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Official Code of Georgia Annotated TITLE 9 Civil Practice (Chs. 1 — 17) CHAPTER 2 Actions Generally (Arts. 1 — 4) Article 2 Parties (§§ 9-2-20 — 9-2-30)

9-2-21. Parties to actions for torts; notice to Department of Community Health for a party who has received medical assistance benefits.

(a) An action for a tort shall, in general, be brought in the name of the person whose legal right has been affected. In the case of an injury to property, a tort action shall be brought in the name of the person who was legally interested in the property at the time the injury thereto was committed or in the name of his assignee.

(b) An action for a tort shall be brought against the party committing the injury, either by himself, his servant, or an agent in his employ.

(c) If the person whose legal right has been affected has received medical assistance benefits pursuant to Chapter 4 of Title 49, prior to initiating recovery action, the representative or attorney who has actual knowledge of the receipt of said benefits shall notify the Department of Community Health of the claim. Mailing and deposit in a United States post office or public mail box of said notice addressed to the Department of Community Health with adequate postage affixed is adequate legal notice of the claim. Notice as provided in this subsection shall not be a condition precedent to the filing of any action for tort. Initiating recovery action shall include any communication with a party who may be liable or someone financially responsible for that liability with regard to recovery of a claim including but not limited to the filing of an action in court.

History

Orig. Code 1863, § 3182; Code 1868, § 3193; Code 1873, § 3258; Code 1882, § 3258; Civil Code 1895, § 4940; Civil Code 1910, § 5517; Code 1933, § 3-109; Ga. L. 1993, p. 1080, § 1; Ga. L. 1999, p. 296, § 24.

Annotations

JUDICIAL DECISIONS

This section requires that civil actions be brought in name of real parties in interest, and does not touch upon the question of who may present an order or pleading to the court on behalf of one of the parties. Dixie-Land Iron & Metal Co. v. Piedmont Iron & Metal Co., 235 Ga. 503, 220 S.E.2d 130, 1975 Ga. LEXIS 912 (1975).

In an action for damages to and to enjoin further damage to real property, the real party in interest is the person or persons who own, lease, or have a legal interest in the property. Equitable Life Assurance Soc'y v. Tinsley Mill Village, 249 Ga. 769, 294 S.E.2d 495, 1982 Ga. LEXIS 931 (1982).

Section 51-1-11 provides exception to this section. —

Former Code 1933, § 105-106 (see now O.C.G.A. § 51-1-11), providing that if tort results from violation of a duty, itself the consequence of a contract, right of action was confined to parties and privies to that contract, except in cases where the party would have had a right of action for the injury done, independently of the contract, set forth an exception to former Code 1933, § 3-109, (see now O.C.G.A. § **9**-**2**-**21**). Black v. Southern Ry., 48 Ga. App. 445, 173 S.E. 199, 1934 Ga. App. LEXIS 99 (1934).

Torts by servant. —

Former Civil Code 1910, § 5517 (see now O.C.G.A. § **9**-**2**-**21**) governed right of action under former Code 1933, § 105-108 (see now O.C.G.A. § 51-2-2) for torts by servant. Burch v. King, 14 Ga. App. 153, 80 S.E. 664, 1914 Ga. App. LEXIS 152 (1914).

Conditional vendor has right of action for damages to automobile. Louisville & N.R.R. v. Dickson, 158 Ga. 303, 123 S.E. 12, 1924 Ga. LEXIS 138 (1924); Ryals v. Seaboard Air-Line Ry., 32 Ga. App. 453, 123 S.E. 733, 1924 Ga. App. LEXIS 457 (1924).

Minor may maintain action for damages on account of any tort resulting in damages to the minor, whether or not the tortious act affects the minor's parent. Kite v. Brooks, 51 Ga. App. 531, 181 S.E. 107, 1935 Ga. App. LEXIS 395 (1935).

Action should be brought in minor's name. —

As minor plaintiff in action for injuries caused by tortious conduct of defendant is real party in interest and next friend is merely an officer of the court who is to protect the rights of the minor, the action should properly be brought in the name of the minor, by the minor's next friend, but if the action is brought in the name of the next friend, the difference is of little consequence. Kite v. Brooks, 51 Ga. App. 531, 181 S.E. 107, 1935 Ga. App. LEXIS 395 (1935).

Action to recover property set apart to minor children which has been taken and converted by other persons should be brought in the name of such children, regardless of whether they sue by guardian or next friend or without representation. Pardue Medicine Co. v. Pardue, 194 Ga. 516, 22 S.E.2d 143, 1942 Ga. LEXIS 623 (1942).

