IN THE SUPREME COURT OF THE STATE OF GEORGIA

Six Flags Over Georgia II, L.P. and Six, Flags Over Georgia, LLC,	)	
Defendants/Appellants,	)	**SUPREME COURT NO. S16C0750**
v.	)	
Joshua Martin,	)	Court of Appeals Docket Number: A15A0828
Plaintiff/Appellee.	)	

BRIEF OF GEORGIA CHAMBER OF COMMERCE AS AMICUS CURIAE

William V. Custer
Georgia Bar No. 202910
Julian Fenwick Ost
Georgia Bar No. 940532
BRYAN CAVE LLP
1201 West Peachtree Street, NW
Fourteenth Floor
Atlanta, Georgia 30309-3488
Tel: (404) 572-6600
Fax: (404) 572-6999

Attorneys for Amicus Curiae Georgia Chamber of Commerce

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases

Statutes

I. INTEREST OF THE GEORGIA CHAMBER OF COMMERCE

The Georgia Chamber of Commerce represents more than 40,000 diverse businesses across the State of Georgia, is the state's largest business advocacy organization, and is dedicated to representing the interests of both businesses and citizens in this state. Established in 1915, the Chamber's primary mission is creating, keeping, and growing jobs in Georgia. The Chamber pursues this mission in part by advocating the viewpoints of businesses and industry in the shaping of law and public policy to ensure that Georgia is economically competitive with other states.

The Chamber sees no need to speak for either party in this action. The parties' positions have already been capably presented by their counsel in both this Court and the courts below. The Chamber is, however, gravely concerned about the issues of premises liability in this case and the Georgia Court of Appeals' opinion which creates a significant expansion of liability for Georgia businesses and landowners.

II. INTRODUCTION

In *Six Flags Over Georgia II, L.P. v. Martin*, 335 Ga. App. 350 (2015), a divided *en banc* panel of the Georgia Court of Appeals held that the defendant Six Flags could be held liable when one of its patrons, after leaving its property safe and unharmed, was later assaulted and beaten at a nearby CCT bus stop

owned by Cobb County. The bus stop at issue was some 200 feet from the Six Flags property and separated by an intervening parking lot owned by a third party. In doing so, the Court of Appeals greatly expanded the boundaries of what had previously and traditionally been understood to constitute the "premises and approaches" of a business. Under the Court of Appeals ruling in this case, businesses can now find themselves liable for the security of non-contiguous properties in their neighborhoods over which they exercise little to no meaningful control.

The notion that Georgia businesses can be held liable for injuries resulting from crimes that occur off their property at nearby bus stops or train stations or other *non-contiguous properties* in their neighborhoods is a rather shocking one. This is especially true for businesses located in urban environments, such as Atlanta, where bus stops and train stations are commonplace and crime at *some* of those locations can be equally commonplace. Moreover, the ruling of the Court of Appeals in this case is especially troubling when one considers the basis expressed by the Court of Appeals for imposing such liability: the fact that customers utilized the bus stop for access to the defendant's business at the defendant's suggestion and the fact that the defendant occasionally utilized part-time police officers to direct traffic in the area of the bus stop. Indeed, the majority remarkably suggests that mere

knowledge that customers routinely use a bus stop to access a business *may* be sufficient to impose liability for crimes committed there. *Id*. at 357-59 n. 34.

Examples of how the holding of the Court of Appeals opinion might be utilized to expand significantly the liability of Georgia businesses abound. The Chamber would ask that the Court consider just one example to understand the danger posed by the ruling by the Court of Appeals: at virtually every office tower in Midtown Atlanta, the tenants encourage their customers and employees to utilize nearby bus stations and MARTA train stations to travel to their businesses, security guards sometimes walk customers and employees to the bus stop or train station at night to make sure they arrive safely, and off duty policemen are a virtual necessity to direct traffic during the congestion of rush hour traffic. Are all such tenants now responsible for the safety of the bus stations and MARTA train stations in their neighborhood? The question is more than academic or rhetorical given the stated basis for liability articulated by the Court of Appeals.

