IN THE COURT OF APPEALS
STATE OF GEORGIA

CASE NO. A25A0406

MILTON SHLAPAK d/b/a SHLAPAK DEVELOPMENT COMPANY, and SHLAPAK DEVELOPMENT COMPANY,

Appellants,

v.

VAN DAU,

Appellee.

APPELLEE VAN DAU'S RESPONSE BRIEF

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TABLE OF CONTENTS

INTRODUCTION

This case involves Plaintiffs' attempt to revive and enforce a decades-old document (from 1992) that was explicitly superseded and terminated by a February 2014 agreement—almost eight years before this lawsuit. The trial court correctly granted summary judgment to Defendant Van Dau, finding that Plaintiffs' claims were barred by the statute of limitations and precluded by the subsequent agreement.[1]

Even under the superseded 1992 document, Plaintiffs' claims fail. Plaintiffs admitted that it applied to only the projects specified within it. Indeed, the document's purpose was to memorialize Plaintiffs' agreement to compensate Dau for his services in setting up the meetings that led to those potential projects. Thus, the trial court properly held that Plaintiffs' complaints about projects outside the scope of the 1992 document involving nonparties failed as a matter of law. Additionally, Plaintiffs' arguments about whether the parties formed a partnership in 1992 are irrelevant and misplaced. All parties agree that Dau had no contracts or personal or business ventures regarding any project in the 1992 document.

[1] *See Young v. Williams*, 274 Ga. 845, 847 (2002) ("A statute of limitation has as its purpose the limiting of the time period in which an action may be brought, thereby providing a date certain after which potential defendants can no longer be held liable for claims brought on such actions.").

Accordingly, the trial court's grant of summary judgment in Dau's favor was proper and should be affirmed.

STATEMENT OF THE CASE

I. Factual background.

A. With Dau's help, Plaintiffs secured development rights from the Lao government.

Plaintiff Milton Shlapak is a sophisticated businessman and mechanical engineer. Dau is a U.S. citizen who was born in Laos. The men met in the 1980s while Dau ran a small jewelry store in Georgia.[2]

At Dau's suggestion, Shlapak visited Laos, and the two met with government officials.[3] After these meetings, Plaintiffs[4] acquired certain development rights from the Lao government.[5]

Between 1989 and 1991, the Lao government granted Plaintiffs the rights to pursue certain development projects (and the necessary related infrastructure). By 1992, Plaintiffs held the development rights for

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2 V2-206-¶¶6-7; V8-350:18-351:4.

3 V2-207-¶10.

4 Plaintiffs' Complaints are unclear about which Plaintiff is a party to any particular agreement. Dau will use "Plaintiffs" for simplicity's sake, but he reserves the right to argue that only one Plaintiff entered a particular agreement.

5 V2-207-08-¶¶10-15; *see also* V2-225-26, 228-43.

- all marketable natural resources of Laos, including minerals, oil and gas;
- a hydroelectric dam;
- an industrial zone/port facility in Vietnam;
- an iron/steel plant; and
- an oil and gas concession.[6]

B. Plaintiffs agree to share profits from certain development projects with Dau.

Although Dau "lacked significant business and development experience," Plaintiffs agreed to share profits from certain of those projects with Dau because he introduced them to the President of Laos and other government officials, which helped Plaintiffs secure the development rights.[7]

In 1992, Plaintiffs' lawyer drafted a document that outlined the profit-sharing agreement with Dau for specific projects (the "1992 Document").[8] According to Shlapak, the understanding was simple: "I was going to do these projects, and he was going to help me by doing language, and I was willing to just share fifty-fifty

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6 V2-208-¶15; V2-228-243.

7 V2-208-¶16; V8-72:10-19.

8 V8-39:7-20; V8-280:19-22; V2-245-47. That document was amended twice, though the amendments are irrelevant here. (*See* V2-249, 251-253). The "1992 Document" refers to these documents collectively.

with him."[9] The 1992 Document reflected that understanding. The first paragraph stated that the parties would "associate themselves together" on Plaintiffs' projects with the Lao government.[10]

In the 1992 Document, Plaintiffs agreed to share profits on these projects with Dau:

> The business (hereinafter referred to as the "Ventures") shall include but not be limited to:
>
> (a) Oil and gas concession (3800 sq km) joint venture with Monument Oil;[11]
> (b) Hydroelectric dam development and associated timber reserves—presently under joint venture negotiation with Bechtel Corporation;
> (c) Iron mini/mill;
> (d) Oil refinery/port development on the coast of Vietnam;
> (e) Mining projects; [and]
> (f) Infrastructure developments; and
> (g) Such other businesses as may be agreed upon by and between the Parties.[12]

By its plain terms, the 1992 Document applied to only one dam project: the "hydroelectric dam development and associated timber reserves—presently under

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9 V8-72:6-9.

10 V2-245-¶1.

11 The 1992 Document did not cover all development rights the Lao government granted Plaintiffs. For instance, Plaintiffs had the right to develop all natural resources in Laos. But the 1992 Document does not cover all such development projects.

12 V2-245-¶1.

joint venture negotiation with Bechtel Corporation"—which Shlapak testified was the Nam Ngum 2 Dam Project ("NN2 Dam Project").[13] That is significant because Plaintiffs' claims here all arise from the 1992 Document and primarily relate to dam-related work by a nonparty to the 1992 Document on dams not covered by that Document.

The 1992 Document also applied to "other businesses as may be agreed upon by and between the Parties."[14] When Plaintiffs and Dau decided to jointly pursue business ventures not specified in the 1992 Document, they memorialized their agreement in writing.[15]

As Plaintiffs admitted, "[t]he [1992 Documents][16] were **not** exclusive in the sense that they permitted each party to pursue opportunities that [we]re ***not described***."[17] That explains, in part, why the 1992 Document did not contain any exclusivity or noncompete provisions.[18]

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13 V2-245-¶1(b); V8-278:6-14.

14 V2-245-¶1(g).

15 *See* V2-210-¶¶20-21; V2-255, 270.

16 Two 1992 Documents list projects. The parties cite the more complete version.

17 V10-292-¶9 (emphasis in original).

18 *See* V2-245-47.

