

Poshnansky v 5023 15th Ave. Assoc., LLC
2017 NY Slip Op 30545(U)
March 17, 2017
Supreme Court, Kings County
Docket Number: 514676/2015
Judge: Edgar G. Walker
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE KINGS

-----X
RUTH POSHNANSKY,

Plaintiff,

Hon. Edgar Walker
Part 90

-against-

Index No. 514676/2015

5023 15th AVENUE ASSOCIATES, LLC,
JUDAH SEPTIMUS and ARON GERTZ,

Defendants.

-----X
CHAIM SEPTIMUS,

Plaintiff,

-against-

Index No. 514648/2015

SCHOLES STREET ASSOCIATE GROUP, LLC,
JUDAH SEPTIMUS and ARON GERTZ,

Defendants.

-----X
LOUIS ZAUDERER,

Plaintiff,

-against-

Index No. 514667/2015

90 NORTH 5TH ST. LLC,
JUDAH SEPTIMUS and ARON GERTZ

Defendants.

-----X
NAT HIRSCHFELD,

Plaintiff,

-against-

Index No. 514673/2015

5023 15TH AVENUE ASSOCIATES, LLC,
JUDAH SEPTIMUS and ARON GERTZ

Defendants.

-----X

SOL GLUCK,

Plaintiff,

-against-

Index No. 500744/2016

5023 15th AVENUE ASSOCIATES, LLC,
JUDAH SEPTIMUS and ARON GERTZ,

Defendants.

-----X
MARC HIRSCHFELD and NAOMI HIRSCHFELD,

Plaintiff,

-against-

Index No. 514646/2015

SCHOLES STREET ASSOCIATE GROUP, LLC,
JUDAH SEPTIMUS and ARON GERTZ,

Defendants.

-----X
CAROLINE LICHTENSTEIN,

Plaintiff,

-against-

Index No. 500449/2016

5023 15th AVENUE ASSOCIATES, LLC,
JUDAH SEPTIMUS and ARON GERTZ,

Defendants.

-----X
DANIEL MECHANIC and DEVORAH MECHANIC,

Plaintiff,

-against-

Index No. 514656/2015

90 NORTH 5TH ST. LLC,
JUDAH SEPTIMUS and ARON GERTZ,

Defendants.

-----X

The portions of Defendant Gertz's motions seeking to disqualify the plaintiffs' counsel are denied. The portions of Defendant Gertz's motions seeking dismissal are granted.

These actions were commenced by the plaintiffs, to recover on promissory notes, which the plaintiffs claim were guaranteed by the defendants Gertz and Septimus. Previously, the plaintiffs moved for summary judgment pursuant to CPLR 3213, but later withdrew those motions. Questions had been raised regarding the authenticity of the guaranties upon which the CPLR 3213 motions were based.

These actions were commenced at approximately the same time by various lenders to the Gertz--Septimus entities. In each action the respective plaintiffs are represented by the same counsel, Savad Churgin, who has represented and continues to represent defendant Septimus in litigation against defendant Gertz. The plaintiffs argue that they and defendant Septimus have consented to the representation.

Rule 1.7 of the Rules of Professional Conduct governs conflicts of interest involving current clients and states:

- (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 different interests; or
 - (2) there is significant risk that the lawyer's professional judgment on behalf of a client will be adversely affected by the lawyer's own financial, business, property or other personal interests.
- (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
 - (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
 - (2) the representation is not prohibited by law;
 - (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal ; and
 - (4) each affected client gives informed consent, confirmed in writing.

Generally,

“a client who is made fully cognizant of potential (or occasionally, actual) conflicts, is entitled to take his chances. But in some instances because the relationships or interests create a substantial likelihood of profound conflict, or for other policy reasons, [such as where the public interest is involved] representation is not permitted under any circumstances. Thus, where a lawyer represents parties whose interests conflict as to the particular subject matter, the likelihood of prejudice to one party may be so great that misconduct will be found despite disclosure and consent.” *Matter of Kelly*, 23 N.Y.2d 368 (1968). *See also Shelby v. Blakes*, 129 A.D.3d 823 (2'd Dept. 2015).

In these cases, the plaintiffs and defendant Septimus have consented in writing to the representation by Savad Churgin. The Court finds that this case does not fall into the rare exception of being a non-waivable conflict. As such, the portions of defendant Gertz's motions seeking to disqualify the plaintiffs' counsel is denied.

Defendant Gertz moves for dismissal pursuant to CPLR 3211(a)(5). As these actions were not commenced within 6 years of when the notes became due and payable, the statute of limitations has run. As such, the portions of defendant Gertz's motions seeking dismissal are granted.

This constitutes the Decision and Order of the Court.

Dated : 3/17/17



Hon. Edgar G. Walker, J.S.C.