Thus, with this Court's indulgence, the Chamber will limit itself to addressing a single legal issue in this brief:

> Whether premises liability exists under O.C.G.A. § 51-3-1 for a crime committed on non-contiguous property owned by a third party, and where the landowner does not exercise dominion and control over the non-contiguous property?

The Chamber submits that the answer to this question is and should be emphatically "no" and that the Georgia Court of Appeals erred in reaching a different conclusion.

This question is an important one to Georgia businesses. Many Georgia businesses own or lease real property and they need to know, as a matter of certainty, the precise scope of the property that they are responsible to secure. The standard employed by the Court of Appeals to determine whether businesses are liable for the security of property other than their own is so vague and malleable that businesses can no longer be sure of their obligations. Indeed, it would appear that the Court of Appeals itself remains in serious doubt regarding the wisdom of its rationale. In the main appeal, three judges concurred with the majority opinion; three judges concurred specially; two judges concurred in the judgment only; and two judges dissented. The fractured nature of the Court of Appeals alone is an obvious reflection of a dissatisfaction with the legal basis for the opinion and justifiably so.

It is axiomatic that the business community abhors uncertainty. The decision in this case presents the perfect case study as to how such uncertainty can potentially impact large numbers of businesses and property owners, expose them to unnecessary liability, and leave them without the requisite guidance on how best to protect their interests. To remedy this uncertainty, the Chamber

respectfully submits that the decision of the Court of Appeals on the issue of premises liability must be reversed and the law must be returned to the relative state of certainty that existed before the Court of Appeals issued its opinion.

III. STATEMENT OF FACTS

The facts that are relevant to the premises liability claim in this case are really quite simple. Joshua Martin was an invitee of Six Flags on July 3, 2007 and safely enjoyed a day at the park without any injury to his person whatsoever. At the end of the day, approximately 8:00 p.m., and shortly before closing, plaintiff Martin and his friends left the park unharmed in any way. Martin's initial intent was to walk to the bus stop and catch the CCT bus back to Marietta, but he unfortunately missed the bus. While awaiting the next bus, Martin and his friends decided to walk down Six Flags parkway, turn left on South Service Road, walk past the CCT bus stop, and continue to a nearby hotel to use the restroom. Martin and his friends emerged from the hotel, again safe and unharmed. Martin thereafter returned to the bus stop, waited three to four minutes, and then walked back to a guardrail on the Six Flags property near the entrance to the park. The time was approximately 8:45 to 8:55 p.m. There, Martin and friends safely waited for the next bus for approximately 15 minutes. As the time for the next bus approached, at around 9:15 p.m. or so, Martin and his friends left the Six Flags property, again unharmed, and walked to the bus

stop some 200 feet from the Six Flags property line at which point Martin was brutally beaten.[1/]

A map depicting Martin's travels on the evening July 3, 2007 is useful to understand the facts, especially for those who are unfamiliar with the area:

This map was prepared using Google maps and the testimony of record below to retrace the steps of Martin in yellow on the night of July 3, 2007. The green line shows the approximate border of the Six Flags property. A larger copy of the map is attached as Exhibit A.

[1/] While there are slight differences in timing offered by various witnesses, those differences are not material to the arguments offered here.

The question of potential liability raised by these facts is perhaps best characterized by a simple multiple choice question that might well appear on any bar exam test: Under a premises liability theory, who has the liability for the injuries sustained by the plaintiff under the facts set forth above?

A. The owner of the bus stop where Martin was brutally beaten and seriously injured, Cobb County;

B. The owner of the hotel property, over 300 hundred feet away and not contiguous to the bus stop, where Martin had safely visited thirty to sixty minutes before the incident, and which was still open;

C. The owner of the Six Flags property, 200 feet away and not contiguous to the bus stop, where Martin had safely visited previously, and *which was now closed*; or

D. None of the above.

Surely, the answer here, under any legal test for premises liability, should be "none of the above." Cobb County could not be sued by the plaintiff here because of sovereign immunity. The only other two potential defendants, the hotel and Six Flags, are not adjacent to, and do not own, occupy, or have any dominion or control over the CCT bus stop and thus, from a purely premises liability perspective, neither have liability here.