C. Only one project in the 1992 Document was ever completed.

Only one project in the 1992 Document was ever completed: the NN2 Dam.[19] In doing so, Plaintiffs did not treat Dau as its "partner" on that project. Instead, Plaintiffs formed a joint venture with Ch. Karnchang Public Company Limited ("CK"), a major Thai construction company, to finance and develop the NN2 Dam Project.[20] In 2005, Southeast Asia Energy Limited ("SEAN"), a Thai company, was formed to own and operate the dam.[21] SEAN issued 4% of its shares to Plaintiffs and 4% to PT (Sole) ("PT") because SEAN needed a local Lao partner.[22] Plaintiffs however claim that they split their shares with Dau.[23]

Years passed. Construction of the NN2 Dam finished, and the dam became operational in January 2013.[24] At that point, the 1992 Document was stale. So Dau had an agreement prepared to clarify where he and Plaintiffs stood.[25]

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19 V8-173:8-16; V8-196:2-6; V8-278:6-14.

20 V10-20,21-¶¶3,7; V8-111:23-112:10.

21 V10-20-21-¶5; V13-204-05.

22 V10-21-22-¶8.; V2-211-12-¶25.

23 Plaintiffs' Opening Brief ("Pl. Br.") at 5-6; V2-211-12-¶¶24-25.

24 V10-22-¶9.

25 V6-95:25-96:3.

D. Plaintiffs and Dau terminate and replace the 1992 Document.

Plaintiffs and Dau entered a new agreement in February 2014 ("2014 Agreement").[26] In the 2014 Agreement, Plaintiffs and Dau confirmed that they were only "affiliated . . . with one another with respect to" two projects: the NN2 Dam Project and Nam Bak Dam Project (another dam that was not developed).[27] They also confirmed that the 2014 Agreement (i) was the "sole and entire agreement between the parties"; (ii) "supersede[d] any previous written or oral agreements or understandings"; and (iii) terminated "any and all" previous agreements or understandings between them.[28] Thus, by signing the 2014 Agreement, the parties replaced and terminated the 1992 Document—the basis for all of Plaintiffs' claims.

Plaintiffs suggest that this language was somehow nefarious. It is not. It is nearly identical to the language Plaintiffs put in the 1992 Document.[29] In any event, Shlapak reviewed the 2014 Agreement before signing, and neither Dau nor anyone else made any representations to him before doing so.[30]

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26 V2-272-277.

27 V2-272,277.

28 V2-274-¶5(e).

29 V2-247-¶12.

30 V8-344:17-23; V8-345:7-17.

E. Plaintiffs' claims are based on projects outside the 1992 Document and thus lack merit.

Dau never made any contracts or had any personal or business ventures with the Lao government for any project or category in the 1992 Document.[31] Plaintiffs do not contend otherwise. Instead, they complain about contracts with or work by PT—a nonparty to the 1992 Document and a nonparty to this lawsuit. Plaintiffs' specific complaints focus on (i) PT's 2005 "resettlement" contract related to the NN2 Dam; (ii) PT's 2011 "resettlement" contract related to the Xayaburi Dam; and (iii) PT's unidentified work on the Luang Prabang Dam in 2019.

Plaintiffs try to tie these projects and PT's work to the 1992 Document. But Plaintiffs' efforts fall short for, at least, three reasons.

First, the 1992 Document does not mention the Xayaburi and Luang Prabang Dams.[32] Nor could it have done so. In 1992, Plaintiffs did not have the right to develop those dams. Years later, the Lao government granted these dams' development rights to CK (Xayaburi) and to Petrovietname Power Company, the power company of Vietnam (Luang Prabang).[33]

Second, PT's contracts for these projects did not come from business with the Lao government. PT's contracts were with the dams' private owners. PT's contract

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31 V10-10-¶8.

32 *See* V2-245-47.

33 V10-22-23, 29-30-¶¶11, 33.

for resettlement work for the NN2 Dam was with SEAN, a private Thai company.[34] PT's contract for work related to the Xayaburi Dam was with the Xayaburi Power Company Limited, a private Lao limited company.[35] That matters because the 1992 Document applied only to "general business" with the Lao government (that the parties—PT was not a party—had "voluntarily" agreed "to associate themselves together").[36]

Recognizing this problem, Plaintiffs devote much of their Statement of the Case to trying to redefine what it means to "conduct general business with the government of Laos."[37] To bolster their new argument, Plaintiffs rely on made-up flowcharts purporting to characterize activities during the 14 years ***after*** the 1992 Document. These fanciful flowcharts, presented for the first time on appeal, are the textbook definition of parol evidence. The plain language of the 1992 Document confirms what this phrase means—direct contracts with the Lao government. If the Court were to search for meaning outside the 1992 Document, the place to look would be Plaintiffs' contracts with the Lao government ***before*** the 1992 Document.

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34 V10-20-22-¶¶5,8; V10-37-59.

35 V10-29-¶31; V10-101-125.

36 V2-245-¶1.

37 Pl. Br. at 4-6.

Third, PT's work on these projects was not "infrastructure development." Plaintiffs characterize PT's work on the NN2 and Xayaburi Dams as "infrastructure" projects to try to suggest that the 1992 Document somehow covers them.[38] But PT's contracts with the dam owners refute that redefinition. The contracts are for elaborate environmental work and myriad services related to resettlement of people displaced by the dams.

The NN2-related contract came first. In May 2006, SEAN and PT entered that contract.[39] Under that contract, PT had to provide environmental services such as water quality monitoring, environmental management in construction, and other environmental monitoring programs.[40] And PT had to provide resettlement services such as public consultation, compensation programs, moving people who would be displaced, dealing with any grievances, social and ethnic minority programs, and monitoring and evaluation.[41]

The NN2-related contract uses the word "infrastructure" only once—in a subpart of a subpart—about resettlement services.[42] Under that sub-sub-part, PT had to construct "infrastructures; access road and internal road system, water supply

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38 Pl. Br. at 8.

39 V10-26-¶23; V10-37.

40 V10-54-¶1.2(2).

41 V10-55-57.

42 V10-56-¶4(a).

system, electricity system, irrigation system, **as needed**."[43] PT had to complete any such work by June 2009—thirteen years before Plaintiffs filed suit.[44]

The Xayaburi-related contract came next. In March 2011, Xayaburi Power Company Limited and PT entered that contract.[45] Under that contract, PT had to provide certain environmental services.[46] And PT had to provide even more resettlement services than the NN2 contract required.[47]

Like the NN2-related contract, the Xayaburi-related contract uses the word "infrastructure" in a subpart about resettlement services.[48] Under that subpart, PT had to construct roads, water systems, electricity, and irrigation systems only "as needed."[49]

The Xayaburi contract also uses the word "infrastructure" in one other place: the context of providing general health services.[50] Yet in that context, "infrastructure" was further defined to include vehicles, supplies, financing and

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43 *Id.* (emphasis added).

