



Neutral

As of: November 4, 2013 1:37 PM EST

**Ingles Mkts., Inc. v. Kempler**

Court of Appeals of Georgia

July 11, 2012, Decided

A12A0139.

**Reporter:** 317 Ga. App. 190; 730 S.E.2d 444; 2012 Ga. App. LEXIS 641; 2012 Fulton County D. Rep. 2308

INGLES MARKETS, INC. et al. v. KEMPLER et al.

**Subsequent History:** Reconsideration denied July 27, 2012 — Cert. applied for. Writ of certiorari denied Ingles Mkts., Inc. v. Kempler, 2013 Ga. LEXIS 52 (Ga., Jan. 7, 2013)

**Prior History:** Negligence, etc. Hall Superior Court. Before Judge Fuller.

**Disposition:** [\*\*\*1] Judgments affirmed.

**Core Terms**

nuisance, nonparty, acquisition, runoff, trial court, fault, pond, injured party, diminution, tortfeasor, trespass, double, measure of damages, property value, jury award, enumerate, notice, repair

**Case Summary**

**Procedural Posture**

Appellee property owners filed an action against appellant companies for trespass, nuisance, and negligence due to increased intrusion of storm water runoff from the companies' property to the their property. The companies challenged a judgment of the trial court (Georgia), which upheld the jury's verdict in favor of the owners.

**Overview**

The court of appeals held that the jury's award for trespass and negligence did not constitute an impermissible double recovery. The trial court properly instructed the jury that it could not award duplicative amounts with regard to repairing the property and the amount of the diminished value of the property. The verdict form also established that the jury made a determination based on the testimony presented at trial, awarding the owners damages for the cost to protect the property from future erosion and for the amount of diminished value of the property sustained to that point. The owners' testimony also supported the jury's award for injured feelings based on the nuisance. The companies failed

to establish that the fact that the jury chose to allocate certain amounts of the special damages proven by the testimony between the two causes of action was reversible error. The testimony at trial established damages to the property, including diminished value and costs to protect the property. That total amount was not reflected in the jury's nuisance award. Under O.C.G.A. § 51-12-2(a), the jury was authorized to award additional general damages based on the parties' negligence.

### Outcome

The court of appeals affirmed the judgment.

#### LexisNexis® Headnotes

Civil Procedure > Trials > Jury Trials > Province of Court & Jury  
Civil Procedure > ... > Standards of Review > Substantial Evidence > Sufficiency of Evidence

**HN1** If a jury has returned a verdict, which has been approved by the trial judge, then the same must be affirmed on appeal if there is any evidence to support it as the jurors are the sole and exclusive judges of the weight and credit given the evidence. The appellate court must construe the evidence with every inference and presumption in favor of upholding the verdict, and after judgment, the evidence must be construed to uphold the verdict even where the evidence is in conflict. As long as there is some evidence to support the verdict, the verdict will be upheld on appeal.

Torts > ... > Comparative Fault > Multiple Parties > Absent Defendants  
Torts > Procedural Matters > Multiple Defendants > Joint & Several Liability

**HN2** See O.C.G.A. § 51-12-33(c).

Torts > ... > Comparative Fault > Multiple Parties > Absent Defendants  
Torts > Procedural Matters > Multiple Defendants > Joint & Several Liability

**HN3** See O.C.G.A. § 51-12-33(d).

Torts > ... > Comparative Fault > Multiple Parties > Absent Defendants  
Torts > Procedural Matters > Multiple Defendants > Joint & Several Liability

**HN4** O.C.G.A. § 51-12-33(c) simply explains that all non-party tortfeasors, regardless of whether they can be held liable for their actions, should be considered by the jury during deliberations. O.C.G.A. § 51-12-33(d) provides the mechanism by which the defendant exercises its statutory right to have such non-party tortfeasors presented to the jury.

