IN THE COURT OF APPEALS
STATE OF GEORGIA

Civil Action File No. 2018CV306061
Superior Court of Fulton County

ARNALL GOLDEN GREGORY LLP,
JOHN L. GORNALL, and WILHELM ZIEGLER

Petitioners,

v.

GREENAVATIONS POWER, LLC
AND GREENAVATIONS POWER DUBLIN LLC,

Respondents.

APPLICATION FOR INTERLOCUTORY APPEAL

Josh Belinfante
Georgia Bar No. 047399
jbelinfanta@robbinsfirm.com
Jeremy U. Littlefield
Georgia Bar No. 141539
jlittlefield@robbinsfirm.com
Craig G. Kunkes
Georgia Bar No. 963594
ckunkes@robbinsfirm.com
Robbins Ross Alloy Belinfante Littlefield LLC
500 14th Street, N.W.
Atlanta, Georgia 30318
Telephone: (678) 701-9381
Facsimile: (404) 856-3250

Attorneys for Petitioners

This Application presents issues of first impression that will impact the practice of law across this State. Specifically, the question presented here is whether, for the first time in Georgia, a law firm's standard engagement letter constitutes the kind of "complete" contract that is subject to the six-year statute of limitations under O.C.G.A. § 9-3-24. **Every** appellate court that has addressed the issue has concluded the answer is "no" and applied the four-year statute of limitations under O.C.G.A. § 9-3-25. Without the Court's review of this legal issue, this litigation could proceed under a radically different approach that will impact every law firm in Georgia and potentially cause the parties in this case to expend needless resources.

For these reasons, the standard imposed by Court of Appeals Rule 30 has been met. Accordingly, pursuant to O.C.G.A. § 5-6-34(b), applicants Arnall Golden Gregory, LLP ("AGG"), John L. Gornall, Jr., and Wilhelm Ziegler (collectively, "Defendants" or "Petitioners") submit this Application for Interlocutory Appeal of the Order by the Superior Court of Fulton County denying in part Defendants' Motion for Partial Summary Judgment, entered on March 11, 2020 (the "Order").

The trial court recognized both the importance of this issue and the new ground it was forging. Indeed, it granted the Certificate of Immediate Review within minutes of receiving the request from Petitioners. This acknowledged that

"the issues decided in the Order are potentially dispositive of the majority of the claims in this case, and review by the Court of Appeals on these issues is appropriate before the parties and [the trial court] commit a substantial amount of time, effort, and resources proceeding to the merits of the claims through a jury trial." (*See* attached Exhibit 1.)[1]

INTRODUCTION

The central issue for review in this interlocutory appeal is significant to all members of the Georgia Bar and impacts all actions for legal malpractice. Unless overturned, the Order enlarges the statute of limitations for legal malpractice claims in Georgia from four to six years. To Petitioners' knowledge, the Order is the first to apply a six-year statute of limitations to a legal malpractice claim based on the existence of a standard law firm engagement agreement. This represents a significant departure from existing law and should not proceed without this Court's review.

The issue to be appealed presents a pure question of law and involves no factual dispute. Relying on the existence of a written engagement agreement, the trial court applied a six-year statute of limitations to the legal malpractice claims in this case, citing *Newell Recycling of Atlanta, Inc. v. Jordan Jones & Goulding,*

[1] In accordance with Court of Appeals Rule 30, Petitioners are filing contemporaneously herewith an Application Index along with the referenced exhibits, which are being uploaded immediately following—and separately from—this Application.

Inc., 288 Ga. 236 (2010) ("*Newell*"), which was **not** a legal malpractice case. The trial court's expansive reading of *Newell* was erroneous and, moreover, overlooked decisions by the Court of Appeals, which has consistently held that standard law firm engagement agreements are "incomplete" contracts, warranting application of a four-year statute of limitations. *Plumlee v. Davis*, 221 Ga, App. 848, 852 (1996); *Frates v. Sutherland, Asbill & Brennan*, 164 Ga. App. 243, 246 (1982); *Jankowski v. Taylor, Bishop & Lee*, 154 Ga. App. 752, 754 (1980).

