DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

SIDDHARTHA PAGIDIPATI and 1010 CAPITAL, INC.,

Appellants,

v.

SANKET VYAS, AS LIQUIDATING AGENT FOR AND ON BEHALF OF Q3 I, L.P., and Q3 INVESTMENTS RECOVERY VEHICLE, LLC,

Appellee.

No. 2D21-3856

October 28, 2022

Appeal pursuant to Fla. R. App. P. 9.130 from the Circuit Court for Hillsborough County; Darren D. Farfante, Judge.

John A. Anthony, Nicholas LaFalce, and S. Scott Stephens of Anthony & Partners, LLC, Tampa, for Appellants.

Jennifer E. Jones and Paul Thanasides of McIntyre, Thanasides, Bringgold, Elliott, Grimaldi, Guito & Matthews, P.A., Tampa, for Appellee.

KHOUZAM, Judge.

In part of a multicase web of litigation arising from a failed

cryptocurrency investment club, defendants Siddhartha Pagidipati and 1010 Capital, Inc. (the Pagidipati Investors), appeal a nonfinal order denying their motion to disqualify McIntyre Thanasides Bringgold Elliott Grimaldi Guito & Matthews, P.A. (the McIntyre firm), from representing the plaintiffs, Sanket Vyas as liquidating agent for and on behalf of Q3 I, L.P., and Q3 Investments Recovery Vehicle, LLC, in this action.[1] Because in denying the motion the trial court applied clearly distinguishable authority and focused its analysis too narrowly on the absence of formal indicia of representation like legal billing, we reverse.

BACKGROUND

The Underlying Allegations and Related Litigation

Encouraged by high reported short-term profits, the Pagidipati Investors paid millions of dollars to join a cryptocurrency investment club that was ultimately organized as Q3 I, L.P. Suffice to say that the investments did not go as they had hoped.

Thereafter, a group of other disappointed Q3 I investors

[1] Although attorneys, as opposed to law firms, represent clients and form attorney-client relationships, we adopt the parties' framing in this regard for ease of reference and in the absence of any dispute that disqualification would apply to the entire law firm.

created an entity called Q3 Investments Recovery Vehicle, LLC (the Recovery Vehicle). These other investors assigned claims to that entity and, in March 2020, brought a lawsuit with the Recovery Vehicle as plaintiff, naming Q3 I and others as defendants (Case 20-CA-2402). One of the Recovery Vehicle members was Mr. Vyas.

The Recovery Vehicle's lawsuit against Q3 I and others alleged that all of the defendants had defrauded the Recovery Vehicle's members, including by knowingly misrepresenting financial matters in order to induce investors to take part in a Ponzi scheme and then by misappropriating the funds. Among other claims against only some defendants, the Recovery Vehicle's initial complaint raised counts for fraud, unjust enrichment, and negligence against all defendants, including against Q3 I itself. That complaint was signed by attorney Paul Thanasides of the McIntyre firm.

This Litigation

In May 2021, the instant lawsuit (Case 21-CA-3922) was filed against the Pagidipati Investors, styling the plaintiff as "Sanket Vyas, derivatively on behalf of Q3 I, L.P." That complaint expressly asserted that the action was a derivative one and that Mr. Vyas brought it "[a]s a limited partner of" Q3 I because demanding that

Q3 I's general partner do so would have been futile. That complaint raised one count, alleging a breach of Q3 I's Limited Partnership Agreement (LPA). That complaint was also signed by Mr. Thanasides of the McIntyre firm.

On the same date, the Recovery Vehicle brought another lawsuit against the Pagidipati Investors (Case 21-CA-3924). That lawsuit, which was later consolidated into this one, alleged two counts of fraudulent transfer. That complaint was also signed by Mr. Thanasides of the McIntyre firm.

At that time, the Recovery Vehicle's parallel lawsuit against Q3 I for fraud and other claims was still pending. The following month, Mr. Thanasides filed an amended complaint on behalf of the Recovery Vehicle in that case, dropping the fraud and unjust enrichment claims against Q3 I but retaining a claim for negligence against it on the basis that Q3 I had failed to prevent the fraud.

The Pagidipati Investors moved to dismiss the claims in both consolidated cases against them, which motions were set to be heard together at a single hearing in July 2021. The afternoon before the hearing on those motions, however, an amended complaint was filed in Case 21-CA-3922 that abandoned the

derivative framing. Now, the complaint styled the plaintiff as "Sanket Vyas, as liquidating agent for and on behalf of Q3 I, L.P." This amended complaint raised the same single count for breach of Q3 I's LPA as the initial derivative complaint. It also was signed by Mr. Thanasides of the McIntyre firm.

