Court of Appeals
of the State of Georgia

ATLANTA, December 09, 2024

The Court of Appeals hereby passes the following order

A24A1466. AVALON MOBILE HOME PARK PARTNERSHIP, LLLP v. MICHELLE RAMIREZ et al .

The appellant's motion FOR PERMISSION TO FILE A SUPPLEMENTAL BRIEF in the above-styled case is hereby GRANTED. The supplemental brief shall be filed by 12/13/2024.

It is further ordered that the appellant's supplemental brief is to be limited as directed in Rule 27(a) and Rule 24(f).

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta, December 09, 2024.

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Christina Bailey Smith, *Clerk.*

IN THE COURT OF APPEALS
STATE OF GEORGIA

CASE NO. A24A1466

AVALON MOBILE HOME PARK PARTNERSHIP, LLLP

Defendant-Appellant,

v.

MICHELLE RAMIREZ, et al.,

Plaintiffs-Appellees.

MOTION TO FILE AMICUS CURIAE BRIEF ON BEHALF OF THE GEORGIA DEFENSE LAWYERS ASSOCIATION

On Behalf Of:

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Pursuant to Court Rule 26(b), the undersigned counsel, on behalf of The Georgia Defense Lawyers Association (the "GDLA") as *amicus curiae* request leave to file the amicus brief attached hereto as Exhibit 1. The undersigned request leave because the GDLA is submitting this brief in support of Appellant/Defendant in this matter and it is more than 10 days since Appellant filed its opening brief. However, the GDLA requests that the Court accept its brief to support fulsome consideration of the issues in this case. *See Ryan v. Commodity Futures Trading Comm'n*, 125 F.3d 1062, 1063 (7th Cir. 1997) (noting that amicus briefs should be allowed when the "amicus has an interest in some other case that may be affected by the decision in the present case . . . or when the amicus has unique information or perspective that can help the court").

WHEREFORE, the GDLA, as *amicus curiae*, request that the Court grant it leave to file the amicus brief attached to this motion as Exhibit 1.

Word Count Certificate:

This submission does not exceed the word count limit imposed by Rule 24.

Respectfully submitted this 28th day of October, 2024.

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On behalf of Amicus Curiae
The Georgia Defense Lawyers Association

CERTIFICATE OF SERVICE

I hereby certify that on October 28, 2024, in addition to filing same with the Clerk of Court, I served a true and correct copy of the foregoing document upon the following counsel by electronic mail and by U.S. mail, first-class postage prepaid, addressed to the parties below.

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EXHIBIT 1

IN THE COURT OF APPEALS
STATE OF GEORGIA

CASE NO. A24A1466

AVALON MOBILE HOME PARK PARTNERSHIP, LLLP

Defendant-Appellant,

v.

MICHELLE RAMIREZ,
individually and as administrator of the Estate of ISRAEL RAMIREZ,

Plaintiff-Appellee.

AMICUS CURIAE BRIEF OF THE GEORGIA DEFENSE LAWYERS ASSOCIATION IN SUPPORT OF DEFENDANT-APPELLANT AVALON MOBILE HOME PARK PARTNERSHIP, LLLP

On Behalf Of:

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STATEMENT OF INTEREST

The Georgia Defense Lawyers Association ("GDLA") is an association of more than 1,000 Georgia lawyers who engage in litigation, including solo practitioners and members of law firms of all sizes, primarily representing defendants in civil lawsuits. The GDLA offers its members a forum to discuss defense strategies, points of law, and emerging issues. Through this forum, the GDLA aims to elevate the standards of trial practice; to develop, establish, and secure court adoption or approval of a high standard of trial conduct and courtroom manners; to support and work for the improvement of the adversary system of jurisprudence in our courts; to work for the elimination of court congestion and delays in civil litigation; to promote the administration of justice; and to increase the quantity and quality of the service and contributions which the legal profession renders to the community, state, and nation.

