

Civil District Court for the Parish of Orleans  
STATE OF LOUISIANA

No. 2014 - 02631

Section: 11 - G

TROUT POINT LODGE, LIMITED ET AL

versus

JONES WALKER LLP ET AL

Date Case Filed: 3/14/2014

NOTICE OF SIGNING OF JUDGMENT

TO:

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Legal Department  
Metairie                            LA 70001

Daniel D Lund Esq                            12782  
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In accordance with Article 1913 C.C.P., you are hereby notified that Judgment  
in the above entitled and numbered cause was signed on September 5, 2014  
New Orleans, Louisiana.  
September 5, 2014

  
MINUTE CLERK

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

2014-2631

DIVISION G

SECTION 11

TROUT POINT LODGE LIMITED, VAUGHN PERRET, and CHARLES LEARY

VERSUS

JONES WALKER L.L.P., HENRY LAIRD, JR., and "ABC INSURANCE COMPANY"

JUDGMENT

This matter came for hearing on 29 July 2014 on defendants', Jones Walker L.L.P. and Henry Laird, Jr., Exception of Peremption.

Appearances:

Daniel Lund and C. Byron Berry, Jr. for defendants, Jones Walker L.L.P. and Henry Laird, Jr.

Daniel Abel and Alan Palmer Jacobus for plaintiffs Trout Point Lodge Limited, Vaughn Perret, and Charles Leary

It is ORDERED, ADJUDGED AND DECREED that the Exception of Peremption is hereby granted, dismissing the plaintiffs', Trout Point Lodge Limited, Vaughn Perret, and Charles Leary, petition and amended petition with prejudice at their costs.

JUDGMENT SIGNED, NEW ORLEANS, LOUISIANA this 5 day of September, 2014.



JUDGE ROBIN M. GIARRUSSO  
DIVISION G

A TRUE COPY

  
DEPUTY CLERK, CIVIL DISTRICT COURT  
PARISH OF ORLEANS  
STATE OF LA

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REASONS FOR JUDGMENT

What is hotly contested in this case is the application of La. R.S. 9:5605(A), which expressly provides that all legal malpractice actions must be brought within one year from the alleged act, omission or neglect or within one year from the date the alleged act, omission or neglect is discovered or should have been discovered. Plaintiffs allege that preemption did not commence to run until the decision of the U.S. Fifth Circuit became final in late 2013. Plaintiffs further allege that they have multiple causes of action. Plaintiffs also argue that their contract causes of action are not preempted or prescribed because a specific result was promised by Jones Walker. Finally, the plaintiffs assert that La. R.S. 9:5605 does not apply to Mr. Laird as he is not licensed as an attorney in Louisiana. For the reasons discussed below, this Court rejects the plaintiffs' arguments and finds their lawsuit was untimely.

The plaintiffs have alleged one cause of action arising out of a single engagement to provide legal services in connection with Trout Point Lodge Limited's action for recognition and enforcement of a foreign judgment. Plaintiffs state several times that they could not have had actual or constructive knowledge of the alleged malpractice until they lost their case in the 5th Circuit. Yet, they ignore their own allegations of continuous malpractice consisting of Jones Walker's alleged refusal and failure to follow plaintiffs' instructions in both the district and appellate courts beginning in 2012. The plaintiffs were on notice and knew of their alleged cause of action when one adverse ruling of the district court issued on 19 December 2012. They received one ruling the same day, more than one year before the instant suit was filed. The plaintiffs' argument was rejected by the Louisiana Supreme Court in Seeder v. North, 70 So.2d 1291. The Court found that the commencement of preemption does not depend upon the conclusion of an appeal in an underlying matter.

This Court has already determined that alleged separate acts of malpractice were related to

the initial alleged malpractice. This Court was affirmed by the 4th Circuit Court of Appeal in Vagelos v. Abramson, 126 So.3d 639. Writs were denied by the Louisiana Supreme Court. Like Vagelos, plaintiffs have only one cause of action – the engagement to provide legal services regarding Trout Point’s recognition and enforcement of a foreign judgment. All of the allegations of malpractice relate to one single engagement.

