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Business Associations

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I. INTRODUCTION

This Article surveys notable cases in the areas of corporate, limited liability company, partnership, agency, and joint venture law decided between June 1, 2015 and May 31, 2016, by the Georgia Supreme Court, the Georgia Court of Appeals, and the United States district courts located in Georgia.[1]

II. ISSUES OF FIRST IMPRESSION

A. Piercing the Corporate Veil Among Corporations with Identical Ownership

In *Cobra 4 Enterprises v. Powell-Newman*,[2] the Georgia Court of Appeals held that a plaintiff cannot pierce the corporate veil between sibling corporations that share a common ownership.[3] The plaintiff in *Cobra 4 Enterprises* was injured in an automobile accident with a truck that was leased to Yellow Ribbon Tree Experts (Yellow Ribbon).[4] The plaintiff,

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1. For an analysis of Georgia business associations law during the prior survey period, see Crystal J. Clark, *Business Associations, Annual Survey of Georgia Law*, 67 MERCER L. REV. 15 (2015).

2. 336 Ga. App. 609, 785 S.E.2d 556 (2016).

3. *Id.* at 614, 785 S.E.2d at 561-62.

4. The plaintiffs' theories of recovery included: "negligence; negligent hiring, supervision, retention, and entrustment; and liability under a theory of respondeat superior." *Id.* at 609, 785 S.E.2d at 558.

along with her husband, sued the truck driver, Yellow Ribbon, and Yellow Ribbon's owner, Gary Robertson. In addition, the plaintiffs sued the owner of the truck involved in the accident, Cobra 4 Enterprises (Cobra 4), also owned by Gary Robertson. The trial court rejected Cobra 4's motion for summary judgment on vicarious liability because, inter alia, the evidence supported the plaintiffs' alter ego theory that Cobra 4 could be vicariously liable because of its shared ownership with Yellow Ribbon by Robertson. After the summary judgment ruling, all parties except Cobra 4 settled the lawsuit.[5] Cobra 4 renewed its motion for summary judgment, arguing that if it was an alter ego, then "it was an agent of Yellow Ribbon and therefore a party" to the settlement.[6] The trial court denied Cobra 4's motion and an appeal followed.[7]

Cobra 4 argued that the trial court erred in finding a factual question for the jury on whether it was Yellow Ribbon's alter ego.[8] The court of appeals discussed the equitable doctrine of piercing the corporate veil and noted that "sole ownership by one person is not a factor" in that consideration.[9] "Where there is no evidence that the corporate arrangement is a sham that was designed to defeat justice, perpetuate fraud, or evade statutory, contractual, or tort liability, the issue of alter ego liability is not a jury question."[10]

The court of appeals admonished Robertson for underfunding and underinsuring his entities and for ignoring corporate formalities.[11] Thus, the plaintiffs could have pierced the companies' corporate veils; but the plaintiffs settled their claims with Robertson.[12] The court recognized that "Georgia courts have never applied the alter ego doctrine to impose liability" on sibling corporations by piercing the corporate veil.[13] Nonetheless, the court examined the corporate activities of Yellow Ribbon and Cobra 4 and concluded "there was no evidence that the two companies

5. *Id.* at 609-10, 785 S.E.2d at 558-59.

6. *Id.* at 610, 785 S.E.2d at 559.

7. *Id.*

8. *Id.* at 613, 785 S.E.2d at 560.

9. *Id.* (citing Amason v. Whitehead, 186 Ga. App. 320, 322, 367 S.E.2d 107 (1988)).

10. *Id.* at 613, 785 S.E.2d at 561 (citing Derbyshire v. United Builders Supplies, Inc., 194 Ga. App. 840, 844, 392 S.E.2d 37 (1990)).

