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283 Ga. 476

S08A0663. MIKESELL v. RP MOTORSPORTS, INC.

**Thompson, Justice.**

This is an appeal from the trial court's award of attorney fees pursuant to OCGA § 9-11-68 (b) (1),<sup>1</sup> a provision enacted as part of the Tort Reform Act of 2005. Appellant contends that this provision violates Art. I, Sec. I, Par. X of the Georgia Constitution as applied because it is a retroactive application of law which alters vested rights. We agree. See Fowler Properties v. Dowland, 282 Ga. 76 (1) (646 SE2d 197) (2007). Consistent with our recent decision in Fowler, OCGA § 9-11-68, which was not effective until February 2005, cannot constitutionally be applied to appellant's cause of action which accrued in September 2002 and for which a legal complaint was filed in February 2003. Our conclusion that OCGA § 9-11-68 is unconstitutional "renders it unnecessary

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<sup>1</sup> In pertinent part, OCGA § 9-11-68 (b) (1) provides:  
If a defendant makes an offer of settlement which is rejected by the plaintiff, the defendant shall be entitled to recover reasonable attorney's fees and expenses of litigation incurred by the defendant ... from the date of the rejection of the offer of settlement through the entry of judgment if the final judgment is one of no liability or the final judgment obtained by the plaintiff is less than 75 percent of such offer of settlement.

to pass upon the other ground[s] of attack upon the constitutionality of this act.”

Floyd County v. Scoggins, 164 Ga. 485, 490 (139 SE 11) (1927).

Judgment reversed. All the Justices concur.

**Decided April 21, 2008.**

OCGA § 9-11-68 (b) (1); constitutional question. Fulton State Court.

Before Judge Thompson.

Lisa D. Wright, for appellant.

Crim & Bassler, Janet C. Allen, for appellee.