

**IN THE SUPERIOR COURT OF BOBB COUNTY  
STATE OF GEORGIA**

**PAULA PLAINTIFF,**

**Plaintiff,**

v.

**DEBRA DEFENDANT.,**

**Defendant.**

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**CIVIL ACTION NO. [REDACTED]**

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**PLAINTIFF’S RESPONSE TO DEFENDANT’S MOTION TO DISMISS AND/OR  
SUMMARY JUDGMENT**

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PAULA PLAINTIFF, Plaintiff, files this response to the Defendant’s Motion for Summary Judgment and respectfully shows:

1.

The Defense is not entitled to its motion on the grounds stated in its motion, its brief, its pleadings, or on any other grounds.

2.

The Plaintiff relies upon her brief in response to Defendant’s motion, the pleadings, all discovery material, and any other evidence and matters of records on file with the Court when the Court rules on the motion.

WHEREFORE, Plaintiff prays that a hearing be held and the motion denied.

Respectfully submitted this \_\_\_\_ day of \_\_\_\_\_, 2011.

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[REDACTED]  
Attorney for Plaintiff  
State Bar No. [REDACTED]

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**BRIEF IN SUPPORT OF PLAINTIFF’S RESPONSE TO DEFENDANT’S  
MOTION FOR SUMMARY JUDGMENT**

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COMES NOW PAULA PLAINTIFF, Plaintiff in the above-captioned action, and, by and through her counsel of record files this brief in support of her response to Defendant’s motion for judgment and respectfully shows the Court as follows:

**I. STATEMENT OF FACTS**

This action arises out of a motor vehicle accident occurring on [REDACTED], 2008. (Complaint, para. 2). Wherein, the Defendant caused a collision with the Plaintiff’s vehicle in the parking lot of [REDACTED] Middle School in Warner Robins, Georgia. (Complaint, para. 2). The subject collision resulted in the Plaintiff suffering \$81,635.20 in medical damages. (Plaintiff’s Exhibit A). Both Plaintiff and Defendant are employees of [REDACTED] Middle School and both were working on the day of the collision. (PLAINTIFF depo., 11/12 and 39/13-15; DEFENDANT depo., 8/4-6 and 17/24-25). The Defendant’s hours on the day of the collision were from 7 A.M. to 3 P.M. (DEFENDANT depo., 22/1-2). The subject collision occurred when the Defendant was “done for the day” and the Defendant no longer had any “duties to her employer for that day.” (DEFENDANT depo., 18/20 and 22/1).

## II. ARGUMENT AND CITATION OF AUTHORITY

Under Georgia Law, in moving for Summary Judgment, the moving party must “demonstrate that there is no genuine issue of material fact and that the undisputed facts, viewed in the light most favorable to the nonmoving party, warrant judgment as a matter of law.” *Lau's Corp., Inc. v. Haskins* 261 Ga. 491. To prevail on his motion for summary judgment, defendant is required to establish the absence of a genuine issue of material fact or absence of evidence to support at least one essential element of plaintiff's claim. *Solomon v. Barnett* 281 Ga. 130.

It is well settled that when an injury arises out of and in the course of employment, the employee's sole remedy is against the employer, pursuant to *OCGA § 34-9-11*. It is true that “an employee “remains in the course of ... employment” during a reasonable time for egress.” *Labelle v. Lister* 192 Ga.App. 464, 465. However, Georgia’s Workers’ Compensation case progeny holds that such reasonable time for egress is limited to “ a reasonable time for egress from the immediate place of work during which [the employee] remains in the course of [the employee’s] employment.” *West Point Pepperell, Inc. v. McEntire* 150 Ga.App. 728, 729. The policy behind this ingress/egress rule is that Georgia Courts find “this situation [to be] analogous to one where the employee first reports to one part of the employer's premises for instructions, assignment, clock punching, drawing tools, etc., and then must proceed to another portion of the premises to begin [the employee’s] actual duties.” *Federal Ins. Co. et. al. v. Coram.* 95 Ga.App. 622, 624.