44 *Id.*

45 V10-29-¶31; V10-101-125.

46 V10-117-¶1.

47 V10-121-¶2.8(3)(b-d).

48 V10-118-¶2.4.

49 *Id.*

50 V10-120-21-¶2.8(3)(a).

management systems.[51] That is not what "infrastructure" means in Plaintiffs' contracts with the Lao government.

One more thing. PT's work on the Luang Prabang Dam began in 2019—five years after the 2014 Agreement terminated the 1992 Document.[52] Plaintiffs' discussion of that work is a red herring.

F. Plaintiffs have known about PT's work on these dam projects for at least twelve years.

Plaintiffs claim that they did not know that PT did the NN2 resettlement work until 2019.[53] The record proves otherwise. Plaintiffs have always known that building a dam required resettlement work.[54] The board of directors of SEAN, the dam's owner and operator, approved PT's NN2 contract in May 2006.[55] At that time, Shlapak sat on SEAN's board.[56] While Shlapak—nearly twenty years later—denied participating in the vote, the official board records show that he was at the meeting and voted for PT's contract.[57]

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51 *Id.*

52 V10-29-30-¶33; V2-272-277.

53 V2-213,215-¶¶30,37.

54 V8-290:16-291:1.

55 V10-26-¶23.

56 V8-316:8-11.

57 V8-316:12-17; V11-14-15-¶12; V10-26-27-¶¶23-24; V10-71-73.

In any event, PT's progress on the resettlement work was reported at subsequent board meetings and detailed in written reports in English.[58] In fact, Plaintiffs' *own records* prove that they learned about PT's NN2 resettlement work in 2006—thirteen years before this lawsuit.[59] Among other things, Plaintiffs had a report in their files stating that "PT is contractor for the implementation of Environment Plan (EMP) and Resettlement Action Plan (RAP)."[60]

Plaintiffs similarly knew or should have known about PT's work on the Xayaburi Dam nearly a decade before filing suit.[61] SEAN was a consultant for the Xayaburi Dam Project.[62] As a SEAN board member, Shlapak possessed financial documents from 2013 showing that PT was working on the Xayaburi Dam Project and receiving payments.[63] Finally, Dau himself later arranged for Shlapak to visit the Xayaburi Dam in August 2016.[64] During that visit, Shlapak took a brochure that

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58 V10-27-28-¶¶25-26; V10-83, 93-94.

59 V8-314:12-16.

60 V9-198.

61 There is evidence Shlapak has known even longer. In 2008, Shlapak attended a dinner with representatives of CK, the holder of the Xayaburi Dam's development rights. (V10-20,22-23-¶¶3,11-12). At the dinner, Shlapak was told that PT would be the project's the local Lao partner. (V10-23-¶13). Shlapak was offered the opportunity to participate in that project. (V10-24-¶15). For his part, Shlapak recalls the dinner but does not remember the conversation. (V8-328:2-24).

62 V10-28-¶28.

63 V8-335:19-338:2; V13-308.

64 V8-50:22-51:6; V8-356:24-357:5; V10-10-¶9.

also disclosed PT's involvement in the Xayaburi Dam Project.[65] Despite claiming now to never have read it, Shlapak indisputably had the information. PT's Xayaburi work was not concealed, and Plaintiffs admit PT's work on these projects was described on its website for all to see.[66]

II. Procedural history.

Plaintiffs filed this lawsuit in January 2022. Plaintiffs named PT as a defendant, but PT was dismissed for lack service.[67]

On December 13, 2023, Dau renewed his motion to dismiss for *forum non conveniens* and moved for summary judgment, and Plaintiffs responded on February 8, 2024. Plaintiffs did not file a Rule 56(f) affidavit stating that they needed additional discovery.

The trial court held a lengthy oral argument on February 20, 2024. After taking more than two months to consider the motion, the trial court advised the parties that it would grant Dau's motion for summary judgment and requested that Dau's counsel submit a draft order. The trial court granted the motion for summary

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65 V8-360:8-13; V8-362:10-364:19; V10-299-¶28; V13-338.

66 V2-216-17-¶¶39-40.

67 PT also disputed jurisdiction, as it is a Lao company that has never done business in the United States. (V2-69, 78-93; V10-12-13-¶¶3-4).

judgment on July 8, 2024. Dau's *forum non conveniens* motion was denied as moot. This timely appeal followed.[68]

ARGUMENT

I. Standard of review.

This Court reviews summary-judgment orders de novo. *See Hardin v. Hardin*, 301 Ga. 532, 536 (2017). This Court can affirm for the grounds espoused in those orders or under the "right for any reason" rule. *See id*. at 537.

II. The applicable statutes of limitations bar Plaintiffs' claims.

Plaintiffs waited too long to sue Dau. Plaintiffs concede that none of their claims have a limitation period longer than six years.[69] PT's NN2-related contract began in May 2006,[70] and PT's Xayaburi-related contract began in March 2011.[71] So any claim related to those contracts expired no later than May 2017. Also, the 2014 Agreement superseded and terminated the 1992 Document. But even if some claim under the 1992 Document (somehow) survived the 2014 Agreement, those claims all expired long before Plaintiffs filed suit in January 2022. The applicable

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68 Dau agrees with Plaintiffs that this Court, not the Supreme Court, has appellate jurisdiction.

69 Pl. Br. 32 at n.106.

70 V10-13-¶6; V10-26-¶23; V10-37-59.

71 V10-13-14-¶8; V10-29-¶31; V10-101-125.

statutes of limitations bar all of Plaintiffs' claims.[72] This is a sufficient basis to affirm the trial court's summary-judgment order.

Plaintiffs concede that their claims are untimely. Yet Plaintiffs contend that the statute of limitations should be tolled. Plaintiffs bear the burden of proving tolling, and they have failed to do so.

To establish tolling under O.C.G.A. § 9-3-96, "a plaintiff must show that: (1) a defendant committed actual fraud; (2) the fraud concealed the cause of action from the plaintiff; and (3) the plaintiff exercised reasonable diligence to discover the cause of action despite her failure to do so within the statute of limitation." *Rollins v. LOR, Inc.*, 345 Ga. App. 832, 842 (2018) (internal quotations omitted). The statute creates an exception to the normal application of a statute of limitations and must be strictly construed. *Tr. Co. Bank v. Union Circulation Co. Inc.*, 241 Ga. 343, 344 (1978). On summary judgment, once Dau showed that Plaintiffs' claims were untimely, Plaintiffs had to adduce evidence that would support tolling. *See Mayfield v. Heiman*, 317 Ga. App. 322, 328 (2012); *see also Milburn v. Nationwide Ins. Co.*, 228 Ga. App. 398, 402 (1997) (To survive summary judgment, a plaintiff "must point to specific evidence giving rise to a triable issue" on all three tolling elements.).