At the hearing on their motions to dismiss, the Pagidipati Investors argued inter alia that the claims failed for lack of standing because Q3 I, a Delaware Limited Partnership, had been canceled under Delaware law and because the plaintiffs had not identified any "creditors." In response, Mr. Thanasides agreed that Q3 I and its general partner Q3 Holdings LLC had been canceled as entities by the state of Delaware due to failure to replace a registered agent.

However, Mr. Thanasides then disclosed that "[s]ince then, we have revived those entities." He continued:

> ***We just revived them***. There was a process to go through to get them revived, which is why the amended complaint took me so long.
>
> We had to first get approval from the—two of the former members—at the time former members of the board of managers of Q3 Holdings LLC to retain a new registered agent and revive Q3 Holdings LLC, the general partner. We did that. ***We got authority from two of the three members of the board of managers so we could act in that regard.*** Then we reinstated Q3 Holdings LLC.

> Then once Q3 Holdings LLC was reinstated, we needed to get an authorization and delegation to revive Q3 I, L.P., on behalf of the now revived Q3 Holdings LLC, general partner. ***We did that, and then we reinstated Q3 I, L.P., based on that authority***.
>
> So that process took a bit of time. We needed to get the approvals. We needed to get them signed. We needed to get the secretary of state to revive the entities. Once those entities were revived and done so properly, we filed the amended complaint.
>
> ***We also needed to get the majority of the limited partners to . . . appoint Sanket Vyas as liquidating agent pursuant to Section 9 of the Limited Partnership Agreement. We did that***. That process took a bit of time too.
>
> But once we had him designated as the liquidating agent or selected by both the general partner and the limited partners, ***we were able to name him as—or actually, name really Q3 I, L.P., as the plaintiff directly in that original 3922 case*** and thus unquestionably have standing to sue pursuant to the Limited Partnership Agreement.

As to the amended complaint filed the prior afternoon that had abandoned the derivative framing, Mr. Thanasides stated that although the original complaint was filed by Mr. Vyas "in his capacity as a limited partner of Q3 I . . . [h]is status has since changed." While Mr. Vyas was "still a limited partner" of Q3 I, Mr. Thanasides asserted that because Mr. Vyas had been appointed as Q3 I's liquidating agent under the terms of its LPA, "at this moment in time, ***we have the partnership itself, Q3 I, L.P.***, . . . bringing

through its liquidating agent, which has the authority to bring claims on behalf of ***or actually by the partnership***."

With respect to the Recovery Vehicle's simultaneous parallel lawsuit against Q3 I and others, Mr. Thanasides disclosed to the court that "Q3 I, L.P., has not answered, so that's going to be reduced to a default judgment . . . as soon as we can get a hearing on that." His prediction became reality just one week later, when his motion for entry of clerk's default was granted against Q3 I in favor of the Recovery Vehicle. The court ultimately ruled that one of the Pagidipati Investors' motions to dismiss was mooted by the new complaint and granted the other motion in part, without prejudice.

After this hearing, the Pagidipati Investors' counsel reached out to Mr. Thanasides by email to confer about the apparent conflict of interest arising from the amended complaint and his disclosures at the hearing. Specifically, it appeared that Mr. Vyas was now "the 'liquidating agent' for the same company he is suing," such that Mr. Thanasides was "purporting to sue on behalf of Q3 [I] in one case and suing it in another." Mr. Thanasides declined to discuss the issue and instead invited the Pagidipati Investors' counsel to seek relief from the trial court.

Thereafter, the complaint in this case was amended again. The operative Second Amended Complaint continues to style the plaintiff as Mr. Vyas "in his capacity as liquidating agent for and on behalf of Q3 I" and asserts that the Pagidipati Investors still have limited partnership interests in Q3 I.

The complaint alleges that both Q3 I and its holding company are insolvent and that, under the LPA, the holding company's insolvency triggered Q3 I's dissolution. In that event, it alleges, the LPA "provides that Q3I shall continue in existence for a reasonable time to wind up its affairs, including bringing claims and liquidating assets for the benefit of its creditors and limited partners," and further, that Mr. Vyas was appointed Q3 I's liquidating agent for that purpose. On that premise, it claims the Pagidipati Investors breached Q3 I's LPA and seeks the return of money from them to Q3 I so that Q3 I can "discharge liabilities to creditors."