Civil Procedure > Judgments > Relief From Judgments > New Trials  
Civil Procedure > ... > Standards of Review > Substantial Evidence > Sufficiency of Evidence  
Evidence > ... > Presumptions > Particular Presumptions > Regularity

**HN5** The jury's award cannot be successfully attacked so as to warrant a new trial unless it is so flagrantly excessive or inadequate, in light of the evidence, as to create a clear implication of bias, prejudice or gross mistake on the part of the jurors. Even though the evidence is such as to authorize a greater or lesser award than that actually made, the ap-

pellate court will not disturb it unless it is so flagrant as to shock the conscience. Moreover, the trial court's approval of the verdict creates a presumption of correctness that will not be disturbed absent compelling evidence. A verdict will not be set aside as unsupported by the evidence when the amount of it is within the range covered by the testimony, though it may not correspond with the contentions of either party.

Torts > ... > Types of Damages > Compensatory Damages > General Overview

**HN6** A plaintiff is prohibited from a double recovery of damages. The plaintiff is entitled to only one recovery and satisfaction of damages, because such recovery and satisfaction is deemed to make the plaintiff whole.

Torts > ... > Types of Damages > Property Damages > Measurements

**HN7** Under Georgia law, cost of repair and diminution in value can be alternative, although often interchangeable, measures of damages with respect to real property. Nevertheless, although unusual, it may sometimes be appropriate, in order to make the injured party whole, to award a combination of both measures of damages. In such cases, notwithstanding remedial measures undertaken by the injured party, there remains a diminution in value of the property, and an award of only the costs of remedying the defects will not fully compensate the injured party.

Real Property Law > ... > Remedies > Damages > Measurement of Damages

**HN8** The measure of damages for discomfort, loss of peace of mind, unhappiness and annoyance of the plaintiff caused by the maintenance of a nuisance is for the enlightened conscience of the jury.

Torts > ... > Types of Damages > Compensatory Damages > General Overview

**HN9** See O.C.G.A. § 51-12-2(a).

Civil Procedure > Trials > Judgment as Matter of Law > Directed Verdicts

Civil Procedure > ... > Standards of Review > Substantial Evidence > General Overview

**HN10** A directed verdict is proper only where there is no conflict in the evidence as to any material issue and the evidence introduced with all reasonable inferences therefrom demands a particular verdict. On appeal, the standard of review of a trial court's denial of a motion for directed verdict is the any evidence standard.

Real Property Law > Torts > Nuisance > Elements

**HN11** The essential element of nuisance is control over the cause of the harm. The tortfeasor must be either the cause or a concurrent cause of the creation, continuance, or maintenance of the nuisance.

Real Property Law > Torts > Nuisance > General Overview

**HN12** One who creates a nuisance is liable for it even if he or she has sold the property containing the nuisance.

Civil Procedure > ... > Standards of Review > Harmless & Invited Errors > Invited Errors Doctrine

**HN14** Induced error provides no basis for reversal on appeal. One cannot complain about a ruling of the trial court which the party's own trial tactics or conduct procured or aided in causing.

Civil Procedure > ... > Standards of Review > Harmless & Invited Errors > Invited Errors Doctrine

**HN13** A party cannot, in the hope or expectation of obtaining a verdict in his own favor, follow a trial tactic which he may believe to be advantageous but which results in a waiver and, when a verdict is returned which he now seeks to overturn, enumerate the error as a ground for setting it aside."

Headnotes/Syllabus
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## Headnotes

Georgia Advance Headnotes

### **GA(1) (1)**

Torts. > Real Property Torts. > General Premises Liability.

In property owners' action, arising from increased intrusion of storm water runoff from appellants' property to the owners' property, the trial court properly instructed the jury to consider the liability of a non-party when deliberating pursuant to OCGA § 51-12-33 (c), as appellants had failed to file any notice of other potential non-parties under § 51-12-33 (d) (1).

### **GA(2) (2)**

Torts. > Damages. > Property Damages.

