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Business Associations

Joseph Epps Claxton

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By Joseph Epps Claxton*

This survey article deals with recent Georgia cases and statutes in the areas of partnerships, corporations, securities regulation, and utilities.

I. PARTNERSHIPS

A. *Legal Liability of Partners*

There are, of course, innumerable issues within the general topic of the liability of individual members of a partnership. One of the most basic of these issues concerns whether a new partner is liable for the previously existing obligations of the partnership. The Uniform Partnership Act does extend liability for such debts to new partners.

> A person admitted as a partner into an existing partnership is liable for all the obligations of the partnership arising before his admission as though he had been a partner when such obligations were incurred, except that this liability shall be satisfied only out of partnership property.[1]

The basic effect of the UPA provision is to eliminate the confusion that can arise when a new partner's obligation is fixed by the terms of his contract of admission—a contract that may be subject to varying constructions.[2] Georgia, however, has not followed this approach. In two early Georgia Supreme Court decisions, *Bracken & Ellsworth v. Dillon & Sons*[3] and *Morris v. Marqueze & Varney*,[4] it was held that a new partner is not liable for the old debts of the partnership in the absence of an express agreement, upon sufficient consideration, to accept those liabilities. The holdings in these two cases have been codified in a statute,[5] which was followed by the Georgia Court of Appeals during the current survey period in the case of

* Associate professor of Law, Walter F. George School of Law, Mercer University. Emory University (A.B., 1968); Duke University (J.D., 1972). Member of the Georgia Bar.

1. UNIFORM PARTNERSHIP ACT §17 [hereinafter cited as UPA]. The limitation to partnership property sometimes is forgotten. It should not be.

2. *See* 2 Z. CAVITCH, BUSINESS ORGANIZATIONS §24.05 (1976).

3. 64 Ga. 243 (1879).

4. 74 Ga. 86 (1885).

5. GA. CODE ANN. §75-205 (1973) states: "An incoming partner is not bound for the old debts of the firm in the absence of an express agreement, on sufficient consideration, to assume the old indebtedness."

Cook v. Preskitt.[6] Reversing the trial court's decision, the court of appeals reemphasized the necessity of an express agreement to hold an incoming partner liable for prior partnership obligations.

Another interesting liability issue is raised when a partner is sued individually by a plaintiff injured by the partner's sole negligence when the negligent act occurred in the course of the partnership business. It is a basic legal principle that a partnership in general may be liable for such an act to the same extent as the partner directly involved.[7] That is certainly the rule in Georgia.[8] A plaintiff, however, has the option of proceeding against the partner alone without regard to the partnership. It was exactly these facts that led to the decision in *Flynn v. Reaves*,[9] in which the court of appeals held that the individual partner involved in such a situation cannot seek contribution from his copartners. This quite predictable result was explained by the court as follows:

> Here, the co-partners and defendant are not joint tortfeasors among themselves. For the co-partners are subjected to liability only by the doctrine of respondeat superior. Thus, defendant whose negligence, if any, was actual, cannot seek contribution from his co-partners, who are merely constructively negligent. Of course, had defendant alleged that his co-partners were actual tortfeasors, a third-party action for contribution would lie. But such is not the case.[10]

B. Procedure

As so often happens, the Georgia Long-Arm Statute[11] was involved in a business setting in *North Peachtree I-285 Properties, Ltd. v. Hicks*.[12] A nonresident partner signed a promissory note in partial payment for property being purchased by his partnership as well as a personal guarantee of payment. The signings took place in the Atlanta offices of the partnership's

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6. 137 Ga. App. 250, 223 S.E.2d 282 (1976).

