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GEORGIA DEFENSE LAWYER

A Magazine for the Civil Defense Trial Bar

Volume XVI, Issue III
Winter 2021

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The Viability of Contractually-Shortened Tort Limitation Periods in Landlord-Tenant Lease Agreements

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Assume you represent a property management company. The company has been roped into a tort action after a tenant fell on a curb located on one of its premises two years prior. Looking over the documents in the case, you skim the lease agreement, noting information on the key parties to the suit. But as you turn the final page, you notice something rather unique compared to most leases:

> Limitation on Actions. To the extent allowed by law, Resident also agrees and understands that any legal action against Management or Owner must be instituted within one year of the date of claim or cause of action arises and that any action filed after one year from such date shall be time barred as a matter of law.

You think to yourself: A one-year limitation period? Any cause of action? Is that all there is to it? It is never this straightforward.

Your intuition would be right as this exact scenario posed a question of law which finally came to a close after four years in *Langley v. MP Spring Lake, LLC*.

On March 3, 2014, Pamela Langley alleged she fell on a common area of her apartment complex when her foot got caught and slid on a crumbling portion of a curb. Two years later, Langley filed suit against Spring Lake in the Superior Court of Clayton County, alleging theories of negligence and negligence per se.

Spring Lake moved for summary judgment citing the same language above restricting any legal actions by Langley to be brought within one year—March 3, 2015.

Langley countered along a few lines, but two bear particular import for the case's eventual trajectory. First, Langley argued the limitation should be interpreted so as to apply only to claims arising from the lease agreement itself—not any tort claims which might materialize during the term of the lease. And second, she stated the language should be held unenforceable as a matter of law. In granting summary judgment, Judge Robert Mack found in favor of Spring Lake and declared Langley's suit to be time-barred.

Langley appealed to the Georgia Court of Appeals, arguing Mack's ruling was "erroneous because a contractual limitation period, such as the one at issue, should not apply to claims that do not arise out of the agreement in which it is contained." Langley's counsel openly questioned: What if she's driving in downtown Atlanta and a maintenance man for the apartments hit her? She can't sue? It doesn't make any legal or logical sense to me.

But the Court of Appeals sided with the trial court, affirming its decision. In its analysis, the Court of Appeals underscored parties' freedom to contract and cardinal rules of construction in interpreting contract to hold "although personal-injury claims are ordinarily subject to a two-year statute of limitation, Langley contractually agreed to bring *any* action against Spring Lake—including, but not limited to,

personal-injury actions—within *one* year.

Professor Anne Tucker, an associate professor at Georgia State University College of Law who teaches contracts, commented the Court of Appeals opinion should be understood to mean:

> blanket restrictions on liability for all types of claims can be written into a contract, even in contracts that are not normally subject to negotiation, like a landlord-tenant contract . . . If your job is to reduce liability or contain exposure, you would absolutely want to include a statute of limitation on any type of claim.

But the opinion also drew an immediate rebuke from the plaintiff's bar:

> This could and likely will have far-reaching implications for a number of injured people as virtually all corporate defendants will not seek to include similar provisions in their contracts . . . daycare centers, gyms, hospitals, nursing homes and trampoline parks might try to limit their exposure by limiting the time a suit can be filed or even capping damages a party can seek. It's a scary decision.

Following the denial of Langley's Motion for Reconsideration by the Court of Appeals, the Supreme Court of Georgia granted certiorari, acknowledging the gravity of the decision. In doing so, the Supreme Court posed two questions: (1) Whether the one-year limitation period in Langley's lease agreement also encompassed tort actions against Spring Lake; and (2) if so, whether the provision is enforceable. But despite asking for briefing on both questions, the Court channeled its focus early:

> [T]he question here is not whether contractual time-limitation provisions are generally enforceable in this State; that question is clearly answered in the affirmative as to claims for breach of contract. Rather, the question is whether the Limitation Provision agreed to by the parties in this case, who were at the time creating a landlord-tenant relationship, applies to Langley's premises liability tort claim.

Competing responses were put forth by the Georgia Trial Lawyers Association and Georgia Defense Lawyers Association in amicus briefs. GTLA asserted the majority of cases enforcing contractually shortened limitations periods traditionally concerned suits to recover on a policy of insurance. In other words, the limitations were solely contractual and nature and have been evidenced by cases reaching as far back at 1858.

