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# From Transient to Tenant OverNite: The Georgia Court of Appeals Leaves Room for Improvement in the Rights of Extended-Stay Motel Residents

Kayla Pfeifer\*

## I. INTRODUCTION

In asking the Georgia Court of Appeals to unmask the true nature of the relationship between extended-stay motels and their guests, Efficiency Lodge sought to raise seemingly simple questions of classification in the context of a business transaction. For the plaintiffs, however, these questions hit closer to home as they sought to affirm their rights as tenants under Efficiency Lodge's roof. A comparative analysis of innkeeper laws and landlord-tenant laws strongly supports the court's holding that the plaintiffs were indeed tenants. However, the court's language in reaching that conclusion provides weak support for extended-stay motel tenants in an increasingly vulnerable housing market. By "constrain[ing]" itself to the outdated constructs of contract and property law, the court delivered a gaping opinion through which the plaintiffs and those similarly situated will inevitably fall through the cracks.<sup>1</sup> Though the Georgia Court of Appeals reasoned that a tenancy had indeed arisen, it failed to explicitly determine the point between "a nite" and "forever" at which other tenancies would arise (or had already arisen) under Efficiency Lodge's roof.

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1. Efficiency Lodge, Inc. v. Neason, 363 Ga. App. 19, 29, 870 S.E.2d 549, 557 (2022).

## II. FACTUAL BACKGROUND

On September 25, 2020, extended-stay motel residents Armetrius Neason, Lynetrice Preston, and Altonese Weaver filed suit against the Efficiency Lodge branch they once considered home.<sup>2</sup> Efficiency Lodge Inc. is a hotel chain that operates under an extended-stay model and primarily caters to low-income residents.<sup>3</sup> Before litigation arose, Efficiency Lodge's website displayed the slogan, "Stay a Nite or Stay Forever."<sup>4</sup> Each plaintiff continuously resided at the extended-stay motel for periods ranging anywhere from almost one to five years.<sup>5</sup> They each signed uniform rental agreements, paid weekly rent, and housed their personal belongings in their rooms. Toward the end of their respective residencies, the plaintiffs experienced financial hardship due to the COVID-19 pandemic. Consequently, each plaintiff fell behind on their rent payments. In response, Efficiency Lodge communicated to each plaintiff that the hotel would remove the plaintiffs from the property if they did not catch up on their rent.<sup>6</sup> Plaintiff Preston received a notice on her door from Efficiency Lodge in April 2020, addressing her as a potential "tenant at will" who could be evicted through the court process.<sup>7</sup>

Simultaneously, Efficiency Lodge repeated threats to lock the plaintiffs out of their rooms if they did not pay their back rent.<sup>8</sup> Efficiency Lodge finally followed through on their threats and locked plaintiff Weaver out of her room in July 2020.<sup>9</sup> Fearing imminent lockouts for plaintiffs Preston and Neason, the plaintiffs filed a Complaint, a Motion for Temporary Restraining Order, and an Interlocutory Injunction in Dekalb County Superior Court.<sup>10</sup> In response, Efficiency Lodge filed an Answer and a Motion for Judgment on the Pleadings. The superior court granted the plaintiffs' Interlocutory Injunction and denied Efficiency Lodge's Motion for Judgment on the Pleadings. Efficiency Lodge appealed to the Georgia Court of Appeals. In reviewing the relational

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2. Neason v. Efficiency Lodge, No. 20CV6753, 2021 LEXIS 3387, at \*4–5 (Ga. Super. Jan. 20, 2021).

3. *Efficiency Lodge*, 363 Ga. App. at 21, 870 S.E.2d at 552.

4. Efficiency Lodge, <https://www.efflodge.com/> [<https://perma.cc/3WE3-QACS>] (last visited Nov. 14, 2022) (home page).

5. *Efficiency Lodge*, 363 Ga. App. at 21, 870 S.E.2d at 553.

6. *Id.* at 22, 870 S.E.2d at 553.

7. *Id.*

8. *Id.*

9. Neason, 2021 LEXIS 3387, at \*2.

10. *Efficiency Lodge*, 363 Ga. App. at 23, 870 S.E.2d at 553.

peculiarities between the parties, including the conflicting contractual provisions within the parties' agreements and whether the behaviors of the respective parties fell in accordance with the customs of innkeeper-guest relationships, the Georgia Court of Appeals affirmed the trial court's judgment.<sup>11</sup> The Georgia Court of Appeals determined that Efficiency Lodge had unintentionally entered a landlord-tenant relationship with the plaintiffs, who were thereby entitled to formal dispossessory proceedings before they were removed from their homes.<sup>12</sup>

### III. LEGAL BACKGROUND

#### A. Overview of Georgia Innkeeper Laws

Georgia has long recognized the legal relationship between innkeepers and their guests. As early as 1863, Georgia codified the rights, duties, and liabilities of innkeepers.<sup>13</sup> Since then, innkeeping has drastically evolved, requiring Georgia courts and legislators to address the modern complexities of the innkeeping market.