IV. ARGUMENT AND CITATION OF AUTHORITY

The basis for premises liability in Georgia is O.C.G.A. § 51-3-1, which provides that:

> Where an owner or occupier of land, by express or implied invitation, induces or leads others to come upon his premises for any lawful purpose, he is liable in damages to such persons for injuries caused by his failure to exercise ordinary care in keeping the premises and approaches safe.

This statute has been part of the Georgia Code in one form or another since at least 1895. The language of the statute indicates that it is only to apply to an "owner or occupier" of land. The fundamental rules of statutory construction would therefore indicate that the legislature did not intend for this statute to provide liability where the defendant is neither the owner nor the occupier of the realty where the tort occurred. *See Elmore of Embry Hills, Inc. v. Porcher*, 124 Ga. App. 418, 419, 183 S.E.2d 923, 925 (1971) (the premises must constitute the actual store building and lot of land on which it rests, which is under the actual dominion and control of the owner or occupier.).

The General Assembly did, however, provide that owners or occupiers could be liable for the approaches to their own property. The Court of Appeals was first called upon to examine the term "approaches" in some detail in the case of *Elmore of Embry Hills, Inc. v. Porcher*, *supra*, and, while that opinion is in no way binding on this Court, the Court of Appeals examined the issue in a

rather thoughtful and understandable way that makes the decision useful to consider here. In *Elmore*, the Court of Appeals held that:

> it is our opinion that each owner or occupier is responsible for keeping the sidewalk immediately in front of and adjacent to his store in safe condition, and that the responsibility for the parking area, and those stretches of pavement that are not in front of the premises of any owner or occupier, must be borne by the owner and operator of the shopping center, provided he has retained control of same.

Id. at 419–20. Continuing with the clear and practical reasoning of the Court of Appeals in *Elmore*, that court also held that:

> It would not seem proper to require a store owner or occupier to be responsible for the safe condition of the sidewalk five hundred feet away from his store and directly in front of some other owner or occupier's store, simply because it was in the direct route of travel to defendant's store, and to that extent constituted an 'approach' to his store.
>
> That is not to say, however, that an occupier would not be liable for an obstruction that he creates or maintains, whether directly in front of his building or not; nor that he would not be liable for an affirmative act of his which creates a dangerous condition, even though it is in the parking area, or directly in front of the building of another owner-occupier. And, of course, he might extend the 'approach' to his premises beyond the limits thereof by some positive action on his part, such as constructing a sidewalk, ramp, or other direct approach, and for his negligence in keeping same in safe condition he would be liable. **But, it is our opinion that, absent some condition such as outlined above, the term 'approaches' as used in Code s 105-401, refers to the sidewalk or other approach that is directly contiguous, adjacent to, and touching the premises under control of the owner or occupier.**

Id. at 420 (emphasis added). Indeed, the analysis of the court in *Elmore* regarding approaches was approved by this Court in *Todd v. F.W. Woolworth Co*., 258 Ga. 194, 196–97, 366 S.E.2d 674, 676 (1988).

The cases that have followed *Elmore* have largely reinforced this consistent and readily understandable definition of the word "approaches." For instance in *Motel Properties, Inc. v. Miller,* 263 Ga. 484, 436 (1993)(Hunstein, J.), this Court held that a claimant who was injured in a fall on a border of rock and concrete placed along the shoreline of Jekyll Island, approximately 196 feet away from the defendant motel, was not injured on an "approach" to the motel's premises. *Id.* As with *Elmore*, this Court construed the word "approaches" to mean:

> that property directly contiguous, adjacent to, and touching those entryways to premises under the control of an owner or occupier of land, through which the owner or occupier, by express or implied invitation, has induced or led others to come upon his premises for any lawful purpose…. By "contiguous, adjacent to, and touching," **we mean that property within the last few steps taken by invitees… as they enter or exit the premises.**

Id. at 486.

This Court went on, however, to discuss the very rare exception when a landowner could be held liable for an injury occurring on an "approach" that was *not contiguous* to the landowner's property. Quoting the dissent of Justice Weltner in *Todd*, this Court reaffirmed that with respect to this rare exception:

> The requirement of an act reflecting a landowner's **positive exercise of dominion** over a public way or another's property is necessary in order to avoid "impos[ing] upon invitors an unknowable and impossible burden for maintaining an undefined circumference of properties.