[72] Plaintiffs' claims about the Luang Prabang Dam are precluded because PT's work on that project started in 2019—five years after the 2014 Agreement superseded and terminated the 1992 Document. (*See* V10-29-30-¶33).

A. Plaintiffs are not entitled to tolling because Dau did not intentionally and fraudulently prevent Plaintiffs from pursuing their claims.

To toll the statute of limitations, Plaintiffs must demonstrate affirmative fraudulent acts by Dau that "debarred or deterred" them from filing suit. This requires proof of either "(1) actual fraud involving moral turpitude, or (2) a fraudulent breach of a duty to disclose that exists because of a relationship of trust and confidence." *Hunter, Maclean, Exley & Dunn, P.C. v. Frame*, 269 Ga. 844, 846 (1998). Furthermore, the fraud must involve intentional acts that actively prevented Plaintiffs from pursuing their claims. *Shipman v. Horizon Corp.*, 245 Ga. 808, 808-09 (1980).

The Supreme Court has explained how tolling works "where the gravamen of the action is other than actual fraud, such as constructive fraud, negligence, breach of contract, etc." *Id*. at 808-09. In these cases, "there must be a separate independent actual fraud involving moral turpitude which debars and deters the plaintiff from bringing his action." *Id*. And this Court has held that tolling for "concealment of a cause of action" requires not only "some trick or artifice" that was used "to prevent inquiry or elude investigation, or to mislead and hinder the party who has the cause of action from obtaining information" but also that the allegedly concealing acts were "affirmative in character and fraudulent." *Mayfield*, 317 Ga. App. at 327; *see Shipman*, 245 Ga. at 808 ("Constructive fraud does not toll the statute.").

Plaintiffs presented no evidence that Dau actively concealed any cause of action. Instead, they rely on vague, unsubstantiated statements that fall far short of the high bar required to toll the statute of limitations. For example, Plaintiffs say that Dau committed fraud based on Shlapak's recollection that in 2004 or 2005, Dau allegedly answered a question about why he met with CK this way: "'That's nothing.' . . . 'I'm just looking into trying to get some work for my brother.'"[73] Plaintiffs also reference Shlapak's testimony that he asked Dau "all the time" about opportunities, and Dau allegedly responded, "Not now," "Not yet," or "No."[74]

These vague statements do not establish tolling for three reasons. *First*, any 2005 statement would predate Plaintiffs' breach-of-contract claims and thus cannot logically have concealed any claim that had not yet arisen.

Second, Plaintiffs did not specify when or how the remaining statements occurred, rendering Shlapak's self-serving testimony insufficient to support tolling. *See Harrison v. Beckham*, 238 Ga. App. 199, 205 (1999) (affirming summary judgment where tolling fraud was not pleaded with particularity); *Sweet City Landfill, LLC v. Lyon,* 352 Ga. App. 824, 830 (2019) (holding that tolling did not apply because plaintiff did not "allege with any particularity that the [defendant]

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73 Pl. Br. at 33-34; *see also* V8-112:11-25.

74 Pl. Br. at 10, 33-34; *see also* V8-408:16-409:3.

made any fraudulent statements or representations or that it committed any fraudulent actions").

Third, there is no evidence that these statements were false. In 2005, PT was owned by Dau's brothers, and Dau told Shlapak he was having discussions with CK regarding work for his brother(s).[75] And Dau's alleged comments about opportunities were accurate. Not only was PT's work outside the scope of the 1992 Document, but the work performed by PT—a Lao construction company—also required capabilities Plaintiffs did not possess. In fact, Plaintiffs knew about the NN2 Dam resettlement work[76] but did not pursue the work, even while Shlapak was a member of the SEAN board that awarded the contract to PT.[77] For Xayaburi, CK had the development rights, not Dau,[78] and as with NN2, the Lao government required the project to have a local partner.[79] Plaintiffs could not have been the Lao partner, nor is there any evidence they could have done the work. None of these statements are "evidence of concealment or actual fraud . . . which deterred or debarred [Plaintiffs] from discovering the acts which are the basis of this action. *Allen v. Columbus Bank & Tr. Co.*, 244 Ga. App. 271, 277 (2000).

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75 V10-10-¶7; V8-112:11-25.

76 V8-290:16-291:1.

77 V8-316:8-11.

78 V10-22-23-¶11.

79 V10-29-¶8.

Plaintiffs next say that Dau committed actual fraud by not telling Plaintiffs about his involvement in the work. That is wrong for two reasons. *First*, Dau had no duty to disclose PT's work because these projects were outside the scope of the 1992 Document, and PT was not a party to the 1992 Document. *Second*, Georgia law is clear that "fraud that gives rise to a cause of action does not necessarily establish the fraud necessary to toll the statute of limitation." *Mayfield*, 317 Ga. App. at 326 (internal quotations omitted). Rather, "the fraud itself—the defendant's intention to conceal or deceive—still must be established, as must the deterrence of a plaintiff from bringing suit." *Hunter, Maclean*, 269 Ga. at 848. A failure to disclose does not deter a plaintiff where the information is open and available, even in the context of a confidential relationship. *See Falanga v. Kirschner & Venker, P.C.*, 286 Ga. App. 92, 96 (2007) ("Because the billing statements were available to appellants and the evidence of the alleged fraud was contained in those statements, [defendant's] silence and failure to disclose did not deter appellants from discovering the alleged fraud."); *see also Allen*, 244 Ga. App. at 277 (no tolling where plaintiff did not read statements provided to her).

In the trial court, Plaintiffs presented no evidence of Dau's intent to conceal or deter Plaintiffs from pursuing claims against Dau (but related to PT's work). Nothing about Dau's actions or statements suggests that he was trying to mislead or prevent Plaintiffs from pursuing whatever claims they might believe they have.

What's more, PT's work was widely documented and openly known—as shown by Plaintiffs' possession of considerable relevant information and its accessibility in general (on PT's website). Indeed, Plaintiffs awareness of key facts contradicts their claims of fraudulent concealment. Thus, given the absence of evidence that Dau's alleged actions or statements were "fraudulently intended to debar [Plaintiffs] from bringing suit," Plaintiffs cannot toll the statutes of limitations. *Godwin v. Mizpah Farms, LLLP*, 330 Ga. App. 31, 41 (2014).

