

<b>The Sedona Group, LLC v Morlarty-Gentile</b>
2007 NY Slip Op 30542(U)
March 29, 2007
Supreme Court, New York County
Docket Number: 0115605/2006
Judge: Karla Moskowitz
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon. KARLA MOSKOWITZ PART 03  
Justice

-----X  
The Sedona Group, LLC.

Plaintiff,

- against -

INDEX NO. 115605/2006

Cathy Morlarty-Gentile, Joseph Gentile, Stanley Perelman,  
Nancy Perelman, Christopher Thompson, Christopher Thompson &  
Associates, P.C., The Gallery At Chelsea, LLC, The Gallery  
Development Group, LLC, CJA Gallery, LLC, JN Gallery LLC, Jani  
RealEstate LLC, Coleson Management, LLC, The Estate of Peter  
Romano, Joseph Vozza, Ultra Construction Associates, Inc., LuxMac,  
Covino & Company, Inc, Michael Covino, M & T Bank and Roslyn  
Savings Bank,

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 002

MOTION CAL. NO. \_\_\_\_\_

Defendants  
-----X

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

**FILED**  
PAPERS NUMBERED

APR 05 2007

Cross-Motion:  Yes  No

NEW YORK  
COUNTY CLERK'S OFFICE

Upon the foregoing papers, it is

ORDERED that this motion is decided in accordance with the accompanying  
Decision and Order and it is further

ORDERED THAT the plaintiff shall serve a copy of this order with notice of entry  
upon the Special Referee's Office (Rm 119).

Dated: March 29 2007

  
\_\_\_\_\_  
KARLA MOSKOWITZ J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE [\* 1]

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 3

-----X  
The Sedona Group, LLC.

Plaintiff.

-against-

Index No. 115605/2006

Cathy Moriarty-Gentile, Joseph Gentile, Stanley Perelman, Nancy Perelman, Christopher Thompson, Christopher Thompson & Associates, P.C., The Gallery At Chelsea, LLC, The Gallery Development Group, LLC, CJA Gallery, LLC, JN Gallery LLC, Jani RealEstate LLC, Coleson Management, LLC, The Estate of Peter Romano, Joseph Vozza, Ultra Construction Associates, Inc., LuxMac, Covino & Company, Inc, Michael Covino, M & T Bank and Roslyn Savings Bank

Decision and Order

**FILED**

Defendants

APR 05 2007

-----X  
**Karla Moskowitz, J.:**

**NEW YORK  
COUNTY CLERK'S OFFICE**

This case alleges at bottom a fraudulent scheme whereby various defendants used sham transactions and sham corporations to siphon off money from a construction project. The defendants were supposed to have used loan money and capital contributions to build a residential condominium in Chelsea.

This motion (seq. no. 2) is to disqualify Christopher Thompson and his firm as counsel for defendants Cathy-Moriarty-Gentile, Joseph Gentile; The Gallery at Chelsea, LLC, The Gallery Development Group, LLC and CJA Gallery, LLC (collectively the "Gentile Defendants"). Christopher Thompson and his firm Christopher Thompson and Associates (collectively "Thompson") are also defendants in this action. In addition, plaintiff requests the court to consolidate discovery in this case with certain other related cases that are now on my docket. For the following reasons, the court grants plaintiff's motion.

On August 5, 2003, The Sedona Group LLC, (“Sedona”), Sedona’s partner JMA and Gallery Development Group (Gallery Group), (an entity that plaintiff claims defendants Stanley Perelman, Joseph Gentile and Cathy Moriarity-Gentile own indirectly), executed an agreement (the “Operating Agreement”) to create The Gallery at Chelsea, LLC (“The Gallery LLC”). The Gallery was to hold ownership of a project to develop a residential condominium at 559 West 23<sup>rd</sup> street (“The Project”). Sedona alleges it contributed \$525,000 as a capital contribution.

In its complaint, plaintiff asserts that Christopher Thompson, along with the other defendants, stole funds from the Project. Apparently, Christopher Thompson was counsel for the Gentile defendants at the inception of the Project and, as a result of the Gentile defendants’ control over the project, became counsel for the project. In that role, Mr. Thompson apparently exercised at least some managerial control. For example, he signed the Operating Agreement on behalf of Gallery Group, the managing member. (See Complaint Ex. A). Christopher Thompson was also a corporate officer of The Gallery LLC with authority to write checks for that entity. (Affirmation of David Frydman dated January 25, 2007, Ex D). Indeed, Christopher Thompson’s control went so far that, on August 31, 2004, he directed Perelman, the person who plaintiff believed was the day to day manager of the project, not to hire construction professionals to continue the project. Christopher Thompson told Perelman that he (Thompson) himself was going to place additional funding for the project. (Frydman Aff. Ex. E). It also would appear that Mr. Thompson was possibly involved in diverting loan funds. Annexed to the Sedona Complaint as Exhibit D are construction loan draw requests, one of which Thompson signed on behalf of the general contractor (FI 03579) and others on which Thompson notarizes the signature of defendant Joseph Vozza (“Vozza”) (*See, e.g.*, Complaint Ex D at FI 03634).

