FIRST DIVISION
BARNES, P. J.,
MARKLE and HODGES, JJ.

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November 3, 2026

In the Court of Appeals of Georgia

A26A1075. JOHN F. KING, COMMISSIONER OF INSURANCE OF THE STATE OF GEORGIA v. FHP ABC, LLP.

MARKLE, Judge.

John F. King, Commissioner of Insurance of the State of Georgia, appeals from the trial court's grant of FHP-ABC's motion to dismiss this action brought in accordance with the Insurers Rehabilitation and Liquidation Act ("the Act"), OCGA § 33-37-1 et seq. The Commissioner argues the trial court erred by concluding that it lacked personal and subject matter jurisdiction; the Commissioner failed to join an indispensable party, and failed to state claims for preferential and fraudulent transfers, and for conversion; and that dismissal was warranted under the doctrine of forum non conveniens. For the reasons that follow, we reverse the trial court's judgment.

In 2023, the Commissioner and Friday Health Plans of Georgia ("FHP-GA"), a domestic health maintenance organization, entered a consent order to liquidate the assets of the failing HMO. The order was filed in Fulton County Superior Court on June 2, 2023.

As alleged in the Complaint, FHP-GA, was a wholly-owned subsidiary of FHP Management Services ("FHP-MSC"), which was itself wholly owned by Friday Health Plans ("FHP-Inc."). FHP-MSC provided all employees and administrative services to FHP-GA for a fee. Although FHP-MSC was prohibited from receiving advanced payment of the fee pursuant to contract, it improperly received $21 million in advanced funds between 2022 and 2023, and continued to receive fees, despite failing to pay FHP-GA's vendors, ultimately incurring $35 million in debt.

Thereafter, both FHP-MSC and FHP-Inc. redomesticated from Colorado to Delaware. FHP-ABC, a Delaware limited liability company, was then formed and, on July 6, 2023, became the assignee of all assets of FHP-MSC and FHP, Inc., including the funds improperly taken from FHP-GA. FHP-ABC then entered into an agreement with a third-party secured lender to pay over FHP-GA's assets in connection with an

insolvency proceeding in the Court of Chancery of the State of Delaware. FHP-ABC remains the principal of a bond in the amount of the assets transferred to it.

The Commissioner brought the present action, pursuant to the Act, against FHP-ABC, FHP-MSC, and FHP-Inc. The Commissioner alleges the redomestication was done purely to evade jurisdiction in Georgia, and asserts claims including conversion, and fraudulent and preferential transfers. The Commissioner secured default judgments against FHP-MSC and FHP, Inc. FHP-ABC then filed a motion to dismiss (by special appearance), arguing the trial court lacked personal and subject matter jurisdiction; the Commissioner failed to state claims for conversion, and for preferential and fraudulent transfers; and the case must be dismissed for failure to join an indispensable party, and under the doctrine of forum non conveniens. Following a hearing, at which no evidence was presented, the trial court granted the motion in its entirety. This appeal followed.

1. The Commissioner first argues the trial court erred in concluding that it lacked personal jurisdiction over FHP-ABC under the Act, as well as Georgia's general long arm statute, OCGA § 9-10-91. We conclude the Act alone was sufficient to confer jurisdiction.

> [W]hen a defendant moves to dismiss for lack of personal jurisdiction, he has the burden of proving that he is not subject to the jurisdiction of the court. Where the motion is decided without an evidentiary hearing and based solely upon the written submissions of the parties, any disputes of fact must be resolved in the light most favorable to the party asserting the existence of personal jurisdiction, and we review the decision of the trial court de novo.

Weathers v. Dieniahmar Music, 337 Ga. App. 816, 818-19(1) (788 SE2d 852) (2016) (citation modified).

Much of our analysis in this opinion necessarily involves statutory interpretation, and is therefore

> guided by the following principles: A statute draws its meaning, of course, from its text. Under our well-established rules of statutory construction, we presume that the General Assembly meant what it said and said what it meant. To that end, we must afford the statutory text its "plain and ordinary meaning," we must view the statutory text in the context in which it appears, and we must read the statutory text in its most natural and reasonable way, as an ordinary speaker of the English language would. Though we may review the text of the provision in question and its context within the larger legal framework to discern the intent of the legislature in enacting it, where the statutory text is clear and unambiguous, we attribute to the statute its plain meaning, and our search for statutory meaning ends. But when the language of a statute or

> regulation is not obvious on its face, we should employ other tools of construction to interpret it and resolve its meaning. Those rules require that we give due weight and meaning to all of the words of the statute, and we are not authorized to disregard any of the words of the statute in question unless the failure to do so would lead to an absurdity manifestly not intended by the legislature. In addition, language in one part of the statute must be construed in light of the legislature's intent as found in the whole statute.