7. UPA §13.

8. There has been considerable confusion on this point, for the very simple reason that there is a provision in the Georgia Code which states that "[p]artners shall not be responsible for torts committed by a copartner." GA. CODE ANN. §75-308 (1973). There are some early cases that give a literal interpretation to this rather unfortunate language. See, *e.g.*, Corbett v. Connor, 11 Ga. App. 385, 75 S.E. 492 (1912). However, Rogers v. Carmichael, 184 Ga. 496, 192 S.E.39 (1937), held in effect that the statute does not really mean what it says and that Georgia adheres to the common-law rule of general liability for "a negligent tort committed by one of the partners *within the scope of the partnership business*." *Id.*, 192 S.E. at 40 (emphasis added). The reader will have to evaluate for himself the validity of this result.

9. 135 Ga. App. 651, 218 S.E.2d 661 (1975).

10. *Id.* at 654, 218 S.E.2d at 663. The court did say that "had the co-partners been subjected to liability by the doctrine of respondeat superior, they would have a right of indemnity against defendant for his actual negligence." *Id.*, n. 2.

11. GA. CODE ANN. §24-113.1 (1971). The relevant portion of the statute provides for jurisdiction over any nonresident who "[t]ransacts any business with this State . . . ."

12. 136 Ga. App. 426, 221 S.E.2d 607 (1975).

attorneys. The court of appeals held that the defendant partner's actions were sufficient to establish personal jurisdiction over him in the Georgia courts. The signings amounted to the transaction of business within the meaning of the Long-Arm Statute. In addition, reference was made to the well-known case of *Coe & Payne Co. v. Wood-Mosaic Corp.*,[13] in which the Georgia Supreme Court said the state had an interest in providing judicial redress against persons who "incur obligations to . . . those within the ambit of the State's legitimate protective policy."[14] The decision in *North Peachtree* is consistent with the so-called Illinois Rule, now followed in Georgia, which is "based on the premise that the Long-Arm Statute contemplates that jurisdiction shall be exercised over non-resident parties to the maximum extent permitted by procedural due process."[15]

C. *Termination of a Partnership Interest*

Particularly in the case of a partnership based on professional skills, such as the providing of medical services, it is not uncommon for the partnership agreement to provide that in the event a partner becomes permanently disabled his interest in the partnership will terminate. Unless the partner formally concedes his own disability, it is necessary for a determination to be made by an independent medical examination. The allocation of considerable sums of money sometimes may hinge on whether such a determination is made in a proper and timely fashion.

In *First National Bank of Atlanta v. Rayle*,[16] there was no real doubt of the affected partner's disability. Nevertheless, the partner never conceded his disability, and it was an "uncontroverted fact that there had been no *determination of such permanent disability pursuant to the partnership agreement* prior to his death."[17] Therefore, the court of appeals held, the affected partner's estate was entitled to the same substantial benefits (such as insurance payments and a distribution from capital) that would have been available to the partner if he had been completely active just prior to his death.

Obviously, a great deal of flexibility is available in the drafting of partnership agreements. It is therefore doubly unfortunate when a simple, clear element of an agreement is ignored by the parties to it, thus compelling what would otherwise be unnecessary judicial intervention.

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13. 230 Ga. 58, 195 S.E.2d 399 (1973). For an analysis of this case, see Claxton, *Annual Survey of Georgia Law: Agency and Business Associations*, 25 MER. L. REV. 21, 42 (1974).

14. 230 Ga. at 61, 195 S.E.2d at 401, *quoting* Nelson v. Miller, 11 Ill.2d 378, 143 N.E.2d 673, 676 (1957).

15. 230 Ga. at 60, 195 S.E.2d at 401.

16. 137 Ga. App. 103, 222 S.E.2d 891 (1975).

17. *Id.* at 106, 222 S.E.2d at 893 (emphasis added).

II. CORPORATIONS

With one exception, a case involving a procedural question,[18] the decisions dealing with corporate questions during the current survey period were relatively routine. However, a number of cases did raise points of some interest.

A. The Corporation as a Legal Entity

The most fundamental characteristic of a corporation is that "the law has seen fit to clothe this institution with legal personality."[19] A corporation, in other words, is a legal entity. There are a multitude of cases in which this concept is applied, and two new Georgia opinions were added to the list during the current survey period.