Plaintiff claims that Vozza was “to be a shill that Thompson and Gentile put in charge of the general contractor entity.” (Frydman Aff. ¶ 13). Mr. Thompson does not deny that he endorsed checks representing over \$100,000 of construction funds or that he was an officer of The Gallery LLC with check signing power that he exercised.

That part of its motion to disqualify Thompson plaintiff brings pursuant to DR 5-101-105; 108; and Court Rules §§ 1200.20-24, and 27. DR 5-101 prohibits a lawyer from representing a client where:

the exercise of professional judgment on behalf of the client will be or reasonably may be affected by the lawyer’s own financial, business, property, or personal interests, unless a disinterested lawyer would believe that the representation of the client will not be adversely affected thereby and the client consents to the representation after full disclosure of the implications of the lawyer’s interest.

Nor may a lawyer represent a client in a case where it is obvious that the lawyer ought to testify on a significant issue on behalf of the client and that testimony might be adverse to that client. (DR 5-102). Nor should a lawyer represent a client with whom he or she has a conflict of interest. (DR 5-105).

Given his level of involvement in the underlying events giving rise to this lawsuit, the court must disqualify Thompson and his firm from their representation of the Gentile defendants. Plaintiff has named Thompson and his firm as defendants and has accused Mr. Thompson, as well as the other defendants, of siphoning money from the Project and stalling the inception of the Project. Therefore, there exists the potential for the various defendants to point fingers at each other as the case progresses. In this respect, Thompson’s interests are such that they could be, or may already be, adverse to those of his own clients. In addition, Thompson’s financial and other involvement in this case may affect his professional judgment. At the very least, there is a

substantial likelihood that he would be called as a witness to testify about where the allegedly misappropriated funds went. This testimony has the potential to damage the Gentile defendants. These reasons alone are sufficient to disqualify Mr. Thompson and his firm. (*See Chang v. Chang*, 190 AD2d 311, 318-320 [court disqualified attorney from representing defendant shareholders of closely-held family corporation where attorney had represented the corporation in the transaction giving rise to the lawsuit and where the attorney himself allegedly had defrauded and looted the corporation]).

The court also grants that part of plaintiff's motion seeking coordinated discovery. The underlying transaction in this case has spawned at least four other lawsuits, all of which are now before me. These other lawsuits are:

1. The Gallery Development Group LLC v. The Sedona Group, 604425/2004;
2. JMA Auto Tech v. The Gallery at Chelsea, 100707/2005;
3. Gene Kaufman Architect PC v. The Gallery at Chelsea, 101897/2005
4. Gene Kaufman Architect PC v. M&T Bank 602944/2006

It would be a waste of client and judicial resources not to proceed with discovery on a consolidated basis. Although plaintiff has asked only for consolidation for discovery purposes with the first two lawsuits, the court, *sua sponte*, consolidates all of them for discovery. The facts underlying all the lawsuits are the same and each case could only benefit from shared discovery. Discovery is underway in the first two actions already, but not so much as to cause prejudice. The parties have exchanged documents and there has only been one deposition. Indeed, the prejudice from not consolidating outweighs the prejudice to the two earlier-filed cases that will only have to wait until the other cases catch up to their document production. The

court also orders discovery to go forward while various dispositive motions are *sub judice*.

Accordingly, it is

ORDERED THAT the court grants plaintiff's motion to disqualify Christopher Thompson and Christopher Thompson & Associates PC; and it is further

ORDERED THAT the court stays this case for 30 days to afford defendants time to retain new counsel; and it is further

ORDERED THAT the court grants that part of plaintiff's motion to coordinate discovery and coordinates The Gallery Development Group LLC v. The Sedona Group, 604425/2004; JMA Auto Tech v. The Gallery at Chelsea, 100707/2005; Gene Kaufman Architect PC v. The Gallery at Chelsea, 101897/2005 and Gene Kaufman Architect PC v. M&T Bank 602944/2006 with this case, pursuant to CPLR 4301 for supervised pretrial discovery before Special Referee Steven Liebman; and it is further;

ORDERED THAT the plaintiff shall serve a copy of this decision and order with notice of entry upon the Special Referee's Office (Rm 119).

Dated: March  2007

  
\_\_\_\_\_  
J.S.C.

**FILED**  
APR 05 2007  
NEW YORK  
COUNTY CLERK'S OFFICE