11. *Id.*

12. *Id.*

13. *Id.* at 614, 785 S.E.2d at 561. Other courts have similarly refused to horizontally pierce the corporate veil. *Id.* (citing Madison Cty. Commc'ns Dist. v. CenturyLink, Inc., CV–12–J–1768–NE, 2012 LEXIS 180064, *9-10 (N.D. Ala. 2012) (refusing to pierce corporate veil between sibling companies where one corporation did not completely dominate and control the other); Minno v. Pro–Fab, Inc., 905 N.E.2d 613, 617 (Ohio 2009) ("[A] plaintiff cannot pierce the veil of one corporation to [impose liability] on its sister corporation.").

were interchangeable entities."[14] Thus, while there was some evidence of overlap between the entities, the court found "no basis to extend the alter ego doctrine to cover sibling companies."[15]

B. Recovery of Nuisance Damages by an LLC

In *Oglethorpe Power Corp. v. Estate of Forrister*,[16] the Georgia Court of Appeals held that a non-resident limited liability company (LLC) property owner could recover nuisance damages.[17] Paradise Lost, LLC (Paradise Lost) owned land near a power plant. As a result of noise coming from the engines at the power plant, Paradise Lost brought claims against the plant for "discomfort and annoyance." Before trial, a motion in limine was filed seeking to bar evidence of nuisance damages on the grounds that Paradise Lost did not "occupy" the property. The movants argued nuisance damages should not be awarded to an LLC in the same way that Georgia law forbids corporations from receiving damages for intentional infliction of emotional distress. The trial court agreed and disallowed Paradise Lost's claim for nuisance damages. Paradise Lost appealed the decision.[18]

On appeal, the court of appeals first distinguished nuisance damages from damages associated with the infliction of emotional distress.[19] Specifically, the court noted that "'discomfort and annoyance' in the context of nuisance is not a species of emotional distress, but a distinct element of nuisance damages."[20]

Next, after determining that "discomfort and annoyance" could be considered an appropriate basis for nuisance damages, the court was faced with the task of determining whether an LLC could recover that type of damage.[21] The court drew a parallel to *Baltimore & Potomac Railroad Co. v. Fifth Baptist Church*,[22] where the United States Supreme Court determined that a church was eligible for nuisance damages.[23] The Su-

14. *Id.* at 614, 785 S.E.2d at 562.

15. *Id.* at 615, 785 S.E.2d at 562.

16. 332 Ga. App. 693, 774 S.E.2d 755 (2015).

17. *Id.* at 706, 774 S.E.2d at 766. The case, brought by landowners who owned property surrounding a power plant, involved numerous legal issues. For purposes of this Article, the relevant issue and the matter of first impression for the court of appeals was whether a non-resident LLC could recover nuisance-based damages.

18. *Id.* at 706-07, 774 S.E.2d at 766.

19. *Id.* at 707-08, 774 S.E.2d at 767.

20. *Id.* at 708, 774 S.E. 2d at 767.

21. *Id.* at 710-11, 774 S.E.2d at 769.

22. 108 U.S. 317 (1883).

23. *Oglethorpe Power*, 332 Ga. App. at 711, 774 S.E.2d 768.

preme Court stated "[p]rivate corporations are but associations of individuals united for some common purpose" and, therefore, could recover nuisance damages.[24] Thus, the court determined that an LLC could bring a cause of action for "'discomfort and annoyance' affecting the use of its property for the purposes intended by its members and those they permit to join them."[25]

III. NOTEWORTHY CASES

A. "Mere Continuation" Liability for Successor Companies

In *Dan J. Sheehan Co. v. Fairlawn on Jones Condominium Ass'n*,[26] a construction company sued a homeowners association to recover for work performed at the condominium complex.[27] After the construction company brought suit against the homeowners association, the homeowners formed a new entity—ostensibly to conform to the Georgia Condominium Act—and transferred all responsibility to a successor condominium association. Neither the construction company nor the trial court was made aware of the transfer. The construction company won a verdict against the homeowners association and judgment was entered, but both associations refused to satisfy the judgment. The construction company then sued both associations, who ultimately moved for summary judgment and prevailed. The construction company appealed.[28]

