

**Quezada v Pizarro**

2020 NY Slip Op 32373(U)

July 17, 2020

Supreme Court, New York County

Docket Number: 651434/2020

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. ARLENE P. BLUTH PART IAS MOTION 14

*Justice*

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INDEX NO. 651434/2020

SANTIAGO QUEZADA, SANTIAGO QUEZADA, JR.,  
EUROS EL TINA RESTAURANT LOUNGE AND  
BILLIARDS CORP.

MOTION DATE N/A

MOTION SEQ. NO. 001

Plaintiff,

- v -

**DECISION + ORDER ON  
MOTION**

MARIA J. PIZARRO,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15

were read on this motion to/for DISQUALIFY.

The motion to disqualify plaintiffs' attorney is granted.

**Background**

Plaintiffs own and operate a restaurant in Washington Heights. Defendant apparently owned the restaurant previously and sold it to plaintiffs; after selling it, defendant stayed on and worked as general manager for the restaurant starting in 2010.

Plaintiffs claim that defendant engaged in a scheme to embezzle funds from the restaurant's proceeds. They claim she transferred money to various people around the world and deliberately transferred amounts below the threshold requiring banks to report such transfers to the IRS (\$10,000). Plaintiffs insist that video surveillance footage shows that defendant moved the security camera away from the cash register.

Defendant now moves to disqualify plaintiffs' counsel (Mr. Rodriguez) on the ground that he was her attorney when she sold the restaurant at issue to plaintiffs. She points out that Mr. Rodriguez also represented her husband in a commercial dispute in Fall 2009. In 2010, when she and her husband were selling the restaurant, she hired Mr. Rodriguez to represent them as sellers to these plaintiffs (as buyers). Defendant claims she told Mr. Rodriguez about her personal finances as part of the sale process. She contends she shared personal financial documents with him and information about the finances of the restaurant prior to the sale.

In opposition, Mr. Rodriguez characterizes this motion as a frivolous tactic to delay the case. He downplays his representation of defendant (and her husband) in the sale of the restaurant and contends it was limited to preparation of standard documents. Mr. Rodriguez admits that the payments referenced in the sale documents would be made to his IOLA account, but he contends the parties eventually agreed to handle payments amongst themselves. He insists that he has served as legal counsel for plaintiffs since the sale of the restaurant and argues he knows nothing about the finances of defendant.

In reply, defendant argues that the passage of time since the sale of the restaurant is not dispositive nor is the fact that Mr. Rodriguez claims he doesn't remember anything about defendant's finances. Defendant observes that plaintiffs clearly want to make defendant's finances a central part of this case and that Mr. Rodriguez had access to that information while representing defendant.

## Discussion

The Code of Professional Responsibility prohibits a lawyer from "represent [ing] another person in the same or a substantially related matter in which that person's interests are materially

adverse to the interests of the former client” (*Pellegrino v Oppenheimer & Co., Inc.*, 49 AD3d 94, 97, 851 NYS2d 19 [1st Dept 2008]). “A party attempting to disqualify an attorney . . . must prove: (1) the existence of a prior attorney-client relationship between the moving party and opposing counsel, (2) that the matters involved in both representations are substantially related, and (3) that the interests of the present client and former client are materially adverse. When the moving party is able to demonstrate each of these factors, an irrebuttable presumption of disqualification follows” (*id.* at 98 [internal quotations and citations omitted]).

There is no question that the first and third factors have been met. Mr. Rodriguez represented defendant and is now pursuing a case on behalf of plaintiffs against her. The central question is whether the matters involved are substantially related. “[D]isqualification has been found inappropriate either where there is no substantial relationship [between the issues in the current and former litigation] or where the party seeking disqualification fails to identify any specific confidential information imparted to the attorney”(*id.*).