#### 1. Georgia Statutory Definitions of Innkeeper

Although the term "innkeeper" is outdated in everyday conversation, the law continues to use this term as a legal status for tax and liability purposes. The Official Code of Georgia Annotated section 43-21-1<sup>14</sup> defines inns as "all taverns, hotels, and houses of public general entertainment for guests."<sup>15</sup> This code section also defines a guest as "a person who pays a fee to the keeper of an inn for the purpose of entertainment at that inn."<sup>16</sup> Innkeeper status is therefore dependent upon the reciprocal relationship between the inn and its guests, or in other words, the exchange of money for "entertainment."<sup>17</sup> When innkeepers offer rooms to the public, they are under statutory obligation to accept "all persons of good character who desire accommodation and who are willing to comply with his rules."<sup>18</sup> Inns are places of public accommodation engaging in retail transactions with members of the public and are also subject to federal regulations prohibiting

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11. *Id.* at 29, 870 S.E.2d at 557.

12. *Id.*

13. *See* O.C.G.A. § 43-21-1 (2022).

14. *Id.*

15. O.C.G.A. § 43-21-1(2).

16. O.C.G.A. § 43-21-1(1).

17. *See id.*

18. O.C.G.A. § 43-21-3 (2022).

discrimination.<sup>19</sup> While state and federal law prohibits Georgia innkeepers from withholding rooms to the public for discriminatory purposes, innkeepers are entitled to terminate occupancy of guests upon notice or cause.<sup>20</sup>

Since Georgia characterizes the monetary exchange between innkeeper and guest as a retail sale, state law requires an innkeeper to pay retail taxes when it charges transient guests for a room.<sup>21</sup> However, the statute notably states that the “tax shall not apply to rooms, lodgings, or accommodations supplied for a period of 90 continuous days or more.”<sup>22</sup> This exception carries the same legislative rationale as Georgia’s hotel-motel tax<sup>23</sup>, which imposed a tax of \$5.00 per night on all hotel and motel stays in efforts to generate the bulk of tax revenue for the state’s transportation network from the out-of-state travelers who engaged in 85% of the state’s hotel and motel transactions.<sup>24</sup> The additional nightly tax levied on hotels and motels does not extend to “extended-stay rentals”<sup>25</sup> that rent rooms for “longer than 30 consecutive days to the same customer.”<sup>26</sup> Considering the statutory implications of innkeeper laws, the Georgia legislature clearly views innkeepers as public entities that offer a taxable commodity to transient consumer bases comprised of in-and out-of-state travelers.

## 2. Georgia’s History of Hybrid Hotels

Georgia has a murky view of innkeepers whose guests have overstayed their transiency. Whether the nomenclature has morphed from inn to boarding house to extended-stay motel, Georgia common law has previously debunked the mysterious nature of these “hybrids” on a case-by-case basis to determine whether they are truly hotels or homes.

In 1849, the Supreme Court of Georgia contemplated whether a spa owner who accommodated long-term guests was an innkeeper in *Bonner*

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19. See 42 U.S.C. § 2000a.

20. O.C.G.A. § 43-21-3.1(a) (2022).

21. O.C.G.A. § 48-13-50.3(1) (2022).

22. O.C.G.A. § 48-8-2(31)(B) (2022).

23. O.C.G.A. § 48-13-50.3(b)(3).

24. Megan E. Canning & John C. Winne, *REVENUE AND TAXATION: Motor Fuel and Road Taxes*, 32 GA. ST. U. L. REV. 261, 285–86 (2015).

25. O.C.G.A. § 48-13-50.3(b)(3).

26. O.C.G.A. § 48-13-50.3(a)(1).

*v. Wellborn*.<sup>27</sup> In reaching its decision, the Supreme Court of Georgia concluded that a spa owner did not conduct his business as an innkeeper open to the “wayfaring world,” but rather, as a boarding house to which his lodgers stayed for “a season.”<sup>28</sup> Thus, the court held the accommodations between the spa and the seasonal boarders were more accurately characterized as a landlord-tenant relationship.<sup>29</sup>

