IN THE SUPREME COURT
STATE OF GEORGIA

PAMELA LANGLEY	)	
	)	
	)	
	)	
Appellant,	)	No. S18G1326
	)	
v.	)	
	)	
MP SPRINGS LAKE, LL,	)	
	)	
Appellee.	)	
	)	

AMICUS BRIEF OF THE GEORGIA DEFENSE LAWYERS ASSOCIATION IN SUPPORT OF APPELLEE

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I. INTEREST OF AMICUS

The Georgia Defense Lawyers Association ("GDLA") is an association of more than 900 Georgia lawyers, including sole practitioners and members of law firms of all sizes, who engage in litigation, primarily for defendants in civil lawsuits. The GDLA is dedicated to, among other purposes, supporting and improving the civil defense bar, improving the adversary system of jurisprudence in our courts, eliminating court congestion and delay in litigation, and otherwise promoting improvements in the administration of justice.

The GDLA's members and their many clients throughout Georgia have a significant interest in ensuring that Georgia law is interpreted and applied consistently in all civil cases throughout the state. Furthermore, the GDLA's members and their clients have an interest in preserving the freedom of parties to contract and the enforcement of contracts as they are written.

II. INTRODUCTION

Georgia courts have long adhered to the principle that parties are generally free to contract on any terms and they see fit and in so doing "may act to limit their rights and duties." *West Side Loan Office v. Electro-Protective Corp*, 167 Ga. App. 520, 520 (1983). Some parties may agree to a provision limiting the type of law that will govern their disputes, others may agree to a provision limiting the type of court for their disputes, and still others may agree to a provision limiting the type of

methods and procedures to resolve their disputes. Regardless of the specific content, Georgia courts have long supported and enforced parties' rights to contract as they see fit.

The parties here agreed that "any legal action against [Appellee] must be instituted within one year of the date any claim or cause of action arises." Thus, they agreed that any claim against Appellee would be subject to a one-year limitations period. The Court should preserve the parties' freedom to contract and affirm the lower courts' enforcement of this provision. Further, this Court cannot determine the constitutional arguments raised by Amici, as these arguments were not raised in the court below. *See In re D.R., 298* Ga. App. 774, 781 (2009), (cert. denied, September 28, 2009), citing, *In re L.C.*, 273 Ga. 886, 889 (2001).

III. ARGUMENT

In granting certiorari, this Court asked (1) whether the limitations provision applies to Appellant's tort claims, and (2) if so, whether the provisions is enforceable. Consistent with the parties' freedom to contract, they agreed that any legal action for any claim or cause of action would be filed within one year of accrual. The provision applies to Appellant's tort claims and must be enforced.

A. The Limitations Provision Applies to Appellant's Tort Claim

Appellant and her supporting Amici argue that the limitations provision does not govern her premises liability claim, but the language of the provision compels

no other conclusion. The provision does not limit itself to disputes arising under the contract, nor does it differentiate between violations of statutory duties or common law duties. The provision applies to "any claim *or* cause of action" in "*any legal action.*" This language plainly and unambiguously encompasses Appellant's premises liability claim. Thus, the decision of the Court of Appeals is neither "anomalous" nor a departure from general principles of contract interpretation and construction. Instead, the Court of Appeals' decision correctly enforces the unambiguous language of the parties' contract and is consistent with the general rule that parties are "free to limit their rights and duties so long as public policy is not violated." *West Side Loan Office v. Electro-Protective Corp.*, 167 Ga. App. 520, 520 (1983).

1. The limitation provision is similar to other structural provisions that often apply to tort claims and are routinely enforced by Georgia courts.

The limitation provision in the parties' agreement is a structural provision of the contract. *See Goshawk Dedicated v. Portsmouth Settlement Co. I*, 466 F. Supp. 2d 1293, 1300 (N.D. Ga. 2006) ("structural provision[s]" are those that "relate[] to remedies and dispute resolution, and not an obligation concerning performance"). Like the right to agree to choice of law provisions, forum selection clauses, and arbitration agreements, contracting parties are similarly free to agree to provisions limiting the time period for which actions must be brought. *See* WILLISTON ON CONTRACTS, § 79:10 (4th ed.) ("A substantial majority of jurisdictions permit the

parties to a contract to agree upon and provide for a shorter time period within which an action must be brought than the period provided by the applicable statute of limitations[.]").

Whether a particular structural provision of a contract encompasses a related tort claim is a matter of contract interpretation. In the context of arbitration agreements, torts that are even slightly related to the contract are engulfed by the arbitration provision. *See Waffle House, Inc. v. Pavesi*, 343 Ga. App. 102 (2017) (physical precedent only as to Division 2); *Davidson v. A.G. Edwards & Sons, Inc.*, 324 Ga. App. 172 (2013); *Wedemeyer v. Gulfstream Aerospace Corp.*, 324 Ga. App. 47 (2017).