GDLA countered this view, noting the limitation constituted a structural provision of contract no different than parties' mutual agreement to other terms pertaining to remedies or dispute resolution—*e.g.*, choice of law, arbitration, and forum selection. In fact, "[i]n the context of arbitration agreements, torts that are even slightly related to the contract are engulfed by the arbitration provision."

Critical to the Court's holding was the context of the otherwise unambiguous terms. "Words, like people, are judged by the company they keep." The Court noted a conflict existed between the broad literal meaning of "any legal action" and the limited function of the lease agreement itself, prompting the Court to read the phrase in favor of Langley, the non-drafter. Taken together with the lease agreement's recitals to duties sounding in contract, as opposed to those sounding in tort, the Court held the limitation period should be cabined to contract claims arising under the lease.

While *Langley* prevented application of the limitation period here, counsel should not overlook what the Supreme Court left undisturbed. The Court expressly noted *Langley* offers no opinion on whether a limitation period within a lease agreement could be constructed so as to avail would-be defendants of the same strategy pursued here. And the Court's continued reasoning suggests this specific issue, if presented on appeal, will likely pit the Court's deference to parties' freedom of contract and individual justices' views upon statutory interpretation against prior decisions' worries of eroding the General Assembly's public policy goals in landlord-tenant settings. But the public policy concern underscored by the General Assembly in *Thompson*, the opinion cited by the Supreme Court, pertains to limitations on a landlord's *substantive liability*—not limitations on the *procedural devices* agreed upon by the parties in resolving that substantive liability.

So, while *Langley* functionally denied the defense to Spring Lake in this instance, the ultimate issue the case presented remains very much unsettled. Perhaps equipped with lease verbiage specifically limiting the *period* for the pursuit of tort claims, while also noting the limitation does not affect the *duties*

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owed by the landlord to the tenant—a drafting tip counsel should relay—the defense could persevere after all. ◆

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Endnotes

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[2] *Id.*; *see also Langley v. MP Spring Lake, LLC,* Civil Action No. 2016-CV-00836-11 (Clayton Cnty. Super. Ct.) (Dismissed as of August 25, 2020); Greg Land, *Ga. Appeals Court OKs Lease Provision Limiting Time to Sue Apartments*, Daily Report (May 7, 2018 at 4:53 PM), https://www.law.com/dailyreportonline/2018/05/07/ga-appeals-court-oks-lease-provision-limiting-time-to-sue-apartments/.

[3] Land, *supra* note 2.

[4] Land, *supra* note 2.

[5] *Id*.

[6] *Langley*, 345 Ga. App. at 742–43.

[7] Land, *supra* note 2.

[8] *Id*.

[9] *Langley v. MP Spring Lake*, LLC, 307 Ga. 321, 321 (2019).

[10] See Brief of Amicus Curiae by Georgia Trial Lawyers Association, *Langley v. MP Spring Lake, LLC*, 307 Ga. 321 (2019) (Case No. S18G1326) 2018 GA. S. Ct. Briefs LEXIS 607, at *4–5 (citing *Brown v. Savannah Mut. Ins. Co.,* 24 Ga. 97 (1858); *Melson v. Phoenix Ins. Co.,* 97 Ga. 722 (1896)).

[11] See Brief of Amicus Curiae by Georgia Defense Lawyers Association, *Langley v. MP Spring Lake, LLC,* 307 Ga. 321 (2019) (Case No. S18G1326) 2019 GA. S. Ct. Briefs LEXIS 209, *2, 4–5 (citing *Goshawk Dedicated v. Portsmouth Settlement Co.* I, 446 F. Supp. 2d 1293, 1300 (N.D. Ga. 2006)).

[12] Id. at *5 (citing *Waffle House, Inc. v. Pavesi*, 343 Ga. App. 102 (2017); *Davidson v. A.G. Edwards & Sons, Inc*. 324 Ga. App. 172 (2013); *Wedemeyer v. Gulfstream Aerospace Corp.,* 324 Ga. App. 47 (2017)).

[13] Langley, 307 Ga. at 325 (citing *Anderson v. Anderson,* 274 Ga. 224, 227(3) (2001)).

[14] Id.

[15] Id. at 329.

[16] Id. at 329 n.4 (citing *Thompson v. Crownover,* 259 Ga. 126, 128 (1989)).

[17] See Brief of Georgia Defense Lawyers Association, supra note 11 (citing *Amu v. Barnes,* 283 Ga. 549, 552 (2008) ("A statute of limitations is a procedural rule limiting the time in which a party may bring an action for a right which has already occurred.")).