In turn, Q3 I's LPA attached to the complaint specifies that the designated liquidating agent has the powers and duties of the general partner and enjoys "sole discretion" over key decisions in the liquidation and distribution process. It also sets forth a priority list for asset distribution under which Q3 I's debts and liabilities

are to be paid out first—before any payments to partners or others.

The Motion to Disqualify

As directed by Mr. Thanasides when they had attempted to confer, the Pagidipati Investors moved to disqualify the McIntyre firm from representing the plaintiffs.[2] They identified the various lawsuits discussed *supra* and the McIntyre firm's admitted conduct in (i) acting on behalf of Q3 I by reviving it, designating Mr. Vyas as its liquidating agent, and bringing its claim in this lawsuit while (ii) suing Q3 I directly for fraud and other claims on behalf of the Recovery Vehicle—of which Mr. Vyas was also a member—and accurately predicting a default there due to Q3 I's failure to answer.

The motion stated that this conduct appeared to be an attempt to fabricate creditor status on behalf of the Recovery Vehicle by creating collusive liability for Q3 I. In particular, it alleged that by obtaining a default judgment against Q3 I in Case 2402, the Recovery Vehicle could become a "creditor" of Q3 I and thereby cure its problem of an absence of creditors argued by the Pagidipati

[2] The motion also sought to disqualify Mr. Vyas as liquidating agent for Q3 I. The trial court denied that portion of the motion without prejudice, which ruling is not part of this nonfinal appeal.

Investors in this case. The motion also asserted that the McIntyre firm's conduct violated Rule 4-1.7 of The Rules Regulating The Florida Bar by simultaneously representing directly adverse clients.

Mr. Vyas's response challenged the Pagidipati Investors' standing to raise disqualification on the basis that the Pagidipati Investors "are not Q3I, do not represent Q3I, and do not assert that McIntyre ever represented" them. On the merits, the response contended that disqualification was inappropriate because "McIntyre does not represent Q3I and never has. Vyas is not Q3I. Q3I is an entity. It is a limited partnership formed under the laws of the State of Delaware. Vyas is a human being selected to be the liquidating agent for Q3I. They are not the same."

As support, attached to the response was a half-page affidavit by Mr. Thanasides averring generally that neither he nor his firm had ever represented, submitted a bill to, or provided legal advice to Q3 I itself, and that Q3 I itself had never sought their representation. On that express basis alone, Mr. Thanasides concluded that neither he nor his firm had access to confidential information that would give the Recovery Vehicle an unfair advantage in the separate pending case against Q3 I.

Conspicuously however, other than identifying Mr. Thanasides as counsel of record, the affidavit did not address *this* lawsuit. Nor did the affidavit acknowledge Mr. Thanasides' candid admission at the prior hearing that the McIntyre firm was acting for Q3 I in its administrative revival and liquidation matters, or the confidential information involved with that representation. For example, it did not explain how Mr. Thanasides knew—after having Mr. Vyas appointed as Q3 I's liquidating agent—that Q3 I still would not be answering the Recovery Vehicle's lawsuit he was then bringing against Q3 I, thereby resulting in the default against Q3 I.

Ultimately, the response contended that this court's decision in *Gonzalez ex rel. Colonial Bank v. Chillura*, 892 So. 2d 1075 (Fla. 2d DCA 2004), "controls and is binding." Specifically, that *Gonzalez* "holds that an attorney does not represent an entity when the attorney represents a person suing on behalf of that entity."

The Pagidipati Investors' motion to disqualify was set to be heard months later. The week before the hearing, in the Recovery Vehicle's lawsuit against Q3 I and others, Mr. Thanasides filed a Notice of Voluntary Dismissal of all claims against Q3 I itself. The Notice specified that the dismissal of Q3 I was "without prejudice."

At the hearing on the motion to disqualify, the Pagidipati Investors' counsel identified that the McIntyre firm had represented the Recovery Vehicle in its fraud lawsuit against Q3 I in Case 2402, while simultaneously bringing claims on Q3 I's behalf against the Pagidipati Investors in this case. He explained that the Pagidipati Investors had not raised the issue of disqualification when this case was initially filed because it was then styled as a derivative action, which was permitted under *Gonzalez*. But once the amended complaint abandoned the derivative framing and instead purported to bring Q3 I's claims directly on its behalf by Mr. Vyas as its liquidating agent, a conflict arose notwithstanding the subsequent dismissal (without prejudice) of Q3 I as a defendant in Case 2402.