Thus, a tort claim may be governed by a contractual choice of law provision specifying a particular state if the provision states that "any and all claims arising out of the relationship between the parties shall be governed by and construed in accordance with the laws of [that particular state]." *See Young v. W.S. Badcock Corp.*, 222 Ga. App. 218, 218 (1996) (holding Florida choice-of-law provision inapplicable to tort claims since provision limited itself to the "agreement and the terms thereof" instead of encompassing "any and all claims"). Similarly, when parties to a contract have specified a forum to resolve their disputes, the forum selection may nonetheless govern tort claims that arise between them. *See Brinson v. Martin*, 220 Ga. App. 638, 640 (1996) (applying forum selection clause to tort

claims); *see also Moon v. CSA-Credit Solutions of America, Inc.*, 304 Ga. App. 555, 555 (physical precedent) ("The [Appellants] contend that the forum selection provision does not apply . . . because their cause of action asserts a [statutory] violation, and therefore this dispute does not regard or arise from the agreement. We rejected a similar narrow construction of a contractual forum selection provision in *Brinson*.").

2. *As a matter of interpretation, the plain, unambiguous language of the limitation provision in the subject contract applies to the tort claim in the case below.*

Plain and unambiguous contractual language must be given its ordinary meaning. *Wedemeyer v. Gulfstream Aerospace Corp.*, 324 Ga. App. 47, 50 (2013). *See, Unified Government of Athens-Clarke County v. McCrary,* 280 Ga. 901, 903 (2001) citing, *Kreimer v. Kreimer*, 274 Ga. 359, 361(1) (2001). And this Court has held in *Wolverine Ins. Co. v. Jack Jordan, Inc.*, 213 Ga. 299, 302 (1957) that, "[I]t is equally well settled that no construction is required or even permissible when the language employed by the parties in their contract is plain, unambiguous, and capable of only one reasonable interpretation." These are bedrock rules of contract interpretation. See also, *Race, Inc. v. Wade Leasing, Inc.*, 201 Ga. App. 340, 341 (1991) ("Clear and unambiguous [terms] are to be taken and understood in their plain, ordinary, and popular sense.").

Turning to the contractual provision at issue in this case, there is no restriction on the type of legal action, claim, or cause of action to which the limitation provision applies. Instead, the provision applies to "any legal action" for "any claim *or* cause of action." Contrary to the arguments of Appellant and her supporting Amici, the subject provision on its face contemplates more than claims for breach of contract. This Court should enforce the unambiguous provision as it reads and uphold the decision of the Court of Appeals holding that the provision applies to Appellant's tort claims.

B. The Limitations Provision is Enforceable, as it Does not Violate any Statute or Public Policy.

Appellant and other Amici urge the Court to deem the limitations provision unenforceable. But "[c]ontractual periods of limitation are generally enforceable under Georgia law." *N4D, LLC v. Passmore*, 329 Ga. App. 565, 566 (2014). And "unless prohibited by statute or public policy, all persons are free to contract on any terms regarding a subject matter in which they have an interest." *Quillen v. Quillen*, 265 Ga. 779, 779 (1995). The limitations provision found in the lease agreement does not violate any statute or public policy. Contrary to Appellant's and Amici's assertions, the provision is not an exculpatory clause, and enforcement of the Court of Appeals' holding would not violate equal protection. The parties were thus free

to contract for a shortened (or extended) limitations period, and the Court should enforce the limitations provision found in the agreement.

Of course, contracts that violate a statute or public policy are not enforceable.[1] *See Quillen*, 265 Ga. at 779; O.C.G.A. § 13-8-2(a).[2] This Court has held, however, that a court's power to declare a contract void as against public policy "should be exercised with great caution, and only in cases free from substantial doubt . . . ." *Dep't of Transp. v. Brook*, 254 Ga. 303, 312 (1985) (per curiam). Indeed, a contract will not be considered in violation of public policy "unless the General Assembly has declared it to be so, or unless the consideration of the contract is contrary to good morals and contrary to law, or unless the contract is entered into for the purpose of effecting an illegal or immoral agreement or doing something which" violates the law. *Id.* at 312. The limitations provision in this case does not, as noted, violate any declaration by the General Assembly or any other identified public policy.

[1] Appellant has not argued that the limitations provision violates any statute. And unlike the states mentioned in Appellant's brief, Georgia has not enacted a statute prohibiting contractual limitations periods. *See Wolf Creek Landfill, LLC v. Twiggs Cty.*, 337 Ga. App. 211, 214 (2016) ("While some states have statutory or judicial restrictions prohibiting or limiting contractual extensions of statutes of limitation, Georgia does not." (footnotes omitted)).

