Heun v Friedman LLP

2026 NY Slip Op 30119(U)

January 7, 2026

Supreme Court, New York County

Docket Number: Index No. 654730/2025

Judge: Lyle E. Frank

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LYLE E. FRANK** **PART** **11M**

Justice

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DOUGLAS J. HEUN

Plaintiff,

- v -

FRIEDMAN LLP,

Defendant.

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INDEX NO. 654730/2025

MOTION DATE 12/15/2025

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 34, 35, 36, 37, 38, 39, 40, 41, 42, 45, 46, 47, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65

were read on this motion to/for DISQUALIFY COUNSEL.

Upon the foregoing documents, the motion is granted.

Background

Plaintiff Heun was a partner in the defendant firm Friedman LLP, and in August of 2022 the parties executed a Retirement Payment Statement agreement ("RPS"). The RPS obligated Defendant to pay four annual installments to Plaintiff, beginning in September of that year. Defendant made the first two payments but has since refused to make the final two. Plaintiff filed this underlying proceeding in August of 2025, seeking to enforce the RPS. Defendant failed to timely appear, and in September of that year Plaintiff obtained a partial default judgment.

In October of 2023, both Plaintiff and Defendant were named as co-defendants in a malpractice action in New Jersey (the "New Jersey Action"). There, the parties were both initially represented by the firm Milber, Makris, Plousadis & Seiden, LLP ("MMPS"). Given the nature of the claims asserted in that action, the co-defendants' interests were not aligned, and on November 24, 2025, the court in the New Jersey Action disqualified MMPS as conflicted.

Defendant here is represented by Joseph J. Cooke, Esq., who is Of Counsel to MMPS but also operates under Joseph J. Cooke PLLC. Mr. Cooke has also been involved in settlement discussions between Plaintiff and Defendant regarding the New Jersey Action, prior to MMPS being disqualified. Defendant has separately moved to vacate the partial default. In those papers, Mr. Cooke has referred to the New Jersey Action and the accompanying facts and uses them as a defense against liability in this action for breach of the RPS. Plaintiff's opposition papers to the vacatur order to show cause did not raise the issue of disqualification, but he now moves to disqualify Defendant's counsel.

Discussion

In this present motion, Plaintiff seeks to have Mr. Cooke disqualified based on the conflict created with the New Jersey Action. Plaintiff argues that Mr. Cooke is disqualified due to the imputed conflict from the New Jersey Action. Plaintiff also argues that Mr. Cooke is independently disqualified due to Rules 1.9 and 1.7 of the New York Rules of Professional Conduct. Defendant opposes the motion, arguing that the New Jersey Action and this one are not substantially related and that Mr. Cooke's relationship with MMPS is such that does not impute a conflict.

Mr. Cooke's 'Of Counsel' Status Does Not Forestall the Imputation of Conflict

Under Rule 1.10(a) of the New York Rules of Professional Conduct, one firm's lawyer's conflict is imputed to the other lawyers "associated" with the firm. Defendant argues that Mr. Cooke is not "associated" with MMPS, because the nature of the 'Of Counsel' relationship is largely one of shared rent, expenses, and secretarial services. But Mr. Cooke uses a MMPS email address and paralegal in this matter, has sent letters on MMPS letterhead, and has referred to himself in pleadings in other proceedings as "a member of the law firm of Milber Makris

Plousadis & Seiden, LLP." The Court is convinced that Mr. Cooke is sufficiently associated with MMPS as to satisfy the imputation requirement.

As the New Jersey court held, due to conflicting interests the same firm could not represent Mr. Heun and Freidman. The general rule is that a "lawyer may not both appear for and oppose a client on substantially related matters when the client's interests are adverse." *Solow v. W. R. Grace & Co.*, 83 N.Y.2d 303, 306 [1994]. Defendant here argues that the two actions are not substantially related, but this argument is belied by the fact that Defendant raises the New Jersey Action and the associated facts as a defense to this proceeding. The two actions are therefore clearly substantially related, thus making MMPS's representation of both parties there up until late November 2025 and MMPS's Of Counsel concurrent representation of Defendant here inappropriate.

The Conflict Created by the New Jersey Action Has Not Been Cured, Waived, or Mooted

Defendant argues that even if there was a conflict, the fact that MMPS is no longer representing the parties in the New Jersey Action renders the need to disqualify Mr. Cooke here moot. But as the Court of Appeals noted, "an attorney must avoid not only the fact, but even the appearance, of representing conflicting interests." *Cardinale v. Golinello,* 43 N.Y.2d 288, 296 [1977]. Here, the appearance of representation of conflicting interests has not been mooted by the disqualification in the New Jersey Action, given the temporal and subject matter overlap of the two actions. The fact that partway through this proceeding Plaintiff became a former client of MMPS instead of a current client does not cure the conflict created. Furthermore, the Court of Appeals has also noted that "[b]ecause dual representation is fraught with the potential for irreconcilable conflict, it will rarely be sanctioned even after full disclosure has been made and the consent of the clients obtained." *Greene v. Greene,* 47 N.Y.2d 447, 451 – 52 [1979]. Here,

there has been no consent by Mr. Heun obtained, further emphasizing the need to avoid the appearance of impropriety caused by the dual representation.

Defendant also argues that because Mr. Heun's New Jersey counsel was likely aware of Mr. Cooke's association with MMPS, and has not raised the matter until now, the conflict has been constructively waived. This argument fails, however, in part because withdrawal is mandatory for conflicted dual representation scenarios. Neither does the Court find that the record supports a finding of constructive waiver due to delay or silence. Plaintiff's New Jersey counsel clearly objected to Defendant's representation by an attorney associated with MMPS, as can be seen through said counsel's affirmation and email exhibits. Nor is the Court convinced that such a conflict as is the case here could be waivable through delay or silence, as opposed to a clear and knowledgeable waiver. Accordingly, it is hereby

ADJUDGED that the motion is granted; and it is further

ORDERED that Milber, Makris, Plousadis & Seiden, and Joseph J. Cooke, Esq., is hereby disqualified from representing defendant in this matter, and it is further

ORDERED that counsel for the movant, within 7 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 defendant; 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 counsel for all parties and upon defendant, 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 defendant 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 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).

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1/7/2026
DATE

LYLE E. FRANK, 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