

UCC Continuations and Legal Malpractice: Georgia Supreme Court Decision

On November 23, 2004, the Georgia Supreme Court reversed the Court of Appeals of Georgia in *Barnes v. Turner*, 278 Ga. 788, 606 S.E.2d 849 (2004), finding that **attorneys representing secured lenders have a duty to continue filed UCC financing statements before they lapse unless the client has been informed in a timely manner that the filings must be continued in five years to avoid lapse and that failure to fulfill that duty constitutes malpractice.**

BRIEF SUMMARY OF THE CASE:

In October of 1996, attorney David Turner represented William Barnes in the sale of Barnes' business. UCC financing statements were filed to secure the note given as part of the purchase price for the business. Turner did not advise his client that the financing statements would lapse after five years unless continued. The financing statements lapsed in October of 2001 and the buyer later became a debtor in a Chapter 7 bankruptcy case. Without Barnes' knowledge, the buyers pledged the same collateral to two other lenders who properly filed UCC financing statements putting them in a senior position to Barnes when his financing statements lapsed.

Barnes sued Turner for malpractice in October of 2002. The trial court granted Turner's motion to dismiss and the Court of Appeals affirmed, finding that the only incident of malpractice was Turner's failure to inform his client of the requirement to continue the financing statements and that the four-year statute of limitations had run before the action was filed. The Georgia Supreme Court did not agree, finding that the attorney's duty was to safeguard his client's security interest, which could have been accomplished by timely continuing the financing statements or advising his client of the need to do so. From this perspective, the court's view was that Turner breached his duty at the expiration of the five-year effective period when he failed to continue the filings or inform the client to do so, and thus the statute of limitations had not expired.

While counsel to secured lenders are probably correct to assume that most of their clients are aware of the need to continue UCC Financing Statements prior to the lapse date, this decision raises the issue of whether prudence dictates that a more formal policy of informing clients of the need to continue UCCs should be implemented.

Note that this summary is being provided for information purposes only and should not be relied upon as legal advice.

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