

Obeid v Swany
2025 NY Slip Op 35411(U)
February 11, 2025
Supreme Court, Nassau County
Docket Number: Index No. 600310/2024
Judge: Sharon M.J. Gianelli
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU – Commercial Division Part 7
Present: Hon. Sharon M.J. Gianelli

AZZAM OBEID, individually and as a member of
HURRICANE IV, LLC,

X

Index No.: 600310/2024

Motion Seq. 001

Decision and Order

Plaintiff,

-against-

KENNETH SWANY, DANIEL PERLA and
HURRICANE IC, LLC,

Defendants.

X

Papers submitted:

Notice of Motion, Memorandum of
Law, Affirmation and Exhibits in Support_____X

Memorandum of Law, Affirmation
and Exhibits in Opposition_____X

Memorandum of Law, Affirmation
and Exhibit in Reply_____X

Plaintiff moves by Notice of Motion for an order disqualifying Gary Schoer, Esq. as an attorney for Defendant Kenneth Swany and Hurricane IC, LLC (“Swany” and “Hurricane”); and disqualifying Eric Gruber, Esq. and Cooperman, Lester Miller & Carus, PC (collectively “Cooperman”) as attorneys for Defendant, Daniel Perla (“Perla”).

This action was commenced on January 5, 2024, by filing of a Summons and Complaint alleging *inter alia*, breach of contract, breach of fiduciary duty and unjust enrichment. Plaintiff also seeks a dissolution of Company Defendant Hurricane. Plaintiff filed the instant motion seeking to disqualify Defendants’ counsel pursuant to Rule 1.9 of the Professional Rules of Conduct. Defendants oppose the motion.

Factual Summary

In 2015, Defendants, Perla and Swany, along with Plaintiff, formed Hurricane to acquire storm-damaged properties from New York State. Hurricane would then rebuild, renovate, and rehabilitate such properties in order to resell them for a profit. Defendant Swany was responsible for the construction and renovation of the properties. Defendant Perla was responsible for Hurricane's bookkeeping and finances. Plaintiff, as investor, was to provide financing for Hurricane's projects. Hurricane acquired nine (9) properties for rehabilitation and resale. Plaintiff invested approximately \$3,145,000.00 in Hurricane. Plaintiff received approximately \$700,000.00 in return. Plaintiff alleges that approximately \$2,400,000.00 of Plaintiff's investment is unaccounted for. Plaintiff states that upon information and belief, Schoer and Cooperman prepared Hurricane's Operating Agreement, of which Plaintiff received an incomplete copy from Defendants.

Plaintiff argues that Schoer previously represented Hurricane and its members, including Plaintiff, in connection with the purchase and sale of Hurricane's properties which are the subject of this action. Additionally, Perla and Plaintiff had a "long-standing business relationship" as Plaintiff invested in several business ventures introduced to him by Perla. Perla and Plaintiff remain "partners" in at least one such venture other than Hurricane. Regarding the business ventures with Perla, Plaintiff understood that Cooperman was acting as his counsel. Plaintiff alleges that Cooperman represented Perla and Plaintiff in those ventures and that Cooperman may have received sensitive and confidential information from Plaintiff in connection with those ventures.

Law/Analysis

“Whether to disqualify an attorney is a matter which lies within the sound discretion of the court” (*Hele Asset, LLC v. S.E.E. Realty Assoc.*, 106 AD3d 692, 693 [2d Dept. 2013]). “A party’s entitlement to be represented in ongoing litigation by counsel of his or her own choosing is a valued right which should not be abridged absent a clear showing that disqualification is warranted. While the right to choose one’s counsel is not absolute, disqualification of legal counsel during litigation implicates not only the ethics of the profession but also the parties’ substantive rights, thus requiring any restrictions to be carefully scrutinized” (*see Ike and Sam’s Group, LLC v. Brach*, 138 AD3d 690, 691-92 [2d Dept. 2016]) (internal quotations omitted).

A party seeking disqualification of an adversary’s attorney must demonstrate: 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) the interests of the present client and former client are materially adverse (*Sessa v. Parrotta*, 116 AD3d 1029, 1029 [2d Dept. 2014]). The movant seeking to disqualify a law firm, or an attorney, bears the burden to show sufficient proof to warrant such a determination (*Hele Asset, LLC*, 106 AD3d at 693).

Here, while there is ambiguity as to whether Schoer and Cooperman previously represented Plaintiff in prior matters, Plaintiff failed to meet his burden of establishing that those prior matters are substantially related to the instant action. Plaintiff’s vague allegation that Schoer and Cooperman gained confidential information, without more,

does not establish that Schoer and Cooperman obtained confidential information of Plaintiff warranting disqualification.

Rule 3.7 of the Rules of Professional Conduct provides that, unless certain exceptions apply, “[a] lawyer shall not act as advocate before a tribunal in a matter in which the lawyer is likely to be a witness on a significant issue of fact (see 22 NYCRR 1200.00 rule 3.7[a]). In order to disqualify counsel on the ground that he may be called as a witness, the movant must demonstrate that (1) the testimony of the opposing party’s counsel is necessary to his or her case, and (2) such testimony would be prejudicial to the opposing party (*Trimarco v. Data Treasury Corp.*, 91 AD3d 756 [2d Dept. 2012]). Here, Plaintiff fails to demonstrate that Schoer and Cooperman’s testimony is necessary or that their testimony would be prejudicial to Defendants Hurricane, Swany and Perla.

Accordingly,

It is

ORDERED, that Plaintiff’s motion to disqualify Gary Schoer, Esq. as attorney for Defendant Kenneth Swany and Hurricane IC, LLC, is Denied; and

It is

ORDERED, that Plaintiff’s motion to disqualify Eric Gruber, Esq. and Cooperman, Lester Miller & Carus, PC as attorneys for Defendant, Daniel Perla, is Denied; and

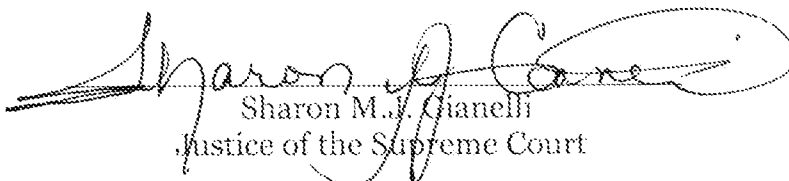
It is

ORDERED, that the parties appear for a Conference before this Court on March 19, 2025, at 11:00 a.m.

Any application not specifically ruled upon herein is denied.

This constituted the Decision and Order of the Court.

Dated: Mineola, New York
February 11, 2025



Sharon M. J. Gianelli
Justice of the Supreme Court

ENTERED

Feb 19 2025

NASSAU COUNTY
COUNTY CLERK'S OFFICE