Here, the Court finds that disqualification is required under these circumstances. Mr. Rodriguez brought a lawsuit concerning purported embezzlement by defendant from a restaurant he helped defendant sell to plaintiffs. Put another way, Mr. Rodriguez represented defendant in selling a restaurant to plaintiffs and now he is representing plaintiffs in an action about that restaurant. While the issue is not exactly the same, there is no question that while representing defendant in selling the restaurant (and apparently securing her position as general manager as part of the deal) he had an obligation to represent defendant’s interests which necessarily involved her finances. His job was to make sure plaintiffs didn’t take advantage of her.

Mr. Rodriguez’s efforts to downplay his access to confidential information and his representation of defendant does not change the fact that there is a clear and obvious conflict.

Whether or not access to that information will prove dispositive as part of this case is besides the point. The purpose of the rules of professional responsibility with respect to conflicts of interest is to avoid situations such as the one here: where a former client has a reasonable fear that information disclosed to an attorney might be used against her. The Court recognizes that disqualification is a harsh remedy. But an attorney must be cognizant of the possibility that a conflict might arise by bringing a case against a former client.

### Summary

Prohibiting conflicts is designed “to fully protect client confidences and secrets . . . and to avoid an appearance of impropriety on the part of the attorney or the law firm” (*Solow v W.R. Grace & Co.*, 83 NY2d 303, 308, 610 NYS2d 128 [1994]). “Whether a conflict actually exists could be determined by a hearing but the rule requires disqualification even when there may not, in fact, be any conflict of interest so that any suggestion of impropriety is avoided” (*id.* at 309).

This Court understands that plaintiffs did not choose Mr. Rodriguez because he may have inside information - after representing defendant in selling the restaurant and staying on as manager, Mr. Rodriguez has represented the plaintiffs and restaurant for many years. However, a former client should not worry that her former attorney might use information against her. There is no question that the causes of action alleged against defendant will necessarily involve her finances, the finances of the restaurant and defendant’s history with the restaurant (both her prior ownership and later employment as general manager). The fact is that selling the restaurant, although not a litigation, involved two adverse sides and Mr. Rodriguez was tasked with safeguarding defendant’s rights and interests against plaintiffs. Those same plaintiffs now want him to zealously represent their interests against defendant about potential wrongdoing at

the restaurant. That gives the appearance of impropriety and the Court cannot permit Mr. Rodriguez to represent plaintiffs in this matter.

Accordingly, it is hereby

ORDERED that the motion to disqualify counsel for plaintiffs is granted and Argilio Rodriguez, Esq., and his firm Rodriguez + Co. are hereby disqualified from representing plaintiffs in this matter, and it is further

ORDERED that counsel for the movant, within 21 days after the entry of this order, shall serve a copy of this order with notice of entry upon counsel for all other parties and upon plaintiffs; and it is further

ORDERED that the action is stayed from this date until 60 days after service of a copy of this order with notice of entry upon counsel for all parties and upon plaintiffs, who shall, within said period, retain another attorney in place of the attorney named above; and it is further

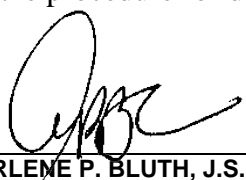
ORDERED that the new attorney retained by plaintiffs shall serve upon all parties a notice of appearance and file same with the Clerk of the General Clerk's Office (60 Centre Street, Room 119) and the Clerk of the Part within said 60-day period via e-filing; and it is further

ORDERED that such filing with the Clerk of the General Clerk's Office and the Clerk of the Part shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)); and it is further

ORDERED that counsel are directed to appear for a conference on October 22, 2020 at 10 a.m. The conference will take place virtually unless otherwise directed and the parties may e-file a discovery order, signed by all sides, for the Court's approval prior to the conference. Approval

of a conference order may obviate the need for the conference. If new counsel for plaintiffs appears and wants to advance the conference date, consult the part rules for the procedure for doing so.

7/17/2020  
DATE

  
ARLENE P. BLUTH, 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