Both of the cases dealt with the so-called alter-ego doctrine, under which the corporate entity may be ignored and liability for monetary obligations imposed directly on its shareholders. Probably the most familiar analysis of the alter-ego doctrine is that set forth by the California courts. In general terms, the application of the doctrine requires the satisfaction of two conditions: "(1) [T]hat there be such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist and (2) that, if the acts are treated as those of the corporation alone, an inequitable result will follow."[20]

In *Trans-American Communications, Inc. v. Nolle*[21] a former corporate officer sought to pierce the corporate veil to recover unpaid salary from a holding company which was the sole shareholder of the employer corporation. The former officer successfully relied upon the alter-ego doctrine, primarily because of evidence that the holding company had used and drained the resources of the employer-subsidiary in order to improve the position of other subsidiaries. The facts of the case include a number of classic indications of intermingling between the two theoretically separate businesses: They were both located in the same building, the corporate officers overlapped, there was a central bookkeeping office, employees were interchanged between the companies, and, according to direct testimony, income was pooled. It was apparent that the subsidiary "was in fact the mere agent, instrumentality, and alter ego" of the holding company.[22]

Reference to the alter-ego doctrine was also made in *Goldgar v. Jetter*,[23]

18. *See* Process Systems, Inc. v. Dixie Packaging Co., 137 Ga. App. 452, 222 S.E.2d 891 (1976), discussed in notes 42-45, *infra*, and accompanying text.

19. N. LATTIN, THE LAW OF CORPORATIONS 65 (2d ed. 1971).

20. Automotriz Del Golfo De California v. Resnick, 47 Cal.2d 792, 796, 306 P.2d 1, 3 (1957). The reader may also wish to examine Minton v. Caveney, 56 Cal.2d 576, 364 P.2d 473 (1961).

21. 134 Ga. App. 457, 214 S.E.2d 717 (1975).

22. *Id.* at 457-58, 214 S.E.2d at 718, summarizing the employee's argument.

23. 135 Ga. App. 589, 218 S.E.2d 452 (1975).

which provides an example of how the doctrine is applied sometimes when simple agency principles could be more suitably relied upon. The issue in *Goldgar* was whether an officer-agent who receives money on behalf of a corporation may be responsible for that sum to the party from whom it is received, even when the agent did not personally pocket the money and received no benefit from it. In a concurring opinion, one member of the court of appeals panel noted that the officer was liable to the party who had conveyed the money if he knew that the latter was ultimately entitled to get it back.[24] This view was based on the language of a Georgia Supreme Court case, *Alexander v. Coyne*,[25] and does not depend in any way upon the alter-ego doctrine. Yet the majority opinion insisted on basing its holding against the officer on the proposition that he was the "alter ego" of the recipient corporation, an approach which need never have been adopted at all. Moreover, the proposition was apparently based solely on the fact that the officer in question also owned eighty percent of the corporation's stock. That fact in itself is certainly not enough to trigger the application of the alter-ego doctrine. The majority probably reached the correct result, but it certainly did so in a questionable manner.[26]

B. The Doctrine of Ultra Vires

As the term is traditionally used, "[a]n act or contract of a corporation is 'ultra vires' where it is beyond the powers expressly or impliedly conferred upon the corporation."[27] In Georgia as in most other states, the doctrine of ultra vires has been almost entirely eliminated.[28] Under the Georgia Corporations Code, it can certainly no longer be raised as a defense to an action against a corporation on a corporate obligation.[29] Nevertheless,

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24. *Id.* at 591, 218 S.E.2d at 453.

25. 143 Ga. 696, 85 S.E. 831 (1915).