Damages to property owners for the cost to protect the property from future erosion and for the amount of diminished value of the property, as well as an award of injured feelings based on a nuisance, were proper in the owners' action, arising from the increased intrusion of storm water runoff from appellants' property, as duplicative amounts were not awarded based on specific jury instructions on that issue.

### **GA(3) (3)**

Torts. > Damages. > Property Damages.

Double damages were not awarded to property owners on their nuisance and negligence claims, as the total amount of damages to the property was not reflected in the jury's nuisance award, and the jury was authorized to award additional general damages based on the parties' negligence.

### **GA(4) (4)**

Civil Procedure. > Appeals. > Reviewability. > Preservation for Review.

Where appellants did not lodge a contemporaneous objection to certain testimony, their claim that the trial court erred by denying their motion for mistrial was waived for purposes of appeal.

**GA(5) (5)**

Torts. > Real Property Torts. > Nuisances.

With regard to a nuisance/trespass claim, where there was evidence that an adjoining land owner was aware of the property owners' complaint, it owed them a duty which the jury was authorized to find was breached by the adjoining land owner, such that there was no cause to grant the adjoining land owner's directed verdict motion.

**GA(6) (6)**

Torts. > Real Property Torts. > General Premises Liability.

In a premises liability action, a directed verdict was properly denied to an adjoining land owner where the evidence show that prior to quitclaiming its interest in the property, the development failed to comply with state statutes and a contractor failed to install a detention pond, as required.

**GA(7) (7)**

Civil Procedure. > Appeals. > Standards of Review. > Harmless & Invited Errors.

Where counsel representing an adjoining land owner argued to the jury that two entities that had owned the land were really one company, any error in the failure to apportion liability between them in the premises liability matter was invited.

**Counsel:** *Adam N. Struletz, Gregory M. Swartzberg, for appellants.*

*Coleman, Chambers & Rogers, Robert W. Chambers III, James C. Rogers, Temple, Strickland, Dinges & Schwartz, William A. Dinges, Weinberg, Wheeler, Hudgins, Gunn & Dial, Nicholas P. Panayotopoulos, Stephen J. Rapp, for appellees.*

**Judges:** DOYLE, Presiding Judge. Andrews and Boggs, JJ., concur.

**Opinion by:** DOYLE

**Opinion**

[\*190] [\*\*447] DOYLE, Presiding Judge.

Lynn K. and Gary S. Kempler brought suit against Ingles Markets, Inc., and Ingles Acquisition of Georgia, LLC (collectively "the Appellants"),<sup>1</sup> for trespass, nuisance, and negligence and for attorney fees and punitive damages based on increased intrusion of storm water runoff from the Appellants' property to the Kemplers' property. The jury re-

<sup>1</sup> The Kemplers also named as defendants R.W. Smith Company and Lowe [\*\*\*2] & Associates, Inc., but those parties are not a part of this appeal.

turned a verdict in favor of the Kemplers. The Appellants appeal, and for the reasons that follow, we affirm.

*HNI* If a jury has returned a verdict, which has been approved by the trial judge, then the same must be affirmed on appeal if there is any evidence to support it as the jurors are the sole and exclusive judges of the weight and credit given the evidence. The appellate court must construe the evidence with every inference and presumption in favor of upholding [\*191] the verdict, and after judgment, the evidence must be construed to uphold the verdict even where the evidence is in conflict. As long as there is some evidence to support the verdict, the verdict will be upheld on appeal.<sup>2</sup>

So viewed, the Kemplers' 100-acre property was valued at approximately \$5 million prior to the Appellants' development of adjacent rural property. The Kemplers' property had a dirt road extension from their asphalt driveway to a main highway in the area and a small stream leading from the Appellants' property to a two-acre, deep-water pond, which the Kemplers used for irrigation and recreation. Prior to development of the Appellants' property, the small stream "barely trickled ... unless it had just rained."