The GDLA's lawyers practice in nearly every area of civil defense litigation and represent businesses in nearly every industry. In order to carry out its mission and represent the interests of its members' clients, the GDLA is committed to assisting the court by offering information and context which bear on significant cases. The case currently before this Court is one of those significant cases. It gives this Court an opportunity to clarify the distinction between the duties of care owed to licensees based on conditions of the property such as the presence of criminal

elements versus liability of the proprietor for active negligence. Such rulings would provide landowners, landlords, and tenants with much-needed guidance on the scope of their respective duties and rights in premises liability cases, which would not only benefit the clients of the GDLA's members, but all litigants in our court system.

INTRODUCTION

Plaintiff's decedent, Israel Ramirez, was fatally shot on the premises of Defendant Avalon Mobile Home Park Partnership, LLLP ("Avalon") as he tried to prevent a thief from stealing a car he had borrowed. It is undisputed that, at the time he was shot and killed, Ramirez had been residing in a mobile home on Lot A10 of Avalon with his brother, Gregorio, and his sister-in-law, Ana Aviles. It is also undisputed that Ramirez was not listed on the lease for Lot A10, as Gregorio and Ana were, which is contrary to Avalon's requirements. Indeed, it is undisputed that Ramirez resided at the property against the will of the landlord, who repeatedly told Gregorio and Ana that Ramirez must leave.

After Ramirez's death, his daughter sued the landlord for premises liability. But Plaintiff did not prove, and did not even allege, that Avalon committed any act of active negligence against Ramirez. Moreover, the GDLA submits that Avalon cannot be liable for a breach of the duty of ordinary care imposed by O.C.G.A. § 51-3-1 because that form of liability requires proof that Ramirez was an invitee,

as opposed to a mere licensee (or a trespasser)—a conclusion belied by the undisputed facts of this case. *Compare* O.C.G.A. § 51-3-1 (addressing duty of "ordinary care" owed to invitees), with O.C.G.A. § 51-3-2(b) (defining duty owed to licensees as refraining from inflicting "willful or wanton injury).

In *Cham v. ECI Mgmt. Corp.*, 311 Ga. 170, 856 S.E.2d 267 (2021), the Georgia Supreme Court touched on the question of when proof of invitee status is even relevant to a personal injury claim arising in the landlord/tenant context. But *Cham*—though providing some helpful guidance by holding that labels of "invitee" or "licensee" do not come into play where the injury is caused by a hazard created by the tenant inside a residence—did not reach the precise issue present in this case, which is the significance of invitee status where the injury was inflicted by third-party conduct at a common area at the landlord's property.

Accordingly, the GDLA, as *amicus curiae*, urges this Court to make three explicit rulings in this appeal to clarify the parameters of premises liability in this state. ***First***, the Court should acknowledge that the Georgia Code distinguishes between the duties owed to invitees and those owed to licensees in cases where liability is based on a "static" condition of the property (i.e. "premises liability"), as opposed to the active negligence of the proprietor where the invitee/licensee distinction is not relevant. ***Second***, the Court should reinforce prior case law under which the existence of third-party criminal activity at the premises is considered a

"static" condition of the property such that the distinction between an invitee and licensee is critical, given the lesser duty owed to a licensee. ***Third***, the Court should hold that, as a matter of law, an individual like Ramirez who undisputedly resided at the premises against the will of the landlord cannot be considered an invitee and is entitled to only a lesser duty of care.

In recent years, the premises liability caselaw has been muddied, as courts have incorporated the ordinary-care standard applicable to cases of *active negligence* to premises liability cases involving third-party criminal activity, which is considered at most *passive negligence* and thus—by statute—requires application of the lesser standard of care where the injured person was not an invitee. It is time for a course correction, and this appeal presents an opportunity for this Court to reassert the distinction between these two lines of caselaw.