Motel Properties, Inc., 263 Ga. at 486.

The standard this Court adopted for determining whether an "approach" could be said to exist on non-contiguous property was a clear one: whether the landowner "exercised dominion" over the non-contiguous property. The word "dominion," of course, connotes significant, sustained, and unquestioned control over a property. As the Court of Appeals stated in *Housing Auth. Of Atl. V. Famble*, 170 Ga. App. 509, 519-23 (1984) with respect to such a requirement, "there must be the grant of authority, dominion or a continuing exclusive right to control the premises in question. In short, one must have the status of an occupier…." *Id*. at 521-22. This standard is fully consistent with the statutory language of O.C.G.A. § 51-3-1, unlike the standard espoused by the Court of Appeals, which seems to be creating a significant expansion of premises liability actions without an adequate statutory basis for doing so. Moreover, the prior standard regarding non-contiguous approaches provides a relative degree of certainty to the business community which is critical for businesses to understand their obligations.

With that standard mind, let us examine the facts of the present case. Here, the plaintiff was injured at a bus stop on South Service Road that:

- was on property titled in the name of Cobb County.
- was not contiguous to the property of Six Flags.
- was some 200 feet from the property line of Six Flags providing an entrance into the park.
- Was on South Service Road, which is a public road that does not lead directly to the park, and serves businesses other than Six Flags, including several motels.
- Was one of the means by which one could travel to Six Flags and not the only means.

The only basis for plaintiff's assertion that Six Flags exercised "dominion" over this bus stop is that Six Flags mowed the grassy median on Six Flags Parkway, posted a few signs on that street, installed "traffic calming" measures on that street, and hired part time police officers to direct automobile and pedestrian traffic in the area on certain busy days. T. 401-03, 504-06, 507, 703-06. All of this evidence relates to Six Flags Parkway. None of this evidence relates to South Service Road or the bus stop, and none of this evidence could possibly be characterized as exercising dominion or control over the Cobb County CCT bus stop. In short, under this Court's prior rulings, and those of the Court of

Appeals, there is no basis for concluding that the CCT bus stop here was an "approach" to Six Flags under O.C.G.A. § 51-3-1 at the time of the plaintiff's injuries.

V. CONCLUSION

The Chamber therefore respectfully requests that this Court reverse the ruling of the Court of Appeals on the premises liability count and return the law of premises liability in the State of Georgia to that which was contemplated by the General Assembly and to that which provides clarity and certitude to both Georgia businesses and Georgia citizens.

Respectfully submitted this ___ day of February, 2017.

_____

William V. Custer
Georgia Bar No. 202910
Julia Fenwick Ost
Georgia Bar No. 940532

BRYAN CAVE LLP
One Atlantic Center
Fourteenth Floor
1201 West Peachtree Street, NW
Atlanta GA 30309
(404) 572-6600

Attorneys for Amicus Curiae
Georgia Chamber of Commerce

CERTIFICATE OF SERVICE

I hereby certify that on this ___ day of February, 2017, I have served a true and correct copy of the foregoing **BRIEF OF AMICUS CURIAE GEORGIA CHAMBER OF COMMERCE** upon counsel of record set forth below by electronically filing it with the Court for service on the parties. A copy of the brief will also be placed in the United States Mail, first class postage prepaid, addressed as follows:

Michael B. Terry, Esq.
Naveen Ramachandrappa
BONDURANT, MIXSON & ELMORE, LLP
1201 W. Peachtree Street, Suite 3900
Atlanta, GA 30309

Michael L. Neff
T. Shane Peagler
THE LAW OFFICES OF MICHAEL L. BEFF, P.C.
945 E. Paces Ferry Road, NE
Ste 1770
Atlanta, GA 30326

Gilbert H. Deitch
Andrew T. Rogers
DEITCH & ROGERS, LLC
5881 Glenridge Dr.
Plz 400, Ste 160
Atlanta, GA 30328

Laurie Webb Daniel
Vernon M. Strickland
HOLLAND & KNIGHT LLP
1180 West Peachtree Street
Ste 1800
Atlanta, GA 30309

_____
William V. Custer
Georgia Bar No. 202910

EXHIBIT A

Joshua Martin's Walking Route