

**Alam v Ahmad**

2020 NY Slip Op 31423(U)

April 21, 2020

Supreme Court, New York County

Docket Number: 653651/2018

Judge: Barry R. Ostrager

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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. BARRY R. OSTRAGER. PART IAS MOTION 61EFM

Justice

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INDEX NO. 653651/2018  
MOTION NO. 016

Navaid Alam, Cobham Capital, LLC, Western  
Financial Investments, L.P. and Lalani Holdings,  
LLC,  
  
Plaintiffs,

- v -

Kabir Ahmad, IFG General Partner Ltd., Kabir  
Capital LLC, IFG Fund L.P., Mujtaba Mohamed  
Jaffer, Emerging Capital Partners, Temasek  
International PTE Ltd., Temasek International  
(USA) LLC.,  
  
Defendants.

**DECISION ON MOTION**

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OSTRAGER, J.

Before the Court is a motion sequence 016 by plaintiffs to disqualify one of defendants’ counsel, The Law Offices of Neal Brickman, P.C. The law firm Pierce Bainbridge, Beck, Price and Hecht, LLP (“Pierce Bainbridge”) represents the moving plaintiffs in this action.<sup>1</sup>

Defendants in this matter are represented by the AXS Law Group PLLC (“AXS”) and co-counsel The Law Offices of Neal Brickman, P.C. (“Brickman”). Plaintiff moves to disqualify Brickman on the ground that Brickman also represents a former Pierce Bainbridge partner, Donald Lewis (“Lewis”), in a lawsuit filed by Lewis against Pierce Bainbridge.

**Background**

Lewis was a partner at Pierce Bainbridge from approximately June 2018 to September 2018. *See Wolinsky Aff.* ¶ 3 (NYSCEF Doc. No. 303). In connection with this motion, Pierce Bainbridge contends that during Lewis’ employment with Pierce Bainbridge, Lewis had access

<sup>1</sup> The instant litigation is herein abbreviated “*Alam v. Ahmad.*”

to confidential information about this case. Lewis has since left Pierce Bainbridge and sued that law firm. Lewis is represented by Brickman in his suit against Pierce Bainbridge.<sup>2</sup> Wolinsky Aff. ¶ 4.

Plaintiffs' theory of disqualification is as follows: as a partner at Pierce Bainbridge, Lewis had access to and received confidential information about Pierce Bainbridge's valuation of this case and other information relevant to the instant litigation. Because Lewis is now a client of Brickman, there is a substantial chance that that confidential information will be shared by Lewis with his attorney Brickman, which could prejudice plaintiffs in this case. Plaintiffs emphasize the potential overlap in subject matter between this case and *Donald Lewis v. Pierce Bainbridge Beck Price & Hecht, L.L.P. et al* (652931/2019). Lewis's claims against the law firm include allegations that Pierce Bainbridge over-valued its cases, including this case, to litigation funders. Thus, the valuation of *Alam v. Ahmad* is relevant to the Lewis litigation.

Brickman's position is that no such conflict exists because Lewis is a *client* of Brickman (not an attorney at The Law Offices of Neal Brickman). Brickman further claims that Lewis denies having received, and has not shared with Brickman, any confidential information related to this case.

In support of the assertion that Lewis had access to confidential information about *Alam v. Ahmad*, plaintiffs submitted three affirmations from other partners at Pierce Bainbridge attesting that that they had communicated with Lewis about Pierce Bainbridge's representation of the plaintiffs in *Alam v. Ahmad*. Specifically, each attorney affirmed that Lewis had access to and received confidential information about this case, which they referred to as "the IFG fund litigation." See Aff. of David Hecht, Decl. of Amman Khan, and Decl. of Michael Pomerantz

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<sup>2</sup> *Donald Lewis v. Pierce Bainbridge Beck Price & Hecht, L.L.P. et al* Index No. 652931/2019

(NYSCEF Doc. Nos. 299 – 301). In particular, plaintiffs allege that Lewis had information about Pierce Bainbridge’s internal assessment and valuation of *Alam v. Ahmad*.<sup>3</sup> The attorneys also attested that they had substantive discussions with Lewis about the merits and litigation strategy of *Alam v. Ahmad*. See Khan Decl. ¶ 5 and Hecht Aff. ¶ 5. Plaintiffs also note that Lewis had access to the entire case file and was a part of the firm’s dedicated Slack channel related to the case.<sup>4</sup>

In opposition, Brickman submitted an affirmation which attests that Brickman did not receive any information about *Alam v. Ahmad* prior to being retained by Ahmad<sup>5</sup>, and states that Brickman has been informed by Lewis that Lewis does not have any confidential information about the *Alam v. Ahmad* litigation. Brickman also reports that Lewis denies the statements in the affirmations and declarations of the Pierce Bainbridge attorneys that were submitted in connection with this motion. See Brickman Aff. ¶ 20 – 22 (NYSCEF Doc. No. 318).