The Appellants acquired property adjacent to the Kemplers in 2007, and they began their development in early 2008, resulting in 26 acres of impervious surfaces, including paved surfaces, buildings, and soil stockpile for future development. Although the Appellants contracted to have a detention pond and outlet control structure constructed to address the increased water runoff generated from the development of the property, runoff to the Kemplers' property increased fourfold. The Kemplers presented [\*\*\*3] evidence that the increased water runoff resulted in erosion of the small stream, which previously handled the once small amounts of water runoff from the Appellants' property; piles of mud blocking the gate access to the Kemplers' dirt road; softened soil leading to fallen trees; collapsed fences; 15-inch ruts in the dirt road; litter and other debris washed onto the road and into the pond; increased silting and excessive turbidity in the pond, which resulted in fish kills and destruction of the pond ecosystem; increased water into the pasture below the lake, which became a "swamp" after the development and affected the Kemplers' ability to harvest hay from that field; and runoff from the pond into an adjacent river, leading to ecological concerns in those public waters.

Real estate appraiser Larry Thomas testified that the total amount of the diminished [\*448] value of the Kempler property was \$607,500, which consisted of amounts to protect the property from future harm, including approximately \$195,000 to install a piping system to reroute the storm water runoff from the Appellants' property past the Kemplers' property and approximately \$97,500 to pave the dirt road. Thomas also explained [\*\*\*4] that the total number included permanent loss of value to the property of approximately 13 percent and \$75,000 [\*192] to rehabilitate the pond. Mr. Kempler testified that as an emergency room physician, his job was very stressful, and he and Ms. Kempler purchased the property in order to have a relaxing place to live, which has been permanently affected by the acts of the Appellants. Mr. Kempler testified that he and his wife had "a miserable two years" attempting to resolve the issues with the Appellants' de-

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<sup>2</sup> (Punctuation omitted.) *Turner Broadcasting System v. McDavid*, 303 Ga. App. 593, 593-594 (693 SE2d 873) (2010).

velopment and estimated about \$300,000 of injury to his peace of mind and feelings as a result of the runoff issues.

The jury determined that the Appellants' acts and omissions constituted negligence for which the Appellants were 40 percent at fault for the damages resulting from these acts or omissions.<sup>3</sup> For this claim, the jury awarded the Kemplers \$400,000. Next, the jury determined that the Appellants had created or maintained a permanent nuisance for which they were 80 percent liable<sup>4</sup> and awarded the Kemplers \$150,000 for diminution of property value and \$300,000 for the cost to protect the Kemplers' remaining property. Finally, the jury determined that the Appellants' acts or omissions [\*\*\*5] created "wounded feelings, loss of peace of mind, discomfort, unhappiness, and annoyance" to the Kemplers for which the Appellants were 80 percent responsible.<sup>5</sup> The jury awarded the Kemplers \$125,000 for the injury to their feelings.

The jury also determined that the Appellants were liable for attorney fees, costs, and punitive damages.

1. The Appellants argue that the trial court erred by expressly limiting the jury's obligation to consider the fault of unnamed nonparties. We disagree.

OCGA § 51-12-33 (c) states that *HN2* "[i]n assessing percentages of fault, the trier of fact shall consider the fault of all persons or entities who contributed to the alleged injury or damages, regardless of whether the person or entity was, or could have been, named as a party to the suit." The [\*\*\*6] statute continues, however, stating in subsection (d) that

*HN3* (1) Negligence or fault of a nonparty shall be considered if the plaintiff entered into a settlement agreement with the nonparty or if a defending party gives notice not later than 120 days prior to the date of trial that a nonparty was wholly or partially at fault[; and] (2) [t]he notice shall be given by [\*193] filing a pleading in the action designating the nonparty and setting forth the nonparty's name and last known address, or the best identification of the nonparty which is possible under the circumstances, together with a brief statement of the basis for believing the nonparty to be at fault.

