

SUPREME COURT OF GEORGIA

RES-GA McDonough, LLC v. Taylor English Duma LLP

302 Ga. 444 (2017) · Decided October 30, 2017

SUMMARY

The Georgia Supreme Court affirmed dismissal of RES-GA McDonough, LLC's legal malpractice action against Taylor English Duma LLP and its attorneys. The court held that RES-GA lacked standing to pursue the underlying fraudulent-transfer claim under the former Georgia Uniform Fraudulent Transfers Act because the claim was subject to Georgia's nonassignment statute. The court also rejected RES-GA's arguments that the Uniform Commercial Code or FIRREA preempted the nonassignment statute.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Boggs, Justice; All other Justices
JURISDICTION	Georgia
DECIDED	October 30, 2017
DISPOSITION	affirmed
PROCEDURAL POSTURE	RES-GA appealed the trial court's dismissal of its legal malpractice, breach-of-fiduciary-duty, attorney-fee, and punitive-damages claims for failure to state a claim. The appeal was transferred from the Georgia Court of Appeals to the Supreme Court of Georgia because RES-GA raised a federal preemption issue.
STANDARD OF REVIEW	A motion to dismiss for failure to state a claim is reviewed under the rule that dismissal is proper only when the allegations show with certainty that the claimant would not be entitled to relief under any provable facts, and the pleadings are construed most favorably to the claimant. The trial court's ruling is reviewed de novo.
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of Georgia.
PARTIES	RES-GA McDonough, LLC v. Taylor English Duma LLP, Taylor English Duma LLP's two attorneys

TOPICS

professional negligence

motions to dismiss

statutory interpretation

federalism

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PRACTICE AREAS

legal malpractice

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civil procedure

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QUESTIONS PRESENTED

1. Whether RES-GA could establish the underlying UFTA claim necessary to support its legal-malpractice action despite Georgia's statutory prohibition on assigning rights of action arising from fraud.
2. Whether the Uniform Commercial Code displaced or preempted OCGA § 44-12-24's nonassignment provision as applied to RES-GA's UFTA claim.
3. Whether the federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 preempted OCGA § 44-12-24 for downstream assignees of FDIC assets.
4. Whether the trial court properly dismissed the complaint for failure to state a claim.

HOLDINGS

1. RES-GA lacked standing under the former UFTA to pursue the assigned fraudulent-transfer claim because OCGA § 44-12-24 made a right of action arising from fraud nonassignable, and RES-GA was a downstream assignee rather than the FDIC or its direct assignee. Because RES-GA could not have prevailed on the underlying claim, it could not establish the causation element of legal malpractice.
2. The UCC did not displace or preempt OCGA § 44-12-24 as applied to RES-GA's underlying UFTA claim.
3. FIRREA did not preempt OCGA § 44-12-24 with respect to downstream assignees of assets initially transferred by the FDIC.

KEY QUOTATIONS

“In a legal malpractice action, the plaintiff must establish three elements: (1) employment of the defendant attorney, (2) failure of the attorney to exercise ordinary care, skill and diligence, and (3) that such negligence was the proximate cause of damage to the plaintiff.” (446)

“Thus, to prevail on [its] preemption claim, Appellant was required to show the ‘clear and manifest purpose of Congress’ to preempt [OCGA § 44-12-24]’ with respect to downstream assignees.” (450)

FACTUAL BACKGROUND

Greenleaf Developers and Construction, Inc. and its guarantor, Michael Langino, owed a debt that was assigned by the FDIC to Multibank and later to RES-GA. After RES-GA became the plaintiff in an underlying collection action, it alleged that Langino had fraudulently transferred real property to his wife and instructed Taylor English to pursue a claim under Georgia's former Uniform Fraudulent Transfers Act. Before the wife was added as a defendant, she sold the property to a bona fide purchaser, and RES-GA later obtained a judgment against Langino but could not execute against the property. RES-GA then sued Taylor English for malpractice, alleging that counsel's delay caused the loss of the property.

PROCEDURAL HISTORY

Taylor English moved to dismiss, arguing that RES-GA could not establish a viable underlying Uniform Fraudulent Transfers Act claim and therefore could not establish legal malpractice. The trial court granted the motion to dismiss on the ground that RES-GA lacked standing to pursue the fraudulent-transfer claim and denied related motions as moot. The Supreme Court of Georgia affirmed.

DISPOSITION

affirmed

CASES CITED

- *Abramyan v. State of Ga.*, 301 Ga. 308, 309-310 (800 SE2d 366) (2017)
- *Leibel v. Johnson*, 291 Ga. 180, 181-182 (728 SE2d 554) (2012)
- *RES-GA Hightower, LLC v. Golshani*, 334 Ga. App. 176 (778 SE2d 805) (2015)
- *Security Feed & Seed Co. of Thomasville, Inc. v. NeSmith*, 213 Ga. 783 (102 SE2d 37) (1958)
- *Callaway Blue Springs, LLLP v. West Basin Capital, LLC*, 341 Ga. App. 535 (801 SE2d 325) (2017)
- *Merrill Ranch Props., LLC v. Austell*, 336 Ga. App. 722, 732 (3) (784 SE2d 125) (2016)
- *Alexander Properties Group v. Doe*, 280 Ga. 306, 309 (1) (626 SE2d 497) (2006)
- *Castillo-Solis v. State*, 292 Ga. 755, 763 (5) (740 SE2d 583) (2013)
- *O'Melveny & Myers v. Federal Deposit Insurance Corp.*, 512 U.S. 79, 85 (II) (114 S.Ct. 2048, 129 L.Ed.2d 67) (1994)
- *Norfolk S. Ry. v. Zeagler*, 293 Ga. 582, 598 (3) (a) (748 SE2d 846) (2013)
- *Babies Right Start, Inc. v. Ga. Dept. of Public Health*, 293 Ga. 553, 554 (1) (748 SE2d 404) (2013)
- *Ward v. McFall*, 211 Ga. 649, 651 (1) (593 SE2d 340) (2004)
- *Community & Southern Bank v. Lovell*, 302 Ga. 375 (807 SE2d 444) (2017)