### **Discussion**

The Court first notes the unusual circumstances presented by the facts of this motion. If Mr. Lewis were joining The Law Offices of Neal Brickman as an attorney, Brickman would be disqualified due to a conflict of interest. Although Lewis is a client of Brickman, for the reasons

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<sup>3</sup> Plaintiffs specifically claim that an internal memorandum dated May 6, 2018 was seen by Lewis. The May 6 memorandum was submitted to this Court for *in camera* review and did in fact contain a valuation of *Alam v. Ahmad*. Plaintiff claims that this same memorandum is quoted in the complaint that Lewis filed against Pierce Bainbridge (Index No. 652931/2019).

<sup>4</sup> As plaintiff notes, Slack is an internet-based instant messaging platform.

<sup>5</sup> Though Brickman argues that there is no overlap between this case and the Lewis litigation, Brickman states in his affirmation that “Kabir Ahmad approached me about retaining the services of The Law Office of Neal Brickman, P.C., after having read media coverage concerning the Lewis litigations and because he recognized what he believed to be parallels as to the unscrupulous conduct exercised by PB in both this litigation and the litigations commenced by Mr. Lewis.” Brickman Aff. ¶ 23.

that follow, the Court finds that the result should be the same<sup>6</sup>, and the motion to disqualify The Law Offices of Neal Brickman is granted..

Plaintiffs' theory of disqualification is rooted in Rule of Professional Responsibility 1.9(c) which provides that "[a] lawyer who formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter: (1) use confidential information of the former client protected by Rule 1.6 to the disadvantage of the former client, except as these Rules would permit or require with respect to a current client or when the information has become generally known; or (2) reveal confidential information of the former client protected by Rule 1.6 except as these Rules would permit or require with respect to a current client." N.Y. R. Prof. Resp. 1.9(c).

Undeniably, the facts presented do not fit the common attorney disqualification fact pattern. Indeed, the Court agrees with Brickman that there is no prior attorney-client relationship between Brickman and any party to the instant litigation. Moreover, the Court does not suggest that Brickman violated Rule 1.9 by accepting representation of defendants. However, the "disqualification rules contained in the Code of Professional Responsibility provide guidance, not binding authority, for courts in determining whether a party's law firm, at its adversary's instance, should be disqualified during litigation." *S & S Hotel Ventures Ltd. P'ship v. 777 S.H. Corp.*, 69 N.Y.2d 437, 440 (1987). And, "[e]ven in instances where the irrebuttable presumption of disqualification of an attorney for representing conflicting interests does not attach, and, hence, disqualification is not mandatory, disqualification nonetheless may be warranted

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<sup>6</sup> *Cf. Hull v. Celanese Corp.*, 513 F.2d 568, 572 (2d Cir. 1975) in which the Second Circuit found that "had [the client] joined the firm as an assistant counsel in the [ ] case, they would have been disqualified. Here she joined them, as it were, as a client. The relation is no less damaging and the presumption [of a conflict] should apply."

depending upon the particular facts and circumstances of a given case.” See *McCutchen v. 3 Princesses & A P Trust Dated Feb. 3, 2004*, 138 A.D.3d 1223 (3rd Dep’t 2016).

The disqualification of an attorney is a matter within discretion of the court. See *McCutchen*, 138 A.D.3d at 1225 (collecting cases). When deciding a disqualification motion, a court must balance “the party’s valued right to choose its own counsel, and the fairness and effect in the particular factual setting of granting disqualification or continuing representation” and the preservation of the public trust. See *S & S Hotel Ventures Ltd. P’ship* 69 N.Y.2d 440 and *Hull v. Celanese Corp.*, 513 F.2d 568, 572 (2d Cir. 1975).

