

# **Defendant's Brief in Support of Their Motion for Summary Judgment**

COME NOW Defendants and hereby file this Brief in Support of their Motion for Summary Judgment. Defendants show herein that they are entitled to judgment as a matter of law and show the Court as follows:

## **Statement of Facts**

On October 27, 1997, Anthony Britt was shot and killed by Antonio Bernard Colton ("Colton") on the premises of the the Defendants' Apartments. The mother of Anthony Britt and administrator of his estate, Youlon Britt, sued the above-named Defendants for his death. Additionally, Erica Johnson, the ex-girlfriend and mother of Anthony Britt's son, Anthony Britt Jr., has also joined suit (hereinafter collectively referred to as "Plaintiffs")(See Plaintiffs' Complaint). While Anthony Britt did not reside at the apartment complex, his younger sister, Valerie Britt, resided in Apartment 8-D with her two children. Colton was the boyfriend of Valerie Britt and father of Valerie Britt's two children.

Valerie Britt knew Colton was violent, and the two "used to fight all the time." In fact, Colton drew a pistol on her when she was eight months pregnant with his own son. Additionally, Colton threatened Valerie Britt two months before this shooting incident at the apartment complex and informed her he was "going to kill" her. She informed a security officer, and the police arrived. Although the resident manager recalls she received an incident report regarding this altercation three weeks later, the report did not reveal the names of either Colton or Valerie Britt nor detail what the incident was about. Valerie Britt informed Colton not to visit her at the apartment complex and he still returned to the property. Although Valerie Britt claims to have reported Colton's violence to the police and the apartment management on several occasions, the management knew nothing of their previous altercations nor has any record of the same. However, Valerie Britt's mother, Youlon Britt, stated Colton "used to beat on my daughter all the time." Colton had a reputation for violence among the apartment complex residents, and occasionally carried a pistol.

On Saturday, October 25, 1997, Colton returned to Valerie Britt's apartment and "pulled a gun" on both Valerie and Anthony Britt in front of Apartment 8-D because Colton did not want any other men, particularly Valerie's new boyfriend, around Valerie and their children. Colton pushed Valerie Britt, and she pushed him

back. Anthony Britt "told [Colton] to stop." At that point, Colton "pulled the gun and cocked" it directly at Anthony Britt, but it did not fire. Colton then left the property by jumping the security fence. According to Valerie Britt, a number of people witnessed this incident. Anthony Britt informed his own mother, Youlon Britt, that Colton had "pulled a gun on him" on Saturday evening, October 25th, but the gun had jammed. Valerie Britt also relayed the same story to her mother as well. However, no one - including Anthony, Valerie, or Youlon Britt - took any action after Colton's failed attempt on Anthony Britt's life, nor called the police or the apartment security to report the shooting attempt.

On October 27, 1997, Colton returned to the apartment complex, accompanied by Orlando Jackson and Eric Roberts, and Valerie Britt recalls seeing him on the property around 6:00 p.m. near Apartment 11. Valerie Britt did nothing after realizing Colton had returned to the apartment complex. Anthony Britt arrived at his sister's apartment sometime later in the evening. Some three hours later, at approximately 9:00 p.m., Valerie Britt *again* saw Colton standing outside Apartment 11 and finally informed her brother that Colton was on the premises. Anthony Britt did "nothing" in response to this information, and went to his girlfriend's apartment downstairs instead. Approximately forty-five (45) minutes ensued between the time Valerie Britt informed her brother that Colton was on the apartment complex premises and when her brother was shot and killed. During that time, neither Valerie nor Anthony Britt called the police nor the apartment complex security to inform them Colton had returned to the apartment complex and potentially posed a threat to either of them.

As Colton was leaving the apartment complex, Chris Echols followed him on foot, and Anthony Britt followed in his car and parked it on the side of the road. Echols walked over to a grassy area on the property and inquired what Colton was doing. Colton responded that he was going to "bust one of y'all mother fuckers." At that point, Anthony Britt exited his vehicle and began telling Echols to "come on." As Anthony was getting out of his vehicle, Colton pulled a pistol out and started shooting, firing the gun four or five times, hitting Anthony Britt in the back. Anthony Britt later died at the hospital from his wounds. After the shooting, Colton remained on the scene momentarily, but took off running after Orlando Jackson told him to run and "get rid of the gun." Valerie Britt immediately called 911 from her apartment, but the police could not find Colton on the the apartment complex premises.