The construction company argued that the successor association was a mere continuation of the homeowners association and was therefore subject to successor liability. The Georgia Court of Appeals agreed.[29] The court applied the equitable doctrine of corporate continuity to find that the condominium association was a "mere continuation of the predecessor" association.[30] Here, the court held that the condominium association had the same purpose, property, board of directors, officers, unit owners,

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24. *Id.*

25. *Id.* at 712, 774 S.E.2d at 769. The court also faced the issue of whether Paradise Lost was considered to be an "occupant" of the property for purposes of nuisance damages. *Id.* at 712-14, 774 S.E.2d at 769-770. The court noted that residence is not necessary for occupancy under Georgia law and that the LLC's use of the property was sufficient to make it an occupant. *Id.* Thus, as an "occupant" of the land entitled to receive nuisance damages for "discomfort and annoyance," the LLC was deemed legally eligible to recover nuisance damages. *Id.*

26. 334 Ga. App. 595, 780 S.E.2d 35 (2015).

27. *Id.* at 595, 780 S.E.2d at 36.

28. *Id.* at 596, 780 S.E.2d at 37-38.

29. *Id.* at 597, 780 S.E.2d at 38.

30. *Id.* (quoting Davis v. Concord Commercial Corp., 209 Ga. App. 595, 597, 434 S.E.2d 571 (1993)).

location, registered office, and authority as the prior corporation.[31] In short "nothing changed except the name."[32] Thus, judgment was reversed for the homeowners and condominium associations.[33]

B. An Action to Dissolve the LLC Does Not Disassociate the Member

In *Crumpton v. Vick's Mobile Homes, LLC*,[34] the Georgia Court of Appeals interpreted section 14-11-601.1(b) of the Official Code of Georgia Annotated (O.C.G.A.),[35] which governs the cessation of membership in a limited liability company.[36] In *Crumpton*, a brother and sister inherited a mobile home park from their father and formed two LLCs to own and manage the park.[37] The sister, Sharon, filed a "Petition for Equitable Relief, Accounting, and Dissolution" against the LLCs and her brother, Raymond.[38] Raymond moved for judgment on the pleadings, arguing that Sharon's petition for dissolution disassociated her as a member under O.C.G.A. § 14-11-601.1(b)(4)(D).[39] This section of the LLC Chapter of the Georgia Code provides for the removal of a member of an LLC where the member, contrary to the operating agreement or without the other members' consent, "files a petition or answer seeking for the member any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation."[40] The trial court granted Raymond's motion, concluding that the Code establishes a "default rule" that a member seeking reorganization ceases to be a member.[41]

The court of appeals disagreed.[42] The court examined the entirety of subsection (b) of O.C.G.A. § 14-11-601.1 to determine the meaning of "for the member."[43] Subsection (b) "recites a list of actions" that an LLC member may do "that result in a change of that member's own status so as to render the member unable to continue as a member of the company."[44]

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31. *Id.*
32. *Id.*
33. *Id.* at 598, 780 S.E.2d at 39.
34. 335 Ga. App. 155, 779 S.E.2d 136 (2015).
35. O.C.G.A. § 14-11-601.1(b) (2003).
36. *Crumpton*, 335 Ga. App. at 155, 779 S.E.2d at 136.
37. *Id.*
38. *Id.* at 156, 779 S.E.2d. at 136-37.
39. *Id.* at 156, 779 S.E.2d at 137.
40. O.C.G.A. § 14-11-601.1(b)(4)(D).
41. *Crumpton*, 335 Ga. App. at 156, 779 S.E.2d at 137.
42. *Id.* at 159, 779 S.E.2d at 139.
43. *Id.* at 157-58, 779 S.E.2d at 138.
44. *Id.* at 158, 779 S.E.2d at 138.

