

SUPREME COURT OF TEXAS

Apex Towing Co. v. Tolin

41 S.W.3d 118 (Tex. 2001) · No. No. 99-1165 · Decided April 26, 2001

SUMMARY

The Supreme Court of Texas held that its Hughes tolling rule applies to legal-malpractice claims arising from an attorney’s prosecution or defense of litigation, regardless of whether the client later hires new counsel or settles the underlying case. Limitations is tolled until all appeals in the underlying litigation are exhausted or the litigation is otherwise finally concluded. The court reversed the court of appeals’ limitations-based summary judgment and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Texas
WRITING FOR THE COURT	Justice Hankinson; Chief Justice Phillips; Justice Hecht; Justice Enoch; Justice Baker; Justice Abbott; Justice O'Neill
JURISDICTION	Texas
DECIDED	April 26, 2001
DOCKET	No. 99-1165
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Apex brought a legal-malpractice action against attorneys who had represented it in an underlying maritime personal-injury lawsuit. The trial court granted the attorneys' motions for summary judgment based on the two-year statute of limitations, and the court of appeals affirmed. The Supreme Court of Texas granted review to clarify the scope of the Hughes tolling rule.
STANDARD OF REVIEW	The court reviewed the summary judgment granted on statute-of-limitations grounds. Summary judgment is proper only when no genuine issue of material fact exists and the movant is entitled to judgment as a matter of law; the opinion's resolution turned on the legal application of the Hughes tolling rule.
PRECEDENTIAL VALUE	Published Texas Supreme Court opinion; precedential.
PARTIES	Apex Towing Company, Apex Barge Company, Apex Oil Company v. William M. Tolin, III, Benckenstein & Oxford, L.L.P., Hebert, Mouldoux & Bland

TOPICS

statute of limitations

summary judgment

civil procedure

appellate procedure

admiralty

PRACTICE AREAS

legal malpractice

statute of limitations

maritime litigation

summary judgment

QUESTIONS PRESENTED

1. Whether the Hughes tolling rule applies to a legal-malpractice action arising from an attorney's prosecution or defense of litigation when the client hires new counsel during the underlying case.
2. Whether the Hughes tolling rule ceases to apply when the underlying litigation is settled.
3. Whether Apex's malpractice action was timely when filed on February 19, 1997.

HOLDINGS

1. The Hughes tolling rule does not require continued representation by the allegedly negligent attorney. When attorney malpractice occurs in the prosecution or defense of a claim resulting in litigation, limitations on the malpractice claim remains tolled until all appeals in the underlying claim are exhausted or the litigation is otherwise finally concluded, even if the client hires new counsel.
2. Neither the hiring of new counsel nor settlement of the underlying litigation removes a legal-malpractice action from the Hughes tolling rule.
3. Apex's malpractice action was timely because the Hughes tolling period ended when the underlying appeal was dismissed on May 19, 1995, and the action was filed on February 19, 1997, within two years thereafter.

KEY QUOTATIONS

“When an attorney commits malpractice in the prosecution or defense of a claim that results in litigation, the statute of limitations on a malpractice claim against that attorney is tolled until all appeals on the underlying claim are exhausted or the litigation is otherwise finally concluded.” (41 S.W.3d at 118-119)

“Hiring a new attorney would not necessarily eliminate the problem of a client having to adopt inconsistent positions in the underlying case and the malpractice case.” (41 S.W.3d at 121)

FACTUAL BACKGROUND

Apex hired the respondent law firms to defend it in a maritime personal-injury action arising when a seaman fell from a gangplank after being affected by the wash of an Apex tugboat. Apex alleged that its attorneys committed malpractice by failing to file a timely maritime limitation-of-liability pleading and by making other litigation errors. After an August 31, 1994 judgment exceeding the potential maritime limitation, Apex obtained new counsel, pursued post-judgment proceedings and an appeal, and the underlying litigation was finally concluded when the appeal was dismissed on May 19, 1995.

