

**IN THE STATE COURT OF COBB COUNTY**  
**STATE OF GEORGIA**

JOSHUA R. MARTIN, )

Plaintiffs, )

VS. )

SIX FLAGS OVER GEORGIA II, L.P., )

SIX FLAGS OVER GEORGIA, LLC, )

SFOG II, INC., SFG-II, LLC, )

MIDTOWN LANIER PARKING, INC., )

WILLIE GRAY FRANKLIN, JR., )

BRAD MCGAIL JOHNSON, )

DEANDRE EVANS, )

CLAUDE MOREY III, and JOHN DOES )

NOS. 1-15, )

Defendants. )

CIVIL ACTION

FILE NO. 09-A-55-4

11 SEP 12 PM 4:30  
DIANE B. WEBB  
STATE COURT CLERK-02

COBB COUNTY, GA  
FILED IN OFFICE

**ORDER**

This case is before the Court on the "Plaintiff's Motion for Partial Summary Judgment that O.C.G.A. § 51-12-33 is Not Applicable and is Unconstitutional as Written or as Applied, or in the Alternative Motion in Limine to Exclude All Evidence and All Arguments of Apportionment Pursuant to O.C.G.A. § 51-12-33."<sup>1</sup> Specifically, Plaintiff seeks a ruling from this Court that the 2005 Amendment to O.C.G.A. § 51-12-33 does not mandate that the fact finder apportion any damages based on the percentage of fault of each Defendant in cases where one Defendant has committed a criminal act. Upon consideration of all matter filed of record, the Court enters this order as follows:

In that there is no Georgia appellate case law addressing the exact issue before this Court, the undersigned is constrained by the following language cited in Cavalier

<sup>1</sup> As the issue currently before the Court specifically relates to the exclusion of evidence and argument at trial on the issue of apportionment, the Court hereby enters this Order in response to Plaintiff's Motion in Limine only.

Convenience, Inc. and Ken's Supermarkets, Inc. v. Sarvis, 305 Ga. App. 141, 142 (2010),

which states:

The cardinal rule in construing a legislative act is 'to ascertain the legislative intent and purpose in enacting the law, and then to give it that construction which will effectuate the legislative intent and purpose.' 'In all interpretations of statutes, the courts shall look diligently for the intention of the General Assembly, keeping in view at all times the old law, the evil, and the remedy.' The Supreme Court of Georgia has instructed that the 'best indicator of the General Assembly's intent is the statutory text it actually adopted' and that '[a]s long as the statutory language is clear and does not lead to an unreasonable or absurd result, it is the sole evidence of the ultimate legislative intent.'

Additionally, the Court finds the following language instructive in the present case:

"Statutes in derogation of the common law are construed strictly." Heard v. Neighbor Newspapers, 259 Ga. 458, 459 (1989).

While Defendant argues that the issue presently before the Court was conclusively resolved in the Cavalier case, the Court is unable to agree with that position. In that case, the Court of Appeals was specifically addressing the question of whether the fact finder should apportion damages in cases where there is no allegation that Plaintiff was at fault. In the present case, the issue before this Court is whether the legislature intended to eliminate joint and several liability in premises liability cases where one Defendant is alleged to have committed an intentional tort.

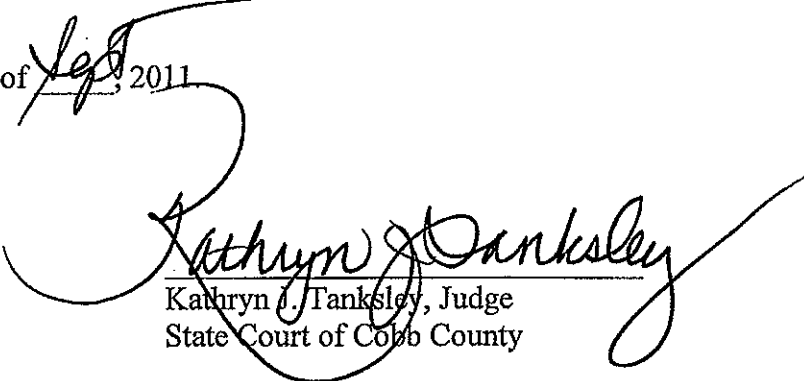
This Court believes that a thorough analysis of O.C.G.A. § 51-12-31, and the subsequent code sections, reveals that allowing apportionment in cases such as this would "lead to an unreasonable or absurd result." Allowing apportionment in the present case would effectively allow the premises owner to shield itself from any potential liability based on an alleged breach of its own duty, if any, because the fact finder would apportion all damages against the criminal actor. If Six Flags did owe a duty in the

present case, it would be to protect Plaintiff from foreseeable, intentional conduct. As a jury may find that the Six Flags Defendants owed such a duty to Plaintiff in this case, it would be a patently "absurd result" to allow Six Flags to shield itself from liability for any breach of that duty based on the very criminal act that Six Flags owed a duty to prevent.

Additionally, the Court notes that within the statute at issue, the Legislature specifically references "negligence or fault" in subsection (d)(1). It appears to this Court that the intention of the Legislature in the statute at issue was only to address cases alleging negligence, and not in cases where there is an allegation of intentional tort.<sup>2</sup> Therefore, the presumption is that the common law remains as to joint and several liability in cases such as the one currently before this Court.

Accordingly, the Court hereby grants Plaintiff's Motion in Limine on the issue of apportionment.

So Ordered, this 12 day of Sept, 2011

  
Kathryn J. Tanksley, Judge  
State Court of Cobb County

<sup>2</sup> A thorough evaluation of the legislative history shows that the intention of the legislature was to address tort reform in the specific context of healthcare. "The General Assembly finds that there presently exists a crisis affecting the provision and quality of health care services in this state. Hospitals and other health care providers in this state are having increasing difficulty in locating liability insurance and, when such hospitals and providers are able to locate such insurance, the insurance is extremely costly. The result of this crisis is the potential for a diminution of the availability of access to health care services and a resulting adverse impact on the health and well-being of the citizens of this state. The General Assembly further finds that certain civil justice and health care regulatory reforms as provided in this Act will promote predictability and improvement in the provision of quality health care services and the resolution of health care liability claims and will thereby assist in promoting the provision of health care liability insurance by insurance providers. The General Assembly further finds that certain needed reforms affect not only health care liability claims but also other civil actions and accordingly provides such general reforms in this Act." See Editor's Notes Ga. L. 2005, p. 1, § 1.

CERTIFICATE OF SERVICE

This is to certify that I have this day mailed true and exact copies of the foregoing

**ORDER**

through the Cobb County Mail System, to the following:

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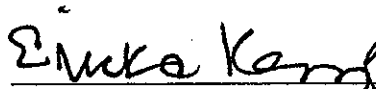
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This 12<sup>th</sup> day of September, 2011.

  
\_\_\_\_\_  
Ericka Kemp, Judicial Administrative Assistant to  
Judge Kathryn J. Tanksley