Unless the Court of Appeals grants immediate appeal, the parties and the trial court will expend significant time and resources litigating claims that are time-barred under the precedent set in *Plumlee*, *Davis*, and *Jankowski*. Since the Georgia Supreme Court decided *Newell* in 2010, the Court of Appeals has not revisited its decisions in *Plumlee*, *Frates*, or *Jankowski* or otherwise addressed the impact of a written engagement agreement on the statute of limitations in legal malpractice claims. In addition, absent interlocutory review, the Order will cause significant uncertainty (and anxiety) within the Georgia Bar on whether standard written engagement letters will now lead to increased liability. Given the trial court's Order, this Court's consideration of its own precedent is both desirable and necessary.

STATEMENT OF JURISDICTION

This Court has jurisdiction over this Application and any subsequent appeal pursuant to O.C.G.A. § 5-6-34(b) and Article VI, § 5, ¶ 3 of the Constitution of the State of Georgia. The issues raised herein do not fall within the exclusive jurisdiction of the Supreme Court of Georgia. *See* Ga. Const. Art. 6, Sec. 6, Pars. 2-3. Pursuant to O.C.G.A. § 5-6-34(b), Petitioners (i) obtained a timely certification from the trial court that the Order is of such importance to the case that immediate review should be had, and (ii) filed this Application within ten (10) days of entry of such certification.

STATEMENT OF FACTS RELEVANT TO STATUTE OF LIMITATIONS

The undisputed facts are summarized below, as determined in the Order and based on the record before the trial court, construed in the light most favorable to Plaintiffs as the non-movant.

A. Greenavations Purchases Solar Panels from Mage Solar.

Plaintiff Greenavations Power, LLC ("GP") is in the business of providing consulting and design services for the development of solar energy projects. (*See* attached Exhibit 2 (Order at 2).) In early 2011, the Laurens County Development Authority ("LCDA") in Dublin, Laurens County, Georgia, engaged in an economic development project to finance, develop, and install a solar array (the "Project")

manufactured by a local company, Mage Solar Projects, Inc. ("Mage Solar"), at the Dublin City High School. (*Id*. at 3.)

In November 2011, after GP performed an analysis of the economic viability of the Project, the LCDA, the Dublin City School District, and Mage Solar decided to proceed with the Project and finance the $4.35 million solar array with a $3.585 million taxable lease revenue bond (the "Bond Deal") and a federal grant of approximately $1.2 million. (*Id*.) Plaintiff Greenavations Power Dublin, LLC ("GPD") was formed as a special purpose entity to facilitate the development of the Project. (Plaintiffs GP and GPD, collectively, will be referred to herein as "Plaintiffs" or "Greenavations"). (*Id*. at 2.) In December 2011—**prior to engaging AGG**—Greenavations and Mage Solar entered into a vendor finance agreement whereby Greenavations purchased the solar panels and other components necessary for the Project from Mage Solar. (*Id*. at 3.)

B. <u>Greenavations Retains AGG After Purchasing The Solar Panels.</u>

Four months after purchasing the solar panels from Mage Solar, in April 2012, Greenavations retained AGG to represent them in connection with the Bond Deal and to negotiate the terms of an extended warranty with Mage Solar. (*Id*.) Because AGG represented Mage Solar in unrelated matters, AGG required Greenavations (and Mage Solar) to execute a "Waiver of Multiple, Concurrent or Conflicting Representation" (the "Waiver Letter"). In the Waiver Letter, dated

April 25, 2012, AGG disclosed that AGG represented Mage Solar and a number of its affiliated entities "on various legal matters, including acquisition, corporate, tax, contract and employment law matters as general outside counsel." (*Id.* at 4; *see* attached Exhibit 6 (Pls.' Resp., Exhibit 1 to Aff. of Robert Green).) Mage Solar and Greenavations executed the Waiver Letter on April 30, 2012, which acknowledged that each entity waived potential conflicts presented by AGG's concurrent representation of Mage Solar and Greenavations. (*Id.* at 4.)