PROCEDURAL HISTORY

The underlying maritime personal-injury case resulted in a judgment against Apex on August 31, 1994. Apex's appeal was dismissed after settlement on May 19, 1995. Apex filed an initial malpractice action in Louisiana on August 31, 1995, which was later dismissed without prejudice, and filed the present Texas action on February 19, 1997. The trial court granted summary judgment on limitations, the court of appeals affirmed, and the Supreme Court of Texas reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The cause was remanded to the trial court for further proceedings after reversal of the summary judgment based on limitations.

CASES CITED

- Hughes v. Mahaney & Higgins, 821 S.W.2d 154 (Tex. 1991)
- Murphy v. Campbell, 964 S.W.2d 265 (Tex. 1997)
- Gulf Coast Inv. Corp. v. Brown, 821 S.W.2d 159 (Tex. 1991)
- Aduddell v. Parkhill, 821 S.W.2d 158 (Tex. 1991)
- American Centennial Ins. Co. v. Canal Ins. Co., 843 S.W.2d 480 (Tex. 1992)
- Sanchez v. Hastings, 898 S.W.2d 287 (Tex. 1995)
- Willis v. Maverick, 760 S.W.2d 642 (Tex. 1988)
- Johnson & Higgins of Tex., Inc. v. Kenneco Energy, Inc., 962 S.W.2d 507 (Tex. 1998)
- Murray v. San Jacinto Agency, Inc., 800 S.W.2d 826 (Tex. 1990)
- HECI Exploration Co. v. Neel, 982 S.W.2d 881 (Tex. 1998)
- Computer Assocs. Int'l, Inc. v. Altai, Inc., 918 S.W.2d 453 (Tex. 1996)
- S.V. v. R.V., 933 S.W.2d 1 (Tex. 1996)
- Childs v. Haussecker, 974 S.W.2d 31 (Tex. 1998)
- Swift v. Seidler, 988 S.W.2d 860 (Tex. App.—San Antonio 1999, pet. denied)
- Norman v. Yzaguirre & Chapa, 988 S.W.2d 460 (Tex. App.—Corpus Christi 1999, no pet.)
- Dear v. Scottsdale Insurance Co., 947 S.W.2d 908 (Tex. App.—Dallas 1997, writ denied)
- Eiland v. Turpin, Smith, Dyer, Saxe & McDonald, 16 S.W.3d 461 (Tex. App.—El Paso 2000, pet. filed)
- Brents v. Haynes & Boone, L.L.P., 10 S.W.3d 772 (Tex. App.—Dallas 2000, pet. filed)
- Nunez v. Caldarola, 2 S.W.3d 755 (Tex. App.—Corpus Christi 1999, pet. filed)
- Edwards v. Kaye, 9 S.W.3d 310 (Tex. App.—Houston [14th Dist.] 1999, pet. denied)
- Swift v. Seidler, 988 S.W.2d 860 (Tex. App.—San Antonio 1999, pet. denied)
- Vanasek v. Underkofler, 1999 WL 314822 (Tex. App.—Dallas 1999)
- Guillot v. Smith, 998 S.W.2d 630 (Tex. App.—Houston [1st Dist.] 1999, no pet.)

- Washington v. Georges, 837 S.W.2d 146 (Tex. App.—San Antonio 1992, writ denied)
- Farah v. Mafrige & Kormanik, P.C., 927 S.W.2d 663 (Tex. App.—Houston [1st Dist.] 1996, no writ)
- Burnap v. Linnartz, 914 S.W.2d 142 (Tex. App.—San Antonio 1995, writ denied)
- Utica Ins. Co. v. Pruitt & Cowden, 902 S.W.2d 143 (Tex. App.—Houston [1st Dist.] 1995, no pet.)
- Hoover v. Gregory, 835 S.W.2d 668 (Tex. App.—Dallas 1992, writ denied)