff's counsel to fix a mistake in the naming of a party. Open default matters should continue to be liberally construed in favor of justice and resolving cases on the merits.

Secondly, the naming of the wrong defendant is a meritorious reason to set aside the default judgment. The lower court instead chose to prioritize procedure over the substance of the matter, penalizing a defendant who had nothing to do with the Plaintiff's injuries. The opinion below shifts the balance from a system that looks to principles of equity and justice to one in which the trial court engages in a mini trial on the party's conduct in search of a good excuse for filing a late responsive pleading.

Argument

1. The opinion below creates an issue of sufficient Rule 40 "gravity" because it will lead trial courts to abandon principles of merit in search of a good excuse for missing a procedural deadline and will create confusion over how to decide cases such as these.

Here is the part of the opinion that will sow confusion in Georgia trial courts: "[w]hile Samsung makes compelling arguments on the merits of its defense, it again failed to offer a meritorious reason why it

could not timely present this defense."[1] The Court then repeated a phrase from *Brewer I*,[2] "[w]henever a motion is made to vacate a judgment, even during the term at which the same was rendered, the movant must allege and prove some good reason in law why he had failed to make his defense at the time required."[3] Missing from the analysis is any mention of the equitable principles that should guide courts in the setting aside of default judgments in the term of court.

The opinion is likely to confuse trial courts and suggests that cases should be decided by judging the sufficiency of the excuse over the merits of the defense or fairness to an indisputably innocent party. Here the "compelling argument" of innocence took a back seat to the worthiness of the excuse for a late responsive pleading. Trial courts are likely to read *Brewer II* and decide future cases the same way or will at least lack clarity regarding what to do.

Before *Brewer I* and *Brewer II*, Georgia appellate courts strongly favored resolving cases on the merits and disfavored default

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[1] Opinion at 10.
[2] *Brewer I* refers to the 2023 case, while *Brewer II* refers to the case opinion below.
[3] *Id.* (citing *Samsung Electronics America, Inc., v. Brewer*, 368 Ga. App. 608, 614 (1)(2023)).

judgments.[4] Georgia courts have consistently recognized the "promotion of justice" as a meritorious reason warranting setting aside a default judgment.[5] Trial courts have traditionally had the power to "set aside [a] default judgment … in the same term of court in which the judgment [is] entered."[6] The passage of the Civil Practice Act did not abrogate the Court's power in that respect.[7] The definition of "meritorious case" to set aside a default judgment "is also addressed to the sound discretion of the judge."[8] And the "promotion of justice is a meritorious reason which will support the trial court's exercise of its inherent power to set aside a judgment."[9]

The trial court has twice exercised its judgment to set aside a default judgment in favor of a party that indisputably did not manufacture the battery that harmed the Plaintiff. And the Court of

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[4] *See e.g. Thomas v. Brown*, 308 Ga. App. 514, 517 (2011); *Strader v. Palladian Enterprises*, LLC, 312 Ga. App. 646, 649 (2011); *Legacy Hills Residential Ass'n v. Colonial Bank*, 255 Ga. App. 144, 145 (2002).
[5] *P.H.L. Dev. Corp. v. Smith*, 174 Ga. App. 328, 328 (1985). Even in *Davison-Paxon Co. v. Burkart*, which the Court of Appeals relied on in *Brewer I* for the proposition that you must give a meritorious reason for failing to plead, it is heavily cabined by references to "discretion" to promote "justice." 92 Ga. App. 80, 83 (1955)).
[6] *Id.*
[7] *Id.* (citing *Cooley v. All the World*, 247 Ga. 459 (1)(1981)); *Bank of Cumming v. Moseley*, 243 Ga. 858, 858 (1979).
[8] *Holcomb v. Trax*, 138 Ga. App. 105, 107 (1976).
[9] *P.H.L. Dev. Corp.*, 174 Ga. App. at 328.

Appeals has twice found that the trial court abused its discretion, reasoning that the Defense did not offer up a valid excuse for the failure to assert that defense in a timelier manner. The language of the Court of Appeals combined with twice reversing the set aside of a default judgment either overrules Georgia common law or at least will create doubt in Georgia trial courts as to whether it has been overruled.