In addition to the Waiver Letter, AGG and Greenavations executed a two-page engagement agreement confirming "the nature of the legal undertaking or engagement [Greenavations] requested [AGG] to perform and to inform [Greenavations] of [AGG's] billing and payment arrangements concerning legal fees." (*Id.* at 3; *see also* attached Exhibit 6 (Pls.' Resp., Exhibit 1 to Aff. of Robert Green) (the "Representation Letter").) The Representation Letter, which was also dated April 25, 2012, identified the attorneys who would be working on the matter, the current hourly billing rates, and attached AGG's Standard Terms of Representation. (*Id.*)

C. The Bond Deal and Mage Solar's Demise.

Pursuant to the terms of the Waiver Letter, AGG represented Greenavations (and not Mage Solar) in connection with the Bond Deal. (*See* attached Exhibit 3 (Compl. ¶ 19).) The Bond Deal closed on January 29, 2013, naming GPD as the

Owner, Borrower, and Lessor of the solar array, which is under lease for the next 25 years to the Laurens Country Public Facilities Authority and the School District. (*See* attached Exhibit 2 (Order at 4).) Construction of the solar array was completed in 2014. (*Id*. at 5.)

During the time period at issue, Mage Solar incurred substantial financial losses. (*Id*.) In June 2013, one of Mage Solar's parent companies, Mage Industrie Holding, AG, declared bankruptcy. (*Id*. at 4.) Mr. Gornall informed Mr. Green regarding the bankruptcy in September 2013. (*Id*.) In December 2013, Mage Solar's other parent company, Mage Solar AG, filed for bankruptcy. (*Id*.) As of October 2014, Mage Solar was no longer in business and could not honor any extended warranties on the Project or warrant the solar array at issue.[2] (*Id*. at 5.)

On January 20, 2017, Greenavations executed a Standstill and Tolling Agreement with AGG and Mr. Gornall, which was subsequently extended by amendment on November 17, 2017 and February 28, 2018. (*Id*. at 5; *see also* attached Exhibit 6 (Pls.' Resp., Exhibit 2 to Aff. of Robert Green).) Mr. Ziegler did not enter into any Standstill and Tolling Agreement with Greenavations.

[2] For this reason, Greenavations refused to pay for the solar panels and equipment purchased from Mage Solar in 2011, resulting in a judgment against Greenavations in excess of $900,000, which remains unpaid to this day. (*See* attached Exhibit 3 (Compl. ¶ 37).)

SUMMARY OF PROCEEDINGS BELOW

Plaintiffs commenced this action on June 5, 2018 by filing a Complaint for Legal Malpractice against Defendants, asserting claims for legal malpractice, breach of fiduciary duty, punitive damages, and attorneys' fees. (*See* attached Exhibit 3 (Compl.).) The bulk of the claims in the Complaint arise out of Defendants' concurrent representation of Greenavations and Mage Solar, which Plaintiffs contend gave rise to a "non-waivable" conflict. According to the Complaint, by virtue of Defendants' prior and ongoing representation of Mage Solar and its affiliates, Defendants knew or should have known that Mage Solar was in financial distress, but Defendants did not disclose that information to Greenavations until September 2013. (*See* attached Exhibit 3 (Compl. ¶¶ 15, 26, 31, 32, 39).) Plaintiffs allege that they could have mitigated their damages by obtaining warranted components from another vendor had Defendants disclosed Mage Solar's financial difficulties "in a timely manner." (*Id.* ¶ 33.)

On August 20, 2019, Defendants filed a Motion for Partial Summary Judgment. In the motion, Defendants argued that Plaintiffs' legal malpractice claims based on the existence of a "non-waivable" conflict accrued in April 2012 when, as alleged in the Complaint, Defendants proceeded with the concurrent representation of Greenavations and Mage Solar, notwithstanding their knowledge of Mage Solar's "financial distress." (*See* attached Exhibit 5 (Defs.' Mem. of Law

at 8-9).) Under the four-year statute of limitations for legal malpractice claims, Plaintiffs' cause of action based on a "non-waivable" conflict expired in April 2016, long before execution of any tolling agreement. (*Id*. at 9) (*citing* O.C.G.A. § 9-3-25 and Georgia cases). Defendants' motion further noted the absence of any allegation of fraud in the Complaint that would meet the requirements under Georgia law to toll the statute of limitations. (*Id.* at 14-15) (*citing Hunter, Maclean, Exley & Dunn, P.C. v. Frame,* 269 Ga. 884, 846-47 (1998)).

