FIRST DIVISION
BARNES, P. J.,
GOBEIL and PIPKIN, JJ.

April 8, 2024

NOT TO BE OFFICIALLY REPORTED

In the Court of Appeals of Georgia

A24A0405. ROBINSON et al. v. CPA GLOBAL SUPPORT SERVICES, LLC.

GOBEIL, Judge.

James C. Robinson, M. D., and Spectrum Spine IP Holdings, LLC ("Spectrum") (collectively, the "Plaintiffs"), appeal from the trial court's grant of summary judgment in favor of CPA Global Support Services, LLC ("CPA") against their claim for negligent misrepresentation in this underlying professional malpractice action. For the reasons that follow, we now affirm.

"Summary judgment is proper when there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. We review a grant or denial of summary judgment de novo and construe the evidence in the light most favorable to the nonmovant." *Havenbrook Homes, LLC v. Infinity Real Estate Investments, Inc.*,

356 Ga. App. 477, 478 (847 SE2d 840) (2020) (citation and punctuation omitted). So viewed, the record shows that Robinson is a board-certified neurosurgeon, who has invented medical devices and methods used in spinal surgery. Spectrum is a limited liability company, with Robinson as its sole member and manager. Robinson assigned ownership of many of his inventions to Spectrum. As relevant here, one of Robinson's inventions involved a type of spinal implant to be inserted between two vertebrae during spinal surgeries (the "Invention").

In 2009, the Plaintiffs hired FisherBroyles LLP, a national law firm with its principal place of business in Atlanta, to complete the process of filing patent applications for Robinson's inventions. On March 15, 2013, FisherBroyles filed a provisional patent application[1] for the Invention with the United States Patent Trademark Office ("USPTO"). On March 17, 2014, FisherBroyles timely filed an application for the Invention with the USPTO and the patent issued on June 5, 2018. To secure foreign patent protection, the Plaintiffs instructed FisherBroyles to also file

[1] A provisional application provides the means to establish an early effective filing date in a later filed non-provisional patent application and permits the term "Patent Pending" to be used in connection with the invention.

a provisional application under the Patent Cooperation Treaty ("PCT"),[2] which would allow the Plaintiffs to preserve their patent rights in member countries. The deadline to complete the patent process is typically 30 to 31 months, depending on the country, from the date of the earliest priority PCT application. On March 17, 2014, FisherBroyles also timely filed a PCT application for the Invention. As a result, the Plaintiffs' deadline to file the international patent process was either September or October 2015, approximately 30 or 31 months (depending on the specific country) from the date of the March 2013 provisional PCT application.

In February 2014, FisherBroyles hired CPA to execute patent docketing services. CPA is a global intellectual property ("IP") management and technology company that provides services and software that aids its customers in managing their patents, trademarks, and other IP rights. CPA provides legal administrative services to its customers including recording dates into the docketing system. FisherBroyles provided CPA employees with access to the firm's IP management software (FoundationIP), in order to enter dates pertaining to FisherBroyles's clients' patent

[2] The PCT is an international treaty among more than 150 countries, which makes it possible to preserve the right to seek patent protection for an invention simultaneously in many countries by filing a single international patent application, instead of filing several separate national or regional patent applications.

applications. FoundationIP would then calculate filing deadlines for patent applications based on the inputted data.

FisherBroyles and CPA entered into a contract. As relevant here, the terms and conditions of the contract provided that "[FisherBroyles] acknowledges that the Deliverables[3] are [ ] supplied by CPA Global solely for use by [FisherBroyles] only and CPA Global expressly excludes any liability arising from the use of the Deliverables by any third party[.]" Similarly, Section 6.5 of the contract expressly limited damages for any claim "arising out of or in connection with this Agreement, including claims of contract, negligence[,] and strict liability," to the fees "paid or payable by [FisherBroyles] to CPA Global during the preceding twelve (12) months for the Deliverable or Services giving rise to the claim." The contract further stated that, "[i]n rendering the Services, CPA Global is acting solely as an independent contractor and not as an agent, employee[,] or partner of [FisherBroyles] for any purpose." Additionally, CPA explicitly did not "assume any obligations for [FisherBroyles]."