PTI Royston, LLC v. Eubanks, 360 Ga. App. 263, 266-67(1) (861 SE2d 115) (2021) (citation modified).

To begin, our legislature intended the Act as a means to oversee the insurance business with regard to delinquency proceedings and the substantive rules of the insurance sector by "[p]roviding for a comprehensive scheme for the rehabilitation and liquidation of insurance companies and those subject to this chapter as part of the regulation of the business of insurance, insurance industry, and insurers in this state." OCGA § 33-37-1(d)(6), (7). The Act specifically provides that "[p]roceedings in cases of insurer insolvency and delinquency are deemed an integral aspect of the business of insurance and are of vital public interest and concern." OCGA § 33-37-1(d)(7).

Thus, the Act is to be liberally construed to execute its stated purposes. OCGA § 33-37-1(c).

Among those purposes is to extend the jurisdiction of the courts by "lessening the problems of interstate rehabilitation and liquidation by facilitating cooperation between states in the liquidation process and by extending the scope of personal jurisdiction over debtors of the insurer outside this state." OCGA § 33-37-1(d)(5). The Act thus provides:

> *[i]n addition to other grounds for jurisdiction provided by the law of this state*, a court of this state having jurisdiction of the subject matter has jurisdiction over a person ... in an action brought by the receiver of a domestic insurer ... [i]f the person ... is or was at the time of the institution of the delinquency proceeding against the insurer holding assets in which the receiver claims an interest on behalf of the insurer, in any action concerning the assets.

OCGA § 33-37-4(c)(4) (emphasis added).

Construing this language in its most plain and natural way, the Act provides an "additional" and, therefore, separate and independent ground for personal

jurisdiction. OCGA § 33-37-4(c)(4). See also Merriam-Webster Dictionary,[1] https://www.merriam-webster.com/dictionary/additional (last visited October 29, 2026) (defining the term "additional" as " more than is usual or expected: added"). It further requires that the court have subject matter jurisdiction, discussed infra, and that the holder of the insurer's assets be in possession of them at the institution of a delinquency proceeding. OCGA § 33-37-4(c)(4). The Act defines a delinquency proceeding as "any proceeding instituted against an insurer for the purpose of liquidating, rehabilitating, reorganizing, or conserving such insurer." OCGA § 33-37-3(3).

Under the terms of the consent order, FHP-GA would not be "placed into liquidation" until August 1, 2023. It is undisputed that FHP-MSC and FHP-Inc. assigned their assets to FHP-ABC on July 6, 2023. Thus, as pled in the complaint, FHP-ABC was the holder of the assets at the time of the institution of the liquidation proceeding, and was thus subject to suit under OCGA § 33-37-4(c)(4).

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[1] "Except when considering a technical term or term of art in a particular industry, Georgia courts often begin by considering how a word has been defined in dictionaries to determine its plain and ordinary meaning." *Catoosa County v. Rome News Media*, 349 Ga. App. 123, 128 (825 SE2d 507) (2019).

At oral argument, FHP-ABC contended that the relevant date was the filing of the consent order in June 2023; therefore, it was not the holder of the assets at the institution of the delinquency proceeding. However, this construction conflicts with other portions of the Act; namely OCGA § 33-37-20(a)(6), which provides that, among other things, the liquidator is authorized "to hold hearings, to subpoena witnesses to compel their attendance, to adminster oaths, to examine any person under oath...." See *PTI Royston*, 360 Ga. App. at 267(1) (statutory language must be construed to effect the intent of the statute as a whole). In other words, the Commissioner, as liquidator, was authorized to conduct proceedings, which could not occur until August 1, 2023 when FHP-GA was placed into liquidation. See Proceeding, Black's Law Dictionary, (12th ed. 2024) ("The business conducted by a court or other official body.").