In 1953, the Georgia Court of Appeals addressed a similar issue in *Garner v. LaMarr*.<sup>30</sup> The court in *Garner* held that the residents had established an oral tenancy with the innkeeper as they paid for a furnished room on a weekly basis.<sup>31</sup> After the innkeeper failed to make repairs to the cracked ceiling over a period of two months, the residents were injured by heavy plaster that fell on top of them in their sleep.<sup>32</sup> The Georgia Court of Appeals quickly affirmed the trial court’s judgment in favor of the plaintiffs’ personal injury claim against the innkeeper, characterizing the relationship between the plaintiffs and the defendant as landlord and tenant. The court held that neither the inn’s furnished rooms nor the week-to-week rates were persuasive in characterizing the defendant as an innkeeper.<sup>33</sup> Rather, the court upheld the trial court’s ruling of a landlord-tenant relationship and asserted that “[t]he relationship of landlord and tenant may be for any length of time fixed by agreement.”<sup>34</sup>

### *B. Overview of Georgia Landlord-Tenant Laws*

Due to the significant property interests at stake for both parties, landlord-tenant relationships are heavily regulated by state and federal law.

#### **1. Statutory Provisions**

Under O.C.G.A. § 44-7-1,<sup>35</sup> a landlord-tenant relationship forms when a property owner grants another individual the right to “possess and

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27. 7 Ga. 296 (1849). In *Bonner*, the Supreme Court of Georgia reversed a ruling against a spa owner who sought damages from a negligent mill owner whose dam spoiled the purity and composition of the spa owner’s mineral springs. *Id.*

28. *Id.* at 307.

29. *Id.* at 309.

30. 88 Ga. App. 364, 76 S.E.2d 721 (1953).

31. *Id.* at 365, 76 S.E.2d at 723–24.

32. *Id.* at 365, 76 S.E.2d at 723.

33. *Id.* at 365, 76 S.E.2d at 723–24.

34. *Id.* at 365, 76 S.E.2d at 724.

35. O.C.G.A. § 44-7-1 (2022).

enjoy” the property for a period determined by agreement or will of the grantor.<sup>36</sup> Whether the parties intentionally or unintentionally enter these relationships through oral or written contract or conduct, the law upholds these relationships.<sup>37</sup> Once a landlord-tenant relationship is established, neither party can waive the rights, duties, or remedies created during the tenancy.<sup>38</sup> While tenants retain the right to possess and enjoy the property, landlords retain the duty to maintain the safety of the premises by upkeeping repairs and improvements.<sup>39</sup> If landlords fail to “keep the premises in repair,” they become liable to tenants in tort for any damages arising from the neglect.<sup>40</sup> Alternatively, tenants must refrain from “injur[ing] the property” as their use of the property is limited to possession and enjoyment of the land.<sup>41</sup> Tenants are also liable to landlords for rent.<sup>42</sup>

## 2. Due Process of Dispossessory Proceedings

Even when the rent is past due, tenants are entitled to due process via dispossessory proceedings.<sup>43</sup> Because the Supreme Court of the United States has recognized the substantial property interest tenants have in “continued residence in their homes,” they cannot be deprived of their property without due process of law.<sup>44</sup> Dispossessory proceedings are comprised of multiple steps designed to afford tenants proper notice of the landlord’s intention to end the tenancy.<sup>45</sup> Most importantly, the proceedings provide tenants with the ability to answer the landlord’s

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36. O.C.G.A. § 44-7-1(b).

37. O.C.G.A. § 44-7-2(b) (2022).

38. *Id.*

39. O.C.G.A. § 44-7-13 (2022).

40. *Id.*

41. O.C.G.A. § 44-7-11 (2022).

42. O.C.G.A. § 44-7-16 (2022).

43. *See* *Leverette v. Moran*, 153 Ga. App. 825, 826–27, 266 S.E.2d 574, 576 (1980) (asserting that claims are determinable in dispossessory proceedings).

44. *See* *Greene v. Lindsey*, 456 U.S. 444 (1982); U.S. CONST. amend. XIV, § 1.

45. The landlord must first demand possession of the property. O.C.G.A. § 44-7-50(a) (2022). If the tenant does not surrender the property, the landlord may immediately make an affidavit before the court. *Id.* The court will then issue a summons to the sheriff, and a copy of the summons and the landlord’s affidavit will be personally served upon the tenant. O.C.G.A. § 44-7-51(a) (2022). The tenant has seven days to respond with a legal defense or counterclaim. O.C.G.A. § 44-7-51(b). If the tenant fails to respond appropriately, the court will issue a writ of possession, empowering the owner to regain physical possession of their land. O.C.G.A. § 44-7-53(a) (2022).

complaint against them with a legal defense.<sup>46</sup> For example, a tenant in debt may raise the defense of the landlord's failure to maintain the premises or retaliatory eviction for reporting housing code violations to a government agency.<sup>47</sup> Given the property interests at stake for tenants in dispossessory proceedings, courts must construe the tenant's answers liberally to preserve their potential defenses for later amendment.<sup>48</sup> The availability of these defenses promotes the safety of public housing while upholding the due process rights of tenants who would otherwise face immediate homelessness or live in conditions subject to their landlord's integrity. Regardless of the circumstances that trigger the landlord's desire to repossess their property—including a tenant's nonpayment of rent—the landlord “must utilize the court process” to do so.<sup>49</sup> Although dispossessory proceedings do not shield all tenants from facing eviction after non-payment of rent, dispossessory proceedings do shield tenants from unlawful and unconscionable eviction.