In response, Mr. Thanasides acknowledged that *Gonzalez* addressed a shareholder derivative claim rather than a direct action, but he contended the distinction was immaterial when both involve fiduciaries. To oppose the notion that an attorney-client relationship existed between the McIntyre firm and Q3 I, Mr. Thanasides relied heavily on his affidavit generally denying that the McIntyre firm had engaged in formal representation of Q3 I itself.

Contrary to his express representations to the court at the

prior hearing, Mr. Thanasides now contended that the plaintiff was Mr. Vyas, not Q3 I. Mr. Thanasides did not attempt to reconcile these two positions or to explain the reversal.

Mr. Thanasides also acknowledged that, as its liquidating agent, Mr. Vyas had discretion to defend Q3 I on its behalf from the claim the McIntyre firm had brought on behalf of the Recovery Vehicle. But he disclosed that, in declining to do so, Mr. Vyas had "exercise[d] business judgment" because, as Mr. Thanasides put it, "the negligence claim [against Q3 I] is undeniable. And so it certainly would be a frivolous defense if he chose to defend."

The court denied the motion, citing to *Gonzalez*. The court said it was persuaded by the assertions that Mr. Thanasides had "never represented Q3 I, 'never submitted a bill to Q3 I. Q3 I, L.P., has never sought representation by me or my firm.' " The Pagidipati Investors then appealed the order reducing this ruling to writing.

ANALYSIS

Scrupulous adherence to the rules regarding conflicts of interest is crucial to the fair and ethical practice of law. These rules exist to protect not only litigants, but also the legal process itself, from abuse, impropriety, and distrust.

Here, the Pagidipati Investors contend that the McIntyre firm must be disqualified due to simultaneous adverse representation in the litigation surrounding Q3 I. We agree. In so ruling, we reject the claim that they lack standing to seek disqualification.

"The standard of review for orders entered on motions to disqualify counsel is that of an abuse of discretion." *Kaplan v. Divosta Homes, L.P.*, 20 So. 3d 459, 461 (Fla. 2d DCA 2009) (citing *Applied Digit. Sols., Inc. v. Vasa*, 941 So. 2d 404, 408 (Fla. 4th DCA 2006)). "An abuse of discretion occurs where the trial court's 'ruling is based on an erroneous view of the law or on a clearly erroneous assessment of the evidence.' " *Buzby v. Turtle Rock Cmty. Ass'n*, 333 So. 3d 250, 253 (Fla. 2d DCA 2022) (quoting *Rush v. Burdge*, 141 So. 3d 764, 766 (Fla. 2d DCA 2014)).

Due to the gravity of the rights involved, including the party's right to counsel and the attorney's right to freely practice law, "disqualification of counsel 'is an extraordinary remedy and should only be resorted to sparingly.' " *Balaban v. Philip Morris USA Inc.*, 240 So. 3d 896, 899 (Fla. 4th DCA 2018) (quoting *Manning v. Cooper*, 981 So. 2d 668, 670 (Fla. 4th DCA 2008)). Nonetheless, "courts should not hesitate to disqualify an attorney where the

circumstances justify such a severe remedy." *Id.*

In denying the motion to disqualify the McIntyre firm, the trial court reversibly erred by focusing its legal analysis too narrowly on the absence of formal indicia of representation and by applying clearly distinguishable authority. Under the correct test, the undisputed facts of this case require disqualification of counsel.

Standing

The first issue is whether the Pagidipati Investors have standing to seek disqualification of opposing counsel. In most cases, a stranger to the attorney-client relationship lacks standing to seek disqualification. *See, e.g.*, *Stopa v. Cannon*, 330 So. 3d 1033, 1036-38 (Fla. 2d DCA 2021) (affirming denial of disqualification of opposing counsel for lack of privity with movant).

However, the Florida Supreme Court has explained that the Rules of Professional Conduct contemplate that "under certain circumstances someone other than the client may request disqualification." *State Farm Mut. Auto. Ins. Co. v. K.A.W.*, 575 So. 2d 630, 632 (Fla. 1991). Consequently, "the required analysis does not always turn on present or former representation of the party seeking disqualification." *Boca Raton Reg'l Hosp., Inc. v. Williams*,

230 So. 3d 42, 45 (Fla. 4th DCA 2017) (applying *K.A.W.* to quash order denying disqualification for lack of standing because trial court had "focused on whom the law firm had represented").