B. Plaintiffs are not entitled to tolling because they did not exercise diligence to discover potential claims.

Plaintiffs challenge the trial court's conclusion that they had actual knowledge of their claims. But Dau need not prove actual knowledge. The relevant inquiry is whether Plaintiffs "point[ed] to specific evidence giving rise to a triable issue" about their diligence. *Cowart v. Widener*, 287 Ga. 622, 623 (2010). They did not.

To benefit from tolling, Plaintiffs had to exercise reasonable diligence to uncover their claims. *Rollins*, 345 Ga. App. at 842. In Georgia, statute-of-limitations tolling stops when "the fraud is discovered or by reasonable diligence should have been discovered." *Bahadori v. Nat'l Union Fire Ins. Co.*, 270 Ga. 203, 205 (1998). Courts apply an objective, "prudent man" standard to the diligence question. *Coe v. Proskauer Rose,* 314 Ga. 519, 530 (2022). "Mere ignorance of facts constituting a cause of action does not prevent the running of a statute of limitations." *McClung Surveying, Inc. v. Worl*, 247 Ga. App. 322, 325 (2000). While diligence is often a

fact question, a party may fail to exercise diligence as a matter of law. *See, e.g.*, *Scully v. First Magnolia Homes*, 279 Ga. 336, 339 n.11 (2005); *Cochran Mill Assoc. v. Stephens*, 286 Ga. App. 241, 247 (2007); *Mayfield*, 317 Ga. App. at 328; *Nash v. Ohio Nat. Life Ins. Co.*, 266 Ga. App. 416, 418 (2004).

Plaintiffs produced no evidence of diligence, and the undisputed evidence shows that Plaintiffs exercised no diligence. For instance, Plaintiffs knew or should have known about PT's NN2 resettlement work no later than 2006 when the SEAN board approved PT's contract—a vote Shlapak was present for and cast—and through subsequent board meetings discussing PT's progress.[80] Yet for 16 years, Plaintiffs sat on any claims before filing suit. That is a lack of diligence, not justifiable reliance on any alleged concealment.

In any event, other record evidence proves Plaintiffs lacked diligence.

- In 2005, Shlapak believed PT was Dau's company.[81]
- Shlapak knew resettlement was required for the NN2 Dam.[82]
- Shlapak is on the board of directors of SEAN, and in 2006 the board voted to award PT the resettlement work on the NN2 Dam Project.[83]
- PT's progress on resettlement was reported at board meetings.[84]

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80 *See supra* n. 54-56.

81 V11-16-¶22; V8-114:15-116:8.

82 V8-290:16-291:1; V10-296-¶19.

83 V10-296-¶20; V8-316:8-11; V10-26-¶¶22-23; V10-71-73.

84 V10-27-¶25.

- In 2006, Shlapak received documents stating that PT was doing the resettlement work on the NN2 Dam Project.[85]

- Shlapak admitted that he ignored resettlement discussions during board meetings.[86]

Similarly, the record also shows that Shlapak has had information about PT's work on Xayaburi since at least 2013,[87] and Dau did nothing to conceal it.

- SEAN was a consultant on the Xayaburi Dam Project. In 2013, Shlapak received documents disclosing PT's payments for Xayaburi work.[88]

- In 2014, PT's publicly available website discussed its work on the Xayaburi Dam Project.[89]

- In 2016, Dau arranged for Shlapak to visit the Xayaburi Dam, where he picked up a brochure identifying PT's role.[90]

Plaintiffs admitted their lack of diligence. Shlapak testified that despite attending SEAN board meetings, he "never paid attention to what was going on [with

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85 V10-27-28-¶¶25-26; V10-83, 93-94.

86 V8-207:7-13.

87 Dau also submitted evidence that in 2008, at a dinner with CK, Shlapak was offered the opportunity to participate in the development of Xayaburi if he contributed capital. (V10-23-25-¶¶12-16). Shlapak recalls the dinner but does not recall the conversation. (V8-328:8-329:7; V11-15-¶15).

88 V10-28-¶28; V8-335:19-338:2; V13-308.

89 V2-216-17-¶¶39-40; V2-286.

90 V10-10-¶9; V8-50:22-51:6; V8-356:24-357:5; V8-360:8-13; V8-364:10-19; V9-289.

the resettlement] because I wasn't involved with the construction."[91] Furthermore, Shlapak repeatedly admitted that he never reviewed relevant documents in his possession.[92] In his affidavit, he confirmed:

> I had not reviewed the booklet before reviewing my files to produce in this litigation, and I did produce it. The same is true for other documents that Defendant contends I had, but which I did not read.[93]

Plaintiffs' inaction demonstrates a lack of diligence as a matter of law. *See Mayfield,* 317 Ga. App. at 328 (holding that trial court properly decided as a matter of law that, despite being in a confidential relationship, "beneficiaries failed to meet their burden by presenting some evidence to raise an issue of material fact that they exercised diligence to discover fraud which would have tolled the running of the statute of limitation"); *Averill v. Akin*, 219 Ga. App. 32, 33 (1995) (tolling improper where shareholder could access corporation's books and records and therefore had the opportunity to inform himself of the alleged fraud; shareholder "must suffer the consequences" of his "negligent[] refus[al] to acquire [open and available] knowledge").

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91 V8-207:7-13.

92 V8-289:20-290:15; V8-337:19-23; V8-364:10-16.

93 V11-16-¶21.

C. Plaintiffs cannot rely on a confidential relationship to save their tolling argument.

Plaintiffs argue that alleging a confidential relationship negates the need to present evidence of diligence to survive summary judgment. This argument is unsupported by law and improperly shifts the burden of proof to Dau. Plus, no confidential relationship existed, and any purported partnership ended with the signing of the 2014 Agreement.

Under Georgia law, "[a] confidential relationship cannot, standing alone, toll the running of the statute." *Hunter, Maclean*, 269 Ga. at 847. For while "the level of diligence required by the plaintiff in investigating the fraud is lessened where a confidential relationship exists, it is not entirely extinguished." *Mayfield*, 317 Ga. App. at 326 (cleaned up) (quoting *Cochran*, 286 Ga. App. at 247).

Even when a confidential relationship once existed, it does not indefinitely toll the statute of limitations. *McClure v. Raper*, 266 Ga. 60, 60 (1995). When a confidential relationship ends, the plaintiff's full diligence obligation resumes. Were the rule otherwise, the statute of limitations would remain tolled forever as long as the supposed fraud occurred during the confidential relationship. That is not now, nor has it ever been, the law in Georgia. *Accord McLendon v. Ga. Kaolin Co., Inc.*, 837 F. Supp. 1231, 1243 (M.D. Ga. 1993).