Indeed, in its order denying Avalon's post-trial motion in this case, the trial court conflated these duties, stating that a landlord must exercise *ordinary care* to keep even a *licensee* safe from third-party criminal activity on the property. *See* Order at 6. Thus, this case presents an ideal opportunity for this Court to make clear that, in premises liability cases governed by O.C.G.A. § 51-3-2(b)—addressing the duty owed to licensees on the premises—a landlord does not have a duty to exercise "ordinary care" to protect someone who stays at the premises against the will of the proprietor from third-party criminal conduct.

ARGUMENT AND CITATION TO AUTHORITY

I. The Georgia Code distinguishes between the duties owed to invitees and those owed to licensees in cases where liability is based on a "static" condition of the property (i.e. "premises liability"), as opposed to the active negligence of the proprietor where the invitee/licensee distinction is not relevant.

A. The Georgia Code articulates the duties owed to visitors in premises liability cases, making clear that licensees are owed a lesser duty than the duty owed to invitees.

In premises liability cases, the duty owed by a landowner to visitors depends on whether the person entering the property is an invitee, a licensee, or a trespasser, which duties are codified in O.C.G.A. §§ 51-3-1, 51-3-2, and 51-3-3, respectively. *Cham,* 856 S.E.2d at 271; *see also Manners v. 5 Star Lodge and Stables, LLC*, 347 Ga. App. 738, 740 (2018) ("The elements of legal liability of the owner of premises for injuries occasioned to persons thereon vary according to whether the person injured was, at the time of the injury, a trespasser, a licensee, an invitee express or implied, or a person standing in some special relation recognized by law."). An owner or occupier of land is liable to invitees "for injuries caused by his failure to exercise ordinary care in keeping the premises and approaches safe." O.C.G.A. § 51-3-1. By contrast, a landowner "owes a *lesser* duty—to avoid causing willful or wanton injury—to a licensee." *Manners,* 347 Ga. App. at 740 (emphasis added); *see also* O.C.G.A. § 51-3-2(b) ("The owner of [a] premises is liable to a licensee only for willful or wanton injury."). Likewise, a landowner

owes no duty of care to a trespasser "except to refrain from causing a willful or wanton injury." O.C.G.A. § 51-3-3.

"This statutory liability for willful or wanton injury to licensees means that the landowner or occupier of the premises owes a duty to a licensee only to avoid knowingly letting him run upon a hidden peril or willfully causing him harm." *Esposito v. Pharr Court Assocs*., L.P., 334 Ga. App. 434, 437 (2015). "Willful conduct is based on an actual intention to do harm or inflict injury; wanton conduct is that which is so reckless or so charged with indifference to the consequences . . . [as to be the] equivalent in spirit to actual intent." *Ivy v. Ford Motor Co*., 646 F.3d 769, 773 (11th Cir. 2011) (applying Georgia law to reject contention that evidence showed willful or wanton conduct).

"[A] property owner has no duty to a licensee to keep his or her premises up to <u>*any*</u> standard of safety, except that it must not contain pitfalls, mantraps, and things of that type." *Rogers v. Woodruff*, 328 Ga. App. 310, 313 (2014) (emphasis added). "[A] mantrap or pitfall is a contrivance so dangerous in character as to imply a disregard of consequences or a willingness to inflict injury, for example, a vending machine booby-trapped with dynamite to discourage theft." *Id*. "Examples of mantraps or pitfalls include spring guns, traps deliberately set to do injury, or other perils which have been hidden by an owner intending to inflict injury." *Aldredge v. Symbas*, 248 Ga. App. 578, 580 (2001).

B. The premises liability distinction between invitees and licensees is not relevant in cases involving "active negligence."