The apartment complex is subsidized housing owned by one of the Defendants. The apartment complex initiated extensive security measures on the premises in response to crime occurring on the property and the surrounding areas. Beginning in August of 1996, the apartment complex instituted a security service

at the entrance of the complex - a security guard was present 24 hours per day, 7 days a week to monitor access to the apartment complex. Defendant Security provided security services to the apartment complex beginning in September, 1997, and was employed at the apartment complex on October 27, 1997. Additionally, the apartment complex issued picture identification cards to all residents over the age of 12, and residents were asked to show their ID card to security in order to return to their apartments. Residents and non-residents alike were required to "sign-in" after 11 p.m. in order to enter the property. The apartment complex constructed a six-foot fence with barbed wire around the perimeter of the complex beginning in late 1996 and completed in early 1997 from the proceeds of a HUD grant. The complex installed six (6) security cameras around the apartment buildings in 1997 as well.

Beginning in approximately 1992, the apartment complex drafted and distributed to security, police, and all the apartment complex residents a "banned list" of individuals prohibited from entering the apartment complex for their crimes and disturbances on the premises. If a resident or non-resident was caught dealing drugs or involved in a shooting incident on the premises, they were put on the list. The management placed several individuals on the banned list and security guards employed on the property also placed individuals on the banned list. A banned list was in existence on the date Anthony Britt was killed. Eric Roberts was on the banned list, but also on the security sign-in sheet at the entrance to the apartment complex on October 27, 1997. Security signed Roberts in, but apparently didn't check the banned list. However, Valerie Britt does not know if Colton was on the banned list, and never saw the banned list itself, and the manager cannot recall if Colton's name was on the banned list either. There is no evidence that Colton was on the banned list at any time.

Prior to this incident, approximately five different shooting incidents were reported on the apartment complex premises between 1992 and 1997. The manager recalls a tenant was shot in the eye in April of 1995 by a visitor. The same year, a vehicle entered the apartment complex premises and fired shots at a building, and a bullet was found lodged in a mattress. A "drive-by" shooting on the complex led to the death of Aretha Ellison in August, 1996 after a stray bullet went through the walls of her apartment. After an argument ensued at a nearby bar, two patrons chased one another into the apartment complex complex, open fired, and one of the bullets hit Ellison in the back. In September of 1996, Marvin Williams was shot in the leg after he got into an argument with another individual on the property. Neither Williams nor the shooter were residents of the apartment complex. On October 1, 1996 Kelsey King, a non-resident, was shot in the arm after an argument ensued between King and another non-resident. According to the manager, if two individuals had an incident

on the apartment complex premises, management would only know about it "if someone that lives there told them about it" or "filed a security report." There were no shootings on the property between the time the new security fence, gate, and cameras were installed and the time of the Britt shooting.

### **Standard of Review**

To prevail on a Motion for Summary Judgment pursuant to O.C.G.A. '9-11-56(c), the moving party must demonstrate that there are no genuine issues of material fact, and the disputed facts, viewed in a light most favorable to the non-moving party, warrant judgment as a matter of law. If the record reveals there is no evidence sufficient to create a genuine issue as to any essential element of the plaintiff's claim, his claim tumbles like a house of cards. @ Lau's Corp. v. Haskins, 261 Ga. 491, 405 S.E.2d 474 (1991). Defendants have no burden on summary judgment beyond demonstrating a lack of genuine issue of fact on any essential element of plaintiffs' claims. Id. It is the duty of each party at summary judgment to present their case in full, or risk judgment going against them. Sharfuddin v. Drug Emporium, 230 Ga. App. 679, 681, 498 S.E.2d 748 (1998), cert. denied.