Thus, as alleged in the complaint, FHP-ABC was the holder of the assets at the relevant time. OCGA § 33-37-4(c)(4). This construction of the requirements of OCGA § 33-37-4(c)(4) comports with the General Assembly's directive to liberally construe this Chapter so as to effectuate its purposes, as set forth above. OCGA § 33-

37-1(c). Accordingly, we conclude the trial court was vested with personal jurisdiction pursuant to the Act.

2. The Commissioner next contends that the trial court erred in concluding it lacked subject matter jurisdiction because the Commissioner lacked standing. We conclude the Commissioner had standing to bring the claims.

Here, the trial court concluded it was divested of jurisdiction because, inter alia, the Commissioner failed to prove it suffered an injury in fact caused by FHP-ABC, and that any relief would be speculative and hampered by potential secured first priority claims of other creditors.

"[W]e review de novo a trial court's grant of a motion to dismiss due to lack of subject matter jurisdiction. We also construe the pleadings in the light most favorable to the nonmoving party with any doubts resolved in that party's favor." *Douglas County v. Hamilton State Bank*, 340 Ga. App. 801, 801–02 (798 SE2d 509) (2017) (citation modified). The Commissioner bears the burden to establish standing. Id. at 801.

Our Supreme Court has explained that a plaintiff must assert a violation of his own legal rights in order to have standing to bring a claim in Georgia courts. *Wasserman v. Franklin County*, 320 Ga. 624, 639(II)(A)(2) (911 SE2d 583) (2025).

> But the question of whether a plaintiff has a cause of action under a particular statute[, as here] is an ordinary issue of statutory interpretation, not a jurisdictional question. Notably, the Supreme Court of the United States has explained that it is misguided to characterize that kind of question as concerning a lack of subject-matter jurisdiction. The scope of a statutory cause of action, then, is not an appropriate inquiry to consider on a OCGA § 9-11-12 (b) (1) motion to dismiss.

Stillwell v. Topa Ins. Co., 363 Ga. App. 126, 131(1) (871 SE2d 8) (2022) (citing *Lexmark Int'l v. Static Control Components*, 572 U. S. 118, 128 (II) & n.4, 129 (III) (134 SCt 1377, 188 LE2d 392) (2014) (Scalia, J.). See also *City of Winder v. Barrow County*, 365 Ga. App. 832, 840(3)(a) (880 SE2d 323) (2022), overruled on other grounds by, *City of Winder v. Barrow County*, 318 Ga. 550 (899 SE2d 157) (2024).

And, here, the Commissioner plainly has standing to bring the action under the terms of the Act. Notably, OCGA § 33-37-4(a) provides that the Commissioner has the *sole authority* to commence delinquency proceedings. See also OCGA §§ 33-2-1 (vesting the authority of the Commissioner in general); 33-37-1(d)(6) (among the

Act's purposes is the "[r]egulation of the insurance business by the impact of the law relating to delinquency procedures and substantive rules on the entire insurance business"). And, under OCGA § 33-37-17(a), the Commissioner is "vested by operation of law with the title to all of the property, contracts, and rights of action" of the insurer. See also 33-37-23(b). Pursuant to OCGA § 33-37-20(a)(14) and (15), the Commissioner is authorized to prosecute actions on behalf of the insurer or "on behalf of the creditors, members, policyholders, or shareholders of the insurer against any officer of the insurer or any other person." Moreover, OCGA § 33-37-25 and 33-37-37 authorize the Commissioner to void fraudulent transfers and preferential transfers, respectively. See also OCGA § 33-37-26.1 ("[A] transfer may be avoided under this Code section if the transfer was made with intent to hinder, delay, or defraud the insurer, the receiver for the insurer, or existing or future creditors.").

As read in its most plain and natural way, the Act clearly grants the Commissioner standing to bring the present action, and the trial court erred in dismissing it on subject matter jurisdiction grounds. See *Stillwell*, 363 Ga. App. at 131(1).

3. The Commissioner next argues that the trial court erred in concluding that it failed to state claims for conversion, and for preferential and fraudulent transfers. We agree that the trial court prematurely dismissed these claims.

OCGA § 9-11-8(a)(2)(A) requires only that a complaint provide "[a] short and plain statement of the claims showing that the pleader is entitled to relief."[2] As we have explained,

> [u]nder current Georgia law, it is not necessary for a complaint to set forth all of the elements of a cause of action in order to survive a motion to dismiss for failure to state a claim. Rather, the Georgia Civil Practice Act requires only notice pleading and, under the Act, pleadings are to be construed liberally and reasonably to achieve substantial justice consistent with the statutory requirements of the Act. Thus, a motion to dismiss for failure to state a claim should not be granted unless the allegations of the complaint disclose with certainty that the claimant would not be entitled to relief under any state of provable facts asserted in support thereof. Put another way, if, within the framework of the complaint, evidence may be introduced which will sustain a grant of relief to the plaintiff, the complaint is sufficient.