It is undisputed by the Appellants that they failed to file any notice pursuant to the terms of OCGA § 51-12-33 (d) (1). Lowe & Associates provided notice that nonparty Sae Soon Korean Church was at fault for some damages to the Kemplers' property. Pursuant to this notice, the trial court instructed the jury that it should consider the liability of the Church when deliberating. The Appellants now contend that this instruction was based on an erroneous reading of the statute by the trial court, namely that subsection (c) re-

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<sup>3</sup> The jury determined that R.W. Smith Company was ten percent at fault for the resulting damages and Lowe & Associates was fifty percent at fault.

<sup>4</sup> The jury determined that R.W. Smith Company was 20 percent liable for creating or maintaining a nuisance.

<sup>5</sup> The jury determined that R.W. Smith Company was 20 percent liable for acts or omissions creating wounded feelings, loss of peace of mind, discomfort, unhappiness, and annoyance.

quires the jury [\*\*\*7] to deliberate on the liability of *all* potential nonparties and subsection (d) does not place a limit on that requirement, but rather allows for the express consideration of particular nonparties. This reasoning is unpersuasive.

[\*\*449] *GA(1)* (1) *HN4* OCGA § 51-12-33 (c) simply explains that all nonparty tortfeasors, regardless of whether they can be held liable for their actions, should be considered by the jury during deliberations. Subsection (d) provides the mechanism by which the defendant exercises its statutory right to have such nonparty tortfeasors presented to the jury.<sup>6</sup> Contrary to the Appellants' contentions, this reading of the statute does not render subsection (c) superfluous in any way. Accordingly, this enumeration is without merit.

2. The Appellants also argue that the trial court erred by entering judgment based on the jury verdict because the verdict form awarded impermissible double damages.

Generally, *HN5* the jury's award cannot be successfully attacked so as to warrant a new trial unless it is so flagrantly excessive or inadequate, in light of the evidence, as to create a clear implication of bias, prejudice or gross mistake [\*\*\*8] on the part of the jurors. Even though the evidence is such as to authorize a greater or lesser award than that actually made, the appellate court will not disturb it unless it is so flagrant as to shock the conscience. Moreover, the trial court's approval of the verdict creates a presumption of correctness that will not be disturbed absent compelling evidence. A verdict will not be set aside as unsupported by the evidence when the [\*194] amount of it is within the range covered by the testimony, though it may not correspond with the contentions of either party.<sup>7</sup>

Moreover, *HN6* "a plaintiff [is prohibited] from a double recovery of damages; the plaintiff is entitled to only one recovery and satisfaction of damages, because such recovery and satisfaction is deemed to make the plaintiff whole."<sup>8</sup>

(a) *Trespass/Nuisance Award*

The Appellants first contend that the jury's award for the Kemplers' trespass/nuisance claim [\*\*\*9] constitutes an impermissible double recovery because it awarded damages both for diminution of value and for future costs to protect the property from additional deterioration. The Appellants rely on *Ga. Northeastern R. v. Lusk*,<sup>9</sup> in support of its contention that such an award is impermissible double recovery as a matter of law. Nevertheless, the Supreme Court recently explained its holding in *Lusk*, stating that the Court "did not rule that Georgia law precludes a diminution in value award in addition to restoration and repair costs where the repair does not fully restore the property to its pre-

<sup>6</sup> See *McReynolds v. Krebs*, 307 Ga. App. 330, 333 (1) (705 SE2d 214) (2010).

<sup>7</sup> (Citation and punctuation omitted.) *McDavid*, 303 Ga. App. at 609 (4).

<sup>8</sup> (Punctuation omitted.) *Monterrey Mexican Restaurant &c. v. Leon*, 282 Ga. App. 439, 450 (5) (c) (638 SE2d 879) (2006) (award for claims of money had and received and of conversion amounted to double recovery).

