Figaro NYC LLC v 186 Bleecker Prop. Owner LLC
2024 NY Slip Op 30182(U)
January 16, 2024
Supreme Court, New York County
Docket Number: Index No. 150333/2023
Judge: Arlene P. Bluth
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE P. BLUTH** **PART** **14**

Justice

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FIGARO NYC LLC

Plaintiff,

- v -

186 BLEECKER PROPERTY OWNER LLC,

Defendant.

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INDEX NO. 150333/2023

MOTION DATE 01/12/2024

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 99, 100, 101, 119, 120, 121

were read on this motion to/for DISQUALIFY COUNSEL.

Defendant's motion to disqualify the law firm of Anderson Law as counsel for plaintiff is granted.

Background

In this commercial landlord- tenant dispute, defendant (the landlord) seeks to disqualify plaintiff's (the tenant) counsel. It explains that in August 2023, it hired Carla Buchanan, Esq. to be its landlord/tenant attorney for the residential portion of the building. According to defendant, Ms. Buchanan is listed as an "of counsel" to Anderson Law. Defendant observes that it was concerned when, on October 10, 2023, plaintiff hired Anderson Law as counsel in this case. It claims that it was not provided with notice of this representation or a conflict waiver.

Defendant observes that many of plaintiff's claims relate to the residential portion of the building including that the second-floor roof is damaged, that the roof above the residential units is also damaged and that the plumbing in the residential portion has leaks. It argues that it does

not intend to waive the clear conflict at issue here. Defendant contends that it has revealed confidences to Ms. Buchanan and maintains that her firm, Anderson Law, should not be permitted to remain as counsel for plaintiff.

Defendant points out that Ms. Buchanan has access to Anderson Law's internal electronic database and has an Anderson law email address despite plaintiff's insistence that Ms. Buchanan is not affiliated with Anderson Law.

In opposition, plaintiff characterizes Ms. Buchanan as a "contracted vendor" and that she works for Anderson law in a "very limited capacity." It insists that she is far removed enough from Anderson Law so that all ethical guidelines can be followed. It argues that Ms. Buchanan is not a salaried employee and has only one client while at Anderson Law. Plaintiff admits that she has an Anderson Law email address, but does not have an office and only has "very limited access to Anderson Law's filing system."

Plaintiff argues that there is no imputed conflict of interest as Ms. Buchanan was never exposed to any confidential information related to this action. It also argues that the formation of an ethical wall is sufficient to defeat the instant motion. Plaintiff insists that Ms. Buchanan maintains her own firm (Buchanan Law PLLC).

In reply, defendant stresses that Anderson Law may not represent both sides of this litigation and that plaintiff characterizes Ms. Buchanan as a contractor or vendor does not eliminate the conflict issue.

Discussion

Rule 1.7 of the Rules of Professional Conduct provides, in pertinent part, that "Conflict of interest: current clients. (a) Except as provided in paragraph (b), a lawyer shall not represent a

client if a reasonable lawyer would conclude that either: (1) the representation will involve the lawyer in representing differing interests" (22 NYCRR 1200.0).

"The Rules of Professional Conduct prohibit attorneys who are 'associated in a firm' from representing a client when a conflict of interest would preclude any one of them from doing so if he or she were practicing alone (Rules of Professional Conduct [22 NYCRR 1200.0] rule 1.10 [a]). The Rules of Professional Conduct do not define the phrase 'associated in a firm,' but it is well established that its meaning extends beyond partners and associates who are employed by the same firm and includes attorneys with "of counsel" relationships" (*Kelly v Paulsen*, 145 AD3d 1398, 1398-99, 44 NYS3d 263 [3d Dept 2016] [internal quotations and citations omitted]).

Here, there is no question that Ms. Buchanan, who represents the landlord/defendant, is an "of counsel" to Anderson Law, the firm which plaintiff/tenant subsequently hired for this matter. That compels the Court to find that there is a conflict and grant defendant's motion. "Any doubts as to the existence of a conflict of interest must be resolved in favor of disqualification so as to avoid even the appearance of impropriety" (*Gjoni v Swan Club, Inc.*, 134 AD3d 896, 897 [2d Dept 2015]).