Here, there is a genuine issues of material fact as to whether the “reasonable time for egress” had come to pass. Such an issue is to be determined by a finder of fact and summary judgment, therefore, should not be granted.

Defendant’s brief relies on *Labelle’s* holding which permits “a reasonable time for ...

egress.” *Labelle v. Lister* 192 Ga.App. 464, 465. However, that case applies precedent that is, as is *Labelle*, factually distinct from the case at bar. These factual distinctions blur the line as to whether the “reasonable amount of time” for ingress and egress had come to pass; further, these factual distinctions create genuine issues of material fact to be determined by a jury.

The origins of the “reasonable time for egress” is the case of *West Point Pepperell, Inc. v. McEntire*. The factual basis of that decision is founded on “evidence...[which] was sufficient to support a finding that [the employee] was proceeding from one part of the premises to another when the injuries occurred.” *West Point Pepperell, Inc. v. McEntire* 150 Ga.App. 728. The court relies on the fact that “Where an employer furnishes an employee parking facilities on the employer's premises, it is, of course, necessary for the employee, before he can commence his actual employment duties, to park his automobile and walk from that portion of the employer's premises to that other portion of the premises where he performs his actual employment duties.” *Federal Ins. Co. v. Coram* 95 Ga.App. 622, 624. This is specifically significant when “the parking facilities were furnished by the employer for the use of the...employee and were furnished as an incident of employment.” *Id.* at 623-624. *Labelle* relies on this precedent and extends the same logic to egress as well as ingress. *Labelle v. Lister* 192 Ga.App. 464, 465. However, *Labelle* specifically notes that the location of the incident in contest was an “adjacent company-maintained parking lot.” *Id.* at 464. The fact that the parking lot was maintained by a “security guard” is one of many specific articulations made by the court to indicate the narrow scope of the decision in *Labelle*. *Id.*

Here, the defendant was not proceeding from one part of the premises of the employer to another. Rather, the defendant was “done for the day.” (DEFENDANT depo., 22/1-2). Further, the defendant was “going home.” (DEFENDANT depo., 18/21). It is, therefore, not logically

necessary for the employee to park her automobile and walk to another portion of the employer's premises to perform her duties. Further, evidence does not exist in the record to indicate that the location of this incident is a "company-maintained parking lot." Rather, the record reflects that this is a public parking-lot available to "whoever wants to park there." (DEFENDANT depo., 15/2 ). Moreover, there was no security guard or police officer patrolling the parking-lot on behalf of the employer. (DEFENDANT depo., 16/5-6). Therefore, the parking lot in question cannot be considered to be furnished by the employer for the use of the employee nor an incident of employment of the employee by the employer.

It is therefore the contention of the Plaintiff that there exists a genuine issue of material fact as to whether the act of the defendant walking from the building of her employer to the parking lot and then arriving at her vehicle constituted the completion of the "reasonable time for egress." Since the parking lot in question was not owned or maintained by the employer, was not for the specific benefit of the employees, was not monitored by any security personnel on behalf of the employer, and both parties had concluded their duties to their employer, the exclusive remedy of the Georgia Workers' Compensation Act does not apply.

### **III. CONCLUSION**

The foregoing argument articulates a genuine issue of material fact in the present case. When viewed in a the light most favorable to the Plaintiff, Defendant's motion for summary judgment should be denied as a matter of law.

Respectfully submitted this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

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Attorney for Plaintiff  
State Bar No. ██████████

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**CERTIFICATE OF SERVICE**

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This is to certify that I have this day served a true and correct copy of the within and foregoing RESPONSE TO DEFENDANT’S MOTION FOR SUMMARY JUDGMENT and BRIEF IN SUPPORT OF PLAINTIFF’S RESPONSE TO DEFENDANT’S MOTION FOR SUMMARY JUDGMENT upon the opposing attorneys of record by depositing same in the U.S. Mail in a properly addressed envelope with sufficient postage affixed thereto, addressed as follows:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Respectfully submitted this \_\_\_\_ day of \_\_\_\_\_, 2011.

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[REDACTED]  
Attorney for Plaintiff  
State Bar No. [REDACTED]