Here, any alleged partnership or confidential relationship between Dau and Plaintiffs conclusively ended with the signing of the 2014 Agreement. Starting (at

least) then, Plaintiffs had an undiminished obligation to investigate potential claims. They failed to do so. As a result, they are not entitled to tolling. *See id*.

Plaintiffs cite *Coe v. Proskauer Rose* to argue that their admissions of ignoring key information create factual issues about diligence.[94] That is wrong. *Coe* is distinguishable from this case. *First*, *Coe* concerned an attorney–client relationship with heightened fiduciary duties, unlike the business relationship here. *Second*, the plaintiffs in *Coe* lacked direct access to critical information. The indirect sources there included "an episode of CBS 60 Minutes, two congressional reports, and publications from various news outlets," and Mr. Coe expressly denied having seen any of them. *Id*. at 531-32. Here, by contrast, Plaintiffs had the notice-providing documents; Shlapak was on SEAN's board of directors and attended meetings where these projects were discussed; and Shlapak admitted that he knew about Dau's association with PT. Unlike in *Coe*, Plaintiffs here ignored readily available information within their possession. Instead, the facts here are on point with *Falanga* (which, like *Coe*, also involved a claim of fraud and issues of fiduciary duty against an attorney), where the plaintiff had the information in his possession but he did not review it. *Falanga*, 286 Ga. App. at 95. Plaintiffs' admissions that they ignored the information in their possession proves that they did not exercise any diligence.

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94 Pl. Br. at 37.

The undisputed facts show Plaintiffs' claims are time-barred, and the trial court's summary judgment ruling should therefore be affirmed.

III. Plaintiffs' claims are barred by the 2014 Agreement and Georgia's merger rule.

The 2014 Agreement supplanted the 1992 Document (the sole basis for Plaintiffs' Complaint). Indeed, the 2014 Agreement's merger clause merged the 1992 Document out of existence. Under the merger clause, the 2014 Agreement (i) is the "sole and entire agreement between the parties," and (ii) "supersedes any previous written or oral agreements or understandings.[95] Applying a long line of Georgia law,[96] the trial court held that this merged the 1992 Document out of existence; thus, Plaintiffs' claims on that superseded agreement failed as a matter of law.[97] The 2014 Agreement's merger clause made the 1992 Document superseded,

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[95] Typically, merger clauses specify that the agreement supersedes only prior agreements on the same subject matter. The 2014 Agreement is broader. It provides that it is the "sole and entire agreement" between the parties and "supersedes any previous written or oral agreements or understandings." (V2-274-¶5(e)).

[96] *See, e.g.*, *Belt Power, LLC v. Reed*, 354 Ga. App. 289, 291-92 (2020) (holding that merger clause in 2014 agreement meant that it superseded and replaced the 2008 agreement between the parties); *cf. Toys 'R' Us, Inc. v. Atlanta Economic Dev. Corp.*, 195 Ga. App. 195, 198 (1990) ("When, as here, the intent that a provision is to merge affirmatively appears on the face of the relevant instruments themselves, no further proof is required and summary judgment is appropriate." (internal quotations omitted)).

[97] V2-15-17.

discharged, and rescinded. *See Triple Net Props., LLC v. Burruss Dev. & Constr., Inc.*, 293 Ga. App. 323, 327 (2008).

Unable to deny the merger rule, Plaintiffs improperly raise two new arguments on appeal.[98] Those arguments cannot be considered. *Pfeiffer v. Ga. Dep't of Transp.*, 275 Ga. 827, 828-30 (2002) (holding that appellant cannot raise new arguments on appeal in summary-judgment context absent limited "special circumstances" inapplicable here).

First, Plaintiffs contend that a merger clause cannot release existing damages claims arising from pre-existing obligations where the parties have already performed without additional consideration. Yet Plaintiffs cite no Georgia authority that addresses the effect of a merger clause and supports their new argument. Georgia caselaw is clear that a later agreement renders an earlier agreement superseded, discharged, and rescinded. *See Triple Net Props.*, 293 Ga. App. at 327. In any event, the 2014 Agreement was supported by consideration: "In consideration of the mutual covenants and agreements stated in this Join[t] Venture Agreement,

[98] In the trial court, Plaintiffs said that they could rescind the 2014 Agreement because of fraud. (V10-363-64). But they had no evidence of fraud. And they waived any right to rescind by waiting years to ever request it and failing to seek it in the initial complaint. On appeal, Plaintiffs abandon this argument.

and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged."[99]

Second, Plaintiffs contend that they can assert a claim for "wrongful dissolution" of the alleged partnership under O.C.G.A. § 14-8-38(b)(1).[100] Plaintiffs never asserted such a claim in any their four complaints, and only cited a case discussing the statute in their summary judgment briefing. The statute is never cited.

Any such claim is meritless. Plaintiffs argue that it would be bad faith for a partner to dissolve a partnership to gain a benefit of the business for himself. Maybe. But here, Plaintiffs admitted that the 1992 Agreement was nonexclusive, and the projects listed were a subset of projects that they received from the Lao government. Dau never pursued any listed projects. Nor did Plaintiffs introduce any evidence that some opportunity existed in February 2014 that Dau took to the exclusion of Plaintiffs. The only project after February 2014 is the Luang Prabang Dam Project that PT, not Dau, obtained a through contract with the dam's owner in 2019, five years later.[101] Plaintiffs' new arguments are baseless, and the trial court's decision should be affirmed.

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99 V2-272.

100 Pl. Br. at 18-21.

101 V10-29-30-¶33.

IV. The trial court properly held that Plaintiffs' claims fail.

The trial court properly granted summary judgment because (i) the 1992 Document does not cover the projects that Plaintiffs complain about; (ii) Dau never had any contracts with the Lao government about the projects in the 1992 Document; (iii) Plaintiffs have no basis to make claims against Dau for work performed by PT; and (iv) Plaintiffs' contract interpretation is unsupportable.[102] To survive summary judgment, Plaintiffs had to establish a contract between Dau and the government of Laos with respect to one of Plaintiffs' projects in the 1992 Document. They did not.

A. The 1992 Document does not cover the projects Plaintiffs complain about.

The 1992 Document did not cover future dam projects in Laos. Plaintiffs admitted that the 1992 Document was nonexclusive, meaning it applied only to the specific projects listed or added through written amendments.[103] Plaintiffs thus needed to show that any project about which they made a claim fell within the limited scope of the 1992 Document.