In their response, Plaintiffs acknowledged that the statute of limitations for a claim for legal malpractice is four years under Georgia law, stating: "A claim for legal malpractice is subject to a four-year statute of limitations." (*See* attached Exhibit 6 (Pls.' Resp. at 22) (*citing* O.C.G.A. § 9-3-25; *Morris v. Atlanta Legal Aid Society*, 22 Ga. App. 62, 65 (1996); and *Brown v. Kinswer*, 218 Ga. App. 385, 387 (1995).) To avoid dismissal of their claims, Plaintiffs argued extensively that the statute of limitations was subject to tolling due to Defendants' alleged fraudulent concealment of Mage Solar's "financial distress." (*Id.* at 16-22.) Plaintiffs even went so far as to amend the Complaint to allege a "newly-discovered" fraud claim in a futile effort to avail themselves of fraudulent tolling. (*See* attached Exhibit 7 (Am. Compl.).)

On the eve of the first scheduled hearing, Plaintiffs changed course, recognizing that their theory of tolling was unsupported by the facts or Georgia

law. On October 16, 2019, Plaintiffs filed a Sur-Reply arguing for the first time that a six-year statute of limitations applied to their claim for legal malpractice, citing *Newell*, which according to Plaintiffs, "overruled previous cases applying the four-year statute of limitations to professional negligence cases." (*See* attached Exhibit 9 (Pls.' Sur-Reply at 2-5).) Despite their heavy reliance on *Newell* and O.C.G.A. § 9-3-24, which applies to "[a]ll actions upon simple contracts in writing," Plaintiffs never amended the Complaint to allege a claim for breach of contract.

Following a November 2019 rescheduled hearing on the motion, during which counsel for Defendants addressed the *Newell* decision (*see* attached Exhibit 10 (Tr. at 7:13-9:19)), the trial court entered the Order on March 11, 2020, denying in part Defendants' Motion for Partial Summary Judgment. On March 13, 2020, Defendants filed a Motion for Reconsideration that specifically addressed the issue of statute of limitations and requested, in the alternative, certification of the Order for immediate appeal. (*See* attached Exhibit 11 (Defs.' Mot. for Reconsideration)). Rather than rule on Defendants' Motion for Reconsideration, the trial court granted a Certificate of Immediate Review within minutes of Defendants' request. (*See* attached Exhibit 1.)

ARGUMENT AND CITATION TO AUTHORITY

The Application should be granted because each of the requirements of Court of Appeals Rule 30 is satisfied. First, the issue to be decided is dispositive of the majority of the legal malpractice claims in this case. Second, the Order appears erroneous and will cause a substantial error by allowing time-barred claims to proceed on the merits, potentially to trial. Third, the trial court's reasoning in the Order raises issues of first impression on which the establishment of precedent is both desirable and necessary.

A. The Issue to Be Decided on Appeal Is Dispositive of the Case.

As recognized by the Court of Appeals, a motion for summary judgment based on the statute of limitations "lends itself to categorical proof without there being any other genuine issues of material fact." *Houston v. Doe*, 136 Ga. App. 583, 585 (1975). In this case, there is no genuine dispute that Plaintiffs' claims for legal malpractice (based on the existence of a "non-waivable" conflict) arising out of AGG's concurrent representation of Greenavations and Mage Solar accrued in April 2012. After applying (erroneously) a six-year statute of limitations, the trial court determined that Plaintiffs' claims for legal malpractice would have "expired in April 2018" but for the execution of tolling agreements that tolled the limitations period through the commencement of this lawsuit. (*See* attached Exhibit 2 (Order at 13).)

