

Rodriguez v Krummel
2019 NY Slip Op 31473(U)
March 25, 2019
Supreme Court, Orange County
Docket Number: EF008353-2018
Judge: Catherine M. Bartlett
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SUPREME COURT-STATE OF NEW YORK
IAS PART-ORANGE COUNTY

Present: HON. CATHERINE M. BARTLETT, A.J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

ADLIN RODRIGUEZ and NATALIE RODRIGUEZ,

Plaintiffs,

-against-

KEVIN A. KRUMMEL and STANKUS
ENTERPRISES INCORPORATED,

Defendants.

To commence the statutory time
period for appeals as of right
(CPLR 5513 [a]), you are
advised to serve a copy of this
order, with notice of entry,
upon all parties.

Index No. EF008353-2018
Motion Date: March 18, 2019

The following papers numbered 1 to 6 were read on the pending motions to disqualify the
law firm of Sobo & Sobo, LLP:

Table listing documents: Notice of Motion (Defendants) - Affirmation / Exhibits (1-2), Notice of Motion (Counterclaim Defendant) - Affirmation / Exhibit (3-4), Affirmation in Opposition (5), Reply Affirmation (Defendants) (6)

Upon the foregoing papers it is ORDERED that the motions are disposed of as follows:

This is an action to recover for personal injuries allegedly sustained by plaintiff Adlin
Rodriguez (operator) and her daughter, plaintiff Natalie Rodriguez (passenger), in a motor
vehicle accident that occurred on August 16, 2016 in the Town of Gardiner, New York.

According to the Police Accident Report, a vehicle operated by defendant Kevin A. Krummel
southbound on Bruynswick Road stopped at a stop sign at the intersection with State Route

44/55, and then proceeded into the intersection, whereupon it was struck by Adlin Rodriguez's vehicle traveling eastbound on Route 44/55.

Plaintiffs, simultaneously represented by Sobo & Sobo, LLP, commenced this action in August 2018. In September 2018, Defendants joined issue and asserted a counterclaim against plaintiff Adlin Rodriguez. In December 2018, Sobo & Sobo, LLP replied to the counterclaim on behalf of Adlin Rodriguez. Thereafter, the Law Office of Bryan Kulak requested that Sobo & Sobo, LLP withdraw its Reply, appeared for Adlin Rodriguez on the counterclaim and filed a (second) Reply. Forrester & Calderin PLLC was thereafter substituted in place of Sobo & Sobo, LLP as attorney for Natalie Rodriguez. On March 18, 2019, the return date of the present motion, a consent to change attorney was filed, substituting Greenwald Law, P.C. as attorney for plaintiff Adlin Rodriguez in place of Sobo & Sobo, LLP.

Defendants as well as Counterclaim Defendant Adlin Rodriguez have moved to disqualify Sobo & Sobo, LLP on the grounds that its simultaneous representation of operator Adlin Rodriguez and passenger Natalie Rodriguez after the filing of Defendants' counterclaim against Adlin Rodriguez constituted a non-waivable conflict of interest and a breach of the Rules of Professional Responsibility. Sobo & Sobo, LLP, in opposition, asserts that (1) Defendants lack standing to move for its disqualification, and (2) inasmuch as Sobo & Sobo, LLP no longer represents any party to this action, the motions for disqualification are moot and there is no longer any "case or controversy" for this Court to decide.

Since Defendants are neither present nor former clients of Sobo & Sobo, LLP, they lack standing to seek disqualification based on Sobo's conflict of interest. *See, A.F.C. Enterprises,*

Inc. v. New York City School Construction Authority, 33 AD3d 736 (2d Dept. 2006). Therefore, Defendants' motion must be denied.

However, inasmuch of Sobo & Sobo, LLP in responding to the motions for disqualification has (1) completely misrepresented the nature of the accident, (2) refused to acknowledge that its simultaneous representation of operator and passenger in the circumstances of this case was prohibited by an impermissible conflict of interest, (3) sought instead to deflect blame for its own misconduct by inappropriately castigating Defendants' counterclaim as frivolous, and (4) may in future attempt to assert a right to a portion of any attorney's fee generated in this action, the Court does not regard the pending motions as moot.

