

Chih-Chen Ma v Wei Li Wang

2023 NY Slip Op 32002(U)

June 14, 2023

Supreme Court, New York County

Docket Number: Index No. 655044/2022

Judge: Lyle E. Frank

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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. LYLE E. FRANK **PART** **11M**

Justice

-----X

CHIH-CHEN MA, NING KAN YANG,

Plaintiff,

- v -

WEI LI WANG, MING TONG, CHINA BUDDHIST
ASSOCIATION

Defendant.

-----X

INDEX NO. 655044/2022

MOTION DATE 06/12/2023

MOTION SEQ. NO. 005

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 005) 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207

were read on this motion to/for DISQUALIFY COUNSEL.

Plaintiffs move pursuant to 22 NYCRR 1200.0 Rule 1.9(a) to disqualify Defendant Wang's counsel.¹ Defendant opposes the motion. For the reasons set forth below, Plaintiffs' motion is denied.

FACTS

Plaintiffs brought this action after Defendants allegedly usurped control of China Buddhist Association (CBA). More specifically, Defendant Wang, whose counsel Plaintiffs seek to disqualify, allegedly breached their fiduciary duty to CBA by removing Plaintiffs and other board members from the association's bank accounts and failing to provide account statements to Plaintiffs upon their request. Defendant Wang, who became CBA member in 2022, is represented by Bill Zou & Associates, PLLC. Counselor Zou briefly represented CBA beginning in September 2010 when CBA members filed a series of suits against Defendant Tung in

¹ The Court would like to thank Chris Markos for his assistance in this matter.

response to a physical assault on CBA property. Counselor Zou was relieved as counsel in March 2011, when the suits were in their procedural infancy; the suits lasted from late 2010 through 2017, when a stipulated settlement agreement was filed with the Court. Plaintiffs contend that this previous representation by Zou on behalf of CBA is grounds for Zou's disqualification.

STANDARD OF REVIEW

Pursuant to 22 NYCRR 1200.0 Rule 1.9(a), "The disqualification of an attorney is a matter that rests within the sound discretion of the Supreme Court." *Trimarco v. Data Treasury Corp.*, 91 A.D.3d 756 [2d Dep't 2012]. In determining disqualification, the Court considers: (1) the existence of a prior attorney-client relationship between the moving party and opposing counsel; (2) the matters involved in both representations are substantially related; and (3) the interests of the present client and former client are materially adverse. *Tekni-Plex, Inc. v. Meyner & Landis*, 89 N.Y.2d 123, 131 [1996].

DISCUSSION

The issue is whether Zou, as a previous attorney for CBA in 2010-11, should be disqualified as counsel for Defendant Wang. Applying the factors from *Tekni-Plex, Inc.*, there is no question that a prior relationship existed between CBA and Zou; however, CBA is both a Plaintiff and a Defendant in this case due to a material disagreement as to which party controls the association. As stated by Zou in his response, "CBA is a passive litigant in this action, it will not play any active role in this matter. . . . it will accept any result from this Court, thereafter it will accept instructions from the prevailing party of this action." The Court agrees with this position; a prior relationship with CBA does not preclude Zou from representing a party claiming

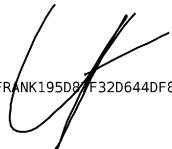
to be a controlling member of the association as it remains unclear who rightfully controls. If Defendant Wang is potentially one of the controlling members, there is no conflict in being represented by an attorney who previously represented their organization.

A possible issue arises in determining if Plaintiff Ma, as the longest standing member of CBA in this case, was represented by Zou in the previous suits. Plaintiffs have only stated that Ma joined CBA in 2011. Zou's response and supporting documents clearly demonstrate that Zou was relieved as counsel in March 2011. While the documentary evidence is unclear whether Ma's tenure at CBA and Zou's representation of the organization overlapped, Zou explicitly stated before the Court that he had never conducted business with Ma or represented Ma in any way, even for CBA. Plaintiffs' counsel had no disagreements on this during oral argument and all the relevant documents on file assert that Ma joined in 2011, without any indication as to when that year.

It should be noted that Plaintiff Yang joined CBA in 2019, eight years after Zou was relieved as CBA's counsel. Plaintiff Yang's potential evidence in support of this motion is limited to the fact that they are simply a current member of CBA.

Even if Plaintiff Ma and Counselor Zou overlapped in their work for CBA, albeit briefly, the circumstances and facts of this case are substantially different from the previous ones Zou worked on for CBA. While Defendant Tung is both a party in this suit and the previously settled suits, the previous litigation revolved around a physical assault on CBA property, whereas this case is about absolute control of CBA as an entity. Furthermore, Zou and Tung were adversaries in the previous suits where Zou represented CBA as Plaintiff against Tung. Accordingly, it is hereby

ADJUDGED that Plaintiffs' motion to disqualify opposing counselor Bill Zou of Bill Zou & Associates, PLLC, is hereby dismissed.


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LYLE E. FRANK, J.S.C.

6/14/2023
DATE

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	REFERENCE