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[3] Under the terms of the contract, "'Deliverables' means any reports, or other written or electronic materials delivered to [FisherBroyles] pursuant to the provision of the Services, as specified in the Order[.]"

On or around March 13, 2014, an employee for CPA entered the priority date for the international patent application for the Invention as March 15, 2014, instead of March 15, 2013. As a result, the FoundationIP software calculated a filing deadline of September 2016 for the foreign applications, as opposed to the correct deadline of either September or October 2015. In May 2014, approximately three months into the engagement, FisherBroyles gave CPA a 60-day notice of termination via e-mail.

FisherBroyles first became aware of CPA's error in the input of the priority date in September 2016 when it attempted to file the patent application for the Invention in certain international markets. FisherBroyles sent an e-mail to the Plaintiffs on September 14, 2016, explaining:

> We ran into an issue today when attempting to file the above referenced matter in Japan, China, and Europe. We filed the PCT application in March of 2014, which claimed priority to a provisional application that was filed the previous March. Our docketing service provider at the time was CPA Global. They incorrectly entered the Priority date as 3/15/14, instead of 3/15/13. This means that the National Phase filing was due 9/15/2015 and not 9/15/2016. In an effort to salvage the filings, I quickly withdrew the priority claim to the provisional. However, I was informed that Europe would not honor the withdrawal. As such, we are precluded from filing in the European Union completely. Before moving forward

> with China and Japan, I wanted to bring this to your attention and to get your thoughts and advi[ce].
>
> We are contacting CPA Global for both an explanation and to discuss where to go from here.

Thereafter, FisherBroyles alerted CPA to the error, and CPA immediately conducted an internal investigation and ultimately concluded that the error was a result of a clerical mistake.

In September 2020, the Plaintiffs filed suit, alleging, among other things, claims for legal malpractice, professional negligence, and breach of contract against FisherBroyles. As relevant here, the Plaintiffs raised the following claims against CPA: breach of legal duty under OCGA § 51-1-6 (Count 4), breach of private duty under OCGA § 51-1-8 (Count 5), and negligent misrepresentation (Count 9). The sole count at issue in this appeal is Count 9 against CPA.[4]

CPA filed an answer, and later moved for summary judgment, arguing that there was no evidence that the Plaintiffs relied on any representations made by CPA; and even assuming the Plaintiffs could establish actual reliance, CPA did not owe the

[4] The trial court dismissed with prejudice Count 5 of the complaint for failure to state a claim. The Plaintiffs later voluntarily dismissed Count 4 without prejudice.

Plaintiffs a duty of care because there was no indication that it intended the Plaintiffs to receive or rely upon any of its representations. The Plaintiffs opposed the motion, alleging that CPA had a duty of reasonable care to the Plaintiffs by supplying information to their agent, FisherBroyles, and CPA knew or should have known that the Plaintiffs would rely upon this data. More specifically, the Plaintiffs asserted that CPA negligently misrepresented to FisherBroyles that the deadline to file certain foreign patent applications was September 2016, as opposed to the correct date of September 2015. And CPA supplied this false information with the knowledge that the Plaintiffs would rely upon said representation.

Following a hearing, the trial court summarily granted summary judgment in favor of CPA on the Plaintiffs' negligent misrepresentation claim. The instant appeal followed.

On appeal, the Plaintiffs assert that the trial court erred in granting summary judgment in favor of CPA on their negligent misrepresentation claim. The Plaintiffs highlight that CPA was hired by FisherBroyles to enter the dates in its online docketing system, and therefore, CPA is liable for negligent misrepresentation — by incorrectly inputting the priority date for the PCT application — which CPA knew

or should have known would be relied upon by the Plaintiffs and resulted in economic loss when the Plaintiffs missed the deadline to file timely applications in certain international markets.