As *Cham* observed, "O.C.G.A. § 51-3-1 *et seq.* is not the only source of a landowner's liability for injuries occurring on the property the landowner occupies; *this statutory framework concerns the 'condition of the premises,' and it does not apply to cases of 'active negligence.*'" *Cham,* 856 S.E.2d at 273 n.6 (emphasis added) (citing *Lipham v. Federated Dep't Stores*, 263 Ga. 865, 865 (1994)); *see also Byrom v. Douglas Hosp., Inc.*, 338 Ga. App. 768, 771-72 (2016) ("Liability is determined under the framework of premises liability only if an injury is caused by a condition of the premises over which the premises owner/occupier has some degree of control, such as a static condition or passive defect.").

If an injury is caused by the active negligence of the owner/occupier or its employee, ordinary negligence principles of ordinary care will apply. *Byrom,* 338 Ga. App. at 772. When that is the case, whether the visitor is an invitee or licensee is "irrelevant." *Lipham,* 263 Ga. at 865; *see also Byrom,* 338 Ga. App. at 772 ("Simply stated, the duty concerning a condition of the premises is distinct from a breach of duty that constitutes active negligence.").

II. The existence of criminal activity at the premises is considered a "static" condition of the property; thus, the licensee/invitee distinction is critical to the determination of premises liability because, in these cases, the proprietor owes licensee a lesser duty than is owed to invitees.

The GDLA urges this Court to make an explicit ruling, already supported by Georgia law, that a premises owner's alleged negligence in failing to prevent harm from third-party criminal conduct in the common areas of the premises is considered a "static" condition of the property, rendering it passive rather than active negligence. *See Brownlee v. Winn-Dixie Atlanta, Inc*., 240 Ga. App. 368, 369 (1999); *see also Nicholson v. Stonybrook Apts., LLC*, 154 So.3d 490, 494 (Fla. Dist. Ct. App. 2015) (holding negligent security cases sound in premises liability and passive negligence because "negligent security actions concern the landowner's failure to keep the premises safe and secure from foreseeable criminal activity [and therefore] they fall under the umbrella of premises liability as opposed to ordinary negligence."). Indeed, the Supreme Court in *Cham* – a negligent security case – expressly noted that the statutory framework for premises liability cases (i.e. the status of the injured party) applied in that case. 856 S.E.2d at 273 n.6. *Cham* also clarified that the status of "invitee" or "licensee" was simply not relevant if the dangerous condition existed inside the tenant's apartment rather than at a common area possessed by the landlord because the landlord/tenant statute, O.C.G.A. § 44-7-14, would govern that scenario.

Georgia law already recognizes that a defendant-landowner does not engage in "active negligence" just because a plaintiff who happens to be on the defendant's property is injured by a third party. *See Brownlee,* 240 Ga. App. at 369 ("If a third party's misconduct causes injury to a plaintiff while on the premises," the concept of "active negligence . . . does not apply."). This is because the theory of liability for third-party conduct is premised on the notion that a third party takes advantage of the defendant's passive negligence. *See S. Bell Tel. & Tel. Co. v. Whiddon*, 108 Ga. App. 106, 109 (1963) (defining "passive negligence" as negligence that is "harmless unless something further occurs"); *see also GM Corp. v. Jenkins*, 114 Ga. App. 873, 880 (1966) (Deen, J. dissenting) (defining "passive or static negligence" as conduct that is "harmless in itself" and "merely furnishe[s] a condition on which a later act of negligence acts to effect the harm.").

Because negligent security cases involving third-party criminal activity are considered "passive negligence" cases involving a static condition of the property, the distinction between invitees and licensees is critical because, in those cases, the proprietor—by statute—owes licensees a lesser duty than owed to invitees. *See Manners,* 347 Ga. App. at 740; O.C.G.A. § 51-3-1; O.C.G.A. § 51-3-2(b). [1]

[1] It should be noted that the standards recently enunciated by the Georgia Supreme Court in *Georgia CVS Pharmacy, LLC v. Carmichael,* do not address this distinction because *Carmichael* involved plaintiffs who were indisputably invitees on the subject properties. 316 Ga. 718, 719 (2023).