26. It is quite common for the alter-ego doctrine to be confused with agency concepts, and frequently no great harm is done as a result. One need look no further than the *Trans-American* case, discussed in notes 21 and 22, *supra*, and accompanying test, to find an opinion in which the blurring of the distinction is not really critical. The quality of the *Goldgar* decision, on the other hand, is seriously undermined by the court's lack of precision in applying two related but nevertheless different theories.

27. J. KAPLAN, KAPLAN'S NADLER GEORGIA CORPORATION LAW §§7-24 (1971).

28. *See* GA. CODE ANN. §22-203 (1970).

29. Under the Code, there are three situations in which a plaintiff may use the doctrine of ultra vires as the basis for an action. They are:

> a. In an action by a shareholder or director against the corporation to enjoin the doing of any act or the transfer of real or personal property by or to the corporation. . . .
>
> b. In action by the corporation . . . against an incumbent or former officer or director of the corporation, for loss or damage due to his unauthorized act.
>
> c. In an action by the Attorney General . . . to dissolve the corporation, or in an action by the Attorney General to enjoin the corporation from the transaction of unauthorized business.

GA. CODE ANN. § 22-203 (1970).

the effort to do exactly that continues to be made, as illustrated by the truly hilarious case of *Free for all Missionary Baptist Church, Inc. v. Southeastern Beverage & Ice Equipment, Inc.*[30] The case arose when the pastors of the church, operating in their capacities as the president and the secretary of the church corporation, leased liquor dispensary equipment from Southeastern Beverage for use in a proposed church-affiliated night-club. The church actually made a substantial initial payment, but then defaulted on the monthly rental payments. When Southeastern brought suit against the church corporation, the latter employed the doctrine of ultra vires as a defense. Unhappily for the church, however, Georgia's statutory limitations on the use of the doctrine of ultra vires are applicable to church corporations.[31] Therefore, certain Biblical admonitions notwithstanding, the defense of ultra vires was unsuccessful.

C. *The Liability of Corporate Promoters*

The potential perils of a promoter who enters into a contract with a third party in the process of establishing a projected corporation were highlighted during the current survey period in the case of *Wiggins v. Darrah*.[32] In Wiggins the court of appeals held that such a promoter "can not be treated as an agent of the corporation, for it is not yet in existence; and he will be personally liable on his contract, unless the other party agreed to look to some other person or fund for payment."[33]

It is an unfortunate fact of life that many corporate promoters and their attorneys simply forget the need for a protective clause in a preincorporation contract. The absence of such a provision means that only a valid novation after incorporation will save the promoter from liability.[34] Too often the promoter tends to think of himself as acting on behalf of the prospective corporation when in fact, as a matter of law, he is acting for himself.

D. *The Liability of Corporate Officers*

When a corporate officer or shareholder misappropriates corporate assets, there is authority under Georgia law for the proposition that a court operating in equity may decree the individual involved personally liable for a debt of the corporation that is left unpaid as a result of the misappropriation.[35] Obviously, however, only a court having equity jurisdiction can

30. 135 Ga. App. 498, 218 S.E.2d 169 (1975).
31. GA. CODE ANN. §22-5501 (1970).
32. 135 Ga. App. 509, 218 S.E.2d 106 (1975).
33. *Id.* at 511, 218 S.E.2d at 108, *quoting* Wells v. Fay & Egan Co., 143 Ga. 732, 733, 85 S.E. 873, 874 (1915).
34. *See* H. HENN, HANDBOOK OF THE LAW OF CORPORATIONS §112 (2d ed. 1970).
35. *See* Tatum v. Leigh, 136 Ga. 791, 72 S.E. 236 (1911), and Lamar v. Allison, 101 Ga. 270, 28 S.E. 686 (1897).

grant relief upon that theory—a point succinctly noted by the court of appeals in *Scroggins v. Ridge Nassau Corp.*[36] The trial court which initially dealt with the case, and granted relief, was the State Court of Cobb County. Under the Georgia Constitution, *superior courts* have exclusive jurisdiction in equity cases.[37]