Appellate review of the trial court's application of a six-year statute of limitations (as opposed to a four-year statute of limitations) is potentially dispositive of almost all of Plaintiffs' legal malpractice claims. In the event the Court of Appeals follows its own precedent in *Plumlee*, *Frates*, and *Jankowski* and likewise holds that the Representation Letter is an "incomplete" contract warranting application of a four-year limitations period, then Plaintiffs' legal malpractice claims expired in April 2016, prior to the execution of the tolling agreements. Under a four-year limitations period, therefore, Plaintiffs' legal malpractice claims based on the existence of a "non-waivable" conflict are time-barred as a matter of law and subject to dismissal on summary judgment.

Although Plaintiffs allege breaches of duties unrelated to the "non-waivable" conflict, Defendants' Motion for Partial Summary Judgment, if granted, would dispose of the majority of claims in this case and significantly narrow the dispute and scope of discovery (assuming Plaintiffs even move forward with pursuit of the remaining claims). As recognized by the trial court in granting the Certificate of Immediate Review, "review by the Court of Appeals on these issues is appropriate before the parties and [the trial court] commit a substantial amount of time, effort, and resources proceeding to the merits of the claims through a jury trial." (*See* attached Exhibit 1.)

B. <u>The Order Appears Erroneous and Will Probably Cause Substantial Error at Trial.</u>

The trial court's application of a six-year statute of limitations to Plaintiffs' claims for legal malpractice appears erroneous and unsupported by any binding precedent involving legal malpractice claims. Indeed, it is the first of its kind in Georgia. This Court has consistently held that a **four-year** statute of limitations is applicable to a claim for legal malpractice, **even where the law firm and attorney entered into a written engagement letter** (which is the common practice for most law firms). *Plumlee*, 221 Ga, App. at 852; *Frates*, 164 Ga. App. at 246; *Jankowski*, 154 Ga. App. at 754.

In applying a six-year statute of limitations, the trial court relied on *Newell*, 288 Ga. at 239, which was **not** a legal malpractice case. The holding in *Newell* requires application of a six-year statute of limitations under O.C.G.A. § 9-3-24 only "where a **complete written contract** exists and an action for breach of contract is pursued." *Id.* at 238 (emphasis added). In contrast, the four-year statute of limitations under O.C.G.A. § 9-3-25 applies "[w]here the agreement is incomplete, such that the writing does not form a contract or the promise allegedly broken stems from a purely oral agreement." *Id.*

In fact, *Newell* does not hold that the mere existence of a written contract mandates the application of a six-year statute of limitations. Instead, courts must examine the written agreement to determine whether the contract is "complete." *Id.*

On remand following the Supreme Court of Georgia's decision in *Newell*, this Court affirmed the trial court's application of a four-year statute of limitations after determining that two engagement letters and nine-page scope of work were "incomplete" contracts because they omitted "essential terms" that had to be implied or presumed. *Newell Recycling of Atlanta, Inc. v. Jordan Jones & Goulding, Inc.*, 317 Ga. App. 464, 466-67 (2012) ("*Newell II*").

Thus, **no precedent** holds that the standard law firm engagement letter is a "complete" contract that gives rise to the application of a six-year statute of limitation period for a legal malpractice claim. **To the contrary, Georgia courts have consistently held that standard law firm engagement agreements are "incomplete" contracts, warranting a four-year statute of limitations for legal malpractice claims**. *Plumlee*, 221 Ga. App. at 852 (holding that the six-year statute of limitations did not apply to the legal malpractice claim because the engagement letter "did not constitute the entire agreement between the parties"); *Frates*, 164 Ga. App. at 246 (holding that a four-year statute of limitations applied because an engagement letter "clearly did not constitute the entire agreement for legal services between the parties"); *Jankowski*, 154 Ga. App. at 754 (applying four-year statute of limitations where law firm engagement letter did not "constitute the entire contract between the parties").