Mentally incompetent plaintiff. —

In an action for injuries by a mentally incompetent plaintiff, the statute of limitations did not continue indefinitely and started to run upon entry into the case of the plaintiff's mother's next friend. Price v. Department of Transp., 214 Ga. App. 85, 446 S.E.2d 749, 1994 Ga. App. LEXIS 777 (1994), cert. denied, No. S94C1741, 1994 Ga. LEXIS 1147 (Ga. Oct. 28, 1994).

This section permits tenant in common to bring action of trover. Jordan v. Thornton, 7 Ga. 517, 1849 Ga. LEXIS 173 (1849); Howard v. Snelling & Snelling, 28 Ga. 469, 1859 Ga. LEXIS 234 (1859).

Action by highway department for destruction of bridge. —

The State Highway Department (now Department of Transportation), holding bridge in trust for public as part of system of roads under its jurisdiction could be considered a bailee, and was entitled to bring the action for the allegedly negligent destruction of the bridge. State Hwy. Dep't v. Florence, 73 Ga. App. 852, 38 S.E.2d 628, 1946 Ga. App. LEXIS 433 (1946).

To maintain action for the use of another, there must be a legal right of action in the party bringing the action. King v. Prince, 89 Ga. App. 588, 80 S.E.2d 222, 1954 Ga. App. LEXIS 520 (1954).

If automobile owner has been fully compensated for damage to the owner's automobile by payment by insurer of damages less deductible amount and by payment by other party to the collision of the deductible amount, the owner has no cause of action against the other party and may not maintain suit in the owner's name. King v. Prince, 89 Ga. App. 588, 80 S.E.2d 222, 1954 Ga. App. LEXIS 520 (1954).

Insurance company cannot maintain action for destruction of property covered in part by its policy in the absence of an assignment. Atlanta Cadillac Co. v. Manley, 29 Ga. App. 522, 116 S.E. 35, 1923 Ga. App. LEXIS 104 (1923).

Subsequent vendees having no legal or equitable interest in property at time alleged negligent act occurred are not parties to tort action. Barber v. Adams, 145 Ga. App. 627, 244 S.E.2d 149, 1978 Ga. App. LEXIS 2069 (1978).

Limited rights of subsequent owners. —

Purchaser who paid seller's draft for price of cotton after it was burned in carrier's possession cannot sue the carrier. Delgado Mills v. Georgia R.R. & Banking Co., 144 Ga. 175, 86 S.E. 550, 1915 Ga. LEXIS 104 (1915); Pee Dee Mfg. Co. v. Georgia R.R. & Banking Co., 144 Ga. 176, 86 S.E. 551, 1915 Ga. LEXIS 105 (1915).

Complaint for damage to realty brought by owner against tenant was properly nonsuited (dismissed) since the plaintiff was neither the owner of the property nor the landlord during most of the period when the damages were inflicted and there was no evidence from which

the jury might reasonably infer that any ascertainable part of the damage was inflicted after plaintiff became the landlord and partial owner. Martin v. Medlin, 83 Ga. App. 589, 64 S.E.2d 73, 1951 Ga. App. LEXIS 918 (1951).

Owner was not entitled to recover mesne profits for period prior to time the owner acquired title. Patellis v. Tanner, 199 Ga. 304, 34 S.E.2d 84, 1945 Ga. LEXIS 304 (1945).

Trover by one who had parted with title. —

When the plaintiff parted with title to property prior to bringing trover action, nonsuit (involuntary dismissal) was proper. Dunlap-Huckabee Auto Co. v. Central Ga. Automotive Co., 31 Ga. App. 617, 122 S.E. 69, 1924 Ga. App. LEXIS 101 (1924).

Tortious agent and corporation for whom agent was acting when tort was committed could be sued in same action jointly. Coffer v. Bradshaw, 46 Ga. App. 143, 167 S.E. 119, 1932 Ga. App. LEXIS 80 (1932).

Tort action against wife and husband, her agent. —

When husband, as agent of wife, took out a dispossessory warrant to evict a tenant, tenant may join both in subsequent tort action connected therewith. Smith v. Eubanks & Hill, 72 Ga. 280, 1884 Ga. LEXIS 256 (1884).

On proof of conspiracy, all the conspirators are liable for the damage done. Woodruff v. Hughes, 2 Ga. App. 361, 58 S.E. 551, 1907 Ga. App. LEXIS 368 (1907).