Instead, "where a conflict 'is such as clearly to call in question the fair or efficient administration of justice, opposing counsel may properly raise the question.' " *K.A.W.*, 575 So. 2d at 632 (quoting Comment to Rule Regulating The Florida Bar 4–1.7; citing *In re Gopman*, 531 F.2d 262 (5th Cir. 1976)); *see also Williams*, 230 So. 3d at 45 (same); *Kenn Air Corp. v. Gainesville-Alachua Cnty. Reg'l Airport Auth.*, 593 So. 2d 1219, 1222 (Fla. 1st DCA 1992) (nonclient may seek disqualification "when the conflict is clear and the question of fair and efficient administration of justice is raised").

One such recognized category in which "someone other than a client or former client may move for disqualification i[s] instances involving conflicts of interest in simultaneous representations." *Kenn Air*, 593 So. 2d at 1222 (citing Comment to Rule 4-1.7). That exception exists in part "[b]ecause . . . conflict of interest in simultaneous representation . . . can be clearly seen by persons other than clients." *Id.* (applying *K.A.W.*, 575 So. 2d at 632).

In the appropriate case, this can include situations where a

party acquires an unfair informational advantage through related representation. *Cf. K.A.W.*, 575 So. 2d at 633 ("The unfairness of the situation results from the fact that [the plaintiffs] have a potential informational advantage over those who must defend . . . which was gained as a result of . . . former representation of [the defendant] in this action."); *Frye v. Ironstone Bank*, 69 So. 3d 1046, 1050 (Fla. 2d DCA 2011) (directing disqualification due to "unfair informational advantage" acquired via prior representation).

We conclude that the exception to the privity requirement applies under the unique facts of this case. Although it does not appear that the McIntyre firm has ever represented the Pagidipati Investors, on this record that fact alone does not end the analysis. *See Williams*, 230 So. 3d at 45 (citing *K.A.W.*, 575 So. 2d at 632)).

To the contrary, in addition to being the defendants in this action with a direct stake in its outcome, the Pagidipati Investors are alleged to still have partnership interests in Q3 I, the entity at the center of the web of litigation and the one whose rights are being asserted against them in this lawsuit brought by another limited partner. And, as explained in more detail *infra*, the many different hats worn simultaneously by the McIntyre firm in the web

of litigation surrounding Q3 I—including (i) acting for Q3 I in its administrative revival and liquidation matters, (ii) bringing Q3 I's claims on Q3 I's behalf against third parties, and (iii) obtaining a default against Q3 I in the Recovery Vehicle's action for fraud and negligence against Q3 I—certainly call into question the fair administration of justice to a degree sufficient to warrant entertaining the motion. Accordingly, we conclude that the Pagidipati Investors have standing to raise the issue.[3]

Disqualification

The Florida Supreme Court has "explained that the Florida Rules of Professional Conduct provide the standard for determining whether counsel should be disqualified in a given case." *Young v. Achenbauch*, 136 So. 3d 575, 580 (Fla. 2014) (citing *K.A.W.*, 575 So. 2d at 633). Rule Regulating The Florida Bar 4-1.7(a) provides that, absent informed consent,[4]

a lawyer must not represent a client if:

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[3] Although it did not expressly address the issue, the trial court appears to have agreed, as it ruled on the merits of the motion despite Mr. Vyas's pending challenge to standing.

[4] The parties do not suggest that the issue of informed consent is relevant to this appeal.

> (1) the representation of 1 client will be directly adverse to another client; or
>
> (2) there is a substantial risk that the representation of 1 or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

The Fifth District aptly explained the basis for rule 4-1.7:

> The existing client rule is based on the ethical-concept requirement that a lawyer should act with undivided loyalty for his client and not place himself or herself in a position where a conflicting interest may affect the obligations of an ongoing professional relationship. It is difficult to imagine how a lawyer could appear in court one day arguing vigorously for a client, and then face the same client the next day and vigorously oppose him in another matter, without seriously damaging their professional relationship. Such unseemly conduct, if permitted, would further erode the public's regard for the legal profession.

Morse v. Clark, 890 So. 2d 496, 498 (Fla. 5th DCA 2004).

