



## Alerts

### Continuous Representation Rule Does Not Apply to Legal Malpractice Actions Says Georgia Appeals Court

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*Titshaw, et. al. v. Geer, et. al.*, 2023 Ga. App. LEXIS 214 (Ct. App. May 24, 2023)

#### Brief Summary

The Georgia Court of Appeals held that the continuous representation rule does not apply to legal malpractice actions. Thus, plaintiff's claims against his attorneys based on their alleged negligence in advising him to file for bankruptcy more than five years before the filing of the complaint were time-barred.

#### Complete Summary

Plaintiffs David Titshaw and several of his investment companies (collectively "plaintiffs") operated two Moe's Southwest Grills (Moe's) restaurants in the Atlanta area pursuant to franchise agreements. In February 2013, Moe's notified plaintiffs that it was terminating its franchise agreements for failure to pass certain required inspections. Plaintiffs filed suit against Moe's in order to prevent it from terminating the franchise agreements, and the parties submitted the dispute to binding arbitration. Ultimately, the arbitrator ordered that the termination of the franchise agreements could only proceed after new inspections were conducted at both locations according to terms set by the arbitrator. Subsequently, only one of the locations passed the new inspection. Moe's sent a second termination letter to plaintiffs stating that the franchise agreement for the location that failed the inspection would terminate on a certain date.

Plaintiffs wished to challenge the validity of the second inspection and, on November 10, 2014, met with attorneys at Cohen Pollock Merlin Turner, P.C. (CPMT), who advised him that filing for bankruptcy was the best way to attempt to save one or both of the locations. In an effort to reduce costs, CPMT referred plaintiffs to Will B. Geer and his firm (collectively "Geer"). After reviewing the relevant documents, Geer sent an email to plaintiffs on December 26, 2014, advising him to either file bankruptcy or file a motion for a temporary restraining order. Plaintiffs instructed Geer to file bankruptcy petitions for both restaurant locations. Following a hearing, the bankruptcy court modified the bankruptcy stay to allow Moe's to terminate the franchise agreements. Despite this, plaintiffs continued to operate both locations for several years until the lease

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expired for one of the locations. Plaintiffs entered into a settlement agreement to continue operating the remaining location.

Plaintiffs filed a complaint for legal malpractice against Geer and CPMT on January 22, 2019, alleging that they negligently advised him to file for bankruptcy. Plaintiffs also claimed breach of contract and demanded disgorgement of attorneys' fees against both defendants. Geer and CPMT each filed a motion to dismiss all claims. The trial court allowed the motions only as to the legal malpractice claims on the grounds that they were barred by the statute of limitations. Thereafter, Geer filed a motion for summary judgment against plaintiffs' remaining claims, which the trial court granted. Plaintiffs' claims against CPMT were stayed pending arbitration.

Plaintiffs appealed the trial court's dismissal of their legal malpractice claims against Geer and CPMT and the trial court's grant of summary judgment to Geer on the remaining claims against him. CPMT cross-appealed from the denial of its motion to dismiss plaintiffs' remaining claims.

In Georgia, legal malpractice claims are subject to a four year statute of limitations as set forth in OCGA § 9-3-25. "Whether sounding in contract or tort, a legal malpractice action accrues and the applicable statute of limitations commences to run from the date that the alleged wrongful act breached the attorney-client relationship." *Titshaw v. Geer*, 2023 Ga. App. LEXIS 214, at \*4 (Ct. App. May 24, 2023)(quoting *Gingold v. Allen*, 272 Ga. App. 653, 655 (2005)). Further, "[t]he statute commences to run from the date of the breach of duty, and not from the time when the extent of the resulting injury is ascertained." *Titshaw, supra*. at \*5 (quoting *Frates v. Sutherland, Asbill & Brennan*, 164 Ga. App. 243, 244 (1982)). Plaintiffs received the allegedly negligent advice to file for bankruptcy from CPMT on November 10, 2014, and received the same advice from Geer on December 26, 2014. Both of these alleged breaches occurred more than four before plaintiffs filed their complaint on January 22, 2019.

The appellate court rejected plaintiffs' argument that the act of filing for bankruptcy was a new act that triggered a new statute of limitations period. The court likened this to a "continuous relationship rule" argument and held that "there is no 'continuous relationship rule' applicable to legal malpractice cases." *Titshaw, supra*. at \*5 (quoting *Duke Galish, L.L.C. v. Arnall Golden Gregory, LLP*, 288 Ga. App. 75, 76 (2007)). The appellate court held that the trial court properly dismissed plaintiffs' legal malpractice claims against Geer and CPMT because they were barred by the statute of limitations. The trial court also properly granted summary judgment to Greer on plaintiffs' breach of contract claims, as the allegations were simply duplicative of the legal malpractice claims. Also, the court concluded that because plaintiffs' claims for legal malpractice and breach of contract were not viable, they were not entitled to attorney's fees, and the trial court properly denied his demand for disgorgement of fees.

## Significance of Decision

This decision is significant because it shows that Georgia is another jurisdiction, like Illinois, where courts have rejected the continuous representation rule in legal malpractice actions. The Georgia courts have reasoned that the rule would allow a client to extend the statute of limitations by continuing the attorney-client relationship, even if the client is fully aware of the alleged negligence. This, coupled with Georgia's strict adherence to the occurrence rule (as opposed to the discovery rule), reaffirms Georgia's strict stance on the statute of limitations in legal malpractice actions.