The actions include: (1) "events that only occur to an individual";[45] (2) events that "either an individual or an artificial person" could do;[46] and (3) "actions more proper to an artificial person."[47] The actions at issue in *Crumpton* fell into the latter category.[48] The court held that a consistent reading of the subsection "requires that 'for the member' in subsection (b)(4)(D) refers to an action by or against the member affecting that member."[49] Therefore, the trial court erred when it held that a member's petition to dissolve the LLC disassociates the member from the LLC.[50]

C. Resignation of a Registered Agent Effective Thirty-One Days After Secretary of State's Receipt

The Georgia Court of Appeals was asked in *STL Management Consultants, LLC v. Manhattan Leasing Enterprises, Ltd*[51] to determine which date controls in a conflict between the day the Secretary of State "receives" the resignation of a corporation's registered agent for service of process and the date when the resignation is stamped "filed" by the Secretary's office. The court held that receipt by the Secretary's office controls, and that the resignation "was filed on the date it was received by the Secretary."[52]

Section 14-11-209(d)[53] of the Georgia Code provides that an LLC's registered agent's resignation is effective on the "thirty-first day after the date on which the statement of resignation was filed."[54] The plaintiff sued the defendants when the defendants defaulted on a lease agreement. The plaintiff served an LLC defendant through its registered agent on April 2, 2013, and won a default when the defendant failed to answer.

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45. *Id.* For example, dying or being adjudged incompetent. O.C.G.A. § 14-11-601.1(b)(6); *Crumpton*, 335 Ga. App. at 158, 779 S.E.2d at 138.

46. *Crumpton*, 335 Ga. App. at 158, 779 S.E.2d at 138. For example, filing for bankruptcy, O.C.G.A. § 14-11-601(b)(4)(B), or assigning the member's interest. O.C.G.A. § 14-11-601.1(b)(1); *Crumpton*, 335 Ga. App. at 158, 779 S.E.2d at 138.

47. *Crumpton*, 335 Ga. App. at 158, 779 S.E.2d at 138.

48. *Id.*

49. *Id.* (citing Crouse v. Mineo, 189 N.C. App. 232, 241–242(I)(B), 658 S.E.2d 33 (2008); Darwin Limes, LLC v. Limes, No. WD–06–049, 2007 Ohio 2261, 2007 Ohio App. LEXIS 2105 (Ohio Ct. App., May 11, 2007). The court noted that other jurisdictions agree with this approach. *Id.*

50. *Id.* at 159, 779 S.E.2d at 139.

51. 333 Ga. App. 309, 775 S.E.2d 758 (2015).

52. *Id.* at 309, 775 S.E.2d at 760.

53. O.C.G.A. § 14-11-209(d) (2003).

54. *STL Management*, 333 Ga. App. at 311, 775 S.E.2d at 761 (quoting O.C.G.A. § 14-11-209(d)).

The LLC's registered agent had submitted his resignation in February 2013, which was "received" by the Secretary of State on February 20, 2013. The Secretary did not stamp the letter as "filed," however, until May 20, 2013. Thus, under O.C.G.A. § 14-11-209(d), if the "received" date controlled, the effective date of the resignation was March 23, 2013—before the plaintiff served the registered agent on April 2, 2013—but if the "filed" date controlled, service was valid.[55]

In determining that the earlier date controlled, the court looked to O.C.G.A. § 14-11-206,[56] which classifies the Secretary's duties for documents filed on behalf of an LLC as "ministerial."[57] Further, O.C.G.A. § 14-11-206 says that "a document accepted for filing is effective '[a]t the time of filing on the date it is filed . . . .'"[58] The court rejected the plaintiff's argument, relying on the corporations chapter of the Georgia Business Code,[59] that the earlier date was not "endorsed" by the actual Secretary of State, but was stamped "Secretary of State Administrative Support" and that the February stamp does not include the word "filed."[60] The court also noted a dearth of evidence explaining the distinction between the two stamps and analogized the issue at hand to filing papers in the Georgia courts, which are deemed filed when "delivered to the proper officer, and by him received to be kept on file."[61]