E. Rights of Dissenting Shareholders

In *Aaron Rents, Inc. v. Corr*,[38] decided during the 1974 survey period, the court of appeals considered the nature of a dissenting shareholder's statutory right[39] to demand that the corporation purchase his shares for their fair value.[40] Left unanswered in that decision was the question whether the dissenting shareholder, who had initially declined to accept the amount tendered to him by the corporation, was entitled to interest on that amount until the time of a judgment which ultimately ruled the tendered amount to be the true value of the shareholder's stock. This question was brought before the court of appeals during the current survey period in *Corr v. Aaron Rents, Inc.*,[41] and no one should be particularly surprised that the answer was in the negative.

F. Procedure

Probably the most significant recent decision in the corporate sphere was that in *Process Systems, Inc. v. Dixie Packaging Company, Inc.*,[42] which has implications that actually extend far beyond the law of corporations. The principal issue in *Process Systems* was whether a New Jersey judgment against a Georgia corporation should be given full faith and credit in, and thus be subject to enforcement by, the Georgia courts. The determining factor was whether New Jersey had applied its long-arm statute to the corporation in a proper manner.

The Georgia Court of Appeals applied the well-known "minimal contacts" test in analyzing the validity of New Jersey's claim of jurisdiction. This test, which has its origins in decisions of the U.S. Supreme Court,[43]

36. 135 Ga. App. 547, 218 S.E.2d 448 (1975).

37. GA. CONST. art. VI, §4, ¶1, GA. CODE ANN. §2-3901 (1973).

38. 133 Ga. App. 296, 211 S.E.2d 156 (1974).

39. The statutory right may be found in both the present and the former Georgia Corporations Codes. GA. CODE ANN. §22-1202 (1970); Ga. Laws, 1937-38, p. 214, *repealed by* Ga. Laws, 1968, p. 565, 683. The *Aaron Rents* litigation involved the rights of dissenting shareholders as set forth in the old Code. Because of the similarities between the relevant provisions of the two codes, however, there can be little doubt that the *Aaron Rents* matter is quite relevant to the existing law.

40. For a discussion of Aaron Rents, Inc. v. Corr, see Claxton, *Annual Survey of Georgia Law: Business Associations*, 27 MER. L. REV. 11, 15 (1975).

41. 136 Ga. App. 643, 222 S.E.2d 150 (1975).

42. 137 Ga. App. 452, 224 S.E.2d 103 (1976).

43. *See* Hanson v. Denckla, 357 U.S. 235 (1958); McGee v. International Life Ins. Co., 355 U.S. 220 (1957); International Shoe Co. v. Washington, 326 U.S. 310 (1945).

is based on the view that, to establish jurisdiction over a nonresident, there must "be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws."[44]

The New Jersey action arose out of contracts that were to be performed in New Jersey, and which were subject to a modification agreement entered into in New Jersey. An agent of the Georgia corporation on at least two occasions had visited the New Jersey offices of the other party to the contract for business discussions. In *Process Systems* the court of appeals held that these facts satisfied the minimal contacts test, thus entitling the New Jersey judgment to be enforced within Georgia. The court summarized its decision with the statement that "where the foreign corporation contacted the resident corporation in its home state and the work was done there, the minimal contacts requirement . . . [is] met."[45]

The *Process Systems* opinion will serve as a major precedent for future decisions on matters involving enforcement actions on foreign judgments. The case is a prime example of the kind of analysis that one would always hope to see in the work product of an appellate court.