In *Robert & Co. Assoc. v. Rhodes-Haverty Partnership*, the Supreme Court of Georgia established a rule governing the viability of a negligent misrepresentation claim against a professional in the absence of privity, as is the case here between the Plaintiffs and CPA, and involving economic loss only:

> [O]ne who supplies information during the course of his business, profession, [or] employment . . . has a duty of reasonable care and competence to parties who rely upon the information in circumstances in which the maker was manifestly aware of the use to which the information was to be put and intended that it be so used. This liability is limited to a foreseeable person or limited class of persons for whom the information was intended, either directly or indirectly. In making a determination of whether the reliance by the third party is justifiable, we will look to the purpose for which the report or representation was made. If it can be shown that the representation was made for the purpose of inducing third parties to rely and act upon the reliance, then liability to the third party can attach. If such cannot be shown there will be no liability in the absence of privity, wilfulness[,] or physical harm or property damage. The additional duty that this rule imposes may be, of course, limited by appropriate disclaimers which would alert those not

> in privity with the supplier of information that they may rely upon it only at their peril.

250 Ga. 680, 681–682 (300 SE2d 503) (1983). In its subsequent decision in *Badische Corp. v. Caylor*, the Court clarified that the rule in *Robert & Co.* did not "expand[ ] professional liability for negligence to an unlimited class of persons whose presence is merely 'foreseeable,'" but rather extended liability only "to those persons, or the limited class of persons who the professional is actually aware will rely upon the information he prepared." 257 Ga. 131, 133 (356 SE2d 198) (1987) (citation and punctuation omitted); see also *Martha H. West Trust v. Market Value of Atlanta*, 262 Ga. App. 90, 93 (2) (584 SE2d 688) (2003) (appraiser who appraised property for seller was not liable in negligence to purchaser when the appraiser knew appraisal would be used to determine sales price but was not aware seller was actually in process of selling property and appraisal contained provision prohibiting its distribution without appraiser's consent). Therefore, the essential elements for a claim of negligent misrepresentation are: "(1) the defendant's negligent supply of false information to foreseeable persons, known or unknown; (2) such persons' reasonable reliance upon that false information; and (3) economic injury proximately resulting

from such reliance." *Coe v. Proskauer Rose, LLP*, 314 Ga. 519, 526 (2) (878 SE2d 235) (2022) (citation and punctuation omitted). Finally, to be liable for a negligent misrepresentation, it is not necessary that the misrepresentation be made directly to the complaining party, but it is necessary that the complaining party reasonably rely on the misrepresentation and be injured as a result. See, e.g., *Wingate Land, LLC v. ValueFirst, Inc.*, 314 Ga. App. 24, 27 (1) (722 SE2d 868) (2012); *Spellman v. Harrell Ins. Agency, Inc.*, 292 Ga. App. 249, 251 (663 SE2d 816) (2008); *White v. BDO Seidman, LLP*, 249 Ga. App. 668, 671 (1) (549 SE2d 490) (2001).

Citing to deposition testimony, the Plaintiffs maintain that CPA was aware that the Plaintiffs were FisherBroyles's clients, and CPA's entry of the dates into the online docketing system would be relied upon by the Plaintiffs. However, during his deposition, CPA's OCGA § 9-11-30 (b) (6) representative specifically clarified that "we have a general awareness that our law firm customers do have end clients. However, we are providing services to our customer, the law firm only, and what they do with the deliverables after that is -- is up to our customer." Additionally, FisherBroyles stated that it never directly informed CPA that its clients were

Robinson and Spectrum, but simply "gave [CPA] client names to enter into the system."