### 3. Contractual Constructions of Leases

Whether oral or written, contracts are the foundation of landlord-tenant relationships.<sup>50</sup> Leases are written contracts that memorialize contracting parties' intentions and expectations for tenancies.<sup>51</sup> When landlord-tenant litigation arises, a lease becomes the court's object of scrutiny.<sup>52</sup> If the lease terms are clear and unambiguous,

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46. O.C.G.A. § 44-7-51(b) (“The summons served on the defendant . . . shall command and require the tenant to answer either orally or in writing within seven days from the date of the actual service”).

47. See generally O.C.G.A. § 44-7-14 (2022); O.C.G.A. §§ 44-7-24(b)(3)(A)–(B) (2022).

48. Hill v. Hill, 241 Ga. 218, 220, 244 S.E.2d 862, 863–64 (1978) (recognizing the disadvantaged position of *pro se* tenants who are often “unschooled in the law,” the General Assembly enacted O.C.G.A. § 61-302(b) and § 61-303 (now codified as O.C.G.A. § 44-7-51) to aid tenants in preserving their legal defenses.).

49. Neason, 2021 LEXIS 3387, at \*23 (quoting Swift Loan & Fin. Co. v. Duncan, 195 Ga. App. 556, 557, 394 S.E.2d 356, 358 (1990)).

50. See Anthony Shoals Power Co. v. Fortson, 138 Ga. 460, 463, 75 S.E. 606, 607 (1912) (“[W]here a tenant gives a rent note to his landlord, embracing and reciting a complete and certain agreement of the terms of the lease contract, it will, in the absence of fraud, accident, or mistake, be conclusively presumed that the writing contains the entire contract.”).

51. *Id.*

52. See Dataforensics, LLC v. Boxer Prop. Mgmt., 361 Ga. App. 311, 315, 864 S.E.2d 140, 144 (2021) (“The construction of a lease, which is a contract, is generally a question of law for the court. If the language of a contract is clear and unambiguous, we enforce those terms and need not look elsewhere to assist in the contract's interpretation.”).



the court will enforce the terms of the contract.<sup>53</sup> Courts navigate contractual ambiguity by applying the “rules of [contract] construction” to determine the intention of the parties as displayed in the contract.<sup>54</sup>

In *Shields v. RDM*,<sup>55</sup> the Georgia Court of Appeals affirmed a trial court’s grant of summary judgment against a mother who sued a recreational gym for injuries she received on the premises, despite signing a prior medical release relieving the gym from liability for any injuries she might receive on the property.<sup>56</sup> Shields argued that the medical release only applied to a temporary camp program hosted at the gym, and since her injuries occurred on a separate occasion, the release was not applicable to her injury.<sup>57</sup> The Georgia Court of Appeals disagreed on Shields’s limited interpretation of the release’s scope, determining that “nothing in the language of the release limit[ed] it to any specific program, event or time period.”<sup>58</sup> Rather, the agreement’s language explicitly stated the medical release was applicable to “all of the risks, known and unknown, connected with [the Defendant’s] related activities.”<sup>59</sup> Given the release’s explicit language, there was no ambiguity in the parties’ written intentions, and therefore, summary judgment barring the mother’s personal injury claims was affirmed.<sup>60</sup>

While some rights are waivable through exculpatory clauses or releases, public policy disallows waiver of tenant rights.<sup>61</sup> In *Country Club Apartments v. Scott*,<sup>62</sup> the Supreme Court of Georgia held that landlords cannot rely upon exculpatory clauses as relief from the legal duties imposed upon landlords to keep their rental property in good repair for tenants.<sup>63</sup> The Georgia legislature has further shielded tenant rights under O.C.G.A. § 44-7-2, outlawing contractual waiver of a landlord’s duties or liabilities or a tenant’s rights to due process.<sup>64</sup>

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53. See *Shields v. RDM, LLC*, 355 Ga. App. 409, 413, 844 S.E.2d 297, 301 (2020).

54. *Stanley v. Gov’t Emps. Ins. Co.*, 344 Ga. App. 342, 344, 810 S.E.2d 179, 181 (2018).

55. 355 Ga. App. 409, 844 S.E.2d 297.

56. *Id.* at 409, 844 S.E.2d at 298.

57. *Id.* at 414, 844 S.E.2d at 301.