In a more mundane matter, the court of appeals in *Healey v. Morgan*[46] once again examined the need of a corporation for a certificate of authority to transact business. In general, the right of a foreign corporation to transact business in Georgia is conditioned on the procurement of such a certificate from the Georgia secretary of state;[47] a foreign corporation that has failed to obtain a certificate may not maintain an action in any Georgia court.[48] *Healey* dealt with the question whether an assignee of a cause of action held by an unqualified foreign corporation could properly bring a suit when that assignee is a natural person. The Georgia Corporations Code makes it clear that a corporate assignee could not maintain such an action,[49] but it does not directly impose a prohibition upon an assignee who is a natural person. Nevertheless, the court of appeals found no difficulty in holding that the assignee in *Healey* could not proceed with the suit, since he "can acquire no greater rights than his assignor had, and he takes it subject to the equities and defenses existing between the assignor and the debtor at the time of the assignment."[50]

In considering *Healey* and similar cases, one should not forget that there are certain activities that a foreign corporation may undertake within Georgia that are statutorily excluded from the meaning of "transacting

44. Hanson v. Denckla, 357 U.S. 235, 253 (1958).
45. 137 Ga. App. at 457, 224 S.E.2d at 107.
46. 135 Ga. App. 915, 219 S.E.2d 628 (1975).
47. GA. CODE ANN. §22-1401(a) (1970).
48. GA. CODE ANN. §22-1421(b) (1970).
49. GA. CODE ANN. §22-1421(b) (1970).
50. 135 Ga. App. 915, 219 S.E.2d at 629.

business."[51] One should examine these exclusions carefully when evaluating whether a foreign corporation has conducted activities in Georgia in violation of the rule requiring qualification.[52]

In *Fibertex, Inc. v. Caldwell*,[53] another case revolving around a basically procedural issue, the Georgia Supreme Court considered the manner in which a claimant must respond to a superior court order to claimants to show cause why the report of the receiver in a corporate receivership should not be approved. The order in question required that an objecting claimant *come before the judge to whom the receivership matter was assigned.* Instead, the claimant made its objection directly to the receiver, and the matter was eventually heard by a judge other than the one who actually was charged with handling the case. The second judge approved the receiver's report, and the claimant appealed. The supreme court held in effect that the claimant had no basis for an appeal, since it had not complied with the procedure for making an objection set forth in the so-called bar order of the first judge.

If an attorney advised the claimant to make its objection in the manner it followed, that attorney may have been guilty of malpractice. The bar order involved was apparently quite clear, and at least on the basis of the information in the reported case there would seem to have been no real excuse for the mistake that was made in responding to the order.

G. Nonprofit Corporations

Georgia courts rarely involve themselves in the operation of benevolent associations, including nonprofit corporations. As stated by the supreme court in *Golden Star of Honor v. Worrell*:[54]

> The general rule is that if a benevolent association confines itself to the powers vested in it, and acts in good faith under by-laws adopted by it, and does not violate the laws of the land or any pecuniary or property right of the member [sic] of the association, the courts have no authority to interfere with the society by directing or controlling it as to questions of internal policy, but will leave the society free to carry out any lawful purpose in accordance with its rules and regulations.[55]

There are exceptions to this pattern, however, as pointed out by the court of appeals in *Smooth Ashlar Grand Lodge (Compact) of F. & A.A. York Masons v. Odom*.[56] That case arose out of an attempt by members of

51. GA. CODE ANN. §22-1401(b) (1970).

52. A good example of a case dealing with such a statutory exception is Winston Corp. v. Park Electric Co., 126 Ga. App. 489, 191 S.E.2d 340 (1972), discussed in Claxton, *supra* note 13, at 41.

53. 236 Ga. 136, 223 S.E.2d 111 (1976).

54. 158 Ga. 309, 123 S.E. 106 (1924).