The outcome in case should be no different, and this Court's review of the summary judgment order is needed to formally address the application of *Newell* to legal malpractice claims. *Newell* is consistent with this Court's prior decisions in *Plumlee*, *Frates*, or *Jankowski,* as each of this Court's opinions held that a law firm's standard engagement letter is an incomplete contract and that a legal malpractice claim premised thereon is subject to a four-year statute of limitations. *Newell* does not change that established holding, and at the very least, this Court should determine whether it does so there is uniformity in the State. Put simply, the question arises out of the unique nature of legal services contracts and not legal services themselves.

Applying the reasoning of *Plumlee*, *Frates*, and *Jankowski*, the Representation Letter is also an "incomplete" contract. In the Representation Letter, AGG agreed to represent Plaintiffs in connection with the "Transaction" in broad terms; identified the attorneys who would be assisting with the representation; outlined the "factors" in determining the amount of fees (but declining to provide an estimate); and attached the firm's standard terms and conditions. (*See* attached Exhibit 6 (Pls.' Resp., Exhibit 1 to Green Aff.).) The Representation Letter does **not** include any terms on how AGG would undertake the duties of representation, nor does it define the tasks required to be performed

by AGG, or any timeframe for performance by AGG. (*Id.*) As observed by the Court of Appeals in *Plumlee* in finding an incomplete contract:

> [The two-page agreement] created the attorney-client relationship and covered certain issues such as Davis's fee, payment of expenses, and his authority. **It did not specify the manner in which the attorney was to carry out his duties**, when suit was to be filed, or numerous other material portions of the contract between Plumlee and Davis. **Instead, as in most attorney employment contracts, those matters were subject to the duty imposed upon Davis by law and implied in his contractual relationship with Plumlee**.

Plumlee, 221 Ga. App. at 852; *see also Frates*, 164 Ga. App. at 246 (holding that engagement letter was an "incomplete" contract because it "merely confirms representation in broad terms and outlines in detail only the fee arrangement between the parties"); *Jankowski*, 154 Ga. App. at 754-55 (holding that written contract employing law firm that addressed the fees to be charged and law firm's authority was an incomplete contract).

Accordingly, based on this Court's precedent, the Representation Letter was not a complete contract as a matter of law under the holding of *Plumlee*, *Frates*, and *Jankowski*. It is also telling that *Newell* involved a claim for breach of contract, something Plaintiffs here have not asserted. 288 Ga. at 236. At a minimum, summary judgment on Plaintiffs' legal malpractice claim arising out of

the alleged non-waivable conflict should have been granted as to Defendants Gornall and Ziegler.[3]

Unless reversed, the parties and the trial court will expend significant time and resources litigating claims that are potentially time-barred. The size and scope of discovery will be substantial, given Plaintiffs' intent to seek discovery of Defendants' purported knowledge of Mage Solar's financial status dating back to 2011, which will implicate serious privilege and confidentiality concerns regarding the discoverability of AGG's client files relating to its representation of separate clients, Mage Solar and affiliated entities (and potentially devastating confidentiality protections any time a law firm enters into a permissible concurrent representation).

C. The Order Raises Issues of First Impression

To Defendants' knowledge, the Order is the **first** of its kind in Georgia to apply a six-year statute of limitations in a legal malpractice case based on the holding in *Newell*. Contrary to Plaintiffs' arguments, Georgia courts have not "extensively" followed *Newell* as "overruling" precedent applying the four-year

[3] It is undisputed that Mr. Ziegler was not a signatory to any of the tolling agreements, and therefore Plaintiffs' claims expired on April 2018, prior to commencement of the lawsuit, even under the six-year limitations period. Although Mr. Gornall was a signatory to the tolling agreements, it is undisputed that Mr. Gornall was not a party in his individual capacity to the Representation Letter, and there is no evidence of any written agreement between Mr. Gornall and Plaintiffs.

limitations period to legal malpractice cases. (*See* attached Exhibit 9 (Pls.' Sur-Reply Br. at 3).) In fact, *Newell* and *Newell II* are consistent with this Court's decisions in *Plumlee*, *Davis*, and *Jankowski*. None of the cases cited in Plaintiffs' sur-reply brief held that a law firm engagement agreement is a "complete" contract under *Newell* and applied a six-year statute of limitations on that basis.[4] Given the absence of any guidance on the impact of *Newell* on legal malpractice actions, appellate review to clarify the appropriate statute of limitations in actions where there exists a written engagement agreement is both desirable and necessary, as it would have considerable impact on the legal community in Georgia.

