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# 'Mutual Combat' Halts Revival Of Ga. Eatery Shooting Claims

By **Tom Lotshaw**

Law360 (October 28, 2024, 8:08 PM EDT) -- The mutual combat doctrine dooms a premises liability claim a Georgia man filed against a property owner after he was shot outside an Atlanta-area Ethiopian restaurant by a convicted felon working security, the Georgia Court of Appeals ruled Monday.

The **ruling** affirmed a trial court decision to grant summary judgment to the property owner, Scarlett & Associates Inc., that Curtis T. Jones and his mother had appealed.

A three-judge panel rejected Jones' argument that the doctrine does not govern the case, noting security footage showed Jones punched the security guard before he shot Jones outside the restaurant in 2021.

"Here, the record demonstrates that the mutual combatant doctrine applies as a matter of law," Judge Elizabeth Gobeil wrote in the opinion.

According to court records, Sheba Ethiopian Restaurant, Scarlett & Associates' tenant, had contracted for security, with a manager informing the security guard who shot Jones that it needed security because "a lot of different gang members" would be there that night.

Surveillance footage showed Jones being pulled out of Sheba by an unidentified man, and he later walked away from a group of people along with the security guard. He then punched the guard, leading the guard to shoot him and flee the scene.

The bullet struck Jones's brain, according to court records, causing memory problems and ongoing issues with half his body.

"Jones had ample time to leave the scene and avoid the possibility of injury from the affray," but he punched the security guard, an act that precipitated the shooting, the panel said.

According to the doctrine, combatants are considered to have a "superior knowledge" of the risks of harm they face, and the opinion said Jones failed to show that Scarlett had some greater knowledge that he faced an unreasonable risk of harm on the property.

Lack of knowledge that the security guard was armed does not preclude the mutual combat doctrine's application, the judges said in the opinion, nor do complaints over earlier criminal incidents at the restaurant that Jones had pointed to.

"Although Scarlett disputes its knowledge of these alleged prior instances, where the plaintiff's injuries arise from mutual combat, 'the existence of prior criminal acts on the premises is irrelevant and cannot form a basis for liability on the premises owner,'" the panel said. "Put another way, where, as here, the record establishes without dispute that Jones voluntarily engaged in the combat that led to his injuries, his knowledge is deemed superior to Scarlett's 'as a matter of law.'"

Troy Covington, one of the attorneys representing Scarlett, praised the decision Monday.

While what happened to Jones is "unfortunate and terrible," he said the property owner had no knowledge of what occurred and nothing to do with it, or some way to know in advance or prevent it.

"We think this was a pretty straightforward application of the mutual combat doctrine," Covington told Law360.

Representatives for Jones could not be reached for comment on Monday.

Judges Elizabeth Gobeil, Anne Elizabeth Barnes and Trea Pipkin sat on the panel for the Court of Appeals.

Jones and his mother are represented by Michael J. Gorby and Mary Donne Peters of Gorby Peters & Associates LLC.

Scarlett & Associates is represented by Simon H. Bloom, Troy R. Covington and Sean C. Ryan of Bloom Parham LLP.

The case is Jones et al. v. Scarlett & Associates Inc., case number A24A1022, in the Court of Appeals of Georgia.

--Editing by Adam LoBelia.

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