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MAR 29 2016
R. POSTELL
COMMERCE PROGRAM

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION—CIVIL

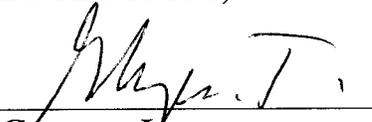
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| WEIR & PARTNERS, LLP | : | May Term, 2015 | |
| | : | | RECEIVED |
| Plaintiff | : | Case No. 00874 | MAR 28 2016 |
| | : | | ROOM 521 |
| v. | : | Commerce Program | |
| MEADOWS INVESTMENTS, LLC | : | | |
| | : | | |
| Defendant | : | Control No. 16023351 | |

ORDER

AND NOW, this 28th day of March, 2016, upon consideration of the motion to disqualify counsel filed by plaintiff Weir & Partners, LLP, the answer in opposition of defendant Meadows Investments, LLC, the respective *memoranda* of law, and the exhibits attached to the motion and answer, it is **ORDERED** that the motion is **GRANTED**: Mr. Edward T. Kang, Esquire and the law firm of Kang Haggerty and Fetbroyt, LLC, are **DISQUALIFIED** from acting as counsel of defendant Meadows Investments, LLC.

This action is placed on **DEFERRED STATUS** for a period of sixty days from the entry of this **ORDER** to allow defendant Meadows Investments, LLC an opportunity to engage new counsel.

BY THE COURT,


GLAZER, J.

Weir & Partners Llp Vs -ORDOP



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| <i>Plaintiff</i> | : | Case No. 00874 |
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| MEADOWS INVESTMENTS, LLC | : | |
| | : | |
| <i>Defendant</i> | : | Control No. 16023351 |

MEMORANDUM OPINION

Plaintiff, Weir & Partners, LLP (“W&P”), is a law firm based in Philadelphia, Pennsylvania. Defendant, Meadows Investment, LLC (“Meadows”), is a limited liability company based in Pennsylvania. On May 1, 2011, Meadows and W&P entered into a written “Fee Agreement,” whereby W&P undertook the task of representing Meadows in a legal action against certain defendants (the “Wiktorchiks”). The Fee Agreement provided that if the action settled before trial, W&P was entitled to fees equal to 1/3 of the net recovery.¹ The Fee Agreement was executed on behalf of W&P by Mr. Edward T. Kang, Esquire (“Kang”).²

On April 3, 2013, the legal action was settled and a consent judgment was entered in favor of Meadows in the amount of \$300,000.00. Under the terms of the consent judgment, Meadows would receive title to real property owned by the Wiktorchiks. In turn, Meadows agreed to immediately list the real property for sale, and use the

¹ Fee Agreement, Exhibit C to plaintiff’s motion to disqualify counsel of defendant.

² Id.

proceeds thereof to extinguish the \$300,000.00 judgment entered against the Wiktorchiks, and pay the legal fees owed to W&P.³

On April 15, 2013, Kang sent an e-mail to W&P. The e-mail informed W&P that the legal action involving Meadows had settled for \$300,000.00, W&P was entitled to a contingent fee from Meadows in the amount of \$100,000, and the fee would become payable to W&P after Meadows sold the real property as required under the consent judgment.⁴ The e-mail also stated as follows:

When we [W&P and Kang] receive our fees in this case in the next 3-6 months, I suggest W&P distribute my portion of fees from our recovery and take the remainder. From the \$100,000 fees recovery, let's say my portion of the fees (based on credit given to me as the origination attorney and as a working attorney) is \$30,000 (this is a guess as I don't know the amount), I suggest that I get paid this amount (\$30,000) and the Firm [K&P] the remainder.⁵

In May 2013, Kang left the law firm of W&P and formed a new law firm named Kang Haggerty and Fetbroyt, LLC ("KHF").

On May 8, 2015, W&P commenced the instant action against Meadows. In the complaint, W&P alleges that Meadows failed to pay the \$100,000.00 owed to W&P pursuant to the Fee Agreement.⁶ On June 17, 2015, Meadows filed its answer with new matter to the complaint of W&P. In the new matter, Meadows asserts that the property remains unsold because an unsatisfied "Federal Lien" of nearly \$1.6 million encumbers title to the property.⁷ In the new matter, Meadows assert that Kang "negligently advised

³ Consent judgment and Settlement Agreement and Mutual Release, Exhibit D to plaintiff's motion to disqualify counsel.

⁴ E-mail dated April 15, 2013 Exhibit E to plaintiff's motion to disqualify counsel.

⁵ *Id.*

⁶ Complaint, ¶¶ 9–11.

⁷ At the time Meadows agreed to the consent judgment, Kang, as counsel thereof, knew that a federal lien encumbered title to the property identified in the judgment. See e-mail of Kang dated January 17, 2013. This e-mail states that "the Wiktorchik's property ... shows the government's lien."

[Meadows] that ... the Property could be sold free and clear of the federal lien,” and that this advice “was wrong.”⁸ The law firm representing defendant Meadows in the instant action is KHF –the same law firm which Kang formed in 2013 after leaving W&P.