<sup>9</sup> 277 Ga. 245 (587 SE2d 643) (2003).



damage value.”<sup>10</sup> This is because “the measure of damages in such cases is intended to place an injured party, as nearly as possible, in the same position it would have been if the injury had never occurred.”<sup>11</sup> The Court continued:

In applying these principles, this Court has recognized that *HN7* under Georgia law, cost of repair and diminution in value can be alternative, although often interchangeable, measures of damages with respect to real property. [Nevertheless,] [a]lthough unusual, it may sometimes be appropriate, in order to make the injured party whole, to award a combination of both [\*\*\*10] measures of damages. In such cases, notwithstanding remedial measures undertaken by the injured party, there remains a diminution in value of the property, and an award of only the costs of remedying the defects will not fully compensate the injured party.<sup>12</sup>

[\*195] *GA(2)* (2) Here, the trial court properly instructed the jury that they could not award duplicative [\*\*450] amounts with regard to repairing the property and the amount of the diminished value of the property. The verdict form also establishes that the jury made a determination based on the testimony presented at trial, awarding \$300,000 to the Kemplers for the cost to protect the property from future erosion and \$150,000 for the amount of diminished value of the property sustained to that point. The Kemplers’ testimony also supported the jury’s \$125,000 award for injured feelings based on the nuisance.<sup>13</sup>

*(b) Simultaneous Trespass/Nuisance and Negligence Awards*

*GA(3)* (3) The Appellants’ claim that improper double damages were awarded because the jury granted awards on both the nuisance and negligence claims is without merit. The testimony at trial established damages to the property including diminished value and costs to protect the property at over \$600,000. This total amount was not reflected in the jury’s nuisance award, and the jury was authorized to award additional general damages based on the parties’ negligence within its “enlightened conscience” and based on the testimony presented at trial.<sup>14</sup> The Appellants have failed to establish that the fact that the jury chose to allocate certain amounts of the special damages proven by the testimony between the two causes of action is reversible error.

*GA(4)* (4) 3. The Appellants contend that the trial court erred by denying their [\*\*\*12] motion for mistrial on the basis of Mr. Kempler’s testimony. The Appellants failed to lodge a contemporaneous objection to this testimony, and thus, they have waived this argu-

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<sup>10</sup> *Royal Capital Dev. v. Maryland Cas. Co.*, 291 Ga. 262, 266 (2) (728 SE2d 234) (2012).

<sup>11</sup> *Id.* at 264 (1).

<sup>12</sup> (Citations and punctuation omitted.) *Id.* at 265 (1).

<sup>13</sup> See *City of Gainesville v. Waters*, 258 Ga. App. 555, 558 (2) (574 SE2d 638) (2002) (*HN8* “The measure of damages for discomfort, loss of [\*\*\*11] peace of mind, unhappiness and annoyance of the plaintiff caused by the maintenance of a nuisance is for the enlightened conscience of the jury.”) (punctuation omitted).

<sup>14</sup> See *OCCA § 51-12-2 (a)* (*HN9* “General damages are those which the law presumes to flow from any tortious act; they may be recovered without proof of any amount.”).

ment.<sup>15</sup>

4. Ingles Acquisition maintains that the trial court erred by denying its motions, including its motion for directed verdict, because the Kemplers failed to present evidence that Ingles Acquisition committed any act or omission leading to the Kemplers' damages.<sup>16</sup> We disagree.

**HN10** A directed verdict is proper only where there is no conflict in the evidence as to any material issue and the [\*196] evidence introduced [\*\*\*13] with all reasonable inferences therefrom demands a particular verdict. On appeal, the standard of review of a trial court's denial of a motion for directed verdict is the any evidence standard.<sup>17</sup>

**GA(5)** (5) (a) With regard to their nuisance/trespass claim, **HN11** "the essential element of nuisance is control over the cause of the harm. The tortfeasor must be either the cause or a concurrent cause of the creation, continuance, or maintenance of the nuisance."<sup>18</sup> The Kemplers presented evidence that Ingles Acquisition owned the property from which the increased storm water runoff damaged the Kempler property, and its employees were aware of the problems associated with the development with regard to the Kemplers' property. As an adjoining landowner, Ingles Acquisition owed a duty to the Kemplers, and based on the testimony presented that agents at Ingles Acquisition were [\*\*451] aware of the Kemplers' complaints, the jury was authorized to find that Ingles Acquisition breached its duty and was liable to the Kemplers for nuisance/trespass.<sup>19</sup>