D. Determining a Deceased Member's Interests in an LLC

In *Davis v. VCP South, LLC*,[62] the Georgia Supreme Court considered, inter alia, a special master's determination of a "reasonable cutoff date for the allocation of profits and losses and entitlement to distributions" of a deceased member's interest in an LLC.[63] Under the terms of the operating agreement at issue, the surviving member of a two-member LLC had a first option to purchase the units owned by the deceased member.[64] If a value could not be agreed upon, value would be determined in

55. *Id.* at 309-11, 775 S.E.2d at 760-61.

56. O.C.G.A. § 14-11-206 (2003 & Supp. 2016).

57. *STL Management*, 333 Ga. App. at 311-12, 775 S.E.2d at 761-62 (quoting O.C.G.A. § 14-11-206(a) & (e)).

58. *Id.* at 312, 775 S.E.2d at 761-62.

59. O.C.G.A. § 14-2-125(b) (2003).

60. *STL Management*, 333 Ga. App. at 313, 775 S.E.2d at 762.

61. *Id.* at 314, 775 S.E.2d at 763 (quoting Valentine v. Hammill, 258 Ga. 582, 372 S.E.2d 435 (1988)).

62. 297 Ga. 616, 774 S.E.2d 606 (2015).

63. *Id.* at 618, 774 S.E.2d at 609-10.

64. *Id.* at 617, 774 S.E.2d at 609.

a "commercially reasonable manner by the certified public accountant."[65] The surviving member sought to enforce the agreement against the deceased member's estate and sued when negotiations broke down. The trial court adopted the special master's report setting the date for determining the financial rights of the deceased member's estate, and the deceased member's estate appealed.[66]

The Georgia Supreme Court affirmed.[67] The court held that the cutoff date, which was twenty months after the deceased member's death, was reasonable, and the operating agreement set forth a "simple and expeditious procedure for accomplishing the sale" of a member's interest.[68] Moreover, Georgia contract law requires that the performance of contractual obligations "be substantially in compliance with the spirit and the letter of the contract and completed within a reasonable time."[69] Finally, the court summarily dismissed appellant's arguments that the cutoff date operated as a "forfeiture of financial rights" to which the deceased member's estate was entitled.[70]

E. Alter Ego, Agency, and Joint Venture Theories Fail to Establish Basis for Liability and Jurisdiction

In *CHIS, LLC v. Liberty Mutual Holding Co.*,[71] a federal district court dismissed three of four defendants on the basis that liability did not extend to these parent companies.[72] The plaintiff, CHIS, LLC, filed claims for breach of contract and declaratory relief against four corporate defendants under the Liberty Mutual umbrella.[73] One defendant was the insurer who wrote the policy for the plaintiff; the other three defendants were parent companies of the actual insurer. The defendants moved to dismiss for failure to state a claim, arguing that the plaintiff failed to

65. *Id.*
66. *Id.* at 618, 774 S.E.2d at 610.
67. *Id.* at 626, 774 S.E.2d at 615.
68. *Id.* at 624-25, 774 S.E.2d at 614.
69. *Id.* (quoting O.C.G.A. § 13-4-20 (2010)).
70. *Id.* at 625, 774 S.E.2d at 614.
71. No. 5:14–CV–277, 2015 LEXIS 90175 (M.D. Ga. July 13, 2015).
72. *Id.* at *22.
73. *Id.* at *1-2.

sufficiently allege a basis for liability.[74] The court agreed with the defendants, finding that there was no basis for liability under an alter ego, agency, or joint venture theory.[75]