58. *Id.*

59. *Id.*

60. *Id.* at 416, 844 S.E.2d at 303.

61. See O.C.G.A. § 13-8-2 (2022).

62. 246 Ga. 443, 271 S.E.2d 841 (1980).

63. *Id.*

64. O.C.G.A. §§ 44-7-2(b)–(c).

## IV. COURT'S RATIONALE

In assessing how Efficiency Lodge inadvertently evolved from an innkeeper to a landlord, the Georgia Court of Appeals deconstructed the parties' rental agreements and made fact-driven inquiries to determine whether the parties' behaviors fell within the statutory definitions of innkeeper-guest relationships.

## A. Contractual Constructions Can Unintentionally Build a Home

Throughout litigation, Efficiency Lodge asserted its status as an "innkeeper" to relieve them of any obligation to bring formal dispossession processes to evict residents.<sup>65</sup> Efficiency Lodge felt entitled to innkeeper status because of a contractual provision in their rental agreements that explicitly disclaimed any formation of a landlord-tenant relationship between the motel and its guests.<sup>66</sup> However, the agreement contained a simultaneous provision that contemplated a resident's financial obligation to pay "any and all expenses including attorney's fees and court costs incurred in the event of eviction."<sup>67</sup> Given the conflicting assumption of tenancy in the latter provision, the court deemed the contract "ambiguous."<sup>68</sup>

Relying on *Shields v. RDM*, the court applied the rules of contract construction to resolve the ambiguity of the legal relationship intended within the agreement.<sup>69</sup> Because the court established there was an ambiguity created by the competing provisions, the court construed the agreement in favor of the "non-drafter" plaintiffs.<sup>70</sup> Lending additional strength to the plaintiffs' prospective tenancies, the court noted that the eviction provision in the agreement specifically addressed the ambiguous relationship under review, and therefore took precedence over any provision prohibiting the creation of a landlord-tenant relationship.<sup>71</sup> If Efficiency Lodge never intended to enter a landlord-tenant relationship with the plaintiffs, the agreement amongst the parties would not logically

65. *Efficiency Lodge*, 363 Ga. App. at 22, 870 S.E.2d at 553.

66. The agreements between Efficiency Lodge and the residents included a provision stating, "[t]he relationship of Innkeeper and Guest shall apply and not the relationship of landlord and tenant." *Id.* at 23, 870 S.E.2d at 554.

67. *Id.* at 23, 870 S.E.2d at 554.

68. *Id.* at 24, 870 S.E.2d at 554.

69. *Id.* at 22–23, 870 S.E.2d at 553–54.

70. *Id.* at 24, 870 S.E.2d at 554; *see also* Langley v. MP Spring Lake, LLC, 307 Ga. 321, 324, 834 S.E.2d 800, 804 ("[W]here there is ambiguity, the agreement will be construed against the drafter and in favor of the non-drafter.").

71. *Efficiency Lodge*, 363 Ga. App. at 24, 870 S.E.2d at 554–55.

include a provision anticipating the necessity for formal eviction proceedings—a repercussion that solely arises from landlord-tenant relationships.

*B. Georgia Statutory Provisions and Common Law Define Innkeeper*

To further analyze the intended relationship within the parties' agreements, the court referenced Georgia's innkeeper and taxation statutes to make sense of "the legal context in which [the agreement] was created."<sup>72</sup> Georgia's innkeeper statutes provide definitions for both "guest[s]" and "inn[s]."<sup>73</sup> The definitions incorporate "entertainment" as a relational factor amongst the parties.<sup>74</sup> A guest "pays a fee to the [innkeeper] for the purpose of entertainment" and the inn provides "public general entertainment for guests."<sup>75</sup> Georgia taxation statutes also hint at the entertainment function of innkeepers by defining innkeepers as any person who "operat[es] a hotel, motel, inn, lodge, tourist camp, tourist cabin, campground, or any other place in which room or rooms, lodgings, or accommodations are regularly furnished for value."<sup>76</sup> Retail sales taxes are imposed on innkeepers for the "sale or charges" of their rooms to "transients."<sup>77</sup>

The court further characterized the transient nature of innkeeper guests when referring to other hybrid-hotel cases.<sup>78</sup> In comparison, the court noted that the plaintiffs were like the non-transient *Bonner* and *Garner* guests and resided at Efficiency Lodge for much longer than the two-month tenancy established in *Garner*.<sup>79</sup> If a landlord-tenant relationship could form within two months, then a landlord-tenant relationship could certainly form within the extensive lengths of time the plaintiffs had made Efficiency Lodge their homes.

