

Amlaur Resources, LLC v Crescendo Asset Mgt. LLC
2023 NY Slip Op 31531(U)
May 4, 2023
Supreme Court, New York County
Docket Number: Index No. 652975/2022
Judge: Andrew Borrok
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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AMLAUR RESOURCES, LLC, BRIAN D. JEDWAB,

INDEX NO. 652975/2022

Plaintiff,

MOTION DATE 11/07/2022

- v -

MOTION SEQ. NO. 002

CRESCENDO ASSET MANAGEMENT LLC, CRESCENDO
ADVISORS INTERNATIONAL LIMITED, FINPAR
INVESTMENTS LLC, CRESCENDO CAPITAL SA

**DECISION + ORDER ON
MOTION**

Defendant.

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29

were read on this motion to/for DISQUALIFY COUNSEL.

Upon the foregoing documents, Amlaur Resources, LLC (**Amlaur**) and Brian D. Jedwab’s (collectively, hereinafter, the **Amlaur Parties**) motion (Mtn. Seq. No. 2) to disqualify Duane Morris LLP (**Duane Morris**) as counsel for Crescendo Asset Management LLC, Crescendo Advisors International Limited, Finpar Investments LLC and Crescendo Capital SA (collectively, hereinafter, the **Crescendo Parties**) is denied because the Amlaur Parties fail to meet their burden in demonstrating a conflict of interests that warrants disqualification.

Prior to this action, Duane Morris represented Amlaur in responding to a third party subpoena (the **Former Representation**) issued in connection with an action then pending in the U.S. District Court for the Eastern District of Virginia, captioned *Williams, et al. v Big Picture Loans, LLC, et al*, Case No. 3:17-cv-00461-REP-RCY. The Former Representation began in November 2018 (NYSCEF Doc. No. 18) and appears to have concluded in June 2019 when Sean Bellew,

the partner handling the Former Representation, left Duane Morris and had the file transferred to

his new firm (NYSCEF Doc. No. 28). Significantly, that lawsuit involved issues totally unrelated to this dispute over certain asset management work.

The Amlaur Parties argue that because Duane Morris gained substantial insight into Amlaur's business operations and access to Amlaur's confidential information during the Former Representation, they should be disqualified as counsel for the Crescendo Parties in the present case under Rules 1.6, 1.7 (a) and 8.4 (c) of the Rules of Professional Conduct (22 NYCRR 1200.0).

In their opposition papers, the Crescendo Parties argue that disqualification is not warranted because (i) the Former Representation lasted merely six months, (ii) the only lawyers who worked on that case, then-Partner Sean Bellew and then-Associate Oderah Nwaeze, left Duane Morris in 2019 and 2020 respectively, (iii) the Former Representation is in no way related to the present case such that it would create any conflict of interests, and (iv) out of precaution, Duane Morris has screened the lawyers and staff involved in the present case from any records concerning the Former Representation. In addition, when Mr. Bellew left Duane Morris for his new firm in June 2019, Duane Morris sent him a letter dated June 26, 2019 (NYSCEF Doc. No. 28) indicating that all file on the Former Representation had been transferred to Mr. Bellew's new firm and that Duane Morris' responsibilities were thereby concluded. Considering that Duane Morris' limited representation of Amlaur in an unrelated matter ended three years prior to the inception of the present case, Duane Morris' conflicts and business intake compliance counsel, Jacqueline Roe, concluded that there would be no conflict of interest for Duane Morris to represent the Crescendo Parties in the present case:

14. The conflict check showed that the client number for Amlaur had been closed in 2019. Based on my review of Firm records, it appeared that, upon his departure from the Firm, Mr. Bellew took the representation of Amlaur in the Former Matter with him to his new firm.

15. I reviewed in the electronic file a letter dated June 26, 2019 by Richard Renck in Duane Morris' Wilmington, Delaware office to Sean J. Bellew at Bellew, LLC. The letter reflected that Amlaur's physical file had been sent to Mr. Bellew, following Mr. Bellew's departure from Duane Morris in 2019. In the letter, Mr. Renck stated that "Our [Duane Morris'] handling and responsibility for this matter is now concluded. Duane Morris LLP considers its client relationship with Amlaur Resources LLC to have ended." I also noted that the letter was countersigned upon receipt of the file by Bellew, LLC. I attach a copy of Mr. Renck's June 26, 2019 letter as Exhibit "E."

16. Given my review of the work proposed to be done for Crescendo, as well as the prior work Duane Morris had performed for Amlaur, I concluded there would be no conflict of interest posed by Duane Morris' representing Crescendo in the dispute with Amlaur.

17. I based my conclusion on several factors, including: (a) Duane Morris' attorney-client relationship with Amlaur had concluded more than three years prior to the proposed Crescendo Engagement; (b) the proposed Crescendo Engagement was not - in any way - related to the legal work Duane Morris lawyers had performed in the past for Amlaur in the Former Matter; (c) the lawyers who had represented Amlaur in the Former Matter had left the firm years prior to the proposed Crescendo Engagement; and (d) Duane Morris had very little information at all in the files I reviewed relating to Amlaur, and none that appeared to me to be material to the proposed Crescendo Engagement

(NYSCEF Doc. No. 27, at 3-4).

Nothing in the record suggests that her conclusions were not correct.

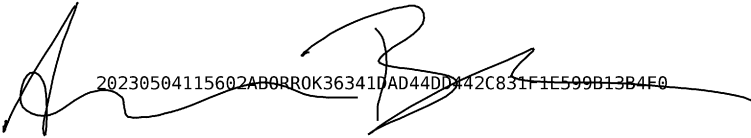
To wit, the right to be represented in ongoing litigation by counsel of one's own choosing should not be abridged absent a clear showing that disqualification is warranted (*Rovner v Rantzer*, 145 AD3d 1016, 1016 [2d Dept 2016]). A party seeking to disqualify counsel for an opposing party on the ground of conflict of interest has the burden of demonstrating (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 (22 NYCRR 1200.0 Rule 1.9 (a); *Tavor v Lane*

Towers Owners, Inc., 197 AD3d 584, 585–586 [2d Dept 2021]). In addition, 22 NYCRR 1200.0 Rule 1.9 (c) prohibits a lawyer from (1) using confidential information of the former client protected by Rule 1.6 to the disadvantage of the former client and (2) revealing confidential information of the former client protected by Rule 1.6, except as otherwise permitted by the Rules.

For the reasons set forth above, the Amlaur Parties simply fail to meet their burden. Therefore, the motion to disqualify counsel must be denied.

It is hereby ORDERED that the Amlaur Parties’ motion (Mtn. Seq. No. 2) to disqualify counsel is denied.

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5/4/2023
DATE

ANDREW BORROK, J.S.C.

CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION

APPLICATION: GRANTED DENIED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE