NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2007 CA 0482

701 CORPORATION

VERSUS

MALCOLM C. MORAN & ALFRED J. MORAN, JR.

Consolidated With

2007 CA 0483

MALCOLM C. MORAN, MARSDEN L. MORAN & ALFRED J. MORAN, JR., INDIVIDUALLY & AS TRUSTEE OF THE ALFRED J. MORAN, JR. REVOCABLE TRUST

VERSUS

BREAZEALE, SACHSE & WILSON, LLP

Judgment rendered: November 2, 2007

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On Appeal from the 19th Judicial District Court
Parish of East Baton Rouge, State of Louisiana
Suit Numbers: 521,813 and 526,792; Division F(22)
The Honorable Timothy E. Kelley, Judge Presiding

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George Frazier New Orleans, LA	Counsel for Plaintiffs/Appellants Malcolm C. Moran, Marsden L. Moran & Alfred J. Moran, Jr.
Joseph P. Titone Baton Rouge, LA	Counsel for Plaintiff/Appellee 701 Corporation
L. Lane Roy Lafayette, LA	Counsel for Defendant/Appellee Breazeale, Sachse & Wilson, LLP

BEFORE: PARRO, KUHN AND DOWNING, JJ.

DOWNING, J.

Three Moran brothers[1] appeal a judgment in which the trial court maintained the peremptory exception raising the innominate objection of peremption,[2] concluding that the Morans' legal malpractice claim against the law firm of Breazeale, Sachse & Wilson, LLP ("Breazeale, Sachse") had perempted pursuant to La. R.S. 9:5605. The trial court, therefore, entered judgment dismissing the Morans' claims against Breazeale, Sachse with prejudice. For the following reasons, we affirm the judgment of the trial court.

PERTINENT FACTS AND PROCEDURAL HISTORY

The Moran brothers allege that one of Breazeale, Sachse's partners committed malpractice on or about November 28, 2001. On that date, the Moran brothers signed closing and subrogation documents and obtained a pledge and proxies from the purchaser in connection with their sale of Moran Printing Co. The Morans claim that Breazeale, Sachse failed to ensure the inclusion in the documents of enforceable provisions that would protect their interests by allowing them to reclaim the company in the event of default. They claim that they were not informed of the extent of the subrogation agreement they entered into with Hibernia Bank. They also particularly claim that they were not notified of a "change of ownership" provision in the loan documentation executed the same day between the buyer and Hibernia Bank that set forth Hibernia Bank's asserted right to call the loan if control of Moran Printing Co. changed hands.

Several significant dates followed:

1. The Moran brothers received a notice of default on or about June 26, 2002. This notice was rescinded a few days later.

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[1] The plaintiffs/appellants are Malcolm C. Moran, Marsden L. Moran and Alfred J. Moran, Jr., individually and as trustee of the Alfred J. Moran, Jr. revocable trust.

[2] Attorneys in practice normally refer to this objection as an "exception of peremption."

2. The Moran brothers acknowledge receiving a second notice of default on January 26, 2003. Malcolm Moran, the managing owner, testified that he knew there was a problem shortly after receiving notice of the default. He testified that he called his brother because he thought they were in trouble regarding the default. The parties all engaged in negotiations to restructure the note. Negotiations were unsuccessful.
3. On January 23, 2004, the Moran brothers retained Breazeale, Sachse to provide legal services to enforce their proxy rights to resume control of Moran Printing Co.
4. On January 26, 2004, Courtney B. Westbrook, the purchaser of Moran Printing Co., filed for personal bankruptcy.
5. On February 27, 2004, Mr. Westbrook filed a complaint against the Moran brothers within the bankruptcy proceeding seeking damages for illegally exercising expired proxies. The Moran brothers assert that this is the first time they were aware the proxies might be defective.
6. On March 1, 2004, the Moran brothers claim they received an e-mail that notified them for the first time that the loan documentation contained a change-of-control provision that might be used to their detriment.
7. On November 24, 2004, the Moran brothers filed a petition for legal malpractice against Breazeale, Sachse. All of the alleged malpractice arises from the sale and loan documentation the Moran brothers signed on November 28, 2001.

8. On October 20, 2006, the trial court held a hearing on the exception of peremption filed by Breazeale, Sachse. The trial court sustained the exception and dismissed the Moran brothers' claims with prejudice. The trial court found that the Moran brothers were on constructive notice of the malpractice at the very latest in January 2003, when they received the second notice of default and that the suit for attorney malpractice was perempted because it was not filed within one year of this date.

The trial court signed judgment accordingly.

The Moran brothers appeal the judgment of the trial court, asserting in one assignment of error that the trial court erred in dismissing their lawsuit upon finding that the case had perempted because it was not brought within a year of the Moran brothers' actual or constructive knowledge of legal malpractice.

DISCUSSION

Deference to Trial Court's Factual Findings

We first discuss the Moran brothers' argument that we owe no deference to the trial court's factual findings for several reasons, including the reason that the trial court made no credibility determinations. While we do not accept the Moran brothers' characterization of the evidence, we are bound by the trial court's factual determinations in the absence of manifest error, even when the trial court makes no credibility determinations.

In **Virgil v. American Guarantee and Liability Insurance Company**, 507 So.2d 825, 826 (La. 1987), the Louisiana Supreme Court ruled that the manifest error standard of review applies to a trial court's factual findings even when the evidence before it consists solely of written reports, records and

depositions. The supreme court in **Virgil**, discussed the allocation of fact finding in Louisiana's three-tiered court system as follows:

> Louisiana's three-tiered court system allocates the fact finding function to the trial courts. Because of that allocation of function (as well as the trial court's normal procedure of evaluating live witnesses), great deference is accorded to the trial court's factual findings, both express and implicit, and reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed on appellate review of the trial court's judgment.