*C. Adding Personal Touches to Furnished Rooms*

Although the court in *Garner* made clear that a hotel's customary room furnishings are not dispositive in characterizing an innkeeper-guest or landlord-tenant relationship, the court in *Efficiency Lodge* nonetheless

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72. *Langley*, 307 Ga. at 325, 870 S.E.2d at 805 ("[W]e must read that provision in light of the contract as a whole and in the legal context in which it was created.").

73. See O.C.G.A. § 43-21-1 (2022).

74. *Id.*

75. *Id.*

76. O.C.G.A. § 48-13-50.2(2)(A) (2022).

77. See O.C.G.A. § 48-8-2(31)(B) (2022).

78. *Efficiency Lodge*, 363 Ga. App. at 25–26, 870 S.E.2d at 555.

79. *Id.* at 26, 870 S.E.2d at 555–56.

looked inside of the plaintiffs' rooms to determine whether their living arrangements resembled a customary hotel stay or a tenancy.<sup>80</sup> The facts weighed heavily in favor of a tenancy. The court viewed the plaintiffs' decorating and storage of personal belongings inside of their rooms as evidence of permanent residency.<sup>81</sup> Strengthening this evidence were the plaintiffs' contentions that they "did not receive housekeeping or linen service" during their residencies and Preston's claim that she "did not have linens [on the bed] at all" when she moved in.<sup>82</sup> Outside of their rooms, the plaintiffs further asserted their permanent residencies publicly by receiving mail to their rooms, listing their addresses on their driver's licenses and school records, and even having their children's school bus pick them up in front of the hotel.<sup>83</sup> The court held this cumulation of behaviors to be inconsistent with behaviors of a transient guest.<sup>84</sup>

*C. Waiver Does Not Work Under O.C.G.A. § 44-7-2(b)*

Even if the eviction provision were removed from the parties' agreement, the purported waiver of a landlord-tenant relationship would render the contract void.<sup>85</sup> Under O.C.G.A. § 44-7-2, tenants cannot waive their rights, including the right to formal dispossessory proceedings.<sup>86</sup> Because O.C.G.A. § 44-7-2(b) covers "any contract . . . or similar agreement . . . for the use or rental of real property as a dwelling place"<sup>87</sup> the court considered the rental agreement between the plaintiffs and Efficiency Lodge to fall within the statute.<sup>88</sup> Further, the court characterized the rental agreement's waiver clause as an attempt to circumvent Efficiency Lodge's statutory obligations to bring formal dispossessory proceedings against the plaintiffs.<sup>89</sup>

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80. *Id.* at 26–27, 870 S.E.2d at 556.

81. *Id.* at 26, 870 S.E.2d at 556.

82. *Id.* at 27, 870 S.E.2d at 556.

83. *Id.* at 26–27, 870 S.E.2d at 556.

84. *Id.* at 27, 870 S.E.2d at 556.

85. *Id.*

86. *See* O.C.G.A. § 44-7-2.

87. *Id.*

88. *Efficiency Lodge*, 363 Ga. App. at 27–28, 870 S.E.2d at 556–57.

89. *Id.* at 27–28, 870 S.E.2d at 557.

*D. Innkeeper Statutes*

The Georgia Court of Appeals was further unpersuaded by Efficiency Lodge's self-classification as an "apartment hotel."<sup>90</sup> O.C.G.A. § 43-21-3.1 includes apartment hotels in its enumeration of entities that may terminate a guest's occupancy.<sup>91</sup> Because Efficiency Lodge considered itself an apartment hotel, it argued that it was statutorily entitled to "evict its residents without resorting to dispossessory proceedings."<sup>92</sup> However, the court pointed out Efficiency Lodge's erroneous reliance on § 43-21-3.1 to summarily evict the plaintiffs, when in reality, the statute only addressed when guests could be evicted—not how they could be evicted.<sup>93</sup> Only § 43-21-3.2 empowers innkeepers to eject guests and remove their property without formal dispossessory proceedings.<sup>94</sup> The court identified that § 43-21-3.2 noticeably extended the ejection power to "innkeepers" and not "apartment hotel[s]."<sup>95</sup> Because the court already established that Efficiency Lodge was not an innkeeper under these facts, it determined that the plaintiffs were still entitled to formal dispossessory proceedings before they could be removed from their homes.<sup>96</sup>

## V. IMPLICATIONS

Although the Georgia Court of Appeals ruled in favor of the plaintiffs, their victory is short-lived as the court itself noted that Efficiency Lodge is "not without remedy," to exercise their rights to bring dispossessory proceedings against the plaintiffs.<sup>97</sup> The court's acknowledgement of Efficiency Lodge's "well-reasoned arguments," however, leaves extended-stay motel tenants to question the long-term "efficiency" of the ruling and extended-stay motels themselves to question the structure of their entire business model.<sup>98</sup>

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90. *Id.* at 28, 870 S.E.2d at 557.