As to the alter ego theory, the court acknowledged that the corporate form could be disregarded where the corporation was being used as a "mere instrumentality" of the parent company.[76] But before ignoring the corporate form and piercing the corporate veil, the Georgia Supreme Court has required "as a precondition to a plaintiff's piercing the corporate veil and holding individual shareholders liable on a corporate claim, that there be insolvency on the part of the corporation in the sense that there are insufficient corporate assets to satisfy the plaintiff's claim."[77] The court ultimately held that CHIS failed to allege facts suggesting insolvency, and further failed to establish an equitable reason to pierce the corporate veil and hold defendants liable.[78]

The court likewise was not persuaded by the plaintiff's agency theory of liability.[79] The plaintiff argued that the existence of a parent/subsidiary relationship alone could establish liability under Georgia law, but the court declined to adopt this argument, determining that there was no evidence of actual or apparent agency, as the defendants never held themselves out as representatives or agents of the insurer.[80] Finally, the court rejected a joint venture theory on the grounds that there were no allegations of mutual control, a required element of a joint venture.[81] Rejecting these theories of secondary liability, the court ultimately dismissed the three parent company defendants, leaving only the direct insurer.[82]

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74. *Id.* at *2-3. A third defendant moved to dismiss on personal jurisdiction grounds. *Id.* at *1, 16. The court ultimately granted the motion to dismiss, finding that there was no basis for jurisdiction under an alter ego, agency, or joint venture theory. *Id.* at *16, 22. The analysis used by the court for the personal jurisdiction analysis mirrored the analysis undertaken for purposes of determining whether there was an appropriate basis for liability under a secondary liability theory. *Id.* at *21.

75. *Id.* at *1-2.

76. *Id.* at *7.

77. *Id.* at *8 (quoting Johnson v. Lipton, 254 Ga. 326, 328 S.E.2d 533 (1985)).

78. *Id.* at *9-10.

79. *Id.* at *14-15.

80. *Id.* at *12.

81. *Id.* at *16.

82. *Id.* at *22.

F. Venue Rules for Corporate Entities

There were two jurisdictional rulings affecting businesses issued by the Georgia Court of Appeals during the survey period. In *Kingdom Retail Group, LLP v. Pandora Franchising, LLC,*[83] the court determined that venue as to a foreign LLC was properly established in the county where a tort was alleged to have occurred.[84] In *Pandora*, the plaintiff, Kingdom Retail Group, sued Pandora in the Superior Court of Thomas County for fraud, tortious interference, negligent misrepresentation, defamation, and promissory and equitable estoppel. Pandora, a foreign LLC, filed a motion to transfer the case to Gwinnett County, a location where Pandora had a registered office and principal place of business in Georgia. The trial court granted the transfer to Gwinnett County, but the plaintiff filed an interlocutory appeal.[85]

On appeal, the court of appeals noted that the Georgia Constitution states that venue lies "in the county where the defendant resides; venue as to corporations, foreign and domestic, shall be as provided by law."[86] Under O.C.G.A. § 14-2-510,[87] domestic and foreign corporations are deemed to reside and to be subject to venue in one of four places: (1) in the county where the corporation maintains a registered office; (2) in a contract action, where the contract was made; (3) in a tort action, where the cause of action originated, if the corporation has an office and transacts business in that county; and (4) in a tort action, where the cause of action originated or where the defendant maintains its principal place of business.[88]

For plaintiffs claiming jurisdiction under subsection (b)(4), the court noted that "principal place of business" was intended to refer to "a single place in the world meeting a certain standard, not to a place within a state meeting that standard."[89] The court expressly determined that the principal place of business analysis under subsection (b)(4) was not intended to look to the "principal place of business in Georgia," but rather the principal place of business of the company.[90] Thus, if the business's principal place of business is not in Georgia, subsection (b)(4) would not permit a transfer.

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83. 334 Ga. App. 812, 780 S.E.2d 459 (2016).
84. *Id.* at 815, 780 S.E.2d at 462.
85. *Id.* at 813, 780 S.E.2d at 460.
86. *Id.* at 814, 780 S.E.2d at 461 (quoting GA. CONST. art. VI, § 2, para. 6).
87. O.C.G.A. § 14-2-510 (2003).
88. *Kingdom Retail*, 334 Ga. App. at 815, 780 S.E.2d at 461.
89. *Id.* at 816, 780 S.E.2d at 462.
90. *Id.* at 818, 780 S.E.2d at 463.