55. *Id.*

56. 136 Ga. App. 812, 222 S.E.2d 614 (1975).

a nonprofit corporation to obtain judicial assistance in exercising their statutory right to inspect the books and records of the corporation.[57] The officers of the Masonic Lodge had actively obstructed the members' inspection efforts. The court of appeals held that under these circumstances there was certainly nothing improper in the trial court's refusal to impose summary judgment against the members. In the words of the *Grand Lodge* opinion, "[w]here . . . [judicial] interference is necessary to enforce rights recognized by the law, the courts of this state have not refused to intervene in the internal affairs of a benevolent society simply because that society has its own governing rules."[58]

H. New Legislation

There were no significant substantive changes in the Georgia Corporations Code[59] during the current survey period. However, in its 1976 session the General Assembly did enact many technical modifications dealing with procedures for incorporation, merger, consolidation, and disolution, as well as certain changes in the routine duties of the secretary of state regarding corporations.[60] This new legislation does not alter the basic nature of the Corporations Code, and for that reason will not be discussed in detail in this article.

III. SECURITIES REGULATION

The Georgia Securities Act of 1973,[61] which became effective on April 1, 1974, expressly includes limited partnership interests in its definition of the term "security."[62] The Securities Act of 1957,[63] which was the predecessor of the present law, did not make specific reference to such interests in its definition of security;[64] however, in two cases decided during the current survey period that dealt with controversies arising under the 1957 Act, the court of appeals held that limited partnership interests were indeed securities. In *Fortier v. Ramsey*[65] the interests were analogized to investment contracts, which were included in the old act's definition of a security. The court stated that where "the limited partners look solely to . . . [a] general partner for the enhancement of their investments and the ultimate success of the ventures," the limited partnership interests were definitely

57. *See* GA. CODE ANN. §22-2612 (1970).
58. 136 Ga. App. at 815, 222 S.E.2d at 616 (emphasis added).
59. GA. CODE ANN., tit. 22 (1970).
60. Ga. Laws, 1976, p. 1102.
61. GA. CODE ANN., tit. 97 (1976).
62. GA. CODE ANN. §97-102(a)(16).
63. Ga. Laws, 1957, p. 134.
64. Ga. Laws, 1957, p. 136.
65. 136 Ga. App. 203, 220 S.E.2d 753 (1975).

securities[66] and thus were subject to state registration requirements and the mandatory disclosures of information involved therein. The *Fortier* decision was followed in *Kleiner v. Silver*.[67]

Fortier and *Kleiner* are clearly correct, and build on the earlier opinion of the court of appeals in *Jaciewicki v. Gordarl Associates, Inc.*,[68] which contained a thorough discussion of all the principal judicial tests for the determination of what is and is not a security. It is apparent that the court of appeals has acted with a keen awareness of the average investor's need for protection.

IV. UTILITIES

In *Allied Chemical Corp. v. Georgia Power Co.*,[69] a case of major importance, the Georgia Supreme Court held that the Georgia Power rate structure, which to some degree may seem to favor residential users over industrial consumers, does not operate in such a manner as to deny equal protection to the industrial consumers. A careful reading of the *Allied Chemical* opinion makes it clear that it was not so much the rate structure itself that favored residential users but rather the change that had been made from the previous rate structure. The court said, moreover, that the most fundamental effect of the change was to equalize a previously existing disparity between industrial and *commercial* users, not to favor residential users. In its overall evaluation of the equal protection question, the court stated:

> [T]he evidence . . . was adequate to show that the higher price assessed against the industrial class rested upon a rational basis which was reasonably related to legitimate ends of utility rate making. So long as this is so, it is no valid ground for complaint under equal protection principles that greater "fairness" might have been achieved through overhauling the rate system in a different manner.[70]

Because of its general economic effect, *Allied Chemical* probably has as much, or more, significance for Georgia business associations than any Georgia appellate decision in recent years. It certainly is representative of the kind of legal issues raised throughout the United States since the erstwhile energy crisis.

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66. *Id.* at 206, 220 S.E.2d at 755.
67. 137 Ga. App. 560 (1976).
68. 132 Ga. App. 888, 209 S.E.2d 693 (1974). This case is discussed in Claxton, *supra* note 40, at 18.
69. 236 Ga. 548, 224 S.E.2d 396 (1976).
70. *Id.* at 555, 224 S.E.2d at 401.