

**THIRD DIVISION
DILLARD, P. J.,
GOBEIL and PIPKIN, JJ.**

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October 19, 2026

In the Court of Appeals of Georgia

**A26A0942. FRANCIS v. CALIFORNIA STATE TEACHERS’
RETIREMENT SYSTEM.**

GOBEIL, Judge.

Bridget Francis appeals the trial court’s dismissal with prejudice of her claims against California State Teachers’ Retirement System (“CalSTRS”) on sovereign immunity grounds. For the following reasons, we affirm the trial court’s dismissal of Francis’s claims against CalSTRS. Nonetheless, because the trial court’s dismissal was with prejudice, we vacate that portion of the trial court’s judgment, and remand the case with direction to clarify that the dismissal was for lack of subject matter jurisdiction, and thus is without prejudice. See generally *Maat Concepts, Inc. v. Fulton County*, __ Ga. App. __ (2) (932 SE2d 825, 830) (2026).

The record shows that on July 12, 2024, Francis, a former leasing consultant and tenant of Lakeside Vista Apartments (the “Apartments”) filed a complaint, through counsel, against the Apartments,¹ Fairfield Lakeside LLC, Fairfield Residential LLC (collectively the “Fairfield defendants”), and CalSTRS. Francis alleged that in October 2022, an individual rented the apartment next to her apartment and smoked marijuana incessantly, in violation of the lease provisions. Francis claimed that because of the persistent infiltration of marijuana smoke into her apartment, she had difficulty breathing and her health deteriorated. Francis alleged that she had notified the Fairfield defendants, who owned and operated the apartments, of the other tenant’s lease violations, but the defendants failed to take appropriate action, ignored her complaints, and ignored her requests for mold remediation and for reasonable accommodations. Francis attached to the complaint a copy of the lease and the no smoking addendum, along with e-mail correspondence with management. The complaint set forth counts for: negligence per se; constructive eviction; property damage and trespass; discrimination; intentional infliction of emotional distress; and breach of contract. With respect to CalSTRS, Francis asserted that it owned Fairfield

¹ The trial court subsequently granted Francis’s motion to dismiss the Apartments from the case.

Residential LLC, but Francis did not allege any specific acts or omissions by CalSTRS. Significantly, nor did Francis allege any manner in which CalSTRS had waived its sovereign immunity.

CalSTRS moved to dismiss the complaint, arguing that though Francis mailed the complaint to it, Francis had not perfected service of process. CalSTRS also asserted that it was a public entity entitled to governmental immunity under the California Government Claims Act, and that under *Franchise Tax Bd. of California v. Hyatt*, 587 US 230 (139 SCt 1485, 203 LE2d 768) (2019) (“*Hyatt III*”), Francis’s claims against it were barred. In other arguments, CalSTRS also contended that: dismissal was proper as to the negligence per se claim against it; CalSTRS was not a signatory to the lease and thus the breach of contract claim was fatally defective; the complaint failed to specify any negligent actions or inactions which CalSTRS caused; and, Francis’s claim for intentional infliction of emotional distress against it was insufficient.

Citing OCGA § 50-21-1, which addresses sovereign immunity in actions for breach of contracts to which the state is a party, Francis responded to the dismissal motion, arguing that CalSTRS’s affiliation with, and ownership of, Fairfield

Residential waived any immunity. Francis claimed further that CalSTRS was the majority owner of Fairfield Residential; was an active participant in that enterprise; and as such, had relinquished immunity to suit. Francis attached to her response a copy of CalSTRS's Investment Policy Statement ("IPS"), which outlined the various investment objectives and strategies of the retirement system. Although the IPS broadly addressed the program's investment assets and strategies, Fairfield Residential was not specifically mentioned in the document.

After a hearing, the trial court granted CalSTRS's dismissal motion. In doing so, the trial court first recognized that Francis had failed to properly serve CalSTRS — and that mailing the complaint, which was delivered to a guard at CalSTRS's headquarters, was insufficient service of process. Nonetheless, the trial court recognized that a dismissal on the grounds of improper service would be without prejudice. The trial court then addressed the issue of sovereign immunity, finding that CalSTRS is a public agency of the State of California, which was established under California law, and administered as a unit of the California Government Operations Agency.² The trial court determined that under the California Government Claims

² See Cal. Educ. Code § 22001.