[2] Section 13-8-2(a) provides a non-exhaustive list of the types of contracts that violate public policy.

i. The limitations provision at issue in this case should not be treated like an exculpatory clause.

Appellant and Amici argue that the limitations provision should be treated like an exculpatory clause. But an exculpatory clause waives a substantial, substantive right: the right to recover for another's wrongdoing. *See Holmes v. Clear Channel Outdoor, Inc.*, 284 Ga. App. 474, 477 (2007). Indeed, an exculpatory clause will often "amount to an accord and satisfaction of future claims." *Id.* Thus, by consenting to an exculpatory clause, a party agrees to waive its rights claims that do not yet exist. *See id.* A contractual limitation, by contrast, does not waive any substantive rights; instead, such a provision is the partial waiver of a procedural right. *See 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." (internal punctuation and emphasis omitted)).

The Appellant in this case, in other words, did not waive her right to recover from Appellee, and there was no accord and satisfaction of future claims. Appellant did not sacrifice her right to bring claims or agree to limit what she could recover. Rather, the parties agreed that claims must be brought within a certain amount of time. Because the limitations provision at issue does not involve the waiver of substantial, substantive rights, the Court should not view the provision as an exculpatory clause.

C. The Limitations Provision Does Not Violate Equal Protection.

Amici in support of Appellant also have argued that the enforcement of the Court of Appeals' holding will violate the Equal Protection clause. As they point out, "[n]o person shall be denied the equal protection of the laws." GA. CONST. Art. 1, § 1, ¶ II.

As an initial matter, this Court should not pass on the constitutional arguments raised by Amici, as these arguments were not raised in the courts below. *See*, *In re D.R., 298* Ga. App. 774, 781 (2009) ("Since the mother did not properly raise the constitutional challenges below or obtain a ruling from the trial judge, these claims are not properly presented for appellate review."); *In re L.C.*, 273 Ga. 886, 889 (2001) ("This Court has held that it 'will not rule on a challenge to the constitutionality of a statute unless the issue has been raised and ruled on in the trial court'"); *In re L.C., id.*, at ftn. 17, citing, *Lucas v. Lucas*, 273 Ga. 240, 242 (2000); *Bohannon v. State*, 269 Ga. 130, 137 (1998); and *Hardison v. Haslam*, 250 Ga. 59, 61 (1982).

In any event, there clearly is no equal protection violation here. "It is fundamental that no equal protection violation exists unless [the state] treats similarly-situated individuals differently." *Landau v. Davis Law Grp., P.C.*, 269 Ga. App. 904, 907 (2004); *Lewis v. Chatham Cty. Bd. of Comm'rs*, 298 Ga. 73, 74 (2015) ("In order to maintain an equal protection challenge, however, the challenger must

first show that he or she is similarly situated to members of a class who are treated differently than he or she is treated.")

In this case, Amici argue that the application of the Court of Appeals' holding would treat similarly situated people differently. They contend, for example, that a guest who had not signed the agreement may be entitled to a two-year statute of limitations while a tenant who had signed the lease would have only one year to file suit. But even assuming an equal-protection claim could otherwise survive scrutiny, the court's holding would not treat similarly situated people differently. Courts would enforce the one-year contractual limitation against parties to contracts. Courts would, of course, not subject those who are not parties to the agreement's terms. Thus, similarly situated individuals would be treated equally: parties to contracts would be treated the same as other parties to similar contracts, and non-parties would be treated the same as other non-parties. In other words, all tenants would be treated the same and all guests would be treated the same.

The argument made by Amici would apply the same to <u>any</u> provision of <u>any</u> contract—a party to the contract is bound by it, and those who are not parties to the contract would not be. Obviously, contracts are not unenforceable simply because a party to the contract may then have different rights <u>as to the party with whom they contract</u> than those who are not parties to the contract.

The equal protection argument advanced in this case can and should be promptly discarded by this Court. The limitations provision at issue in this case is enforceable because it violates no statute or public policy. The provision is not an exculpatory clause because it does not prevent Appellant from asserting any type of claims, and the enforcement of the provision will not violate equal protection.

IV. CONCLUSION

Respectfully, for all these reasons this Court should affirm the Court of Appeals' decision.

This 12th day of April, 2019.

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CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the within and foregoing **AMICUS BRIEF OF THE GEORGIA DEFENSE LAWYERS ASSOCIATION IN SUPPORT OF APPELLEE** upon the following counsel of record via U.S. Postal service with the proper postage affixed and addressed as follows:

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