91. *See* O.C.G.A. § 43-21-3.1 (2022).

92. *Efficiency Lodge*, 363 Ga. App. at 28, 870 S.E.2d at 557.

93. *Id.*; O.C.G.A. § 43-21-3.1(a).

94. *Efficiency Lodge*, 363 Ga. App. at 28, 870 S.E.2d at 557; *see generally* O.C.G.A. 43-21-3.2 (1994).

95. *Efficiency Lodge*, 363 Ga. App. at 28, 870 S.E.2d at 557.

96. *Id.* at 29, 870 S.E.2d at 557.

97. *Id.*

98. *Id.*

*A. Contract and Policy Reconstruction*

Throughout the litigation, Efficiency Lodge has made its intentions very clear: “Efficiency . . . does not want to be a landlord and will not be a landlord.”<sup>99</sup> Because much of the court’s opinion focused on its unfavorable disposition toward Efficiency Lodge’s ambiguous contractual agreement with the plaintiffs, Efficiency Lodge might naturally edit the ambiguities out of its future rental agreements by removing the language that contemplates eviction proceedings. Though the court stated it would still be “constrained” to invalidate contractual provisions explicitly disclaiming landlord-tenant relationships between Efficiency Lodge and its guests, this constraint is notably limited “to the extent that it allowed Efficiency Lodge to evict the [p]laintiffs in the absence of formal dispossessory proceedings.”<sup>100</sup> In its battle to maintain innkeeper status, Efficiency Lodge will likely implement tenancy-preventing policy changes that further remove the extended-stay motel from any duty to bring such proceedings. Using the court’s fact-driven analysis as a blueprint, these changes would presumptively target the behaviors of guests and prohibit them from using their rooms to house and accumulate personal property. For guests with children, families, and limited access to transportation or storage, such a policy would be physically and emotionally devastating as they are forced to choose between the legitimate need for their personal belongings or a roof over their heads.

Ironically, the ruling might force Efficiency Lodge to reconsider its entire extended-stay business model altogether by adjusting the length of time it allows guests to occupy rooms. Considering that the extended-stay motel relies upon the patronage of guests needing a room for extended periods of time, the term “extended-stay” would likely be fine-tuned to the magic moment of tenancy that arises somewhere between a “nite” and “forever.” Because the court and the legislature have chosen to leave this moment undefined, they have simultaneously left families and individuals who are on the brink of homelessness unprotected as extended-stay motels fill in the blank themselves.

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99. Stephanie Stokes, *When Extended Stays Become Home: Ga. Court Considers Whether Hotel Occupants Can Be Tenants*, WABE (Aug. 25, 2021), <https://www.wabe.org/ga-court-considers-whether-extended-stay-residents-are-guests-or-tenants/> [https://perma.cc/QTY7-2H29].

100. *Efficiency Lodge*, 363 Ga. App. at 27, 870 S.E.2d at 556.

*B. Atlanta's Housing Crisis*

Although the parties are separated by their competing financial interests, their abstract identities necessarily depend on the other for continued survival. The plaintiffs cannot keep a roof over their heads if Efficiency Lodge cannot keep the lights on. An uncomfortable, yet rational argument can indeed be made for the underlying public interests served when extended-stay motels protect their revenue by legally ejecting guests and evicting tenants who do not pay for their rooms. These public interests are further legitimized by the desperate and growing need for affordable housing.

For many individuals, extended-stay motels are their Hail Mary effort to avoid homelessness. The City of Atlanta has one the highest concentrations of extended-stay motels in the nation.<sup>101</sup> In 2021, Highland Group hotel investors surveyed extended-stay motels in Northeast Atlanta and revealed that 67% of extended-stay motels in the area were booked for stays exceeding 30 days.<sup>102</sup> Contributing housing market factors, such as the flood of big-tech real estate investors and shared economy housing have driven the cost of affordable housing up and left many at-risk populations with no viable financial alternative to maintaining permanent residencies in extended-stay motels.<sup>103</sup> With evictions on the rise in Atlanta, the need for affordable and alternative housing grows exponentially.<sup>104</sup> By staying in business, Efficiency Lodge and other extended-stay motels provide housing for families and individuals who fall below the poverty line. By remaining profitable, extended-stay motel chains can expand and open new locations to house the increasing number of families and individuals subject to homelessness.

*C. "Constrained" to Unconscionability*

It is one thing to house individuals and another thing entirely to provide them with a home. Hellbent on avoiding tenancies, Efficiency Lodge has indicated that it will "simply move guests out" before they can

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101. Michael Sasso, *Atlanta's Real Estate Boom Forces Locals to Live in Extended-Stay Hotels*, BLOOMBERG (June 23, 2022), <https://www.bloomberg.com/news/articles/2022-06-23/when-extended-stay-hotel-rooms-become-affordable-housing> [https://perma.cc/D6GZ-VV7C].