In the event the Court of Appeals reaches the question of tolling in its review of the Order, Plaintiffs' theory of fraudulent tolling also raises an issue of first impression: whether a law firm's "non-disclosure" of one client's confidential information to another client in a concurrent representation constitutes "fraud"

[4] *Saiia Const., LLC v. Terracon Consultants, Inc.*, 310 Ga. App. 713 (2011) (applying six-year limitations period to claim for contractual indemnification in construction defect dispute, assuming written contract is complete); *Old Republic Nat. Ins. Co. v. Panella*, 319 Ga. App. 274 (2012) (applying six-year limitations period to claim for contractual indemnification in insurance agency contract); *Gowen Oil Co. v. Foley & Lardner, LLP*, No. CV 512-039, 2013 WL 909903, at *3 (S.D. Ga. Mar. 6, 2013) (specifying that "this Court does not hold that the applicable statute of limitations is six years"); *Christenbury v. Locke Lord Bissell & Liddell, LLP*, No. 1:11-CV-3459-JEC, 2013 WL 12246194, at *6 (N.D. Ga. Aug. 23, 2013) (noting, without deciding, that "[t]he longest limitation period that is potentially applicable to the claims is six years").

sufficient to toll the statute of limitations.[5] According to Plaintiffs, Defendants had a duty to timely disclose to Plaintiffs that another client—Mage Solar—was in "financial distress," and that Defendants' alleged failure to do so tolled the statute of limitations. (*See* attached Exhibit 9 (Pls.' Resp. at 16-22).) Even assuming Defendants had knowledge of Mage Solar's "financial distress," under no circumstance would Defendants have been permitted (much less obligated) to disclose Mage Solar's confidential and sensitive financial information to Plaintiffs, which would have been in violation of Defendants' duties of confidentiality to Mage Solar. The issue is one of duty and the application of Georgia Rule of Professional Conduct 1.6. It is a legal question, and no case in Georgia holds that a law firm's compliance with confidentiality obligations as to one client can amount to a "fraud" on another client. In the absence of case law on this question—which appears to be one of first impression—appellate review would be appropriate and beneficial, not only in this case, but to the members of the Georgia Bar at large who routinely enter into permissible concurrent representations.

CONCLUSION

For the reasons stated throughout this brief, this Court should grant this Application for Interlocutory Appeal.

This submission does not exceed the word count limit imposed by Rule 24.

[5] This issue was also raised in Defendants' Motion to Dismiss, which the trial court denied in the same Order.

Respectfully submitted this 23rd day of March, 2020.

/s/ Josh Belinfante
Josh Belinfante
Georgia Bar No. 047399
jbelinfanta@robbinsfirm.com
Jeremy U. Littlefield
Georgia Bar No. 141539
jlittlefield@robbinsfirm.com
Craig G. Kunkes
Georgia Bar No. 963594
ckunkes@robbinsfirm.com
Robbins Ross Alloy Belinfante Littlefield LLC
500 14th Street, N.W.
Atlanta, Georgia 30318
Telephone: (678) 701-9381
Facsimile: (404) 856-3250

Attorneys for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing **APPLICATION FOR INTERLOCUTORY APPEAL** upon counsel of record by email and by depositing a copy of the same in the United States mail, with adequate postage thereon to ensure delivery, and properly addressed as follows:

Scott A. Schweber
Shuli L. Green
SCHWEBER GREEN LAW GROUP
2002 Summit Boulevard
Suite 300
Atlanta, Georgia 30319
scott@atl-lawyers.com
sgreen@atl-lawyers.com

This 23rd day of March, 2020.

/s/ Josh Belinfante
Josh Belinfante