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[2] The Civil Practice Act applies to pleadings in special statutory proceedings. OCGA § 9-11-81 ("[T]he provisions of this chapter governing the sufficiency of pleadings ... shall apply to all such proceedings.").

Babalola v. HSBC Bank, USA, N.A., 324 Ga. App. 750, 752(2) (751 SE2d 545) (2013) (citation modified).

The trial court failed to adhere to this standard in concluding that the allegations of the complaint did not provide a sufficient factual basis for establishing the necessary elements of the claims. See *AG Res. Mgmt. v. Mundy, Inc.*, 376 Ga. App. 643, 645 (920 SE2d 486) (2025) ("The purported failure to allege certain elements of a cause of action set forth in the complaint does not mandate dismissal because it is no longer necessary for a complaint to set forth all of the elements of a cause of action in order to survive a motion to dismiss for failure to state a claim.") (citation modified).

Notably, with regard to the conversion claim, the cases cited by the trial court address the sufficiency of the evidence as to the elements of this claim at either the summary judgment or trial phases of litigation. See *Mims v. Exclusive Ass'n Mgmt.*, 372 Ga. App. 777 (906 SE2d 799) (2024); *Alexander Law Firm v. Richburg*, 361 Ga. App. 376 (864 SE2d 479) (2021).

As to the claims regarding the allegedly improper transfers, the trial court determined that the Commissioner failed to include facts establishing that FHP-ABC

was involved in any transfer of funds, and that any such transfer involved an antecedent debt, as required by OCGA § 33-37-27(a)(1).[3] To the contrary, the complaint alleges both that FHP-ABC was the final recipient of a series of transfers that satisfy the antecedent debt requirement and was, therefore, involved in the transfer of funds.

In short, the allegations of the Complaint were sufficient to put FHP-ABC on notice of the claims against it, and there has been no showing that the Commissioner "would not be entitled to relief under any state of provable facts." *Babalola*, 324 Ga. App. at 752(2). The trial court thus erred by applying too rigid a standard at this phase of litigation.

4. The Commissioner contends the trial court erred by dismissing the case because of the failure to add an indispensable party. We agree.

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[3] OCGA § 33-37-27(a)(1) provides, in pertinent part: "A preference is a transfer of any of the property of an insurer to or for the benefit of a creditor for or on account of an antecedent debt made or suffered by the insurer within one year before the filing of a successful petition for liquidation under this chapter, the effect of which transfer may be to enable the creditor to obtain a greater percentage of this debt than another creditor of the same class would receive."

The trial court determined that the creditor who received the disputed funds in the Delaware action was an indispensable party to the action, and the failure to add it was grounds for dismissal. Specifically, the trial court found that the failure to do so hampered its ability to afford complete relief, and would subject FHP-ABC to multiple, inconsistent rulings due to the Delaware action.

In doing so, the trial court applied only the analysis required by OCGA § 9-11-19(a), which provides:

A person who is subject to service of process shall be joined as a party in the action if:

(1) In his absence complete relief cannot be afforded among those who are already parties; or

(2) He claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may:

(A) As a practical matter impair or impede his ability to protect that interest; or

(B) Leave any of the persons who are already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.

This Code section, however, requires the trial court to order the joinder of a necessary party to the action — not to dismiss the case. OCGA § 9-11-19(a). See *Wilcher v. Way Acceptance Co.*, 316 Ga. App. 862, 866(1) (730 SE2d 577) (2012) ("Ordinarily, it is error to dismiss a complaint for failure to join an indispensable party. Rather, the party should be joined so the case can be considered on the merits.") (citation modified). In order to dismiss the case, the trial court was required to determine whether the creditor was an *indispensable party* who could not feasibly be joined, pursuant to OCGA § 9-11-19(b).

Normally, we would remand the case to the trial court to address this issue, however, we conclude that the trial court erred in its determination that the creditor was a necessary party to this action in the first instance. See *Wilcher*, 316 Ga. App. at 869(1) (remanding the action to the trial court to apply the correct analysis). But see *Hall v. Oliver*, 251 Ga. App. 122, 123(2) (553 SE2d 656) (2001) (noting that a trial court should not proceed to determine whether a party is indispensable until it has first determined that it is a necessary party).