The record before the Court on Defendants' Motion for Summary Judgment is completely void of any evidence demonstrating a genuine issue of material fact as to the Defendants' liability for the Plaintiffs' injuries:

A plaintiff may not claim inadequate security and avoid summary judgment by simply pointing to his injuries as evidence that the landowner failed to take reasonable precautions to protect him. Plaintiff is required to come forward with evidence sufficient for a reasonable jury to conclude that the owner failed to take reasonable steps to protect him against injury.

Reid v. August-Richmond Coliseum Authority, 203 Ga. App. 235, 237-38, 416 S.E.2d 776, 779 (1992), cert. denied. For the reasons below, Defendants are entitled to summary judgment as a matter of law under '9-11-56.

### **ARGUMENT AND CITATION OF AUTHORITY**

1. The apartment complex exercised ordinary care in maintaining security for the apartment complex

The general rule in Georgia is that a landlord does not ensure a tenant's safety against third-party criminal attacks, and any liability from such attacks must be predicated on a breach of duty to exercise ordinary care in keeping the premises and approaches safe. @ Traicoff v. Withers, 247 Ga. App. 428, 544 S.E.2d 177 (2000).

Beginning in August of 1996, the apartment complex instituted a security service at the entrance of the complex - a security guard was present 24 hours per day, 7 days a week to monitor access to the apartment complex.. However, there is no standard of care which required Defendants to have a security officer at the entrance of the apartment complex. The presence of a security officer on the property does not somehow create a duty where none existed before. See Ritz Carlton Hotel Co. v. Revel, 216 Ga. App. 300, 454 S.E.2d 183 (1995), cert. denied. There is no evidence in this case that the security company increased any danger posed to Anthony Britt by Colton, or misled Britt into believing Colton was not or would not be on the apartment complex premises. Ritz Carlton Hotel Co. v. Revel, 216 Ga. App. at 304. See Lau's Corp. v. Haskins, 261 Ga. 491, 405 S.E.2d 474 (1991); Grandma's Biscuits v. Baisden, 192 Ga. App. 816, 386 S.E.2d 415 (1989). In fact, Anthony Britt knew Colton was on the property earlier the evening of the shooting because his sister had told him so. In addition, Anthony Britt knew, before he confronted Colton on October 27, that Colton had, just two days before on the same property, been armed with a handgun with which he had tried to shoot Britt.

The apartment complex exercised the appropriate standard of care in keeping the premises safe, and went above and beyond this duty by utilizing several security precautions, including fences, security guards, and ID cards. The apartment complex issued picture identification cards to all residents over the age of 12, and residents were asked to show their ID card to security in order to return to their apartments. Residents and non-residents alike were required to "sign-in" after 11 p.m. in order to enter the property. The apartment complex also constructed a six-foot fence with barbed wire around the perimeter of the complex beginning in late 1996 and completed in early 1997 from the proceeds of a HUD grant. The complex installed six (6) security cameras around the apartment buildings in 1997 as well.

The apartment complex also instituted the banned list to keep certain individuals off the property for various reasons. Valerie Britt does not know if Colton was on the banned list, and never saw the banned list itself. The manager cannot recall if Colton's name was on the banned list either. There is no evidence that Colton was on the banned list. Clearly, the apartment complex met or exceeded all applicable and relevant standards of care in the protection of its tenants, and Defendants cannot be held liable for the unforeseeable

(at least to the apartment complex) criminal actions of Antonio Colton. **There is no evidence that the apartment complex breached any applicable standard of care.**

2. The apartment complex did not have a duty to protect against the altercation in question because it had no knowledge of a prior substantially similar incident on the premises

In order for a premises owner to be held liable for an injury to a tenant or resident, the incident causing the injury must be substantially similar in type to the previous criminal activities occurring on or near the premises so that a reasonable person would take ordinary precautions to protect his customers or tenants against the risk posed by that type of activity. @ Sturbridge Partners, Ltd. v. Walker, 267 Ga. 785, 482 S.E.2d 339 (1997); FPI Atlanta, LP, v. Seaton, 240 Ga. App. 880, 524 S.E.2d 524 (1999). Thus, a landlord's duty to exercise ordinary care to protect tenants against third-party criminal acts extends only to *foreseeable* acts. Id. at 785-786. A prior incident does not have to be identical; all that is required for a crime to be "substantially similar" is if a prior incident attracts the attention of a premises owner to a **dangerous condition** which indeed results in the litigated incident.