The comment to rule 4-1.7 provides helpful context. *See, e.g.*, *K.A.W.*, 575 So. 2d at 632 (quoting and applying comment to rule 4-1.7). In particular, the comment explains that under subsection (a)(1), "a lawyer ordinarily may not act as advocate against a person the lawyer represents in some other matter, even if it is wholly unrelated." R. Regulating Fla. Bar 4-1.7 cmt. And subsection (a)(2) addresses circumstances "when a lawyer cannot consider, recommend, or carry out an appropriate course of action for the

client because of the lawyer's other responsibilities or interests," expressly including a personal interest. *Id.*

The comment explains further that the "nature of the litigation" helps determine "[t]he propriety of concurrent representation." *Id.* Notably, it specifies that "a suit charging fraud entails conflict to a degree not involved in a suit for declaratory judgment concerning statutory interpretation." *Id.*

Under the Rule, the "threshold requirement for disqualification based on a conflict of interest" is the existence of an attorney-client relationship. *Kaplan*, 20 So. 3d at 462. Establishing such a relationship "giv[es] rise to an irrefutable presumption that confidences were disclosed during the relationship." *K.A.W.*, 575 So. 2d at 633; *see also Young*, 136 So. 3d at 583.

In Florida, "[t]he law does not require a long or complicated attorney-client relationship to fulfill the requirements for disqualification." *Key Largo Rest., Inc. v. T.H. Old Town Assocs.*, 759 So. 2d 690, 693 (Fla. 5th DCA 2000); *see also Metcalf v. Metcalf*, 785 So. 2d 747, 749 (Fla. 5th DCA 2001) (same).

To the contrary, "[t]he test for determining this relationship 'is a subjective one and hinges upon the client's belief that he is

consulting a lawyer in that capacity and his manifested intention is to seek professional legal advice.' " *Gonzalez*, 892 So. 2d at 1077 (quoting *Bartholomew v. Bartholomew*, 611 So. 2d 85, 86 (Fla. 2d DCA 1992)); *see also* Restatement (Third) of the Law Governing Lawyers §14 (Am. Law Inst. 2022) ("A relationship of client and lawyer arises when: (1) a person manifests to a lawyer the person's intent that the lawyer provide legal services for the person; and . . . (a) the lawyer manifests to the person consent to do so . . . ."). The belief must be "objectively reasonable." *E.g.*, *Global Lab Partners v. Patroni Enters.*, 327 So. 3d 453, 456 (Fla. 1st DCA 2021).

In determining whether such a relationship exists, it is well settled that "[e]stablishment of the attorney-client relationship—and thus the attachment of the concomitant rights and duties of each side to the relationship—does not require a written agreement or evidence that fees have been paid or agreed upon." *Mansur v. Podhurst Orseck, P.A.*, 994 So. 2d 435, 438 (Fla. 3d DCA 2008); *see also E.P. v. Hogreve*, 259 So. 3d 1007, 1010 (Fla. 5th DCA 2018) (same); *Eggers v. Eggers*, 776 So. 2d 1096, 1099 (Fla. 5th DCA 2001) (observing that "the existence of a formal retainer agreement is not essential to the finding of an attorney-client relationship"

(citing *Dean v. Dean*, 607 So. 2d 494 (Fla. 4th DCA 1992))). Indeed, "[a] fee is not necessary to form an attorney-client relationship." *Fla. Bar v. King*, 664 So. 2d 925, 927 (Fla. 1995) (reasoning that the opposite rule would preclude pro bono representation).

Here, we hold that the undisputed facts establish that an attorney-client relationship exists between the McIntyre firm and Q3 I. To begin with, in this suit the McIntyre firm is asserting rights that belong to Q3 I. The operative complaint asserts a single count of breach of Q3 I's LPA and demands relief in the form of payment by the defendants "to Q3I in accordance with the" LPA, for the express purpose of paying Q3 I's creditors and partners.

Contrary to Mr. Vyas's contention, the decision to style the plaintiff under Florida Rule of Civil Procedure 1.210(a) as Mr. Vyas in his capacity as liquidating agent on behalf of Q3 I, as opposed to styling the plaintiff as Q3 I itself, does not end the inquiry. As explained *supra*, the test for the existence of an attorney-client relationship does not necessarily hinge upon the style of the case.

Further, the operative complaint alleges that while Q3 I is in

dissolution,[5] the designated liquidating agent has the authority of the general partner, which the LPA confirms includes "sole discretion" over key decisions in the liquidation and distribution process. Thus, according to both Q3 I's LPA and the complaint, Mr. Vyas as liquidating agent is acting for Q3 I to wind up its affairs in place of its general partner. Subject only to limitations imposed by law and the LPA—such as the LPA's distribution priority list favoring creditors—Mr. Vyas enjoys "sole discretion" over winding up Q3 I's affairs, including deciding which claims to bring and how.

