

Cames v Craig

2016 NY Slip Op 33076(U)

November 22, 2016

Supreme Court, Kings County

Docket Number: Index No.: 512752/2015

Judge: Carl J. Landicino

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 81 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 22nd day of November, 2016.

P R E S E N T:

HON. CARL J. LANDICINO,

Justice.

-----X

TATIANA CAMES,

Plaintiffs,

Index No.: 512752/2015

DECISION AND ORDER

- against -

RANDOLPH CRAIG, and FLOYD JOSEPH

Defendants.

Motion Sequence, #1

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Recitation, as required by CPLR §2219(a), of the papers considered in the review of this motion:

	<u>Papers Numbered</u>
Notice of Motion/Cross Motion and	
Affidavits (Affirmations) Annexed.....	1/2 _____
Opposing Affidavits (Affirmations).....	3. _____
Reply Affidavits (Affirmations).....	4. _____

Upon the foregoing papers, and after oral argument, the Court finds as follows:

This action relates to a motor vehicle accident that occurred on July 23, 2014. Plaintiff Tatiana Cames (hereinafter “the Plaintiff”) was a passenger in a car she owned that was being operated by Defendant Randolph Craig (hereinafter “Defendant Craig”). The Plaintiff’s vehicle collided with a vehicle owned and operated by Defendant Floyd Joseph (hereinafter “Defendant Joseph”).¹ The Plaintiff seeks damages for her injuries allegedly sustained by her as a result of the afore-referenced accident.

¹ Apparently, Defendant Joseph has not appeared in this action.

Defendant Craig now moves for an Order: (1) dismissing the action pursuant to CPLR §3211(a)(5) and General Obligations Law 15-108, as a result of the Plaintiff's accepted settlement with and release of Defendant Craig; and (2) pursuant to Disciplinary Rule 5-105, disqualifying the law firm of Gratt & Associates from representing the Plaintiff in this action. The movant avers that the Plaintiff released Defendant Craig from all claims and demands in relation to the subject accident by execution of a "Full Release" and acceptance of the sum of Five Hundred (\$500.00) dollars . Further, Defendant Craig contends that the Court should disqualify the Plaintiff's law firm from continuing in this case in that the Plaintiff's law firm had previously represented both the Plaintiff and Defendant Craig's interest in relation to this matter.

The Plaintiff opposes the motion. Specifically, the Plaintiff argues that although the Plaintiff signed a release, it would be against public policy to enforce that release. What is more, the Plaintiff argues that the release was signed without the assistance of counsel, and that there were mutual mistakes of law and fact that should prevent this Court from enforcing the terms of that release as against the Plaintiff. Also, Plaintiff's counsel does acknowledge the common representation of the Plaintiff and Defendant Craig, but contends that it was "...for a short period of time..." and the firm "...did not obtain any sort of information that could prejudice [Defendant Craig] in prosecuting the instant matter..." (Affirmation in Opposition, Paragraph 4).

In general, "[a] party's entitlement to be represented in ongoing litigation by counsel of his own choosing is a valued right which should not be abridged absent a clear showing that disqualification is warranted...and the movant bears the burden on the motion." *Olmoz v. Town of Fishkill*, 258 A.D.2d 447, 447, 684 N.Y.S.2d 611, 612 [2nd Dept, 1999]. A movant seeking to disqualify counsel must not only show the existence of a prior attorney-client relationship, that the matters are substantially related and that the interests of the parties are adverse, but must also

provide evidence that client confidences were provided as part of that prior representation. *See Jamaica Pub. Serv. Co. v. AIU Ins. Co.*, 92 N.Y.2d 631, 707 N.E.2d 414 [1998]; *Tekni-Plex, Inc. v. Meyner & Landis*, 89 N.Y.2d 123, 674 N.E.2d 663 [1996]. “Indeed, DR 5-108(a) mandates disqualification where these three conditions are met.” *Falk v. Chittenden*, 11 N.Y.3d 73, 78, 893 N.E.2d 116, 119 [2008].

Turning to the merits of that aspect of Defendant Craig’s motion made pursuant to Disciplinary Rule 5-105 (now codified under Rules of Professional Conduct [22 NYCRR 1200.0], see Rules 1.7(a), 1.8(b), 1.9) this Court finds that the Defendant has provided clear and convincing evidence that all three conditions cited in the above cases have been met and therefore counsel to Plaintiff must be disqualified. In fact, counsel to the Plaintiff does not deny that the three conditions have been met, but merely argues that no information obtained from Mr. Craig could serve to prejudice his position and that the representation was short lived. However, as held by the Court of Appeals in both *Tekni-Plex* and *Falk*, once all three conditions are met, “the irrebuttable presumption of disqualification arises.” *Falk v. Chittenden*, 11 N.Y.3d 73, 78, 893 N.E.2d 116, 119 [2008]; *Tekni-Plex, Inc. v. Meyner & Landis*, 89 N.Y.2d 123, 674 N.E.2d 663 [1996]. What is more, in the instant proceeding, Defendant Craig attaches a letter (Motion, Exhibit F) indicating that Plaintiff’s counsel has completed a No-Fault Application for Defendant Craig. Plaintiff’s firm represented, in relation to this case, the person who they are now suing. In addition, Defendant Craig was the driver and the Plaintiff was a passenger. The initial representation of both in itself raised the possibility of a conflict. *See Shelby v. Blakes*, 129 A.D.3d 823, 825, 11 N.Y.S.3d 211, 213 [2nd Dept, 2015]. As a result, disqualification of Plaintiff’s counsel is appropriate.² In transferring the file to new counsel, Gratt & Associates

² Defendant’s Craig’s application to dismiss pursuant to CPLR §3211(a)(5) and General Obligations Law 15-108 is accordingly denied without prejudice to renew.

should ensure that they are in compliance with the mandates of the Rules of Professional Conduct, providing that no secrets or confidences gained through his prior representation of the Plaintiff are disclosed herein. See Rule 1.6 generally and Rule 1.9.(c)1 & 2. See *Detrano v. Akpinar*, 21 Misc. 3d 1136(A), 875 N.Y.S.2d 819 [Nassau Sup. Ct. 2008].

Based on the foregoing, it is hereby ORDERED as follows:

Defendant Craig's application to disqualify Gratt & Associates, P.C. from representing Plaintiffs herein and to enjoin Gratt & Associates, P.C. from disclosing the contents of any of Defendant's files or information learned in the course of his representation of Defendant is granted.

That this action is stayed until the next conference of this matter to be held on January 11, 2017 at 9:30 a.m. at which time the parties shall report on the status of this matter.

Defendant Craig's application seeking to dismiss the complaint pursuant to CPLR §3211(a)(5) is denied without prejudice to renew.

The foregoing constitutes the Decision and Order of the Court

Date: November 22, 2016

ENTER:


Carl J. Landicino
HON. S.C.

FILED
COUNTY CLERK
2016 DEC -5 AM 11:03