A premises owner's duty to guard against crime generally arises when he has reason to anticipate criminal acts due to prior experience with substantially similar types of crime. An owner is under no affirmative duty to conduct research with local police to determine if crimes have been committed on his property. For example, in Habersham Venture, Ltd. v. Breedlove, 244 Ga.App. 407, 535 S.E.2d 788 (2000), several night club patrons sued a night club and its owner for injuries they sustained during after an attack in the night club parking lot after leaving the club. After the plaintiffs left the club and walked into the parking lot, several men made derogatory comments to a female plaintiff. Plaintiffs responded with profanities, but returned to their parked vehicle nearby. Moments later, one of the assailants stabbed a plaintiff in the back of his head and another plaintiff retrieved an aluminum softball bat from the vehicle's trunk and engaged in a violent altercation which left both parties injured. Plaintiffs claimed the insufficient lighting in the parking lot and lack of security guards could have prevented their injuries. However, the Court of Appeals determined that the night club was unaware of any reports of either personal or property crimes on the premises. Id. at 410. The Court noted that a property owner is under no obligation to investigate police files to determine whether

criminal activities have occurred on his property,@ and affirmed summary judgment for the night club and its owner. Id. (citing SunTrust Banks. v. Killebrew, 266 Ga. 109, 464 S.E.2d 207 (1995)).

A premises owner does not have a duty to protect and prevent a resident or invitee from an *unforeseeable* criminal attack from an individual known to the resident. In Traicoff v. Withers, 247 Ga. App. 428, 544 S.E.2d 177 (2000), the wife of a man killed by another tenant after a quarrel at the apartment complex where both parties lived sued the owner and manager of the apartment complex for failing to exercise due care in protecting the decedent from a violent attack by the other tenant. The Georgia Court of Appeals reversed a trial court's denial of summary judgment for the defendant owner and manager of the apartment complex, holding the defendants had no duty to intervene or warn of an impending violent attack by the other tenant because the private altercation between the two tenants was completely unforeseeable. The plaintiff failed to demonstrate the defendants knew the assailant had violent propensities because the exercise of ordinary care does not impose a duty to anticipate unlikely, remote, or slightly possible events.@ Id. (quoting Mills v. Jack Eckerd Corp., 224 Ga. App. 785, 482 S.E.2d 449 (1997)).

A premises owner will not be liable for the unforeseen criminal attacks against a tenant by a *non-resident* as well. In Camelot Club Condominium Assoc. v. Bonner, 207 Ga. App. 634, 428 S.E.2d 625 (1993), cert. denied, the plaintiff, a condominium resident who was raped by an off-duty police officer she had previously dated, sued the condominium resident and security officer attending the gate, alleging both were negligent in failing to follow condominium rules regarding entry of the premises by non-residents. The police officer visited the plaintiff on numerous occasions without incident, and the security officer at the gate knew he was a police officer, and was dating the plaintiff. Accordingly, the security guard permitted him to enter the complex on several occasions without the express permission of the plaintiff, including the night of the incident. After the guard permitted the police officer to enter the premises, he went to the plaintiff's unit, kicked in her door and raped her. The Court of Appeals reversed the trial court's denial of summary judgment for the condominium association and the security officer because the intervening criminal actions of this off duty police officer were not reasonably foreseeable - there was no evidence the plaintiff ever informed anyone of any prior abuse, nor were there any prior incidents similar to this particular assault at the condominium association.