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[102] Contract construction is a question of law for the Court. *Duffett v. E & W Props., Inc.*, 208 Ga. App. 484, 486 (1993). "[W]here contractual language is clear and unambiguous, the court is obliged to enforce the contract according to its terms, looking to the contract alone for its meaning." *Blockbuster Invs. LP v. Cox Enters., Inc.*, 314 Ga. App. 506, 506-07 (2012). Documents may be used to explain but not alter a term. *McKinley v. Coliseum Health Grp., LLC*, 308 Ga. App. 768, 770-71 (2011).

[103] V10-292-93-¶9.

Plaintiffs devote just two short paragraphs to this central issue. In doing so, they assert that the 1992 Document included a general category for "hydroelectric dam development."[104] This is false. The 1992 Document covers only one specific dam project: the "[h]ydroelectric dam development and associated timber reserves—*presently under joint venture negotiation with Bechtel Corporation.*"[105] While Plaintiffs now ignore this language, Shlapak confirmed that this referred solely to the NN2 Dam Project, which was already underway.[106] There is no catch-all category for dams and no reference to the Xayaburi or Luang Prabang Dams. The trial court therefore properly concluded that the Xayaburi and Luang Prabang Dam Projects fall outside the 1992 Document.

Similarly, Plaintiffs allege claims about unspecified oil and gas projects in Laos pursued by PT,[107] but there is no general category of oil and gas projects in the 1992 Document.[108] It references only one specific oil and gas project involving third party Monument Oil.[109] Plaintiffs have no claims about that project. Finally, Plaintiffs complain about resettlement work that PT performed with respect to the

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104 Pl. Br. at 26-27.

105 V2-245-¶1(b) (emphasis added).

106 V8-278:6-14.

107 V3-71-¶9.

108 *See* V2-245.

109 V2-245-¶1(a).

NN2 Dam Project.[110] Yet resettlement work is also absent from the 1992 Document.[111]

B. Dau never did business with the Lao government.

The 1992 Document pertains exclusively to conducting business with the government of Laos. But Dau has never entered any agreements or had personal or business ventures with the Lao government regarding any project or category in the 1992 Document.[112] In fact, the Lao government granted CK, a Thai company, the development rights for the Xayaburi Dam Project and granted Petrovietname Power Company, the power company of Vietnam, the development rights for the Luang Prabang Dam Project.[113] Accordingly, Plaintiffs had no contractual basis to assert a claim as to those projects.

C. Plaintiffs cannot sue Dau for work PT did.

1. The 1992 Document applies only to Dau.

Unable to substantiate claims against Dau, Plaintiffs pivot to asserting claims regarding work performed by PT. This move fails because the 1992 Document applied solely to Dau. It did not cover companies or persons associated with Dau,

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110 V2-215-¶37; V8-109:3-17.

111 *See* V2-245.

112 V10-10-¶8.

113 V10-22-23-¶11; V10-29-30-¶33.

nor did it include a noncompete or similar restrictions. In the trial court, Plaintiffs attempted an end run around this glaring problem by suggesting PT was somehow an "alter ego" of Dau.[114] On appeal, Plaintiffs abandoned that argument. Since Plaintiffs do not have a contract with PT,[115] their claims about PT's supposed misconduct fail.

2. PT's dam-related work did not come from contracts with the Lao government.

PT never had any contracts with the Lao government regarding the NN2, Xayaburi, or Luang Prabang Dams.[116] PT's contracts were with the private entities that owned the dams.[117] The 1992 Document did not—and could not—prohibit nonparties like PT from doing business with another company that had contracted with or had been granted rights by the Lao government.[118]

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114 *See* V2-205,213-¶¶2,30.

115 V3-93-¶78; *see also* V10-296-¶18.

116 V10-13-¶5.

117 *Id.*

118 PT got concessions from the Lao government permitting mining exploration in certain defined areas. (V10-14-15-¶¶13-15). Regardless of whether such work *could* create a claim, it did not here. PT's mining work stopped at exploration, for PT never discovered sufficient quantities to proceed with full-scale mining. (V10-14-15-¶13). PT's mining work never generated a profit, and its last mining-exploration project ended in 2015—more than six years before this lawsuit. (V10-15-¶15).

Plaintiffs argue that doing business with entities owning the dams equates to doing business with the Lao government. But this argument was not raised in the trial court and is baseless. Doing business with the Lao government requires a direct contractual relationship with the government itself. Plaintiffs had such agreements before 1992—not through intermediaries, but directly.[119] Similarly, CK and Petrovietname Power Company directly engaged with the Lao government to pursue the Xayaburi and Luan Prabang Dams.[120] Conversely, entities contracting with the private dam owners are not, by extension, doing business with the Lao government. The 1992 Document could have covered indirect dealings, including contracts with entities associated with the government, but it did not. Courts cannot rewrite contracts to include terms that the parties themselves did not agree to.

3. The 1992 Document does not cover PT's contracts with the dam owners.

Plaintiffs say that the 1992 Document covered PT's resettlement work because it was "infrastructure" work.[121] But the relevant contracts do not constitute infrastructure work with the Lao government no matter how the word "infrastructure" is interpreted.

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119 *See* V2-225-26, 228-43.

120 V10-22-23-¶11; V10-29-30-¶33.

121 Pl. Br. at 27.

Plaintiffs suggest that the meaning of "infrastructure" is not tethered to the projects for which they received development rights. The record suggests otherwise. The Lao government did not grant Plaintiffs the right to pursue infrastructure projects in Laos generally. Instead, Plaintiffs had the right to infrastructure work only insofar as it related to their other rights. For instance, Plaintiffs had to the right "to pursue the evaluation, exploration, and development (including manufacturing) of all the marketable natural resources off the country of Laos including minerals, oil and gas. This authorization includes the development of necessary infrastructure (Transportation and Power requirements)."[122] Shlapak also confirmed infrastructure referred to infrastructure required for the projects.[123] Because Plaintiffs never completed any other project in the 1992 Document, their only possible "infrastructure" claim would be for work related to the NN2 Dam. The 1992 Document does not cover any other dam projects.

In any event, PT's contracts with the dam owners were not "infrastructure" contracts. They involve extensive environmental and resettlement services. Under the 2006 NN2 contract with SEAN, PT had to provide environmental services such as water quality monitoring, environmental management in construction, and other

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122 V2-225; *see also* V2-228 (oil refinery right describing "necessary infrastructure").