Default judgment is an extreme remedy reserved for cases either lacking in a defense or where the failure to respond by the deadline was inexcusable.[10] Traditionally, courts have looked to the merits of the case itself more than to whether there was a good excuse to miss the deadline to file a responsive pleading. This Court's ruling in *Exxon Corp. v. Thomason* is a good example.[11] In *Thomason*, the Court determined that the defendant had a "meritorious case," by considering whether "if relief from default is granted, the outcome of the suit may be different from the result if the default stands. In making this showing, the defendant must provide factual information and may not rely solely on conclusions."[12] In *Thomason*, the Court considered that

[10] *See Brown*, 308 Ga. App. at 516-17.
[11] 269 Ga. 761 (1998).
[12] *Id.* at 761 (footnote omitted).

the complaint alleged that Exxon had been "maintaining leaking and corroding" storage tanks for a decade, knew of the defect, and chose to disregard the environmental consequences.[13] *Exxon* presented evidence that contradicted this sweeping claim.[14] And based on this evidence, this Court found a meritorious defense sufficient to set aside default.[15]

And yet the Court of Appeals here summarily categorized the fact that Samsung didn't manufacture the battery as a "compelling argument" and shifted to whether Samsung presented a meritorious excuse for failing to file a responsive pleading. The Respondent has also shifted the focus away from the meritorious defense and toward the conduct that led to the missed deadline.[16] However, this shift risks losing sight of the traditional meaning of a "meritorious case," focusing instead on how justifiable it was to miss a procedural deadline. It would be difficult to imagine a set of default facts in which a Plaintiff would agree that an answer was not inexcusably late or where a Defendant

[13] *Id*. at 761-62.
[14] *Id*. at 762.
[15] *Id*.
[16] Even in *Thomason* this Court says: "[g]enerally, a default should be set aside where the defendant acts with reasonable promptness and sets up a meritorious defense." *Id*. at 762.

would assert that its reason for going into default was invalid. Until now, that has never been the primary focus in default judgment cases.

2. Even if this case turned on the existence of a "meritorious reason," Samsung acted in good faith in its efforts to communicate with Plaintiff's counsel about the fact that it did not manufacture the battery that harmed the Plaintiff.

Samsung tried to resolve this matter without litigation, by calling Plaintiff's counsel to discuss the fact that it was the wrong party. However, the Plaintiff chose not to have a discussion at first. And when it did, it chose not to inform Samsung that a default judgment was imminent. After securing a default judgment in the millions against a defendant who did not manufacture the battery, the Plaintiff turned around and sued the proper party. And the Plaintiff persists in litigating this case on appeal while also litigating its suit against the proper party.

Samsung did not ignore the lawsuit. Rather, it tried to avoid litigating the matter by explaining to the Plaintiff that he had sued the wrong party. The facts presented here present the sort of injustice that Georgia courts have always sought to avoid in considering a default judgment to be an extreme and disfavored remedy. The Plaintiff has

secured a multi-million-dollar judgment against an innocent defendant while it pursues a second recovery against the proper defendant.

The Court of Appeals did not reach the question of whether default should be opened. Nevertheless, the analysis appears to overlap with what would be "excusable neglect" under O.C.G.A. § 9-11-55 in a way that contradicts this Court's approach to that analysis in *Bowen v. Savoy*.[17] This Court held that excusable neglect "refers to cases where there is a reasonable excuse for failing to answer."[18] The Court in *Brewer II* has conflated the standards by loosely exporting "excusable neglect" concepts into the "meritorious case" analysis for setting aside a default judgment. But even if it were proper to consider whether the neglect was excusable, the Court did not apply that standard properly. Samsung did not thumb its nose at the trial court or ignore the complaint. It engaged opposing counsel in good faith discussions with a view that counsel would not knowingly continue the litigation against the wrong party in an effort to win by "gotcha." Surely, this approach should not be viewed as neglect, much less inexcusable neglect.

[17] 308 Ga. 204, 207-08 (2022).
[18] *Id.* at 207.

GDLA is concerned by the language in *Brewer II* in which what should be the proper analysis of "meritorious case" has been recast merely as "compelling argument," and where a trial court has twice been reversed in the same case for exercising its discretion to set aside a judgment that it rendered in the same term of court in which it was entered. Because *Brewer II* creates confusion in the law, and at least the impression that "meritorious case" has been supplanted by "good enough excuse," this case is of sufficient gravity for the granting of certiorari.

Conclusion

For the foregoing reasons, GDLA asks the Court to grant Samsung's Petition for Writ of Certiorari.

Word Count Certification

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Respectfully submitted,

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Certificate of Service

I hereby certify that on August 18, 2025, I served a copy of the Amicus Curiae Brief of Georgia Defense Lawyers Association in Support of Petitioner Samsung Electronics America, Inc. upon all counsel of record via email and U.S. Mail to:

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