

No Punitive Damages under the GCSPA: What Employment Litigators should Know about the Georgia Supreme Court's Recent Decision

Benjamin I. Fink and Daniel H. Park, *Berman Fink Van Horn P.C.*

In the digital age, unfair competition cases between employers and former employees often involve computer misconduct and claims under the state and federal statutes that regulate such behavior. One such statute is the Georgia Computer Systems Protection Act, O.C.G.A. § 16-9-90, *et. seq.* (“GCSPA”).

The GCSPA is a criminal statute prohibiting computer theft, computer trespass and other computer related misconduct.¹ The GCSPA also allows for civil remedies for violations of its provisions, providing that “[a]ny person whose property or person is injured by reason of a violation of any provision of this article may sue therefor and recover for any damages sustained and the costs of suit.”²

The GCSPA is an important tool for the employment practitioner especially when an employee leaves an employer and takes the employer’s information and data by electronic means. For example, in *DuCom v. State*,³ the Georgia Court of Appeals upheld a conviction under the GCSPA of a former employee who downloaded company data on the day she left the company and after she had formed an intent to compete.

Whether defending against or prosecuting a civil claim under the GCSPA, it is important to have a firm understanding of the damages and remedies available under the statute. Although there is limited case law interpreting the GCSPA, since its enactment in 1991, Georgia courts have grappled with the relief and damages recoverable under the GCSPA.⁴

Recently, the Georgia Supreme Court brought a little clarity to the damages issue by finding that the GCSPA does not authorize an award of punitive damages. *Lyman v. Cellchem Int’l, Inc.*,⁵ an employer filed suit against its former employees asserting claims for computer theft and computer trespass under the GCSPA, breach of fiduciary duty, and tortious interference with business relations, based on the contention that the former employees stole data and used it to their competitive advantage.⁶ At trial, the jury found the former employees liable on all counts and awarded the employer compensatory damages and attorneys’ fees, as well as punitive damages in the amount of \$5.1 million.⁷ *Id.*

¹ O.C.G.A. §§ 16-9-93(a)-(f).

² O.C.G.A. § 16-9-93(g).

³ 288 Ga. App. 555 (2007).

⁴ See, e.g., *Ware v. Am. Recovery Sol. Servs., Inc.*, 324 Ga. App. 187, 192 (2013) (reversing trial court’s award of damages for amounts paid to the defendant for software development services as not recoverable under the GCSPA because the plaintiff received value for the amounts paid); *Keg Techs., Inc. v. Laimer*, 436 F. Supp. 2d 1364, 1380 n.14 (N.D. Ga. 2006) (“It is doubtful whether the Georgia Computer Systems Protection Act provides for equitable relief”).

⁵ No. S16G0662, 2017 WL 279514, at *1 (Ga. Jan. 23, 2017).

⁶ *Id.*

⁷ *Id.*

On appeal, the Georgia Court of Appeals reversed the judgment on the tortious interference claim and remanded the case for a new trial as to punitive damages, reasoning that the claims for breach of fiduciary duty and violations of the GCSPA could support a claim for punitive damages. *Id.* In support of the availability of punitive damages under the GCSPA, the Court of Appeals cited to *Automated Drawing Sys., Inc. v. Integrated Network Servs., Inc.*, 214 Ga. App. 122, 123 (1994), which held “in one sentence and without further reasoning, that punitive damages are available for violations of GCSPA . . .” *Id.*

The Georgia Supreme Court granted certiorari to determine whether the Court of Appeals erred in holding that the GCSPA authorizes an award of punitive damages. *Id.* The GCSPA authorizes recovery “for any damages sustained and the costs of suit . . . ‘damages’ shall include loss of profits and victim expenditure.” O.C.G.A. § 16-9-93(g). The Supreme Court found that this language only provides for damages that are compensatory in nature and that the Georgia legislature did not intend for punitive damages to be recoverable since there is no express language authorizing the recovery of punitive damages. *Lyman*, 2017 WL 279514, at *2. Additionally, considering the legislative scheme of the statute, because O.C.G.A. section 16-9-93(h)(1) specifically allows for a criminal sanction of up to \$50,000 if certain violations are proven beyond a reasonable doubt, the Supreme Court found that “the civil cause of action provided for in the GCSPA evinces a legislative intent to leave penal sanctions to the government and a desire to cap private penalties, as opposed to an allowance for punitive damages which could far exceed the statutory cap of \$50,000.” *Id.* at *3. The Supreme Court thus expressly overruled *Automated Drawing Sys.*, and held that punitive damages are not authorized under the GCSPA.

While the case law confirms that the GCSPA is a viable remedy for employers seeking to recover from departing employees for computer theft and computer trespass, *Lyman* serves as a reminder that the remedies available under the statute are not without limit.

Given the limited scope of remedies available under the GCSPA, the employment practitioner should certainly consider other claims in conjunction with a GCSPA claim. Because a GCSPA claim is often brought where an employee has taken the employer’s confidential information, claims often asserted with a GCSPA claim include claims for breach of confidentiality and/or non-disclosure agreements, and misappropriation of trade secrets under the Georgia Trade Secrets Act (“GTSA”)⁸. The employment practitioner should carefully consider the specific facts of his or her case and assert the applicable causes of action.

Benjamin I. Fink is a shareholder and Daniel H. Park is an associate in the Atlanta law firm Berman Fink Van Horn P.C. where they handle business and employment litigation with a specific focus on non-compete, trade secret and other competition-related disputes. This article is intended for general informational purposes only. The article is not intended to constitute, and does not constitute, legal advice.

⁸ One federal court has held that the GTSA preempts a GCSPA claim to the extent it relies on the same allegations supporting the claim for misappropriation. *See RLI Ins. Co. v. Banks*, No. 1:14-CV-1108, 2015 WL 400540 (N.D. Ga. Jan. 28, 2015). However, this case is not necessarily dispositive of the issue. The Georgia appellate courts have not yet addressed this issue.