Act (“CGCA”)³, and relevant California case law, CalSTRS is a “public entity” entitled to sovereign immunity. Furthermore, the trial court concluded that the CGCA provides that, absent a specific statutory waiver of immunity, public entities such as CalSTRS may not be liable for injuries.⁴

Next, the trial court analyzed *Hyatt III* and found that the United States Supreme Court “unequivocally held ‘that States retain their sovereign immunity from private suits brought in the courts of other States.’” See *Hyatt III*, 587 US at 236. Then, citing *City of College Park v. Clayton County*, 306 Ga. 301, 310(1)(b) (830 SE2d 179) (2019), the trial court stated, “Georgia’s Supreme Court has previously reviewed *Hyatt III*, noting that ‘the nature of sovereign immunity appears to be clear — the sovereign cannot be called into the courts of its own making by private persons without the permission of the sovereign.’ *City of College Park*, 306 Ga. at 310.” Under this authority, the trial court concluded CalSTRS was entitled to sovereign immunity in Georgia. Furthermore, the trial court found that Francis, who bore the burden of demonstrating a sovereign immunity waiver, see *Ga. Dep’t of Labor v. RTT Assocs.*,

³ See Cal. Gov. Code §§ 810, et seq.

⁴ See Cal. Gov. Code § 815.

Inc., 299 Ga. 78, 81(1) (786 SE2d 840) (2016), had failed to identify a specific statutory waiver of immunity or a statutory duty that would allow her claims against CalSTRS to proceed. In reaching this conclusion, the trial court noted that neither Francis’s unsubstantiated assertions regarding CalSTRS’s investment in Fairfield Residential, nor her claims that CalSTRS was a third-party beneficiary to the lease, constituted such a waiver. Accordingly, the trial court granted CalSTRS’s motion to dismiss. From that order, Francis filed this appeal.⁵

1. Francis argues that the trial court erred in finding that CalSTRS is entitled to sovereign immunity for claims arising from its commercial activities in Georgia through its “ownership and operational control of an apartment complex.” Francis further contends that Georgia law distinguishes governmental from proprietary functions and CalSTRS’s role at the Apartments was a quintessential commercial activity, not a sovereign function, and thus not entitled to immunity under *Hyatt III*. She argues further that the trial court erred by failing to perform the necessary “arm of the state” analysis. These arguments do not withstand scrutiny.

⁵ See OCGA § 5-6-34(a)(15), allowing direct appeals from “judgments, orders, or rulings in civil actions granting ... immunity to one or more parties based upon sovereign ... immunity”.

First, the trial court properly dismissed Francis’s breach of contract claims because she failed to establish a waiver of sovereign immunity. As our Supreme Court has stated:

One of the exceptions to the defense of sovereign immunity is for “any action ex contractu for the breach of any written contract ... entered into by the state or its departments and agencies.” Ga. Const. of 1983, Art. I, Sec. II, Par. IX(c). See also OCGA § 50-21-1(a) (“The defense of sovereign immunity is waived as to any action ex contractu for the breach of any written contract ... entered into by the state, departments and agencies of the state, and state authorities.”).

State of Ga. v. Fed. Defender Program, Inc., 315 Ga. 319, 327(3) (882 SE2d 257) (2022).

Nevertheless, “[b]ecause sovereign immunity is jurisdictional, it requires the plaintiff to prove any waiver thereto and is properly raised as a defense under OCGA § 9-11-12(b)(1).” *Id.* (Citation modified). “To meet this burden, the plaintiff must show that the contract sought to be enforced is in writing and contains all of the terms necessary to constitute a valid contract.” *Id.*; see also *Ga. Dep’t of Comty. Health v. Data Inquiry, LLC*, 313 Ga. App. 683, 685(1)(a) (772 SE2d 403) (2012). “To constitute a valid contract, there must be parties able to contract, a consideration moving to the contract, the assent of the parties to the terms of the contract, and a

subject matter upon which the contract can operate. OCGA § 13-3-1.” Id. (Punctuation omitted).

In this case, it is undisputed that CalSTRS was not a signatory to the lease with Francis, and she has failed to show that any person acting on behalf of CalSTRS was involved with the agreement. Similarly, there is no evidence that CalSTRS was a party to e-mails which Francis exchanged with management to express her displeasure after she smelled the marijuana smoke. Compare *Fed. Defender Program*, 315 Ga. at 328-30(3)(a). Accordingly, we conclude as a matter of law that Francis failed to establish that sovereign immunity for CalSTRS was waived, and thus, her action ex contractu was barred by sovereign immunity. See *Ga. Dep’t of Cmty. Health*, 313 Ga. App. at 687(1)(b) (reversing trial court’s denial of defendant’s motion to dismiss after finding that Data Inquiry had not met its burden of showing the existence of a written contract so as to demonstrate a waiver of sovereign immunity).