Sobo & Sobo, LLP, citing to the Police Accident Report, asserts that (i) at the intersection in question both streets are controlled by stop signs, (ii) plaintiff Adlin Rodriguez proceeded into the intersection after having stopped first, (iii) defendant Krummel passed through his stop sign with stopping, and (iv) Defendant collided with Plaintiff. All four of these assertions are *flatly contradicted* by the Police Accident Report, which indicates that (i) only Bruynswick Road, and not State Route 44/55, is controlled by a stop sign, (ii) Plaintiff, who was not faced with a stop sign, accordingly proceeded into the intersection without stopping, (iii) Defendant did stop at his stop sign, and (iv) Plaintiff collided with Defendant, not vice-versa.

While under these circumstances Defendants are potentially subject to liability for Mr. Krummel's alleged negligence in failing to yield the right-of-way (*see*, PJI 2:80), it was practically inevitable that Defendants would assert a counterclaim against plaintiff Adlin Rodriguez for allegedly failing to proceed with reasonable care, failing to keep a proper lookout, and proceeding recklessly into the intersection in disregard of Defendants' vehicle. *See*, PJI 2:77, PJI 2:80A.

From the outset, then, it was at the very least highly inadvisable for Sobo & Sobo, LLP to undertake the simultaneous representation of both Adlin Rodriguez, operator, and Natalie Rodriguez, her passenger. Once the Defendants interposed their counterclaim – irrespective of that claim’s merit – Sobo & Sobo, LLP’s continued representation of both operator and passenger, even to the point of filing a Reply to the counterclaim, embroiled it in a wholly impermissible conflict of interest and a breach of the Rules of Professional Responsibility. *See, Shelby v. Blakes*, 129 AD3d 823, 825 (2d Dept. 2015); *Alcantara v. Mendez*, 303 AD2d 337, 338 (2d Dept. 2003).

In *Shelby v. Blakes*, *supra*, a law firm simultaneously represented operator and passenger despite the interposition of a counterclaim in a case involving a rear-end accident with a stopped vehicle. The law firm, like Sobo & Sobo, LLP here, asserted that the counterclaim was frivolous, and in *Shelby* the counterclaim was ultimately withdrawn. Nevertheless, the Second Department held that “once the defendant asserted a counterclaim, the pecuniary interests of the driver conflicted with those of the passenger” and granted a motion to disqualify. *Id.*, 129 AD3d at 824, 825. The Court wrote:

The general rule is that an attorney is not entitled to a fee in a personal injury action if the attorney violated the Rule of Professional Conduct (12 NYCRR 1200.0) by representing both the driver of an automobile involved in a collision and a passenger in that vehicle (*see Quinn v. Walsh*, 18 AD3d 638...; *Pessoni v. Rabkin*, 220 AD2d 732...; *see also Doviak v. Finkelstein & Partners, LLP*, 90 AD3d 696,699...). Rule 1.7(a) of the Rules of Professional Conduct (22 NYCRR 1200.0) provides, in pertinent part, with respect to conflicts of interests involving current clients, that a lawyer shall not represent a client if a reasonable lawyer would conclude that “the representation will involve the lawyer in representing differing interests” (Rules of Professional Conduct [22 NYCRR 1200.0 Rule 1.7[a][1])....

[The law firm] contends that since Earl was a passenger in a stopped vehicle which was struck in the rear, the driver of the stopped vehicle was clearly not at fault, and there was

no conflict of interest [cit.om.]. However, once the defendant asserted a counterclaim, the pecuniary interests of the driver conflicted with those of the passenger [cit.om.; see also *Alcantara v. Mendez*, 303 AD2d 337...]. Therefore, the appellant's motion to disqualify [the law firm] from receiving a portion of the attorney's fees should have been granted, and the cross motion for an allocation of attorney's fees should have been denied.

Shelby v. Blakes, supra, 129 AD3d at 825.

It is therefore

ORDERED, that Defendants' motion to disqualify Sobo & Sobo, LLP is denied for want of standing, and it is further

ORDERED, that Counterclaim-Defendant Adlin Rodriguez's motion to disqualify Sobo & Sobo, LLP is granted.

The foregoing constitutes the decision and order of the Court.

Dated: March 25, 2019
Goshen, New York

ENTER



HON. CATHERINE M. BARTLETT, A.J.S.C.

HON. C. M. BARTLETT
JUDGE NY STATE COURT OF CLAIMS
ACTING SUPREME COURT JUSTICE