102. *Id.*

103. *Id.*

104. See *Atlanta Region Eviction Tracker*, THE ATLANTA REGIONAL HOUSING STRATEGY, <https://metroatlhousing.org/atlanta-region-eviction-tracker/> [https://perma.cc/5Z5H-YKFR] (last visited Nov. 15, 2022).

ever become tenants or call Efficiency Lodge “home.”<sup>105</sup> Such a result would drastically intensify the housing crisis and wrongfully displace thousands of individuals, children, and families who have yet to even fall behind on a payment. Considering the unconscionable impact these drastic measures would have on virtually every sector of the public, it is imperative that Georgia addresses the housing crisis by enforcing tighter regulations on the extended-stay motels that profit off the financial vulnerability of its consumers. Georgia can start by expanding the legislation where the court is “constrained” by outdated property laws that fail to address the nuances of the modern housing market.

Because Georgia law already refrains from specifying a minimum length of time for a formal designation of a landlord-tenant relationship,<sup>106</sup> there is nothing stopping the courts or legislature from explicitly defining that tenancies at-will arise between extended-stay motels and guests on night one.<sup>107</sup> The court in *Efficiency Lodge* seemed to implicitly recognize this notion when it analyzed the ambiguity and statutory context of the rental agreements and reasoned that Efficiency Lodge’s terms were open to tenancy.<sup>108</sup> The conflicting terms of Efficiency Lodge’s rental agreement symbolize the underlying problem of the hotel’s convenient hybrid identity. As suggested by the plaintiffs, Efficiency Lodge “reaps the benefits of a traditional landlord-tenant relationship while avoiding its costs[.]”<sup>109</sup> Extended-stay motels exploit a niche market demand that recognizes the emergent needs of its consumers for long-term or temporary housing. Where traditional hotels primarily

105. Sasso, *supra* note 101.

106. See generally O.C.G.A. § 44-7-1.

107. Given Efficiency’s acknowledgement of the reliance interests of its financially vulnerable guests, an even stronger argument is made for courts to find the creation of a tenancy at will on night one. “Where no time is specified for the termination of a tenancy, the law construes it to be a tenancy at will.” O.C.G.A. § 44-7-6 (2022).

108. *Efficiency Lodge*, 363 Ga. App. at 23–24, 870 S.E.2d at 554. If the ambiguous contractual agreements aided the Georgia Court of Appeals’ decision to deem these plaintiffs as tenants, it is highly probable that other extended-stay tenants exist under the same rental agreement.

109. Brief for Housing Justice League & The Atlanta Volunteers Lawyers Foundation et al. as Amici Curiae Supporting Plaintiffs-Appellees at 28, *Efficiency Lodge, Inc. v. Neason*, 363 Ga. App. 19, 870 S.E.2d 549 (2022) (No. A21A1263). Efficiency Lodge also has every reason to believe its “guests” are tenants. In an annual report form filed with the Securities and Exchange Commission, Efficiency Lodge explicitly identified its typical consumer as someone “who cannot meet the credit requirements of apartments.” *Id.* at 7–8. In making this public and formal statement to the federal government, Efficiency Lodge is hard pressed to make the conflicting argument to the court that they are unaware of their “guests[.]” intentions of entering a tenancy with them in absence of other adequate housing options.



profit from the comings and goings of traveling guests, Efficiency Lodge profits from guests who intend to stay put for extended periods of time. If the converse were true, extended-stays would not distinguish themselves from traditional hotels by offering pro-rated weekly rates as incentive to attract these types of consumers. Nor would their marketing efforts invite their guests to “Stay Forever.” By aggregating Efficiency Lodge’s ambiguous contractual terms and marketing strategies that seem to suggest occupants are free to assume permanent residency in their rooms from night one, it appears these contracts are both fraudulent and unconscionable when they lure in guests who have every reason to believe they are tenants. Given the plethora of recent studies, surveys, and reports that also recognize extended-stay motels as alternative housing for financially at-risk populations, the argument that extended-stays are last-resort options for low-income housing is further strengthened by the industry custom that has arisen in the economic fallouts of the past two decades.

Ultimately, the Georgia Court of Appeals correctly affirmed the tenancies and due process rights of the plaintiffs. Yet, at the end of the day, the question remains: where will they go? And for how long? As long as the courts and the legislature fail to provide sufficient answers to these questions, Efficiency Lodge and other extended-stay options are empowered to hold tenants hostage to transiency at-will. While the court’s opinion was constrained to the outdated limits of Georgia property law, housing justice is constrained to the financial upper hand of its opponents.