Similarly, the trial court also properly dismissed Francis’s tort claims because she failed to show a waiver of sovereign immunity as to these claims. With respect to tort actions involving other states:

The United States Supreme Court has held that although the full faith and credit clause does not require a forum state to recognize the

sovereign immunity of another state, the forum may recognize another state's sovereign immunity as a matter of comity. Comity is a principle under which the courts of one state give effect to the laws of another state or extend immunity to a sister sovereign not as a rule of law, but rather out of deference or respect. Courts extend immunity as a matter of comity to foster cooperation, promote harmony, and build goodwill. In discussing comity in the context of sovereign immunity, the [United States] Supreme Court counseled: "It may be wise policy, as a matter of harmonious interstate relations, for States to accord each other immunity or to respect any established limits on liability. They are free to do so."

Univ. of Iowa Press v. Urrea, 211 Ga. App. 564, 565-66(2) (440 SE2d 203) (1993) (citation modified); see also *United Parcel Serv. of Am., Inc. v. Whitlock*, 366 Ga. App. 542, 547(1)(b) (883 SE2d 556) (2023) ("[a]s a matter of comity, a Georgia court will defer to another state's statutes, as well as its judicial decisions authoritatively interpreting those statutes, in determining the law of that state"). Likewise, Georgia's comity statute, OCGA § 1-3-9 provides:

The laws of other states and foreign nations shall have no force and effect of themselves within this state further than is provided by the Constitution of the United States and is recognized by the comity of states. The courts shall enforce this comity, unless restrained by the General Assembly, so long as its enforcement is not contrary to the policy or prejudicial to the interests of this state.

We review a trial court's determination regarding comity for an abuse of discretion. See *Univ. of Iowa Press*, 211 Ga. App. at 566(2).

In analyzing Francis's tort claims, we turn to *Univ. of Iowa Press*, in which this Court applied comity precepts to conclude that the University of Iowa Press was an Iowa state entity and,

as such, is governed by the Iowa Tort Claims Act. Pursuant to this Act, the State of Iowa waives its immunity from suit only to the extent it is sued in its state courts. This section provides that "where the omission occurred outside of Iowa and the plaintiff is a nonresident, the Polk county district court has exclusive jurisdiction to hear" such claims. Georgia has also adopted a Tort Claims Act which similarly provides that it waives its sovereign immunity only to the extent it is sued in the courts of the State of Georgia. OCGA § 50-21-23(b). Because the two provisions are conceptually identical, application of Iowa's Tort Claims Act would not violate Georgia's public policy and, as such, we should recognize and give effect to the legislatively declared policy of Iowa as a matter of comity. Accordingly, because extending immunity to appellant will not offend the public policy of this state, we find the trial court abused its discretion in not recognizing appellant's sovereign immunity as a matter of comity.

Univ. of Iowa Press, 211 Ga. App. at 566-67(2) (citation modified).

In this case, as set forth above, the trial court performed a similar analysis, citing the California statutory system which established CalSTRS as a public agency of the State of California under California law.⁶ The trial court then found that under the CGCA, CalSTRS is a “public entity” entitled to sovereign immunity.⁷ More specifically, the trial court found that CGCA § 815 states that “[e]xcept as otherwise provided by statute ... [a] public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person.” Then, the trial court concluded that there was no evidence that CalSTRS had waived its sovereign immunity and thus, granted CalSTRS’s dismissal motion.

We find no error. “Georgia has also adopted a Tort Claims Act which similarly provides that it waives its sovereign immunity only to the extent it is sued in the courts of the State of Georgia. OCGA § 50-21-23(b).” *Univ. of Iowa Press*, 211 Ga. App. at 566-67(2). Under OCGA § 50-21-21(a), the Act expressly recognizes that public policy requires that “the state shall only be liable in tort actions within the limitations of this article and in accordance with the fair and uniform principles established in this

⁶ See Cal. Educ. Code § 22001.

⁷ See Cal. Gov. Code §§ 811.2, 815(a).

article.” Moreover, under Georgia law, “as the party seeking to benefit from the waiver of sovereign immunity in this case, [Francis] bears the burden of proving such waiver.” *Ga. Dep’t of Cmty. Health*, 313 Ga. App. at 685(1) (punctuation omitted). Thus, because the Georgia and California Tort Claim Act provisions are “conceptually identical, application of [California’s] Tort Claims Act would not violate Georgia’s public policy and, as such, we should recognize and give effect to the legislatively declared policy of [California] as a matter of comity.” *Univ. of Iowa Press*, 211 Ga. App. at 567(2). In reaching this conclusion, we are also mindful of the United States Supreme Court’s expansive view of sovereign immunity, which lends further support to the trial court’s ruling here. As it stated in *Hyatt III*, “[t]he Constitution does not merely allow States to afford each other immunity as a matter of comity; it embeds interstate sovereign immunity within the constitutional design.” *Hyatt III*, 587 US at 245(II)(B)(3).

