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PROPERTY

Landlord and Tenant: Amend Dispossessory Proceedings

CODE SECTIONS: O.C.G.A. §§ 44-7-53, -55 to -56 (amended)
BILL NUMBER: HB 337
ACT NUMBER: 1169
SUMMARY: The Act provides that a writ of possession shall enter instantly if a tenant fails to answer a summons as provided in dispossessory proceedings. The Act further provides that if, upon trial of the case, judgment is entered against the tenant, the trial court shall issue a writ of possession and a writ of execution to be effective at the expiration of ten days after the judgment is entered. Finally, the Act provides that if the judgment is against the tenant, the court may upon motion of the landlord and upon good cause shown order the tenant to pay rent into the registry of the court in order to remain in possession of the premises during the appellate process.

EFFECTIVE DATE: July 1, 1994

History

HB 337 addresses two problems attendant to dispossessory proceedings. First, the Georgia Code provides that “[a] notice of appeal shall be filed within 30 days after entry of the appealable decision or judgment complained of.”¹ Further, a notice of appeal serves as a stay of proceedings upon payment of all costs in civil actions generally.² To protect a money judgment and the right to interest, the appellee may file a motion for supersedeas bond.³ By contrast, dispossessory proceedings are peculiar because they often involve not only money judgments, but also the right to possession of property. Therefore, prior to this amendment, Code section 44-7-56, in conjunction with Code section 5-6-38, could have produced the inequitable result of forcing a landlord to wait thirty days, often without receiving rent, to see if a

1. O.C.G.A. § 5-6-38(a) (Supp. 1994).

2. *Id.* § 5-6-46 (Supp. 1994).

3. *Id.*

tenant appealed the judgment of the trial court.⁴ Furthermore, the subject premises were often unkept and, indeed, damaged by tenants.⁵

Former Code section 44-7-56 caused other problems because, in order to appeal, the tenant had to pay rent into the registry of the court in order to remain in possession of the premises.⁶ Often, these disagreements between landlords and tenants concerned disputed back rent.⁷ In disputes involving the obligation to pay back rent, requiring payment of disputed rent into the registry of the court was considered unfair under some circumstances.⁸

HB 337

HB 337 amended Code section 44-7-56 and provides that notice of appeal in dispossessory cases shall be filed within ten days of the date of judgment.⁹ This amendment protects the landlord from the inequity of not receiving rent for thirty days even though the landlord won at the trial level.¹⁰ Subsection (a) of Code section 44-7-55 was also amended to comport with the amendment to Code section 44-7-56.¹¹ Specifically, under the Act, if the judgment is against the tenant, "[t]he court shall issue a writ of possession, both of execution for the judgment amount and a writ to be effective at the expiration of ten days after the date such judgment was entered."¹²

Code section 44-7-56 was further amended to provide that if a tenant wishes to remain in possession of the premises during appeal, the tenant must only pay rent into the registry of the court upon motion by the appellee landlord and upon good cause shown.¹³ Both the House and the Senate passed versions of HB 337 requiring the tenant to pay rent into the registry of the court in order to remain in possession during appeal.¹⁴ However, only the House version granted the trial court discretion to determine the amount of rent due.¹⁵ The Senate

4. Telephone Interview with Rep. Roy Barnes, House District No. 33 (Apr. 6, 1994) [hereinafter Barnes Interview]. Rep. Barnes was a member of the Conference Committee which recommended the Conference substitute that ultimately passed. *Id.* Telephone Interview with Rep. Vinson Wall, House District No. 87 (Apr. 16, 1994) [hereinafter Wall Interview]. Rep. Wall sponsored HB 337. *Id.*

5. Barnes Interview, *supra* note 4.

6. *Id.*; O.C.G.A. § 44-7-56 (1991).

7. Barnes Interview, *supra* note 4.

8. *Id.*

9. O.C.G.A. § 44-7-56 (Supp. 1994).

10. Barnes Interview, *supra* note 4.

11. *See* O.C.G.A. § 44-7-55(a) (Supp. 1994) (inserting similar "ten-day" language).

12. *Id.*

13. *Id.* § 44-7-56 (Supp. 1994); *cf. id.* § 44-7-56 (1991) (requiring tenant to pay rent into court registry).

14. HB 337 (HCS), 1994 Ga. Gen. Assem.; HB 337 (SCS), 1994 Ga. Gen. Assem.

15. HB 337 (HCS), 1994 Ga. Gen. Assem.

and House held a conference committee meeting in which Representative Barnes successfully persuaded the Conference Committee to allow the trial judge to exercise his discretion to order whether rent had to be paid at all.¹⁶ Both the Property Owner's Association and Legal Aid endorsed the bill.¹⁷

Stephen R. Chance

16. Barnes Interview, *supra* note 4; HB 337 (CCS), 1994 Ga. Gen. Assem.

17. Wall Interview, *supra* note 4.