The parties strongly dispute whether Lewis received confidential information pertinent to *Alam v. Ahmad*. However, the Court need not determine whether Lewis actually has confidential information for two reasons: First, in “a disqualification situation, any doubt is to be resolved in favor of disqualification.” *Hull*, 513 F.2d at 571, citing *Fleischer v. A. A. P., Inc.*, 163 F.Supp. 548, 553 (S.D.N.Y.1958); see also *Roddy v. Nederlander Producing Co. of Am.*, 96 A.D.3d 509, 509 (1st Dep’t 2012). Second, even the possibility that defense counsel could, through its representation of Lewis, have obtained plaintiffs’ confidential information in the instant litigation, supports a finding of disqualification. See *Tekni-Plex, Inc. v. Meyner & Landis*, 89 N.Y.2d 123, 131, (1996) (“this rule of disqualification fully protects a client’s secrets and confidences by preventing *even the possibility* that they will subsequently be used against the client in related litigation”) (emphasis added); see also *Greene v. Greene*, 47 N.Y.2d 447, 453,(1979) (“to obtain disqualification of the attorney, the former client need not show that confidential information necessarily will be disclosed in the course of the litigation; rather, a reasonable probability of disclosure should suffice”).

Brickman argues that even if Lewis had information about Pierce Bainbridge’s valuation of *Alam v. Ahmad*, assessments by lawyers are not confidential information, nor are they the “client’s secrets.” *See* Defendants’ Memorandum of Law at p. 4 (NYSCEF Doc. No. 318). In other words, Brickman argues that what plaintiffs’ lawyers think *Alam v. Ahmad* is worth is not an issue in the litigation of *Alam v. Ahmad*. However, this argument ignores the role that such information could play in resolving the litigation and implications it may have on litigation strategy and the interests of plaintiffs. Indeed, in November 2019, defense counsel sent a discovery request in this action to plaintiffs which included a demand for any documents related to the valuation of *Alam v. Ahmad*, including those that had been given to third-party litigation funders. *See* NYSCEF Doc. No. 307 at ¶ 5.

In any event, a party seeking disqualification of opposing counsel is not required to show actual harm to succeed on the motion. *See Tekni-Plex, Inc.* 89 N.Y.2d 131 (1996), *citing Solow v. W.R. Grace & Co.*, 83 N.Y.2d 309 (1994) (“by mandating disqualification irrespective of any actual detriment—that is, even when there may not, in fact, be any conflict of interest—the rule also avoids any suggestion of impropriety on the part of the attorney”) (internal quotation marks omitted). Potential conflicts of legal representation must be resolved to avoid even the appearance of impropriety. *See e.g. McCutchen*, 138 A.D.3d at 1226 (collecting cases); *see also Halberstam v. Halberstam*, 122 A.D.3d 679, 680 (2nd Dep’t 2014). The purpose of disqualifying counsel where there is the appearance, but not necessarily the existence, of a conflict “preserves the client’s expectation of loyalty [and] also promotes public confidence in the integrity of the Bar.” *See Solow*, 83 N.Y.2d at 309.

While the facts before the Court do not fit squarely into precedent, “[w]hen we find an area of uncertainty, [ ] we must use our judicial process to make our own decision in the interests

of justice to all concerned.” *S & S Hotel Ventures Ltd. P’ship* 69 N.Y.2d 443 (1987), *citing Foley & Co. v. Vanderbilt*, 2nd Cir., 523 F.2d 1357, 1360 [Gurfein, J., concurring].). And, while the Court is conscious of defendants’ right to be represented by counsel of their choosing, that right is not unlimited, and defendants continue to be represented by their original counsel AXS. Although the Court disfavors disqualification, it must exercise its discretion to reach the result that upholds the spirit of the ethical rules and avoids potential conflicts. Under these circumstances, the Court finds that the risks articulated by plaintiffs support disqualifying The Law Offices of Neal Brickman.

Accordingly, it is hereby,

ORDERED that plaintiffs’ motion is granted and The Law Offices of Neal Brickman, P.C. is disqualified from representing plaintiffs in this action. A compliance conference is scheduled for September 22, 2020, at 9:30 a.m. Should the parties need the Court’s assistance prior to the compliance conference, please contact [SFC-PART61@nycourts.gov](mailto:SFC-PART61@nycourts.gov).

Dated: April 21, 2020

  
 BARRY R. OSTRAGER, J.S.C.

CHECK ONE:  CASE DISPOSED  NON-FINAL DISPOSITION

GRANTED  DENIED  GRANTED IN PART  OTHER

APPLICATION:  SETTLE ORDER  SUBMIT ORDER

CHECK IF APPROPRIATE:  INCLUDES TRANSFER/REASSIGN  FIDUCIARY APPOINTMENT  REFERENCE