Mr. Vyas exercised that discretion by authorizing the McIntyre firm to assert against other limited partners Q3 I's rights in this lawsuit, which expressly seeks the return to Q3 I of money alleged to have been paid as distributions under its LPA. This was, by Mr. Thanasides' own admission, the affirmative goal of his firm's considerable work to administratively revive Q3 I and its general partner and to appoint Mr. Vyas as liquidating agent. Nothing

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[5] At oral argument, Mr. Vyas's counsel disputed that Q3 I is in fact in dissolution. Whatever the facts may be, we note that that representation to this court was in direct conflict with both (i) the factual assertions in Mr. Vyas's answer brief and (ii) the operative complaint's stated basis for Mr. Vyas's authority to act for Q3 I.

suggests that any of this occurred without Mr. Vyas's approval.

To the contrary, Mr. Thanasides also disclosed that Mr. Vyas further exercised his discretion as Q3 I's liquidating agent by declining to defend the Recovery Vehicle's parallel action against Q3 I. As Mr. Thanasides candidly admitted, the Recovery Vehicle (of which Mr. Vyas is also a member) was actively pursuing a default on its negligence claim against Q3 I even after Mr. Vyas had been named Q3 I's liquidating agent. And just as Mr. Thanasides predicted, the Recovery Vehicle was successful in doing so, even though it thereafter dismissed Q3 I (without prejudice) once the conflict was raised.

In this context, the trial court's myopic focus on the absence of traditional indicia of legal representation was error, as it ignored the other undisputed, crucially relevant facts. Florida law simply does not require evidence of bills, a retainer, or a formal representation agreement as a prerequisite to establishing an attorney-client relationship. *See, e.g.*, *Mansur*, 994 So. 2d at 438. Because the McIntyre firm administratively revived Q3 I, designated Mr. Vyas as Q3 I's liquidating agent, and brought a direct action on Q3 I's behalf asserting Q3 I's rights and demanding the return of money to Q3 I

under the terms of Q3 I's LPA, we conclude that the McIntyre firm developed an attorney-client relationship with Q3 I.

This court's decision in *Gonzalez*, relied upon by Mr. Vyas and the trial court, is distinguishable. There, we specified that the issue was "whether a law firm should be disqualified under rule 4-1.7 of the Rules Regulating The Florida Bar for concurrently representing the plaintiff in a shareholder derivative action while at the same time representing the same plaintiff in litigation he is pursuing individually against the corporation." 892 So. 2d at 1077. In answering that question, this court rejected as "illogic[al]" the argument that the law firm for the shareholder also had an attorney-client relationship with the corporation "by virtue of the fact that [the firm] is representing a shareholder . . . who is bringing an action that is for the benefit of" the corporation. *Id.* at 1077-78.

In doing so, we expressly focused the analysis on "the nature of a shareholder derivative action," which in equity "allow[s a stockholder] to step into the corporation's shoes and to seek in its right the restitution he could not demand in his own." *Id.* at 1078 (quoting *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 548 (1949)). We reasoned that a contrary ruling would leave "no way for

the derivative plaintiff to ever have conflict-free counsel," thereby "in effect . . . letting the fox guard the chicken coop" by allowing the defendant corporation "the ability to control by whom a derivative plaintiff is represented." *Id.*

As *Gonzalez* makes clear, its holding and analysis were expressly based on the derivative nature of the claim there. But in this case, any derivative framing and claim were abandoned in favor of a direct claim against third parties. Further, the concerns about the nonexistence of conflict-free counsel where a shareholder sues derivatively are not presented here. Accordingly, *Gonzalez* does not preclude the existence of an attorney-client relationship here.

We find more instructive the First District's decision in *First Fidelity Trust Services, Inc. v. Shelter Cove Condominium Ass'n*, 329 So. 3d 222 (Fla. 1st DCA 2021). There, the trial court granted a motion to disqualify a law firm in part because the law firm had developed an attorney-client relationship with Shelter Cove when it previously represented a court-appointed receiver for Shelter Cove. *Id.* at 225-26.