While the evidence in the record establishes that CPA knew that FisherBroyles had clients, it does not support an inference that CPA intended for the Plaintiffs to rely on the incorrect dates. The Plaintiffs counter that "Georgia law does not require that CPA have intended for [the Plaintiffs] to rely upon CPA's information." However, our Supreme Court has explained that in the context of a negligent misrepresentation claim in the absence of privity, "liability to [a] third party can attach" only if "it can be shown that the representation was made for the purpose of inducing third parties to rely and act upon the reliance." *Badische Corp.*, 257 Ga. at 133; see also *Martha H. West Trust*, 262 Ga. App. at 92 (1) (under Georgia law it is necessary that the maker of the statement actually be aware that the third party will rely on the information and that the "known third party's reliance was the desired result of the misrepresentation") (citation and punctuation omitted).

There is no dispute that CPA entered the incorrect priority date for the Invention's international patent applications into FisherBroyles's IP management software. But CPA did not supply any filing dates to FisherBroyles and it never

relayed any information to the Plaintiffs. And even if CPA knew that its entry of the incorrect deadlines could affect FisherBroyles's clients, including the Plaintiffs, by causing them to miss certain deadlines, there is nothing in the record to suggest that CPA inputted the dates "for the purpose of inducing [the Plaintiffs] to justifiably rely and act upon" the data entry. *Wingate Land, LLC*, 314 Ga. App. at 26. Put another way, the Plaintiffs have failed to show that CPA intended that the dates it entered into FisherBroyles's docketing software would be shared with and relied upon by the Plaintiffs. *Robert & Co.*, 250 Ga. at 681. In fact, FisherBroyles admitted that it never checked or verified CPA's data input in the online docketing system and was unaware of the error until it attempted to file the international patent applications in 2016, a year too late. And FisherBroyles conceded that it "erroneously represented to [the] Plaintiffs that the legal deadline to enter the national phase for the Invention in the designated countries was September 15, 2016, instead of the correct legal deadlines of September 15, 2015 and October 15, 2015."

The contract between FisherBroyles and CPA, on its face, further negates any intention on the part of CPA for the Plaintiffs to rely upon their work. The contract expressly stated: "[FisherBroyles] acknowledges that the Deliverables are [ ] supplied

by CPA Global solely for use by [FisherBroyles] only and CPA Global expressly excludes any liability arising from the use of the Deliverables by any third party[.]" The contract also clarified that CPA's relationship with FisherBroyles was that of "an independent contractor and not as an agent, employee or partner of [FisherBroyles] for any purpose." Such language constitutes an "appropriate disclaimer[ ] which would alert those not in privity with [CPA] that they may rely upon [its data entry] only at their peril." *Robert & Co.*, 250 Ga. at 682.

The Plaintiffs allege that the contract between CPA and FisherBroyles is not a valid or effective contract because the copy of the document in the record is only signed by FisherBroyles. This contention is without merit. Even though the copy of the contract in the record is only signed by FisherBroyles, both CPA and FisherBroyles authenticated the agreement and testified that they had been operating as though it was fully executed. See *Nationwide Mut. Ins. Co. v. Teal*, 112 Ga. App. 236, 236 (2) (144 SE2d 567) (1965) ("A contract signed by one of the parties only, but accepted and acted on by the other party to it, may be just as binding as if it were signed by both parties, if the obligations of the parties are mutual.") (citation and punctuation omitted). FisherBroyles also testified that it terminated the contract in

May 2014 by invoking the 60-day notice period in Section 7.2 of the contract, further illustrating that the parties were acting as if bound by the terms of the agreement.

Based on the foregoing, we affirm the trial court's grant of summary judgment in favor of CPA against the Plaintiffs' claim for negligent misrepresentation.[5]

We do not authorize the reporting of this opinion because it does not announce a new rule or policy, or involve an interpretation of law that is not already precedent. See Court of Appeals Rules 33.2 (b), 34.

Judgment affirmed. Barnes, P. J., and Pipkin, J., concur.

[5] Given our holding above — that the Plaintiffs failed to show that CPA was actually aware and intended that the Plaintiffs would rely on its data entry — to the extent the Plaintiffs also allege that issues of material fact remain as to whether they reasonably relied and acted on CPA's misrepresentations of fact, we need not consider this argument.