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Georgia Supreme Court

IN THIS ISSUE

DECISIONS ISSUED DURING SEPTEMBER 2009

SUPREME COURT OF GEORGIA

Beneke v. Parker, et al. v. Beneke, Nos. S08G2078, S08G2082 [*Personal injury: Statute of limitation tolled until disposition of traffic citation in cases where injured party brings tort claim based upon commission of a crime.*] (Hunstein, 7-0).

Favorito v. Handel, No. S09A1367 [*Constitutional Law: The use of direct recording electronic voting machines does not violate the Equal Protection Clause; nor does it offend the right to elections by the people or state law requiring elections by ballot.*] (Carley, 7-0).

[Click Here for Opinions](#)

GEORGIA COURT OF APPEALS

Ford Motor Co. v. Reese, No. A09A0871 [*Product liability: Absent special circumstances, no common law duty exists under Georgia law requiring a manufacturer to recall a product after the product has left the manufacturer's control.*] (Bernes, 3-0).

Hampton Island Club, LLC v. B2 Creative, Inc., No. A09A2037 [*Contracts: Summary judgment overturned on the grounds that the evidence presented at trial created a question of fact as to the plaintiff's performance under the contract.*] (Blackburn, 3-0).

Loyal v. State, No. A09A1894 [*Evidence: A witness establishing the proper foundation for an electronic security log under the business record exception to the hearsay rule does not need to personally monitor or maintain the log in order for the evidence to be admissible.*] (Blackburn, 3-0).

Thomas v. Metropolitan Atlanta Rapid Transit Authority et al., No. A09A0933 [*Evidence/Spoliation: Repair of escalator before required inspection by MARTA entitled Plaintiff to presumption that escalator was in a defective condition at the time of her accident.*] (Doyle, 3-0).

CASE SUMMARIES

Beneke v. Parker, et al. v. Beneke, Nos. S08G2078, S08G2082 (September 28, 2009). Beneke injured Parker when his vehicle rear-ended the car she was riding in on April 27, 2005. Beneke was cited for following too closely and posted a cash bond disposing of his citation on May 19, 2005. Parker filed a personal injury suit against Beneke on May 11, 2007. Beneke

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sought summary judgment based on expiration of the statute of limitation, O.C.G.A. § 9-3-33, because Parker filed suit more than two years after the date of the accident. The Supreme Court held the statute of limitation did not begin to run until May 19, 2005. O.C.G.A. § 9-3-99 provides that where an injured party brings a suit in tort relating to the commission of a crime, the statute of limitation is tolled until the prosecution of the crime has become final or otherwise terminated. The question for the Court was whether a traffic citation for following too closely was a crime. The Court held O.C.G.A. § 9-3-99 encompasses a violation of a Uniform Rules of the Road. Therefore, the statute of limitation was tolled until the citation was final or terminated, which was on May 19, 2005, and the suit brought on May 11, 2007 was timely.

Favorito v. Handel, No. S09A1367 (Sept. 28, 2009). Plaintiff challenged Georgia’s use of direct recording electronic (“DRE”) voting machines on multiple constitutional and state law grounds. The trial court granted summary judgment for defendants, and plaintiff appealed. The Georgia Supreme Court affirmed the trial court’s ruling, holding the use of DRE voting machines do not violate the Equal Protection Clause of the United States and Georgia Constitutions because Georgia made absentee paper ballot voting and DRE voting available to all citizens, and neither voting method was inherently more burdensome than the other. Notably, the Georgia Supreme Court applied a “rational basis” test rather than the “strict scrutiny” test sought by the plaintiff because the affected classification, DRE voters, is not a suspect class.

The Georgia Supreme Court also rejected plaintiff’s claim that DRE voting violates O.C.G.A. § 21-2-280, which requires voting by ballot. The Court held that the term “ballot” is not restricted to paper ballots and could include the electronic ballots used in the DRE machines. The Court similarly rejected plaintiff’s claim that DRE voting violates Art. II, Sec. 1, Par. 1 of the Georgia Constitution, which provides the right to “elections by the people.” The Court held that the use of electronic machines to store and count votes does not “vitiating the nature of elections as ‘by the people.’”

