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'I'm Having Trouble Seeing That': Panel Eyes Combat Doctrine in Premises Liability Case

"The mutual combat doctrine arose back in the mid-1990s. And since that period of time, there have been maybe seven or eight cases that have worked their way through the appellate courts," the plaintiff-appellants argued. "All those cases have one thing in common. The combatants ... had absolutely no connection whatsoever with the establishment."

May 29, 2024 at 03:06 PM

Civil Appeals



Alex Anteau



What You Need to Know

- A plaintiff shot by restaurant security appealed a premises liability action where the landlord was dismissed according to mutual combat doctrine.
- The defendant-appellees argue the dismissal was correct because, once the plaintiff punched the security guard, he lost his ability to seek a premises liability claim.
- Now on appeal, the plaintiffs argue that mutual combat doctrine doesn't apply because the security guard had ties to the landlord.

The Georgia Court of Appeals has been asked to determine whether a premises liability case can be dismissed on the issue of mutual combat doctrine if one of the combatants had a connection with the establishment in a case where an Atlanta restaurant security guard shot a customer.

Interpretation of the Supreme Court's opinion in the landmark *CVS v. Carmichael* case relative mutual combatant doctrine appears to be key to resolving this dispute. The plaintiff-appellants, represented by [Michael Gorby](#) of Gorby Peters & Associates, contend that mutual combatant doctrine does not control and *Carmichael* requires the court to look at the totality of the circumstances surrounding the shooting. He argued because the restaurant had a 25-year-long relationship with the landlord and the landlord paid weekly visits to the property, they would likely have known the restaurant had contracted a convicted felon to work security.

"The mutual combat doctrine arose back in the mid-1990s. And since that period of time, there have been maybe seven or eight cases that have worked their way through the appellate courts," Gorby argued. "All those cases have one thing in common. The combatants ... had absolutely no connection whatsoever with the establishment."

Meanwhile, the defendant-appellee, landlord Scarlett & Associates that rented the space where the shooting happened, represented by [Troy Covington](#) of Bloom Parham, argued that, because the customer initiated the fight, he cut off any potential premises liability claims and “*CVS v. Carmichael* does not change this result.”

“As a practical matter, the reason that this probably has not come up in these mutual combat cases before is that if you had an employee of the property owner that was involved in a fight, I think the claim there would be a vicarious liability, a negligent hiring or a negligent retention claim, and that kind of claim is not possible here, so they’re trying to shoehorn it into the premises liability statute,” Covington said.

Read the plaintiff-appellant brief.

Judge [Elizabeth Gobeil](#) spearheaded the panel’s limited questioning. Notably, Gobeil authored another premises liability case opinion in 2023, which was the first of its kind to hold a hotel owner responsible for sex trafficking done on the property in Georgia.

“Do you contend that the mutual combat doctrine exists as a completely separate bucket from the situation in *Carmichael*, or is your contention that they’re consistent as a practical matter, and the mutual combat doctrine is part of the totality of the circumstances?” Gobeil asked.

“They’re part of the same analysis, but they travel in two separate lanes,” Covington replied. “The reasonable foreseeability analysis goes to what’s come before that would put the property owner on notice...But that can’t go to what the plaintiff is going to do in the future because...the plaintiff, by definition, has superior knowledge and the property owner cannot be inside his head.”

Gobeil’s questions also indicated some skepticism toward the plaintiff’s contentions.

“Other than where [the shooting] occurred, it seems that the linkages are to [the tenant restaurant that hired the contractor] versus the premises owner,” Gobeil said. “Now maybe it’s wading into facts a bit prematurely, but is there anything in the record before us to show more than that? Because meetings are a little different from vetting contractors and doing background checks of contractors hired by tenants.”

Read the defendant-appellee brief.

Gorby replied that the plaintiff-appellants based their argument on constructive knowledge of dangerous conditions, specifically two prior incidents at the restaurant—a 2014 shooting and a 2017 attack on a patron by a security guard. Covington, however, later countered that only the tenant was sued after the 2017 incident, and Scarlett didn’t know about it until discovery began in the dispute at hand.

“Absent some self-defense type of situation, how can it be said that an owner would have superior knowledge or reasonable foreseeability, depending on whether you put it in a strict *Carmichael* context or treat combat doctrine as a separate thing? I’m having trouble seeing that,” Gobeil pressed the appellants.

“That is [the trial judge and appellees] takeaway. Curtis throws the first punch. He’s the aggressor. Game over,” Gorby replied, but, based on the Brookhaven Police report filed on the incident, this is actually a question of fact. “We feel that based on the history between the property owner and the restaurant and the other incidents, there’s at least a jury question on that.”

The case is *Jones v. Scarlett*, No. [A24A1022](#), in the Georgia Court of Appeals and was also heard by Presiding Judge [Anne Elizabeth Barnes](#) and Judge [Trea Pipkin](#).

Read the reply brief below.

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**IN THE COURT OF APPEALS
STATE OF GEORGIA**

CURTIS T. JONES AND MILAN	:	
JUNCHALEARN AS LEGAL	:	
REPRESENTATIVE OF CURTIS T. JONES	:	
	:	
Appellants,	:	Appeal No. A24A1022
	:	
v.	:	Appeal from State
	:	Court of DeKalb County
SCARLETT & ASSOCIATES, INC.	:	Civil Action File No.
	:	22A02134
	:	
Appellee.	:	

REPLY BRIEF OF APPELLANTS

GORBY, PETERS & ASSOCIATES, LLC
MICHAEL J. GORBY

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