**GA(6)** (6) (b) With regard to the Kemplers' negligence claim, the Appellants presented evidence that, prior to quitclaiming its interest in the property to Ingles Markets, Ingles Acquisition owned the property when the development failed to comply with state statutes and when the contractor in charge of installing the detention pond in May 2007 failed to install it by early 2008. Accordingly, this enumeration is without merit.

5. Finally, the Appellants argue that the trial court erred by entering judgment based on the jury verdict because the jury failed to properly apportion liability between Ingles Markets and Ingles Acquisition. We disagree.

**GA(7)** (7) If there was any error in the trial court's entry of the jury verdict, it was in-

<sup>15</sup> See *Ivy Road Properties v. First Citizens Bank & Trust Co.*, 311 Ga. App. 409, 410 (1) (715 SE2d 809) (2011). See also *Giliam v. State*, 240 Ga. App. 158, 159 (1) (522 SE2d 766) (1999), citing *Stephens v. State*, 232 Ga. App. 738, 739 (2) (503 SE2d 643) (1998) and *Sweeney v. State*, 233 Ga. App. 862, 865 (4) (506 SE2d 150) (1998).

<sup>16</sup> Ingles Acquisition also argues that the trial court erred by denying its motion for summary judgment on this issue, which we do not review after entry of a verdict and judgment. See *Bailey v. Annistown Road Baptist Church*, 301 Ga. App. 677, 685 (4) (689 SE2d 62) (2009).

<sup>17</sup> (Punctuation omitted.) *Sumitomo Corp. &c. v. Deal*, 256 Ga. App. 703, 706-707 (2) (569 SE2d 608) (2002).

<sup>18</sup> (Punctuation omitted.) *Id.* at 707 (2).

<sup>19</sup> See *Green v. Eastland Homes*, 284 Ga. App. 643, 648-649 (2) (644 SE2d 479) (2007) [\*\*\*14] (**HN12** "one who creates a nuisance is liable for it even if he has sold the property containing the nuisance") (punctuation omitted).

vited error.<sup>20</sup> During closing argument, trial counsel, representing both Ingles Acquisition and Ingles Markets, argued to the [\*197] jury that the two entities were “really just one company ... . There’s no evidence that there’s any separate action by Ingles Acquisition as to control, ownership, having anything to do with this property, we’re just Ingles. [\*\*\*15] And please treat us that way when you’re considering the numbers, whatever you consider.”

*HNI3* [A] party cannot, in the hope or expectation of obtaining a verdict in his own favor, follow a trial tactic which he may believe to be advantageous but which results in a waiver and, when a verdict is returned which he now seeks to overturn, enumerate the error as a ground for setting it aside.<sup>21</sup>

Accordingly, this enumeration is without merit.

*Judgment affirmed. Andrews and Boggs, JJ., concur.*

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<sup>20</sup> See, e.g., *Jackson v. Neese*, 276 Ga. App. 724, 725 (1) (624 SE2d 139) (2005). See also *Green v. Sommers*, 254 Ga. App. 446, 446-447 (1) (562 SE2d 808) (2002) (*HNI4* induced error provides no basis for reversal on appeal); *Wallace v. Swift Spinning Mills*, 236 Ga. App. 613, 616 (2) (511 SE2d 904) (1999) (“It is a well-settled appellate rule that one cannot complain about a ruling of the trial court which the party’s own trial tactics or conduct procured or aided in causing.”) (punctuation omitted).

<sup>21</sup> (Punctuation omitted.) *Le Twigge, Ltd. v. Wammock & Co.*, 187 Ga. App. 446, 448 (370 SE2d 631) (1988).