Pursuant to OCGA § 33-37-17(a), the Commissioner is "vested by operation of law with the title to all of the [insurer's] property, contracts, and rights of action...

wherever located." Additionally, OCGA § 33-37-20 grants the Commissioner broad authority to pursue actions to collect debts and funds belonging to the insurer in other jurisdictions, as necessary. OCGA § 33-37-20(a)(8), (14), (21). Thus, the Act provides that the Commissioner, alone, has a right to the disputed funds by operation of law.

Moreover, the trial court's conclusion that FHP-ABC would be subject to multiple, inconsistent judgments overlooks the decision of the Delaware court to defer to the local courts so as to specifically "avoid stepping on the toes of other courts and the entry of inconsistent orders." As such, there was no basis for the trial court's conclusion that the creditor was a necessary party to this action.

5. Finally, the Commissioner contends the trial court erred by dismissing the action under the doctrine of forum non conveniens. We agree.

OCGA § 9-10-31.1 sets out the factors for analyzing whether an action should be dismissed or transferred to another venue on forum non conveniens grounds.[4]

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[4] The seven factors to establish forum non conveniens are:

(1) Relative ease of access to sources of proof;

(2) Availability and cost of compulsory process for attendance of unwilling witnesses;

Although a trial court is not required to make specific finding as to each factor in every case, that is the better practice. *Wang v. Liu*, 292 Ga. 568, 570(1) (740 SE2d 136) (2013). As our Supreme Court has explained,

> [t]he decision to dismiss a case properly filed in Georgia in favor of its resolution in a foreign forum is a momentous one that requires careful consideration in accordance with the provisions of the statute. The burden to show the factors set forth in OCGA § 9-10-31.1 (a) supporting a dismissal is on the moving party. The trial court's application of the standard in OCGA § 9-10-31.1 (a) to the peculiar circumstances of a particular case is a matter committed to the sound discretion of the trial court, and our review is for an abuse of that discretion. ...Thus, the issue

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> (3) Possibility of viewing of the premises, if viewing would be appropriate to the action;
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> (4) Unnecessary expense or trouble to the defendant not necessary to the plaintiff's own right to pursue his or her remedy;
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> (5) Administrative difficulties for the forum courts;
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> (6) Existence of local interests in deciding the case locally; and
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> (7) The traditional deference given to a plaintiff's choice of forum.
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> OCGA § 9-10-31.1(a)(1)-(7).

> is not whether venue was proper where the action was filed, but whether there is sufficient evidence to support a conclusion that "in the interest of justice and for the convenience of the parties and witnesses a claim or action would be more properly heard in a forum outside this state." OCGA § 9-10-31.1 (a).

McInerney v. McInerney, 313 Ga. 462, 469(2)(c) (870 SE2d 721) (2022) (citation modified). See also *Wang*, 292 Ga. at 569(1).

Simply put, the evidence of record is inadequate to enable the trial court to carefully consider the forum non conveniens factors. Moreover, the trial court improperly shifted the burden to the Commissioner to point to "physical evidence that would be located in the state of Georgia." See *McInerney*, 313 Ga. at 471(2)(c) ("Though it may often be in the interest of the plaintiff to produce evidence with respect to forum non conveniens factors when opposing transfer or dismissal, the burden never leaves the moving party.").

The trial court based its ruling primarily on its faulty conclusion, as discussed in Division 4 supra, that FHP-ABC would be subject to multiple and inconsistent judgments. However, the only evidence of record shows that the Delaware court deferred to the presiding court in Georgia.

Because FHP-ABC failed to carry its burden to satisfy the forum non conveniens factors, the trial court abused its discretion in dismissing the action on this basis. *See McInerney*, 313 Ga. at 469(2)(c). See also *R. J. Taylor Mem. Hosp. v. Beck*, 280 Ga. 660, 663(3) (631 SE2d 684) (2006) (movant failed to proffer sufficient evidence to show transfer of venue was warranted under OCGA § 9-10-31.1).

For all these reasons, the trial court erred in granting FHP-ABC's motion to dismiss, and we reverse.

Judgment reversed. Barnes, P. J., and Hodges, J., concur.