123 V8-146:3-7.

environmental monitoring programs.[124] And PT had to provide resettlement services such as consulting with the public, providing compensation, moving people who would be displaced, dealing with grievances, social and ethnic minority programs, and monitoring and evaluation.[125] PT also had to provide SEAN with progress reports.[126]

In all the detail about PT's obligations, the word "infrastructure" was used once in the NN2 contract. As part of the resettlement services, PT had to construct "infrastructures; access road and internal road system, water supply system, electricity system, irrigation system, **as needed**."[127] This language makes clear that infrastructure work was not necessarily required. One mention of "infrastructure" in a subpart of a subpart about resettlement services cannot make the contract an "infrastructure" contract subject to the 1992 Document.

The same is true for PT's 2011 Xayaburi contract. The gist of that contract, like the NN2 contract, focused on environmental and resettlement service plus other detailed cultural obligations.[128]

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124 V10-54-¶1.2(2).

125 V10-55-57.

126 V10-57-¶1.3.

127 V10-56-¶1.2.2(4)(a) (emphasis added).

128 *See* V10-117-122.

D. Plaintiffs misinterpret the 1992 Document.

Plaintiffs' claims incorrectly assume that Dau was bound by an exclusive, mandatory agreement that prohibited him from conducting business in Laos or working for a company operating in Laos without Plaintiffs involvement. The 1992 Document says no such thing. The parties merely agreed that they would "associate themselves together" on Plaintiffs' projects with the Lao government.[129]

The 1992 Document contains no exclusivity provision, noncompete clause, or language suggesting a partnership or fiduciary duties. Plaintiffs' contention that (unbeknownst to Dau) they created such obligations is belied by the 1992 Document's plain language and the lack of any partnership activities or arrangements. For instance, the alleged partnership never filed tax returns, issued K-1 forms, or entered into contracts.[130] The parties have no ongoing business, shared assets to distribute, or partnership to dissolve. Plaintiffs admittedly pursued the NN2 Dam Project in a joint venture with CK, to the exclusion of Dau.[131] There is no legal or factual basis to impose on Dau the sweeping obligations and restrictions Plaintiffs now claim.

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129 V2-245-¶1.

130 V8-73:1-25; V8-95:25-96:3; V10-293-¶11.

131 V8-111:23-112:10; V2-210-11-¶22; V2-258-268.

Lacking support in the 1992 Document, Plaintiffs instead argue that "all partnerships are 'exclusive'" due to duties of loyalty and good faith, which purportedly "prevent partners from competing with the partnership or assisting competitors."[132] This argument is flawed. Not all partnerships are exclusive. For example, a window manufacturer can partner with multiple companies bidding on the same project, even offering better pricing to one over the other. Moreover, Plaintiffs' theory is based on Dau's allegedly helping so called "partnership competitors," but Xayaburi Power Company Limited and Luang Prabang Power Company Limited were not competitors of Plaintiffs or any alleged partnership. Those companies were used by the dams' private owners to develop those dams[133]—and to do so based on rights the Lao government had not granted in 1992, and did not grant until more than 15 years later.[134]

Simply put, the 1992 Document governed how Dau would share in certain projects specifically granted to Plaintiffs by the Lao government before 1992 (or as expressly agreed between the parties thereafter). It does not restrict Dau's ability to work on unrelated projects or for other companies, much less restrict PT.

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132 Pl. Br. at 25.

133 V10-22-23-¶11; V10-29-30-¶33.

134 *See* V10-22-23, 29-30¶¶11,33.

V. The trial court correctly ruled that Plaintiffs' claims for fraud, unjust enrichment, and attorney's fees fail as a matter of law.

Plaintiffs' fraud claims have no legal merit. They claim Dau's alleged misrepresentations and omissions constitute fraud, but the trial court properly granted summary judgment to Dau. The 1992 Document explicitly defined the scope of the parties' obligations and did not create a partnership or impose fiduciary duties. Without a partnership, Plaintiffs cannot rely on alleged partnership duties to support a claim for fraud. Any fraud claim also fails for the lack of specificity discussed above. In addition, Plaintiffs claim they relied on these misrepresentations and omissions which induced Plaintiffs to give Dau equity in SEAN, but they contend to have voluntarily allocated equity in SEAN to Dau under the 1992 Document. Moreover, there is no evidence that Dau made any alleged misrepresentation or omission about these future projects prior to receiving equity in SEAN. Indeed, the record demonstrates Dau was granted equity in SEAN in 2005, before any of the at-issue projects came to fruition.[135] Plaintiffs also failed to show how Dau's purported misrepresentations caused any specific harm beyond their unsupported allegations. Georgia law requires specific evidence of reliance and damages to sustain a fraud claim, which Plaintiffs failed to provide. *See Rollins*, 345 Ga. App. at 842 n.17.

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135 *See* V10-21-22-¶8.

Similarly, the trial court correctly found that a contractual relationship precludes Plaintiffs' unjust enrichment claims. Under Georgia law, unjust enrichment is unavailable where a valid contract exists. *See Marvin Hewatt Enters., Inc. v. Butler Cap. Corp*., 328 Ga. App. 317, 322-23 (2014) (affirming summary judgment on plaintiff's unjust enrichment claims where express contract existed between parties). Even if unjust enrichment were available as an alternative theory, Plaintiffs failed to demonstrate any benefit conferred on Dau for which he did not compensate them. The equity in SEAN was allegedly provided under the 1992 Document for Dau's assistance with NN2, including making the introductions (without which Plaintiffs never would have been granted the development rights) and translating.[136] There is no evidence Dau improperly retained any benefits beyond what was agreed. Plaintiffs' allegations do not fall within the bounds of any cognizable unjust enrichment claim. *See Engram v. Engram*, 265 Ga. 804, 806 (1995).

Plaintiffs' claim for attorney's fees fails because their substantive claims lack merit. Without evidence of bad faith or unnecessary expense caused by Dau, there is no basis for recovery under O.C.G.A. § 13-6-11.

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136 *See* V8-72:6-25; V2-211-12-¶25.

CONCLUSION

Van Dau respectfully requests that this Court affirm the decision of the Superior Court.

This Brief does not exceed the word limit contained in Rule 24.

Respectfully submitted, this 9th day of January, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that on January 9, 2025, I served a true and correct copy of **APPELLEE VAN DAU'S RESPONSE BRIEF** by filing with the Court's eFast electronic filing system and by email to the below counsel of record. I certify that there is a prior agreement with Plaintiffs-Appellants to allow documents in a PDF format sent via email to suffice for service.

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