Parties in trover action cannot be substituted by amendment. Willis v. Burch, 116 Ga. 374, 42 S.E. 718, 1902 Ga. LEXIS 107 (1902).

Action improperly brought against county commissioners cannot be amended by making the county a party or by changing action into one against commissioners as individuals. Arnett v. Board of Comm'rs, 75 Ga. 782, 1885 Ga. LEXIS 229 (1885).

Venue of trover action against joint defendants. —

Trover action alleging that named defendants have possession of described articles of personal property to which plaintiff claims title which they refuse to deliver to plaintiff charges defendants jointly with tortious act of conversion, and hence they may be sued together in county where any of them resides. Screven Oil Mill v. Crosby, 94 Ga. App. 238, 94 S.E.2d 146, 1956 Ga. App. LEXIS 514 (1956).

Tort action failed for lack of ownership interest. —

State court, as a matter of law, properly entered summary judgment for amusement park owner for lack of an ownership interest in the property at the time of the alleged sexual molestation of a minor on the roller coaster as, under O.C.G.A. § **9**-**2**-**21**(b), an action in tort had to be brought against the party committing the injury, either personally, by the party's servant, or an agent in the party's employ. Rice v. Six Flags Over Ga., LLC, 257 Ga. App. 864, 572 S.E.2d 322, 2002 Ga. App. LEXIS 1249 (2002), cert. denied, No. S03C0300, 2003 Ga. LEXIS 95 (Ga. Jan. 27, 2003).

Party without involvement in business not proper party. —

In a personal injury case in which a hotel moved for summary judgment, it was not a proper party under O.C.G.A. § **9**-**2**-**21**(b). The hotel demonstrated that the hotel did not own, manage, or otherwise have any participation or involvement with the hotel in question. Vidal v. Otis Elevator Co., No. 1:11-CV-03518-RWS, 2012 U.S. Dist. LEXIS 56180 (N.D. Ga. Apr. 20, 2012).

Research References & Practice Aids

Law reviews.

For note on 1993 amendment of this Code section, see 10 Ga. St. U.L. Rev. 20 (1993).

RESEARCH REFERENCES

C.J.S.

67A C.J.S., Parties, §§ 8 et seq., 46 et seq., 61 et seq.

ALR.

Right of husband and wife to maintain joint action for wrongs directly affecting both arising from same act, 25 A.L.R. 743.

Jurisdiction of action at law for damages for tort concerning real property in another state or country, 42 A.L.R. 196; 30 A.L.R.2d 1219.

Liability of employer forbidding employees to trade or associate with another, 52 A.L.R. 1028.

Actions at law between partners and partnerships, 58 A.L.R. 621; 168 A.L.R. 1088.

Right under or in view of statute to join in tort action at law parties who are severally but not jointly liable to plaintiff, 94 A.L.R. 539.

Suits and remedies against alien enemies, 152 A.L.R. 1451; 153 A.L.R. 1419; 155 A.L.R. 1451; 156 A.L.R. 1448; 157 A.L.R. 1449.

Breach of assumed duty to inspect property as ground of liability for damage or injury to third person, 6 A.L.R.2d 284.

Conflict of laws as to right of injured person to maintain direct action against tort-feasor's automobile liability insurer, 16 A.L.R.2d 881.

What rights of action in tort in favor of a bankrupt vest in his trustee in bankruptcy under § 70(a) of the former Bankruptcy Act (11 U.S.C. § 110(a)), 66 A.L.R.2d 1217.

Liability of real estate broker for interference with contract between vendor and another real estate broker, 34 A.L.R.3d 720.

Surveyor's liability for mistake in, or misrepresentation as to accuracy of, survey of real property, 35 A.L.R.3d 504.

Death action by or in favor of parent against unemancipated child, 62 A.L.R.3d 1299.

Right in absence of express statutory authorization, of one convicted of crime and imprisoned or paroled, to prosecute civil action, 74 A.L.R.3d 680.

Statute of limitations: running of statute of limitations on products liability claim against manufacturer as affected by plaintiff's lack of knowledge of defect allegedly causing personal injury or disease, 91 A.L.R.3d 991.

Breach of assumed duty to inspect property as ground for liability to third party, 13 A.L.R.5th 289.

Hierarchy Notes:

O.C.G.A. Title 9

O.C.G.A. Title 9, Ch. 2

O.C.G.A. Title 9, Ch. 2, Art. 2

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