On February 23, 2016, plaintiff W&P filed the instant motion to disqualify Kang and KHF as counsel of defendant. On March 14, 2016, defendant Meadows filed its answer in opposition to W&P’s motion to disqualify. Defendant Meadows incorporated into this answer a cross-motion to disqualify the law firm of W&P from acting as counsel of plaintiff W&P.⁹ The cover sheet to the answer with cross-claim of defendant Meadows identifies the filing as “MTANS” –an acronym meaning “answer to a motion.” Defendant Meadows has not provided the court with a cover sheet identifying the existence of a cross-motion to disqualify plaintiff’s counsel.¹⁰

DISCUSSION¹¹

The answer to K&P’s complaint asserts in its new matter that W&P negligently gave wrong legal advice to Meadows, and that Meadows, relying upon the wrong advice, agreed to the terms of the settlement and consent judgment in the underlying action. Meadows asserts that by relying upon the wrong legal advice, it received title to property encumbered by the Federal Lien, and that this property is incapable of producing sufficient proceeds to satisfy the underlying settlement and consent judgment, as well as

⁸ New matter, ¶¶ 21–23.

⁹ The cross-motion to disqualify of Meadows lacks a specific motion control number because it was not filed as an independent motion; rather a purported cross-motion to disqualify was incorporated into the answer filed by Meadows in opposition to W&P’s motion to disqualify.

¹⁰ “A Petition/Motion Cover Sheet ... must be attached to all Petitions, Motions, Answers and Responses, except for Discovery Motions and Motions for Extraordinary Relief, and Responses thereto.” Phila. R. 205.2(b)(2). In this case, Meadows has failed to provide a cover-sheet identifying the existence of a cross-motion to disqualify plaintiff’s counsel; for this reason, the court finds that the cross-motion for disqualification of Meadows fails because it was not properly filed.

¹¹ “A motion for disqualification is ... an injunctive order issued in a case already pending.” Maritrans GP Inc. v. Pepper, Hamilton & Scheetz, 529 Pa. 241, 256-57; 602 A.2d 1277, 1285 (Pa. 1992).

the legal fees claimed by W&P.

The foregoing assertions by Meadows imply the existence of a concurrent conflict of interest between Kang, partner in the law firm currently representing Meadows, and Meadows itself. This concurrent conflict arises out of at least two distinct possibilities: first, Kang's interest in the recovery of his portion of the underlying contingent fee is adverse to the interests of Meadows because Meadows instantly seeks to avoid payment thereof; and second, Kang could be sued by Meadows for allegedly providing wrong legal advice in the underlying action, should Kang's new law firm, KHF, fail in the instant action to defeat W&P's efforts to recover legal fees allegedly stemming from the underlying action. Based on the foregoing, it may be difficult or impossible for KHF to provide Meadows with detached advice in the instant action while a potential malpractice law suit looms against Kang, a founding partner of KHF. To determine whether the concurrent conflict makes it difficult or impossible for KHF to provide Meadows with detached advice, this court will examine the pertinent Pennsylvania Rules of Professional Conduct.

The Pennsylvania Rules of Professional Conduct instruct as follows:

Rule 1.7. Conflict of Interest: Current Clients

- (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

* * *

There is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities ... by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest ... a lawyer may represent a client if:

* * *

(4) each affected client gives informed consent.¹²

A first reading of the foregoing rule suggests that KHF and Kang should not necessarily be disqualified as counsel of Meadows, as long as Meadows provides them with an informed consent.¹³ However, the analysis does not end here. Explanatory Comment [10] to Pa. R.P.C. 1.7 states as follows:

The lawyer's own interest should not be permitted to have an adverse effect on representation of a client. For example, if the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client **detached advice**.... In addition, a lawyer may not allow related business interests to affect representation.¹⁴

In this case, the court perceives the existence of at least two potential problems: first, Kang stands in an adverse position against Meadows because his new law firm, as counsel on behalf of Meadows, is called upon by Meadows to defeat Kang's underlying claims to legal fees; and second, Kang could conceivably become the target of a legal malpractice law suit asserted by Meadows. Specifically, Kang could become the target of a malpractice law suit by Meadows if his new law firm, KHF, fails to stop W&P's attempt to recover legal fees allegedly earned in the underlying action.

Explanatory Comment [10] to Pa. R.P.C. 1.7 convinces the court that, with or without the informed consent of Meadows, KHF may find it difficult or impossible to

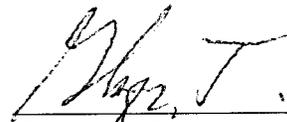
¹² Pa. R.P.C. 1.7(a), 1.7(b)(4).

¹³ Explanatory Comment [20] to Pa. R.C.P. 1.7(b) states that "the client's [informed] consent need not be confirmed in writing to be effective." However, the same comment also states that "a writing tends to impress upon clients the seriousness of the decision the client is being asked to make...." Id.

¹⁴ Explanatory Comment [10] to Pa. R.P.C. 1.7 (emphasis supplied).

give Meadows “detached advice” in the instant action. For this reason, the motion to disqualify Edward T. Kang, Esquire, and the law firm of Kang Haggerty and Fetbroyt, LLC, is granted: Edward T. Kang, Esquire, and the law firm of Kang Haggerty and Fetbroyt, LLC, are disqualified from acting as counsel of defendant Meadows Investments, LLC.¹⁵

BY THE COURT,



GLAZER, J.

¹⁵ “It is axiomatic that an attorney who undertakes representation of a client owes ... the highest duty of honesty, fidelity, and confidentiality. **Such duty** demands undivided loyalty and **prohibits the attorney from engaging in conflicts of interest...**” Kirschner v. K & L Gates LLP, 2012 Pa. Super. 102; 46 A.3d 737, 757 (Pa. Super. 2012) (emphasis supplied).