Thus, to be liable for harm to a licensee arising from passive negligence, such as a failure to provide additional security or failing to warn of potential third-party wrongdoing, the plaintiff has the burden of proving "willful or wanton conduct" with evidence that (1) the landowner wanted the plaintiff to suffer harm from the third-party wrongdoing (which would be akin to setting a mantrap), *see Harrison v. Plant Improvement Co*., 273 Ga. App. 884, 887 (2005) (explaining that when a licensee's claim involves a "static or passive condition," that condition "must have been placed with the intent of doing harm . . . to give rise to liability"); or (2) the failure to provide additional security or warn of potential third-party wrongdoing was so reckless as to be the "equivalent in spirit to actual intent." *See Ivy*, 646 F.3d at 773.

For many years, Georgia courts recognized this distinction. For example, 30 years ago the Georgia Supreme Court held that where a static condition is involved—as opposed to active negligence—the landowner owes those who are not invitees only a lesser duty, a duty that is below the duty of "ordinary care." *See Trammell v. Baird,* 262 Ga. 124, 125-26 (1992) (involving a juvenile who was riding a motorcycle on the defendant's premises without permission when he collided with a covered cable gate and died). And the Court distinguished the cases cited by plaintiffs by pointing out that, in those cases, "the defendants committed an act of active negligence." *Id.*

Until about 10 to 15 years ago, this Court generally followed the active versus passive distinction set by the Georgia Supreme Court. *See Ga. DOT v. Thompson*, 270 Ga. App. 265, 270 (2004) ("[Appellee] cites the principle that 'it is usually willful or wanton not to exercise ordinary care to prevent injuring a person who is actually known to be, or may reasonably be expected to be, within the range of a dangerous act being done [by the defendant] or a hidden peril on one's premises.' This principle, though correctly quoted, does not apply to injuries arising from a dangerous static condition."); *Moore-Sapp Inv'rs v. Richards*, 240 Ga. App. 798, 799-800 (1999) ("The principle relied upon by the trial court in holding that 'it is usually willful or wanton not to exercise ordinary care' has some validity. But it . . . does not apply when the alleged negligence arises from static or passive conditions."); *Atl. Steel Co. v. Cleaton*, 52 Ga. App. 502, 506 (1936) ("A well-defined distinction runs through the cases, between injuries caused by a dangerous statical condition and premises where dangerous active operations are being carried on.").

The trial court here relied on *Bethany Group,, LLC v. Grobman,* a 2012 decision from this Court, to conclude that "if a danger [from third-party criminal activity] to a licensee is known and foreseen by the owner, then the owner must exercise ordinary care and diligence to protect the licensee from the peril." (Order at 6). It is true that *Bethany* stated this principle, *see* 315 Ga. App. 298, 300–01

(2012), and that *Bethany* involved a victim/decedent who was found shot to death in his taxi in front of the defendant's apartment complex. But this statement was mere dicta – given without any analysis of the limited duty owed to licensees or the distinction between active and passive negligence. Rather, the actual holding of the Court of Appeals in *Bethany* is an affirmance of the denial of summary judgment because a fact issue remained as to entrant status. *Id.* at 299-300 (holding that "the facts presented at summary judgment render it impossible to determine whether [the decedent]" was an invitee or licensee).

In a later case, a panel of this Court, in affirming the denial of a defendant landowner's post-trial motions, held that there was sufficient evidence that the defendant was "willful or wanton" in failing to take "ordinary care" to warn a licensee of the "frequent" criminal activity on its premises of which it arguably had knowledge. *Khalia, Inc. v. Rosebud*, 353 Ga. App. 350, 354 (2019) (physical precedent only). But the Court of Appeals' analysis relied solely on cases involving active negligence. Moreover, the *Bethany* and *Khalia* decisions predate the Georgia Supreme Court's 2021 decision in *Cham,* which clarified that negligent security cases pertaining to the common areas of the property involve conditions of the premises, such that the premises-liability statutory framework applies, *not* the active negligence standard. *Cham*, 856 S.E.2d at 273 n.6.