Although approximately five different shooting incidents were reported on the apartment complex premises between 1992 and 1997, each were completely distinct from one another and from the October 27<sup>th</sup>

shooting death of Anthony Britt. While the shooting of Anthony Britt did occur on the premises of the apartment complex as other previous shootings and all incidents occurred within approximately five (5) years, his death did not occur under similar circumstances and conditions, and was not similar in nature. There is no evidence of any shooting or violent assault occurring after the additional security measures (fence, gate, cameras) were in place and operational and before the Britt shooting. Although Britt's sister informed him that Colton - the man who almost killed him only two days before - was on the premises, Anthony Britt did "nothing" in response to this information, and went to his girlfriend's apartment downstairs instead. Approximately forty-five (45) minutes ensued between the time Valerie Britt informed her brother Colton was present and when her brother was shot and killed. Anthony Britt was killed by an individual who threatened his life only two days before, and was known to be extremely dangerous to Britt. This was not a drive-by shooting where an innocent bystander was shot and killed, as in the case of Arthea Ellison. Nor was this a heated argument which led to the shootings injuries of Marvin Williams or Kelsey King on the apartment complex premises. The murder of Anthony Britt was completely unforeseeable to the apartment complex, as they had no prior knowledge of the private and escalating conflict between Anthony Britt and Colton, nor of any previous incident substantially similar in nature.

3. Britt possessed "superior knowledge" of the violent propensities of Colton

The true ground of liability for a premises owner is the "superior knowledge" of the "existence of a condition that may subject the invitee to an unreasonable risk of harm." Howell v. Three Rivers Security, 216 Ga. App. 890, 892, 456 S.E.2d 278, 280 (1995), cert. denied. Plaintiffs cannot honestly claim the apartment complex possessed superior knowledge of the dangers posed by Colton to that of Anthony Britt, who only two days before his death was threatened by Colton with a gun which jammed, or of Valerie Britt, who witnessed the near death of her brother only two days before and did nothing after she noticed Colton on the premises on the night of his death. The superior knowledge possessed by all of these individuals regarding the danger posed by Antonio Colton relieves the apartment complex of *any* liability for the death of Anthony Britt.

In Griffin v. AAA Autoclub South, Inc., 221 Ga. App. 1, 470 S.E.2d 474 (1996), the Court of Appeals affirmed summary judgment for the defendant employer after an employee was attacked by her boyfriend on the employer's premises because only the employee possessed superior knowledge of the potential for a criminal attack. The employee, Griffin, notified her employer's security service two days before the attack that

a former boyfriend threatened to "buy a gun and come to AAA and shoot her." Id. at 2, 470 S.E.2d 476. Griffin asked the guard to inform her of anything "out of the ordinary," and to escort her to her vehicle parked on the premises. Id. However, on the night of the incident, Griffin walked to her vehicle alone, and was shot by her boyfriend after he pulled his car from around the corner of the building after he saw her exit the building. According to the court, an intervening criminal act by a third party generally insulates a proprietor from liability unless a defendant had reasonable grounds for apprehending that such criminal act would be committed. Id. Although Griffin advised the security service two days prior to her attack, the court held it was undisputed that she had superior knowledge of her boyfriend's characteristics and temperament, and possessed a far greater degree of foreseeability of the attack than her employer because her assailant was not a random stranger." Id. at 223, 470 S.E.2d at 476. The attack stemmed from a "specific private relationship" having no connection to her employment with the defendants, and her employer did not create or allow to exist an environment which placed Griffin at risk any more than if she had been at home or on the street - the location of the attack incidentally on her employer's parking lot. Id. In addition, in the present case, Anthony Britt knew Colton was on the property (and was in fact on his way to exit the property) when Britt approached Colton. Had Britt remained at his girlfriend's apartment or his sister's apartment until Colton left the property, this shooting would not have occurred.

The existence of a "banned list" does not create superior knowledge on the part of a premises owner, especially if the victim and his assailants were involved in previous altercations, as in Howell v. Three Rivers Security, 216 Ga. App. 890, 456 S.E.2d 278 (1995), cert. denied. In Howell, the Court of Appeals again affirmed summary judgment for a bar owner and a security service after a patron was injured in a fight with another bar patron. Prior to the incident, the plaintiff's assailants were told they were permanently banned from the bar for their fighting, but the ban was not enforced on the date of the incident in question. However, only a few weeks before the altercation in question, the plaintiff was personally threatened by his assailants and heard from other "sources" his assailant wanted to beat him up. On the night of the incident, the plaintiff recognized his assailants sitting at the bar, and informed his friends to watch his back for him. Nonetheless, the plaintiff decided to dance with his girlfriend instead of leaving the premises, and never told any security guard or employee his assailants potentially posed any danger to him. The Court of Appeals held the plaintiff could not seriously contend the bar owner possessed superior knowledge of the plaintiff's peril under the circumstances. Although the court agreed the bar owner breached his duty of care in permitting the