In sum, as the trial court recognized, Francis failed to plead any basis for a waiver of immunity in her complaint, or the extent of any such waiver. See *Henry County Schools v. Grant*, ___ Ga. App. ___ (1)(b) (932 SE2d 113, 120) (2026). She then failed to carry her burden of demonstrating waiver, so the trial court’s dismissal of the

complaint was proper. See *Ramos v. Owens*, 366 Ga. App. 216, 218 (881 SE2d 464) (2022); accord *Young v. Johnson*, 359 Ga. App. 769, 771 (860 SE2d 82) (2021) (affirming dismissal where plaintiff failed to explicitly plead a waiver of sovereign immunity in her complaint, did not amend the complaint to correct the omission, and failed to raise the waiver issue in any of her filings in the trial court).

In reaching this decision, we reject Francis’s assertion that the trial court erred by not conducting an “arm of the state” analysis. That analysis applies under the Eleventh Amendment of the United States Constitution⁸ and provides immunity when a State entity is “an arm of the State.” See *Alden v. Maine*, 527 US 706, 756(III) (119 SCt 2240, 144 LE2d 636) (1999); see also *Henry County Schools*, ___ Ga. App. ___ (1)(b) (932 SE2d 113, 119) (2026). Nonetheless, the “sovereign immunity of the States neither derives from, nor is limited by, the terms of the Eleventh Amendment.” *Alden*, 527 US at 713(I); see also *Hyatt III*, 587 US at 243(II)(B)(2). “Rather, as the Constitution’s structure, and its history, and the authoritative interpretations by this Court make clear, the States’ immunity from suit is a fundamental aspect of the

⁸ The Eleventh Amendment provides: “[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.” US Const., Amend. XI.

sovereignty which the States enjoyed before the ratification of the Constitution, and which they retain today.” *Alden*, 527 US at 713(I). For the reasons above, we conclude that the trial court correctly dismissed the claims against CalSTRS, finding that it had not waived its immunity under principles of state constitutional law.

2. Francis claims that the trial court abused its discretion by resolving CalSTRS’s sovereign immunity defense on a sparse record without permitting jurisdictional discovery into CalSTRS’s ownership, control, and operational role regarding the Apartments. Francis argues she needed to undertake an examination of CalSTRS’s “structure, control, and financial responsibility” to develop her argument that CalSTRS was not functioning as an arm of the state.

This argument fails because Francis has not established that she propounded limited jurisdictional discovery to CalSTRS or that she even requested that the trial court permit it. In short, Francis does not argue that the trial court prevented her from taking any action with respect to discovery. CalSTRS filed its dismissal motion on February 4, 2025, the superior court conducted a hearing on the matter on June 30, 2025, and entered its order on July 25, 2025 — but at no point during these four months does it appear that Francis raised the issue of discovery. Accordingly, we find

that Francis waived this issue. Compare *Kolb v. Daruda*, 350 Ga. App. 642, 647(2) (829 SE2d 881) (2019) (when Kolb sought a ruling from the trial court to require personal jurisdictional discovery, she was not required to take additional steps to preserve her discovery rights). “Issues presented for the first time on appeal furnish nothing for us to review, for this is a court for correction of errors of law committed by the trial court where proper exception is taken.” *Crippen v. Outback Steakhouse Int’l, LP*, 321 Ga. App. 167, 170(1) (741 SE2d 280) (2013).

3. Finally, Francis argues that the trial court improperly dismissed the complaint with prejudice. Francis contends that the trial court’s dismissal both on the basis of lack of subject matter jurisdiction and defective service should have been without prejudice. First, the trial court explicitly recognized in its order that a dismissal on the grounds of improper service is without prejudice. So, there is nothing for us to review on appeal as to that claim. Nonetheless, we agree that the trial court’s dismissal on the basis of sovereign immunity should have been without prejudice.

A motion seeking dismissal of a claim based upon sovereign immunity arises from “the trial court’s lack of subject-matter jurisdiction, rather than the merits of the plaintiff’s claim.” *Fraser v. Glynn County*, 377 Ga. App. 662, 669(1)(c) (922 SE2d 825) (2025). In this case, because the trial court “dismissed the action based on a lack of subject matter jurisdiction, the dismissal is without prejudice.” *Maat Concepts*, ___ Ga. App. at ___ (2) (932 SE2d 825, 830) (2026). Accordingly, we vacate the court’s order dismissing with prejudice the complaint as to CalSTRS, and remand the case to the trial court with instructions to clarify that the dismissal on that ground was without prejudice. *Id.*; see also *Fraser*, 377 Ga. App. at 669(1)(c).

Judgment affirmed in part, vacated in part, and case remanded with direction.
Dillard P. J., and Pipkin, J., concur.