Plaintiffs’ contract claim based on one promise to obtain a specific result also fails. That exception was legislatively overruled by the passage of La. R.S. 9:5605.

Finally, plaintiffs argue that Mr. Laird, an attorney licensed in Mississippi, but not Louisiana, can not avail himself of the protection of La. R.S. 9:5605. They do admit that Jones Walker is entitled to the protection. Contrary to plaintiffs’ assertion, La. R.S. 9:5606 uses different language not including the work “licensed.” The statute refers to “action[s] for damages . . . against any attorney at law duly admitted to practice in this state, any partnership of such attorneys at law, or any professional corporation, company, organization, association, enterprise, or other commercial business or professional combination authorized by the laws of this state to engage in the practice of law[.]” La. R.S. 9:5605(A)(emphasis added).

In Evans v. Union Bank of Switzerland, 2002 WL 31682787 at \*8 (E.D. La. 11/25/02), Judge Engelhardt held that “authorized” as used in La. R.S. 9:5605 means “permitted, allowed, and not prohibited – under Louisiana law.” The Court further explained:

\*\*\* The statute is not concerned with regulating law firms; it is concerned with restricting the malpractice claims filed in Louisiana courts. Moreover, the Court can find no alternative constructive of the term [“authorized”] . . . that is reasonable and would not lead to arbitrary and unpredictable results. For example, an interpretation that encompassed only associations of Louisiana-licensed lawyers would not work. Louisiana law expressly permits visiting out-of-state attorneys to practice law within the borders of Louisiana simply by acting in association with a Louisiana lawyer. See La. R.S. 37:214. In such cases, the lawyers and their firms plainly would be “authorized by the laws of this state to engage in the practice of law.”

This decision is correct as is apparent on the face of La. R.S. 9:5605. First, La. R.S. 9:5605(A), by its terms, applies to “actions.” Subsection B also emphatically states “[t]he provisions of this Section are remedial and apply to all causes of action”, and Subsection C further states that “[n]otwithstanding any other law to the contrary, in all actions brought in this state against any attorney at law duly admitted to practice law in this state, . . . or any company, organization . . . enterprise, or other commercial business . . . authorized by the laws of this state to engage in the practice of law, the prescription and preemptive period shall be governed by this Section.” This language unmistakably evinces legislative intent to

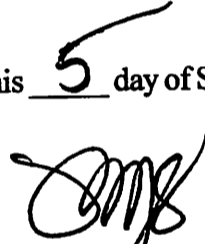
regulate actions and access to the courts.

Second, Mr. Laird falls within the broad categories enumerated in La. R.S. 9:5605. "Enterprise, or other commercial business" encompasses any individual lawyer or combination of lawyers operating in any business structure or without any business structure at all. Non-"licensed" lawyers from other states can be duly admitted to Louisiana *pro hac vice* (See La. S.Ct. XVII § 13) and can practice under certain circumstances without having to associate a Louisiana-licensed attorney. La. R.S. 37:215; Louisiana Lawyering § 2.321, *in* 21 Louisiana Civil Law Treatise. But, all such lawyers are "authorized" to practice law in Louisiana because Louisiana law allows them to do so without a "license" issued by the Louisiana Supreme Court.

If the legislature really meant that the statute applied only to lawyers "licensed" by the Louisiana Supreme Court, it would have said so as it did in the accountants' preemption statute passed by the same legislature in 1990. La. R.S. 9:5604 explicitly applies to actions for damages "against any accountant duly licensed under the laws of this state[.]"

For these reasons, plaintiffs' case is dismissed with prejudice.

JUDGMENT SIGNED, NEW ORLEANS, LOUISIANA this 5 day of September, 2014.



JUDGE ROBIN M. GIARRUSSO  
DIVISION G

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