Ford Motor Co. v. Reese, No. A09A0871 (Sept. 16, 2009). Surviving children of Mary Bessie Reese brought this action against Ford contending Reese’s seatback had collapsed at the time of a rear impact due to a design defect, asserting claims for defective design under theories of negligence and strict liability, for negligent failure to warn of the alleged defect, and for negligent failure to recall the vehicle. The trial court charged the jury on duty to recall, which formed the basis of Ford’s appeal. The Court of Appeals held the jury instruction imposing a general duty of manufacturers to recall dangerous products was legally erroneous and harmful. Absent special circumstances, no common law duty exists under Georgia law requiring a manufacturer to recall a product after the product has left the manufacturer’s control. Instead, a manufacturer’s duty to implement alternative safer designs is limited to the time the product is manufactured, not months or years later when technology or knowledge may have changed. The Court also addressed the substantial similarity requirement for introducing other complaints or lawsuits, finding the Plaintiffs rightfully introduced complaints from other lawsuits against Ford to establish notice of the alleged defect, and the risk-utility analysis, finding deposition testimony of plaintiffs in five of the prior lawsuits probative to the analysis.

Hampton Island Club, LLC v. B2 Creative, Inc., No. A09A2037 (September 28, 2009). Plaintiff B2 Creative, Inc. submitted an “estimate” proposal to provide and install certain furnishings for model homes constructed by defendant Hampton Island Club, LLC. Under the terms of the proposal, Hampton Island Club was to have the right of final approval for all furnishings. Hampton Island Club executed the proposal and paid the first half of the price under the proposal; B2 Creative began performance under the agreement. After B2 Creative submitted its final invoice, Hampton Island Club found fault with several aspects of B2 Creative’s performance and refused to pay the balance due, prompting the lawsuit. The trial court granted summary judgment in favor of B2 Creative. The Court of Appeals rejected Hampton Island Club’s argument that a contract was never formed. The Court affirmed the trial court’s ruling that the execution of the proposal, the initial payment and the performance under the agreement constituted a simple contract. The Court of Appeals reversed the finding of summary judgment on Hampton Island Club’s alleged breach of contract because evidence presented at trial created a question of fact as to whether B2 Creative adequately performed under the contract.

Loyal v. State, No. A09A1894 (Sept. 10, 2009). Defendant appealed after a jury convicted him on a single count of theft by taking based on the State’s allegations that Defendant had stolen goods from his former employer’s warehouse. Defendant asserted on appeal that the trial court erred by admitting into evidence his former employer’s security log without requiring the State to establish a proper foun-

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[HOME PAGE](#)

ation for the evidence. The security log included information showing the dates and times when the employer's warehouse facility was locked and unlocked and the PIN used to access the facility. This information was collected and stored by a third-party security company. The log showed that Defendant and another employee had entered the warehouse on a number of occasions "after hours." The employer's vice president testified that the log was kept electronically, in the regular course of business, and that the data in the log was entered into the log contemporaneously with the events themselves. Defendant argued that the State had not established foundation because the witness was not personally familiar with the method for keeping the log and was not responsible for monitoring the log. Citing to Hamilton v. State, 297 Ga. App. 152, 154 (2004), the Court of Appeals upheld the trial court's admission of the log, holding the business records exception to the hearsay rule set forth in O.C.G.A. § 24-3-14 was satisfied by the witness's testimony. The Court stated that a testifying business records witness is not required to have personal knowledge about the specifics of the making or monitoring of an electronic log. Any lack of personal knowledge regarding such matters goes to the weight of the evidence, but not the admissibility.

Thomas v. Metropolitan Atlanta Rapid Transit Authority et al., No. A09A0933 (Sept. 1, 2009). Plaintiff was injured on a MARTA escalator when it stopped while she was riding on it, and sued MARTA and the escalator manufacturer, alleging the defendants failed to keep the premises in a safe condition and failed to maintain the escalator properly. Defendants had the escalator repaired before it could be inspected by a state inspector pursuant to O.C.G.A. § 8-2-06(c), which provides that any escalator involved in an accident involving personal injury shall be removed from service and not repaired until inspected by a certified inspector for the enforcement authority. The statute also provides that violation is a form of spoliation. The trial court found that the spoliation presumption (that the escalator was in a defective condition) did not apply because Plaintiff offered no proof that the negligence was a preexisting defective condition. The Court of Appeals reversed, holding that testimony by Plaintiff's expert that failure to properly maintain the escalator caused the accident in one way or another was sufficient evidence of a defective condition. The Court of Appeals found Defendants' repair of the escalator before it could be inspected prevented Plaintiff from showing a defect in the escalator and reversed the trial court's grant of summary judgment.