The trial court here erred by conflating the duties owed to invitees and licensees in a premises liability case not involving active negligence—thereby overriding the plain terms of the Georgia Code as well as precedents of the Georgia Supreme Court, *see Atl. Coast Line R. Co. v. O'Neal*, 180 Ga. 153, 154 (1934), and other decisions of the Court of Appeals, such as *Brownlee*, 240 Ga. App. at 369. This Court, therefore, should reassert the distinction between (1) the duty proprietors owe in cases involving active negligence, and (2) the duties proprietors owe in premises liability cases that involve passive negligence, and which duties are triggered by the status of the entrant. Furthermore, this Court should make explicit that, under *Cham*, cases involving alleged negligence in failing to prevent harm from third-party criminal conduct in the common areas of the premises is considered a "static" condition of the property, rendering it passive rather than active negligence.

III. As a matter of law, an individual like Ramirez who undisputedly resided at the premises against the will of the landlord cannot be considered an invitee and is entitled, at most, to only the lesser duty of care owed to a licensee.

A person is accorded invitee status under Georgia law when the owner or occupier of land "induces or leads" him to enter the premises "by express or implied invitation" for any lawful purpose. O.C.G.A. § 51-3-1. To be "invited" means to "entice" another to "enter, remain on, or use [a] property." *Invitation,* Black's Law Dictionary, (12th ed. 2024).

To be an invitee, the person's presence on the property must be of "mutual benefit to both him and the landowner." *Cham,* 856 S.E.2d at 272. Even for an implied invitation, there must be some showing that the owner did something or permitted something to be done which fairly indicated to the entrant that his entry and use of the property "is consistent with the intents and purposes of the landowner." *Sanderson Farms, Inc. v. Atkins*, 310 Ga. App. 423, 425 (2011); *see also Cham,* 856 S.E.2d at 272 ("[T]he determining question as to whether a visitor is an invitee by implication or a licensee is whether or not the owner or occupant of the premises will receive some benefit, real or supposed, or has some interest in the purpose of the visit."). "Mere permission to enter the premises creates the relation of licensee; *invitation*, express or implied, is necessary to create the more responsible relation [of invitee] and the consequent higher duty upon the owner or proprietor." *Venable v. Langford*, 116 Ga. App. 257, 259 (1967) (emphasis added).

Here, it is undisputed that Ramirez resided at Lot A10 against Avalon's will. The record shows that Avalon sent four written notices of violation to Gregorio and Ana for having an unauthorized person, Ramirez, residing with them, in addition to verbal declarations to the same effect. (V2- 460, 462, 464, 468, 2718-2721; V12-275, 277, 278, 304, 308; V13-344, 345, 346, 446.) Each notice of violation directed Ramirez to vacate, and Gregorio and Ana informed Ramirez of these notices. (V2-2718-2721.) Just weeks before the shooting, Avalon's manager

sent text messages to Ms. Aviles saying she wanted to, once again, address Ramirez's unauthorized residency. (V12-309, 309; V13-349, 350; V2-2722.)

Avalon did not extend any invitation – express or implied – to Ramirez. Indeed, the opposite is true – Avalon wanted him gone, and his continued presence there was against the landowner's express wishes. While Plaintiff argues that Avalon supposedly benefited from Ramirez's presence on the premises, which she argues supports his status as an invitee, *Cham* makes clear that, to be an invitee, this is only part of the equation. In addition to a benefit flowing to the landowner, there must be some evidence of an invitation – or at least an implied authorization – for that person to reside on the premises. *Cham*, 856 S.E.2d at 277-78 (explaining that there was evidence in that case of invitee status because the landowner "expressly (or at least implicitly) authorized [the decedent] to reside on the premises," and "that this permission ***directly*** benefited the [landowner]."") (emphasis added). Ramirez cannot meet the first prong here. He was not "implicitly authorized" to live at Avalon where the landowner sent repeated notices to its tenants that Ramirez should vacate. In such cases, courts need not even decide the "benefit" question because the individual cannot be an invitee as a matter of law (though the evidence fails to show Avalon "directly" benefited from Ramirez's presence but rather that Ramirez presented a harmful presence).