The Court observes that plaintiff acknowledges that Ms. Buchanan has an Anderson Law email account and defendant's managing member submits an affidavit in which he observed that Ms. Buchanan held herself out as an 'of counsel' for Anderson Law (NYSCEF Doc. No. 101, ¶ 3). Therefore, it was defendant's understanding that Ms. Buchanan was associated with Anderson Law and nothing submitted on this motion sufficiently disabused the Court of that assertion. Plaintiff did not argue that this was some sort of misunderstanding (such as that Ms. Buchanan did not actually work for Anderson law); instead, it attempted to make a distinction

about how it internally views Ms. Buchanan's relationship with Anderson Law. That does not compel the Court to deny the motion.

Plaintiff's attempt to downplay Ms. Buchanan's role and characterize her as a vendor is of no moment. Plaintiff did not cite any binding caselaw for the proposition that conflicts can be avoided simply by giving an attorney a classification as a "vendor." In other words, the Court simply cannot overlook the fact that Ms. Buchanan, who represents defendant with other matters related to this building, is an of counsel with Anderson Law while Anderson Law represents plaintiff, a tenant, in this case. Critically, Ms. Buchanan represents defendant/landlord with respect to residential landlord-tenant issues, including matters in this very building. Those issues have a direct overlap with the disputes in this litigation, including the condition of the roof and the plumbing. Defendant should be entitled to reveal confidences to its attorney about the building without worrying that they might be disclosed to plaintiff's attorney. The appearance of impropriety compels the Court to grant the motion.

Plaintiff's reliance on an NYSBA opinion (Opinion 715) is misplaced as that opinion concerns potential conflicts from a contract lawyer. Plaintiff did not sufficiently show that Ms. Buchanan is a contract attorney (plaintiff did not, for instance, submit a copy of an agreement defining the scope of Ms. Buchanan's work for plaintiff). Nor does the Court view that opinion to sanction this conflict.

Summary

The instant motion involves a request to disqualify a law firm where that firm represents both the plaintiff and the defendant. It is axiomatic that such a conflict compels the Court to grant the motion. This is not a situation, as is often the case, where a potential conflict arises

because of a former client of an attorney at a firm. In that circumstance, a law firm may create an ethical wall shielding that attorney from that litigation. That outcome, raised by plaintiff in its opposition, is not appropriate here as Ms. Buchanan is actively representing defendant.

Here, Ms. Buchanan was hired by defendant *before* plaintiff hired Anderson Law. And she continues to represent plaintiff, using an Anderson Law email address, in landlord/tenant matters. There is no way for this Court to avoid that clear and obvious conflict. Because defendant has not waived this conflict, the Court disqualifies Anderson Law.

The Court observes that although it is briefly staying this matter to permit plaintiff to obtain new counsel, that stay does not affect plaintiff's obligation to pay rent.

Accordingly, it is hereby

ORDERED that the motion by defendant to disqualify plaintiff's counsel, Anderson Law from representing plaintiff is granted; 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 plaintiff; and it is further

ORDERED that the action is stayed from this date until 30 days after service of a copy of this order with notice of entry upon plaintiff, who shall, within said period, retain another attorney in place of the attorney named above; and it is further

ORDERED that, to clarify, there is NO STAY in the obligation to pay rent; and it is further

ORDERED that the new attorney retained by plaintiff shall serve (electronically) 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 30-day period; 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)].

See NYSCEF Doc. No. 98 concerning the next conference. If plaintiff fails to get new counsel (as it must because it is a corporate entity) by the time of the next conference, then the Court may strike both plaintiff's complaint and reply to defendant's counterclaims at the next conference.

1/16/2024							
DATE					ARLENE P. BLUTH, J.S.C.		
CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
	X	GRANTED		DENIED		GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE