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TORTS

Injuries to Personalty: Provide Remedy for Owners of Intentionally Damaged or Stolen Property

CODE SECTION: O.C.G.A. § 51-10-6 (new)
BILL NUMBER: HB 1538
ACT NUMBER: 1165
SUMMARY: The Act authorizes the owner of personal property to bring a civil action, subsequent to a written demand for payment, to recover damages from any person who willfully damages or steals that property. The Act prohibits bringing a civil action when payments are made in accordance with the written demand for payment.
EFFECTIVE DATE: July 1, 1988

History

The right to bring a civil action for the wrongful damage or theft of personal property has a long history, both statutory and common law.¹ Likewise, filing criminal charges against the person who steals or damages property has always been a possible alternative.²

However, these remedies are expensive. For the merchant, costs include the expenses for legal counsel and loss of time.³ The consequences can be severe for small businesses whose owners must devote considerable time prosecuting shoplifters or vandals.⁴ The Act, known as the Civil Shoplifting Act, is an effort to lessen these burdens for retailers. The purpose of the Act is to give merchants a statutory method to pursuing a civil remedy against those who damage or steal personal property.⁵

1. See O.C.G.A. §§ 51-10-1 to -5 (1984); *Thombley v. Hightower*, 52 Ga. App. 716, 184 S.E. 331 (1936) (any act which unlawfully interferes with the owner's enjoyment of personal property gives rise to a cause of action in tort); W. PROSSER & W. KEETON, *PROSSER AND KEETON ON TORTS* § 14 (5th ed. 1984).

2. Telephone interview with Representative Boyd Pettit, House District No. 19 (Apr. 11, 1988) [hereinafter Pettit Interview]. See O.C.G.A. §§ 16-7-2 to -23 (1988) (criminal trespass and damage to property); O.C.G.A. § 16-8-14 (1988) (theft by shoplifting).

3. Pettit Interview, *supra* note 2.

4. *Id.*

5. *Id.*

HB 1538

HB 1538 was enacted to ensure that merchants and other owners of damaged or stolen property have an efficient civil remedy.⁶ When property has been intentionally damaged or stolen as defined by the Criminal Code,⁷ the owner may institute a civil action and recover compensatory damages and any other resulting losses.⁸ For losses less than \$3000 there also may be recovery of "liquidated exemplary damages equal to \$150.00 or twice the amount of compensatory damages recovered in the action, whichever is greater," in addition to expenses of litigation.⁹

Before resorting to the court system, an injured property owner must meet three requirements. First, in a timely manner, the owner must demand payment in writing.¹⁰ Second, the tortfeasor must fail to pay or renege on an agreement to pay.¹¹ Third, the owner must allow thirty days before filing suit.¹² To discourage frivolous suits by property owners using this new Code section, the Act provides for attorney's fees and costs of litigation if the actions are based on claims "without reasonable, factual, or legal support."¹³

In its original form, HB 1538 included five subparagraphs detailing the required contents of the demand letter.¹⁴ To avoid confusion concerning the legal sufficiency of a demand letter, the House Committee on Judiciary removed the instructive paragraphs and provided that sending "conspicuous notice" and a copy of the Code section were the only requirements for an effective demand.¹⁵ The Senate Judiciary Committee was concerned that the effectiveness of the new section would be compromised if a potential defendant was not clearly apprised of his responsibili-

6. *Id.*

7. O.C.G.A. §§ 16-8-1 to -21 (1988).

8. O.C.G.A. § 51-10-6(a) (Supp. 1988).

9. O.C.G.A. § 51-10-6(a)(2) (Supp. 1988).

10. O.C.G.A. § 51-10-6(a)(2)(A) (Supp. 1988). Demand provisions are not uncommon. *See, e.g.*, O.C.G.A. § 10-1-399(b) (Supp. 1988) (relating to private actions under the Fair Business Practices Act of 1975).

11. O.C.G.A. § 51-10-6(a)(2)(B) (Supp. 1988).

12. O.C.G.A. § 51-10-6(a)(2)(C) (Supp. 1988). HB 1538, as introduced, did not allow a property owner to maintain an action if criminal charges had been filed within the 30-day grace period. This limitation was dropped by the House Committee on Judiciary because it restricted the potential remedies for property owners. Pettit Interview, *supra* note 2. *See* HB 1538 (HCS), 1988 Ga. Gen. Assem.

13. O.C.G.A. § 51-10-6(b) (Supp. 1988).

14. HB 1538, as introduced, 1988 Ga. Gen. Assem.

15. HB 1538 (HCS), 1988 Ga. Gen. Assem. Specificity in demand letters is required in other situations. *See, e.g.*, O.C.G.A. § 10-1-399(b) (Supp. 1988) (written demand for relief must describe unfair or deceptive business practices and subsequent injury); *Colonial Lincoln Mercury Sales, Inc. v. Molina*, 152 Ga. App. 379, 262 S.E.2d 820 (1979) (effective demand for relief must describe unfair business practice and injuries suffered).

ties and the consequences of his failure to make restitution.¹⁶ Further, the committee was concerned that the merchant might be unsure about the necessary language to use in making his demand or might have to pay a lawyer to advise him.¹⁷ In an effort to protect the rights of potential litigants and promote uniformity from case to case, the Senate Judiciary Committee offered a substitute which deleted all explanations of the contents of the demand letter and inserted a form that must be substantially followed.¹⁸

The bill, as passed, incorporates this form¹⁹ and prohibits the property owner from filing a civil action when the tortfeasor responds to the demand by payment or by an agreement to pay.²⁰ Once the property owner has fulfilled the statutory prerequisites and commenced civil action, the trier of fact must determine whether the property has been intentionally damaged or stolen, regardless of whether the tortfeasor has pled guilty to or has been convicted of a crime on the same facts.²¹ Finally, the Act offers no remedy to those who are pursuing a trover action.²²

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16. Pettit Interview, *supra* note 2.

17. *Id.*

18. *Id.* Compare HB 1538, as introduced, with HB 1538 (SCSFA), 1988 Ga. Gen. Assem.

19. O.C.G.A. § 51-10-6(c) (Supp. 1988).

20. O.C.G.A. § 51-10-6(d) (Supp. 1988).

21. O.C.G.A. § 51-10-6(e) (Supp. 1988).

22. O.C.G.A. § 51-10-6(g) (Supp. 1988). Trover is a remedy for the wrongful detention or interference with the possession of personal property. See O.C.G.A. §§ 44-12-150 to -158 (1982).