assailants on the premises despite the "banned" list, it did not render the owner liable because the true ground of liability is the superior knowledge of the proprietor of the existence of a condition that may subject an invitee to unreasonable risk of harm. @ Id. at 892, 456 S.E.2d at 280. See also Habersham Venture, Ltd. v. Breedlove, 244 Ga.App. 407, 535 S.E.2d 788 (2000)(plaintiffs unable to demonstrate superior knowledge on behalf of night club owner, and night club entitled to summary judgment).

Britt was just as much at risk from being shot by Colton at the apartment complex as he was on the streets of town or anywhere else in Georgia. He knew of Colton's dangerous propensities and that Colton was on the property and had tried to kill him a mere two days before, yet Anthony Britt **approached** Colton, provoking the shooting.

4. The proximate cause of Anthony Britt's death was his own voluntary participation in an altercation with Colton, a person he knew to be dangerous, and his failure to exercise ordinary care for his own safety - not any act or omission on behalf of The apartment complex.

The death of Anthony Britt was not caused by any act or omission of The apartment complex, but rather by Britt's *own* voluntary injection into a violent conflict with Colton and others on the apartment complex premises two days after Colton had threatened his life with a loaded gun. In every case of liability for third party criminal conduct is the existence of concurrent proximate cause of the landlord's prior negligent act or omission. Generally, an independent intervening criminal act of a third party" causing another injury will be treated as a "supervening proximate cause of the injury, breaking the causal connection between the defendant's negligence and the injury" unless such intervening criminal act was a reasonably foreseeable consequence of defendant's negligent act or omission. FPI Atlanta v. Seaton, 240 Ga. App. 880, 524 S.E.2d 524 (1999), cert. denied (March 10, 2000). The proximate cause of Britt's shooting death was his failure to exercise care for his own safety and his voluntary involvement in an altercation with Colton - a man who had threatened him only two days before.

***A. Britt failed to exercise ordinary care for his own safety***

In Johnson v. Atlanta Housing Authority, 243 Ga.App. 157, 532 S.E.2d 701 (2000), the Court of Appeals affirmed an entry of summary judgment for a housing authority because the injured tenant failed to exercise ordinary care for his own safety

by remaining in an area he knew to be dangerous after dark. Plaintiff Johnson was shot while he sat on a bench in front of an Atlanta Housing Authority apartment when he noticed a man pass by him several times with a gun in his hand. The Court of Appeals analyzed the various factors in determining whether previous criminal acts are substantially similar to the occurrence causing harm thus sufficient to put the landlord on notice of a dangerous condition, including the location, nature and extent of the prior criminal activities and their likeness, proximity or other relationship to the crime in question. Id. at 159. The Court determined that there was no evidence of any crime in the specific area immediately surrounding the bench where Plaintiff Johnson was shot despite sixty-four police reports reflecting crime around the general area. Furthermore, the Court relied heavily on Plaintiff Johnson's own recognition and knowledge of the dangerous nature of his neighborhood. Particularly, he knew it was dangerous to sit on that bench at night and that prior shootings had occurred on that same block. The Court recognized that his knowledge of the danger was at least equal to that of AHA. Although the Court noted that the issue of a plaintiff's exercise of due diligence for his own safety is ordinarily a question for a jury, it may be summarily adjudicated where the plaintiff's knowledge of the risk is clear and palpable. Id. At 160 (citing Rappenecker v. LSE, Inc., 236 Ga. App. 86, 510 S.E.2d 871 (1999)). The Court held that because Johnson failed to exercise ordinary care by recognizing the man who passed him two times with a gun, the trial court properly entered summary judgment for AHA. Id. Anthony Britt was killed by someone he knew as a potential murderer, and yet he did nothing to avoid contact with Colton.