Similarly, in *Ross v. Waters*,[91] the court reiterated that a domestic corporation is deemed to reside in the county where it has a principal place of business or registered office.[92] Where a corporation has been administratively dissolved, however, venue is proper in the county where the corporation last had a registered office or principal place of business prior to the dissolution (as opposed to where a cause of action arises).[93] The element of dissolution narrows the options available to a plaintiff pursuing the dissolved corporation.

G. Evidentiary Rulings

There were several evidentiary rulings of note during the survey period. In *Steel Erectors, Inc. v. AIM Steel International, Inc.*,[94] a federal magistrate judge rejected a foreign corporation's refusal to file a corporate disclosure statement as required by Federal Rule of Civil Procedure 7.1[95] because revealing the identity of its parent would somehow reduce the corporation's market share.[96]

In *Ciras, LLC v. Hydrajet Technology, LLC*,[97] the Georgia Court of Appeals reversed a trial court ruling that the business records exception to the hearsay rule[98] did not apply to records authenticated by a successor corporation's senior official.[99] The trial court excluded loan documents originally held by Wachovia (which was acquired by Wells Fargo in 2008) because the Wells Fargo executive lacked "personal knowledge of the record-keeping practices of Wachovia."[100] The court of appeals determined that the records "passed to Wells Fargo as part of its acquisition" such that they were "integrated into its own business records."[101]

In *Robinson v. Wellshire Financial Services, LLC*,[102] a Fulton County Superior Court Judge temporarily granted a petitioner's application for protective order.[103] The petitioner was issued a subpoena to appear for a

91. 332 Ga. App. 623, 774 S.E.2d 195 (2015).

92. *Id.* at 625, 774 S.E.2d 197.

93. *Id.*

94. 312 F.R.D. 673 (S.D. Ga. 2016).

95. Fed. R. Civ. P. 7.1.

96. *Steel Erectors, Inc.*, 312 F.R.D. at 674-75.

97. 333 Ga. App. 498, 773 S.E.2d 800 (2015).

98. Georgia's new Evidence Code took effect on January 1, 2013. *See* O.C.G.A. § 24-8-803(6) (2013).

99. *Ciras, LLC*, 333 Ga. App. at 501, 773 S.E.2d at 802.

100. *Id.*

101. *Id.* at 500, 773 S.E.2d at 802.

102. Order, Robinson v. Wellshire Fin. Servs., LLC, 2015-CV-259408 (Fulton Cty. Super. Ct. June 1, 2015).

103. *Id.* at 4, 5.

deposition in a case pending in Texas. The petitioner was previously the president of the defendant corporation but had been living in Atlanta since November 2014. The petitioner claims he had no firsthand knowledge of the dispute and sought to be protected from testifying under the "apex doctrine."[104] The apex doctrine "protects corporate officers at the apex of the corporate hierarchy from depositions without a showing that the official has superior knowledge that cannot be discovered in a less burdensome fashion."[105] Despite petitioner's argument that courts in the Eleventh Circuit and federal district courts located in Georgia have applied the apex doctrine, the superior court declined to adopt the apex doctrine in "whole cloth," staying adjudication until a related Texas Court of Appeals case on the propriety of high-level executives' depositions was decided.[106] After the Texas Court of Appeals ruled, the superior court revisited the apex doctrine, but declined to extend it to the petitioner because the evidence showed the petitioner might have relevant knowledge.[107]

104. *Id.* at 2, 3.

105. *Id.* at 3.

106. *Id.* at 4.

107. Order, Robinson v. Wellshire Fin. Servs., LLC, 2015-CV-259408 (Fulton Cty. Super. Ct. Oct. 20, 2015).