Avalon's clear expression of its position that Ramirez was not welcome to continue residing at the premises makes this case different from cases like *Cham* and others where the landlord implicitly or tacitly consented to the individual's presence. *See Cham*, 856 S.E.2d at 277-78; *Pollard v. Deloach*, 903 S.E.2d 329, 331 (Ga. Ct. App. 2024) (finding that injured plaintiff was an invitee for premises liability purposes where she was not listed on the lease but apartment management company was aware that plaintiff lived in the apartment and "*had raised no objection to her doing so*") (emphasis added).

The trial court held that the jury might have properly considered Ramirez an invitee due to "Defendant's acquiescence of Ramirez on its property" (Order at 6), but "[a]cquiescence is not invitation." *Leonard v. Est. of Schmidt*, 2024 WL 2011305, at *4 (Md. Ct. Spec. App. May 7, 2024). As the Restatement (Second) of Torts explains, invitation is "essential" to establish invitee status. Restatement (Second) of Torts § 332 (1965). "An invitation differs from mere permission in this: an invitation is conduct which justifies others in believing that the possessor *desires them* to enter the land; permission is conduct justifying others in believing that the possessor is willing that they shall enter if they desire to do so." *Id.* (emphasis added). "Mere permission, as distinguished from invitation, is sufficient to make the visitor a licensee . . . but it does not make him an invitee, even where his purpose in entering concerns the business of the possessor." *Id.* This is a

critical distinction that has been recognized by courts both within and outside Georgia. *See, e.g.*, *Brooks v. Logan*, 134 Ga. App. 226, 227–28 (1975) (finding that landowner's previous "acquiescence" to child entering the premises on prior occasions did not convert her presence at the time of injury from that of trespasser or licensee to that of an invitee because the child "was clearly not an invitee by express or implied invitation"); *Leonard*, 2024 WL 2011305, at *4 ("At most, acquiescence changes the status of the trespasser to that of bare licensee. . . . For an entrant to acquire a status greater than that of a bare licensee, there must be more than passive acceptance by the property owner; there must be some form of inducement or encouragement." (cleaned up)); *Olivier v. Snowden*, 426 S.W.2d 545, 550 (Tex. 1968) (where landowner erected scaffolding for its own use and permitted others, including plaintiff, to use it, plaintiff was at most "using and occupying the scaffold by acquiescence and not by invitation. Permission is not sufficient to turn the scale in favor of Snowden's status being that of an invitee."); *see also* 65A C.J.S. Negligence § 501 ("One whose invitation to enter premises has been withdrawn does not occupy the status of an invitee if he or she subsequently enters.").

Thus, the GDLA urges this Court to hold that individuals like Ramirez who reside at the premises against the will of the landowner cannot be considered an invitee as a matter of law and are, at most, licensees. Furthermore, as a licensee in

a premises liability case, landowners owe such individuals a lesser duty of care and are liable to them "only for willful or wanton injury." O.C.G.A. § 51-3-2(b).

CONCLUSION

GDLA respectfully submits that this Court should clarify the three points of premises liability law described above and reverse the judgment against Avalon.

Word Count Certification:

This submission does not exceed the word count limit imposed by Rule 24.

Respectfully submitted this 28th day of October, 2024.

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On behalf of Amicus Curiae
The Georgia Defense Lawyers Association

CERTIFICATE OF SERVICE

I hereby certify that on October 28, 2024, in addition to filing same with the Clerk of Court, I served a true and correct copy of the foregoing document upon the following counsel by electronic mail and by U.S. mail, first-class postage prepaid, addressed to the parties below.

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