***B. The "mutual combat" between Britt and Colton precludes any recovery by the Plaintiffs***

In Habersham, supra, the night club was entitled to summary judgment due to the mutual combat of the plaintiffs with their assailants. The plaintiffs voluntarily chose to enter into mutual combat with the assailants and the Court held that superior knowledge must always remain with the combatants as they by their voluntary participation have selected the time, date, and place for the altercation. @ Id. at 411 (*citing Sailors v. Esmail Int.*), 217 Ga. App. 811, 459 S.E.2d 465 (1995)). In Hansen v. Etheridge, 232 Ga. App. 408, 501 S.E.2d 517 (1998), cert. denied, the Court of Appeals affirmed summary judgment to a landlord in a wrongful death action brought by the parents of an eighteen year old party guest who was stabbed to death while attempting to break up a fight. The Court of Appeals held the landlord's alleged negligence in permitting the underage party was not the proximate cause of the guest's death - the consumption of alcohol by Hansen and not the landlord's observation that alcohol was served to underage drinkers was the proximate cause for the injuries and subsequent death of Hansen. Moreover, the decedent voluntarily entered into the fight@ and he alone maintained superior knowledge of the pending danger. The decedent pursued his assailant into the parking lot of the apartment complex, at which time a fight ensued which led to the stabbing of the decedent when he tried to break it up. The Court of Appeals held where someone inserts himself into a fight, the superior knowledge remains with the combatants because they have selected the time and place for their altercation voluntarily. Id. at 410, 501 S.E.2d at 520. As the landlord had inferior knowledge@ it was not liable for the death of Hansen. Id. In the present case, Britt approached Colton even though he knew Colton had, just two days before, tried to shoot him. Britt voluntarily joined in the confrontation between Colton and Echols.

Additionally, in Reid v. Augusta - Richmond County Coliseum Authority, 203 Ga. App. 235, 416 S.E.2d 776 (1992), cert. denied, the Georgia Court of Appeals determined that a stadium owner was not liable for injuries suffered by a concert attendee who was shot after a concert by a third party, with whom he had an ongoing dispute. Prior to the night of the concert, the plaintiff and his assailant had fought over whether the plaintiff had informed the police that his assailant was involved in a series of local car thefts and burglaries. Although plaintiff claimed the stadium failed to provide adequate security for him at the concert, the Court held that the stadium was not liable for the plaintiff's injuries because the assault arose from pre-existing personal

animosity@ between the plaintiff and his assailant. There was no evidence that the attack was part of a pattern of foreseeable assaults which the stadium should have taken advance security measures to avoid. In particular, the Court recognized that the plaintiff, with full knowledge of potential danger, stayed at the stadium for another two hours after he recognized his assailant was also present, and then waited outside the building for approximately another hour after the concert concluded. The Court recognized the principle that a proprietor will not be liable for a plaintiff's injuries caused by a dangerous condition on the premises if the plaintiff had equal or superior knowledge of the danger, and could have avoided the danger by exercise of ordinary care. The Court concluded that plaintiff had superior knowledge of the danger of a Arepeat attack@ and could have exercised ordinary care to avoid a second encounter. Id. at 239, 416 S.E.2d at 780. Therefore the Court affirmed summary judgment for the stadium owner.

In the present case, Plaintiffs may not recover because the proximate cause of the shooting death of Anthony Britt, Sr. stemmed from an intentional act of a criminal, Antonio Colton, and not any act or omission of the Defendants. It is unlikely the plaintiffs can prove that had the defendants done what the plaintiffs claim they should have done (which has never been specified), the shooting of Britt by Colton would have somehow been prevented.

### **CONCLUSION**

For the foregoing reasons, these Defendants are entitled to judgment as a matter of law.

SWIFT, CURRIE, McGHEE & HIERS, LLP

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LYNN M. ROBERSON

Georgia State Bar No. 608047

Attorney for Defendants

SWIFT, CURRIE, McGHEE & HIERS, LLP

1355 Peachtree Street, N.E., Suite 300

Atlanta, GA 30309-3238

(404) 874-8800