In affirming the disqualification, the First District observed that "[u]nder the order appointing receiver, the Receiver was tasked

with aiding the execution of" a judgment and "ensur[ing] Shelter Cove's satisfaction of its obligations under" a settlement agreement. *Id.* at 226 (second alteration in original). The court emphasized that, to perform his receivership duties, "the Receiver was empowered to 'exercise all of the powers of Shelter Cove' " itself and, further, that there was no dispute that the law firm assisted in doing so. *Id.* at 226-27. Ultimately, "the trial court did not abuse its discretion in finding that, in the course of its representation of Shelter Cove's court-appointed receiver, [the law firm] maintained an attorney-client relationship with Shelter Cove."[6] *Id.* at 227.

Similar to the receiver in *Shelter Cove*, Mr. Vyas as Q3 I's liquidating agent is acting for the entity to satisfy its obligations and is exercising his discretion to do so, including through attorneys. Unlike a derivative plaintiff, Mr. Vyas in his capacity as Q3 I's

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[6] Although the *Shelter Cove* decision identifies that the law firm there failed to contest the existence of an attorney-client relationship below, thereby failing to preserve for appeal an argument that no such relationship existed, the First District's discussion demonstrates that it nonetheless considered the argument on the merits, rejecting it as also "unsupported by the record, and contradicted by" the law firm's "representation of Shelter Cove's court-appointed receiver." *Id.* at 226.

liquidating agent *does* exercise control over the entity and is not adverse to it in this case,[7] "nominal[ly]" or otherwise. *Cf. Gonzalez*, 892 So. 2d at 1077-78 (quoting *Cohen*, 337 U.S. at 548).

At oral argument, counsel for Mr. Vyas contended that a disqualification here would establish a bright-line rule that every representation of a liquidating agent creates an attorney-client relationship with the entity being liquidated. We disagree.

Having established an attorney-client relationship between the McIntyre firm and Q3 I, an irrefutable presumption arises that confidential information was exchanged. *K.A.W.*, 575 So. 2d at 633-34; *see also Young*, 136 So. 3d at 583. Even absent the presumption, however, this record would compel the same result, where Mr. Thanasides candidly disclosed that his firm worked with Q3 I's leadership to administratively revive Q3 I and name Mr. Vyas its liquidating agent and, further, that he knew Q3 I would not oppose a default in the Recovery Vehicle's lawsuit—even after performing the work to appoint Mr. Vyas as Q3 I's liquidating agent

[7] To the contrary, the only case we are aware of in which Mr. Vyas was adverse to Q3 I is in the parallel action by the Recovery Vehicle, of which he is a member.

and after bringing this lawsuit on Q3 I's behalf through Mr. Vyas.

We hold that these facts involve directly adverse representation between clients prohibited by Rule 4-1.7(a)(1). At a minimum, this record creates a "substantial risk" that the representation of one client will be materially limited by responsibilities to another. R. Regulating Fla. Bar 4-1.7(a)(2). Indeed, that risk has already matured beyond being merely theoretical: a default was obtained on behalf of one client against another in circumstances directly impacting asset distribution under a priority system favoring creditors, and further, the attorney for both parties represented in court that the claim he brought against his own client "is undeniable," and any defense thereto "would be . . . frivolous."

We also reject Mr. Vyas's contention that the conflict issue was rendered moot when Mr. Thanasides filed a voluntarily dismissal without prejudice of Q3 I in the Recovery Vehicle's parallel action against it. *See, e.g., Young*, 136 So. 3d at 581 (explaining that under Rule 4-1.7, counsel has a duty to decline prospective representation if a conflict already exists and to withdraw if one arises thereafter); *cf. Canta v. Philip Morris USA, Inc.*, 245 So. 3d

813, 818 (Fla. 3d DCA 2017) (concluding that imputed conflict was not cured by " 'midstream' sequence of events" including tainted attorney's dissociation with firm); *Cankur v. State*, 706 So. 2d 944, 944-45 (Fla. 4th DCA 1998) (quashing order denying disqualification due to irreconcilable conflict arising from defense counsel's prior representation of state witness, notwithstanding state's subsequent offer not to call that witness at trial).

Ultimately, although "we do not imply any misconduct on the part of" the McIntyre firm, nonetheless "we cannot escape the conclusion that this is a situation rife with the possibility of discredit to the bar and the administration of justice." *K.A.W.*, 575 So. 2d at 634 (second quote quoting *Rotante v. Lawrence Hosp.*, 361 N.Y.S.2d 372, 373 (N.Y. App. Div. 1974)). We accordingly reverse the order on appeal and direct that the McIntyre firm be disqualified from further representation of the plaintiffs in this action.

Reversed and remanded.

NORTHCUTT and CASANUEVA, JJ., Concur.