Id.

Manifest Error

The Moran brothers argue that the trial court's finding that they had constructive knowledge of the alleged Breazeale, Sachse malpractice no later than January 2003 was manifestly erroneous. They claim the finding is unsupported by the evidence, is nonsensical, and is based on circular reasoning. We conclude that the trial court's findings of fact regarding the date of constructive knowledge were not manifestly erroneous.

The trial court found that the Moran brothers had constructive knowledge on two dates. First, it found that they had constructive knowledge on November 28, 2001, when they executed the sale and loan documents in connection with the sale of Moran Printing Co. The trial court explained:

> [A]t the closing on November 28th, the Morans were provided documentation which by their signatures indicated that they acknowledged that they had a subordinate position to some lending institution ... . At that time, they should have known that there are events of default in those loan documents that would take precedence over their position of their loan; therefore, at that time, they should have known that there was a malpractice in not disclosing those conditions.

The trial court also found the Moran brothers had constructive knowledge as of January 2003, upon the second notice of default. The trial court explained:

> Certainly at the very latest, the court believes that the January 2003 default, which was the second default, had to have made it known very clearly to the Morans that there were, in fact, events of default. They had been implemented. At that time, they should have

> knowledge that a failure to know what those events of default were and how it would affect their rights would be detrimental to them and therefore malpractice in the drafting of the documents. So at the very latest, the second default, which is in January of 2003, they had constructive knowledge, if not indeed actual knowledge of malpractice.

We conclude that the trial court was not manifestly erroneous in finding the Moran brothers had constructive knowledge as of January 26, 2003, the date of the second notice of default. This court in **Collins v. Star Ins. Co.**, 05-0746, p. 7 (La.App. 1 Cir. 9/1/06) (unpublished), 936 So.2d 884 (Table), explained the notice required, as follows:

> The peremptory period for malpractice can begin to run even when the client does not have *actual* knowledge of facts that would entitle him to bring a suit where there is *constructive* knowledge of same. Constructive knowledge is whatever notice is enough to excite attention and put an injured party on guard and call for inquiry. Such notice is tantamount to knowledge or notice of everything to which a reasonable inquiry may lead. Such information or knowledge as ought to reasonably put the alleged victim on inquiry is sufficient to start the running of the peremptive period.

See also **Campo v. Correa**, 01-2707, pp. 11-12 (La. 6/21/02), 828 So.2d 502, 510-11, and **Atlas Iron and Metal Co. v. Asby**, 05-458, p. 5 (La.App. 3 Cir. 1/4/06), 918 So.2d 1205, 1210.

Under this standard, we cannot conclude that the trial court manifestly erred in finding that the Moran brothers were put on constructive notice of the alleged attorney malpractice as of January 26, 2003, the date of the second default notice. As the trial court stated, on this second notice of default, the default was implemented. And the Moran brothers' attention should have been excited to the possibility that the documents they signed might differ from their understanding to their detriment. In this regard, Malcolm Moran testified that he called his brother and said, "I could use your help on this because I think we're in trouble on this thing and, you know, you know a lot more about this [than] I do about restructuring and dealing with creditors and all that sort of stuff." The

facts support the trial court's findings. We therefore find no merit in the Moran brothers' arguments in this regard.

Incongruous Result

Throughout their briefs, the Moran brothers complain that they relied to their detriment on the advice of Breazeale, Sachse. They argue that, "[t]he effect of (i) a law firm's assurances of adequate performance (ii) during a previous engagement (iii) before a [peremptive] period has run" gives them "reasonable grounds to believe no malpractice barring them from exercising their contractual rights has been committed." The Moran brothers argue that this is a *res nova* issue that merits consideration. They provide no legal basis, however, on which we can consider these issues.

We are sympathetic, but the law reads plainly. La. R.S. 9:5605B[3] states that the one-year and three-year periods are peremptive. In **Reeder v. North**, 97-0239, p. 12 (La. 10/21/97), 701 So.2d 1291, 1298, the supreme court explained that the "continuous representation rule" does not apply to peremptive periods. The court stated, "nothing may interfere with the running of a peremptive period." **Id.**

Even so, we specifically do not comment on the merits of the Moran brothers' allegations or on Breazeale, Sachse's asserted defenses. These matters are not before us.

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[3] Louisiana Revised Statutes 9:5605 reads as follows, in pertinent part:

> A. No action for damages against any attorney at law duly admitted to practice in this state, any partnership of such attorneys at law, or any professional corporation, company, organization, association, enterprise, or other commercial business or professional combination authorized by the laws of this state to engage in the practice of law, whether based upon tort, or breach of contract, or otherwise, arising out of an engagement to provide legal services shall be brought unless filed in a court of competent jurisdiction and proper venue within one year from the date of the alleged act, omission, or neglect, or within one year from the date that the alleged act, omission, or neglect is discovered or should have been discovered; however, even as to actions filed within one year from the date of such discovery, in all events such actions shall be filed at the latest within three years from the date of the alleged act, omission, or neglect.
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> B. ... The one-year and three-year periods of limitation provided in Subsection A of this Section are peremptive periods within the meaning of Civil Code Article 3458 and, in accordance with Civil Code Article 3461, may not be renounced, interrupted, or suspended.

DECREE

For the foregoing reasons, we affirm the judgment of the trial court maintaining Breazeale, Sachse's exception of peremption and dismissing the Moran brothers' action against it. Costs of this appeal are assessed against the Moran brothers.

AFFIRMED