

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

PARAMOUNT PROPERTIES MANAGEMENT )  
GROUP, )  
Plaintiff, ) CASE NO. 2022-CV-365529  
v. )  
DERRICK JACKSON, )  
Defendant. )

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**MOTION TO VACATE ORDER ON IMMEDIATE WRIT OF POSSESSION  
DUE TO FAILURE TO COMPLY WITH ORDER**

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COMES NOW Defendant in the above-styled action and, without waiver of any arguments or prayers on the record, files this *Motion To Vacate Order On Immediate Writ Of Possession Due To Failure To Comply With Order* showing this Court as follows:

**I. STATEMENT OF FACTS**

1. Pursuant to the Lease For Residential Property (“LRP”) and the Purchase And Sale Agreement (“PSA”) between the parties, Defendant is to pay \$15,000.00 per month for rent/purchase payments. This comes to \$180,000.00 per year.
2. Pursuant to the On January 12, 2022, Defendant Derrick Jackson made a \$16,500.00 payment to Arthur (“Mike”) McCracken for December 2021 payment.
3. Defendant Derrick Jackson never heard of Paramount Properties prior to the initiation of this action in the Magistrate Court of Fulton County.
4. By Consent Order, without prejudice of any claims, counterclaims or defenses in this action, on or about April 21, 2022, Defendant deposited the sum of \$85,264.52 into the Court Registry under the Magistrate Court’s jurisdiction pursuant to O.C.G.A. § 44-7-54.
5. Defendant then made seven (7) consecutive payments of \$15,000.00, which total \$105,000.00.

6. As of the date of Plaintiff's motion to release the funds in the Registry, Defendant had already deposited \$190,264.52.
7. Plaintiff filed its *Motion For An Immediate Writ of Possession And Release Of All Funds Held In The Registry* on December 20, 2022, requesting the following relief:
  - a. An immediate writ of possession; and
  - b. The release of all funds paid into the Court's Registry by Defendant since April 2022.
  - c. Plaintiff's motion did not pray for further payments be made into the Registry and such requirement is not authorized by law. *See* O.C.G.A. § 44-7-54.
8. This Court issued an order granting (a) the release of all funds in the Registry to the Plaintiff, (b) an immediate writ of possession, and (c) an order that Defendant pay \$30,000.00 into the Registry of the Court by December 31, 2022, all without providing any accounting of what the dollar amounts stood or stand for.

#### RULE OF LAW

This Court may grant this motion pursuant to O.C.G.A. § 9-11-60(d), which provides that “[a] motion to set aside may be brought to set aside a judgment based upon . . . (2) Fraud, accident, or mistake or the acts of the adverse party unmixed with the negligence or fault of the movant; or (3) A nonamendable defect which appears upon the face of the record or pleadings.” O.C.G.A. § 9-11-60(g), provides that “[c]lerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time.”

O.C.G.A. § 44-7-54(b)-(c) states in relevant part:

- (b) If the tenant should fail to make any payment as it becomes due pursuant to paragraph (1) or (2) of subsection (a) of [O.C.G.A. § 44-7-54], the court shall issue a writ of possession and the landlord shall be placed in full possession of the premises by the sheriff, the deputy, or the constable.
- (c) The court shall order the clerk of the court to pay to the landlord the payments claimed under the rental contracts paid into the registry of the court as said payments are made; provided, however, that, if the tenant claims that he or she is entitled to all or any part of the funds and such claim is an issue of controversy in the litigation, the court shall order the clerk to pay to the landlord without delay only that portion of the funds to which the tenant has made no claim in the proceedings or may make such other order as is appropriate

under the circumstances. *That part of the funds which is a matter of controversy in the litigation shall remain in the registry of the court until a determination of the issues by the trial court.* If either party appeals the decision of the trial court, that part of the funds equal to any sums found by the trial court to be due from the landlord to the tenant shall remain in the registry of the court until a final determination of the issues.

(Emphasis added).

### **CONCLUSION**

In light of the above, it is clear that Defendant has paid \$190,264.52 into the Court's Registry, which excludes both November and December's rent, and the built-in remedy of the consent order is an immediate writ of possession and NOT a further order to pay into the Registry NOR the release of all funds in the Registry without scrutiny. Thus, only a sum of \$150,000.00 of the Registry's funds could be released since the outset of this case to Plaintiff absent findings of the jury, and the Registry must retain \$40,264.52 of the funds that remain in the Registry until a trial on the merits.

WHEREFORE Defendant prays that this Court vacate or modify its "*Order For immediate Writ of Possession Due To Failure To Comply With Court Oder* [sic]" and enter an order consistent with the Georgia law and the facts of this case.

This 22nd day of December, 2022.

/s/ Matthew D. McMaster  
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