

Goren v Barnett
2020 NY Slip Op 32952(U)
September 8, 2020
Supreme Court, New York County
Docket Number: 653221/2019
Judge: Andrew Borrok
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ANDREW BORROK PART IAS MOTION 53EFM

Justice

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LELA GOREN, INDIVIDUALLY, AS WELL AS
DERIVATIVELY ON BEHALF OF EXTELL NEW YORK
REGIONAL CENTER, LLC, A DELAWARE LIMITED
LIABILITY COMPANY,

INDEX NO. 653221/2019

MOTION DATE 09/08/2020

MOTION SEQ. NO. 003

Plaintiff,

- V -

GARY BARNETT INDIVIDUALLY, OMS MANAGER,
LLC, 555 TENTH AVENUE MANAGER, LLC, CPT EB5
MANAGER, LLC, WNCE MANAGER, LLC, HRH NCE
MANAGER, LLC, INTERNATIONAL GEM TOWER FUND,
LLC, INTERNATIONAL GEM TOWER FUND II, LLC, EXTELL
NEW YORK REGIONAL CENTER, LLC, EX HOLDINGS
LLC, A NEW YORK LIMITED LIABILITY COMPANY

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 59, 60, 61, 62, 63
were read on this motion to/for DISQUALIFY COUNSEL.

Gary Barnett, OMS Manager, LLC (**OMS**), 555 Tenth Avenue Manager, LLC (**555**), CPT EB5
Manager, LLC (**CPT**), WNCE Manager, LLC (**WNCE**), HRH NCE Manager, LLC (**HRH**),
International Gem Tower Fund, LLC, (**IGTF I**), and International Gem Tower Fund II, LLC
(**IGTF II**, and together with Mr. Barnett, OMS, 555, CPT, WNCE, HRH, and IGTI I,
collectively, the **Defendants**) move to disqualify the law firm of Saul Ewing Arnstein & Lehr
LLP (**Saul Ewing**) from representing Extell New York Regional Center, LLC (the **Regional
Center**) pursuant to Rules 1.7 and 1.9 of the New York Rules of Professional conduct. Upon the
foregoing documents, and for the reasons set forth below, the motion is granted without
opposition.

From 2010 to approximately 2013, the law firm of Arnstein & Lehr LLP (**Arnstein & Lehr**) represented the Regional Center as securities counsel in various matters related to its EB-5 program administered by the United States Citizen and Immigration Services. In 2017, Arnstein & Lehr merged with Saul Ewing LLP. Saul Ewing represents Lela Goren in this matter, both individually and derivatively on behalf of the Regional Center.

Rule 1.9 of the Rules of Professional Conduct (22 NYCRR 1200.0) provides: “A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or substantially related matter in which that person’s interests are materially adverse to the interests of the former client.” In addition, Rule 1.7 provides, in relevant part, that: “a lawyer shall not represent a client if a reasonable lawyer would conclude that . . . the representation will involve the lawyer in representing differing interests.”

In support of their motion, the Defendants submit certain invoices (the **Invoices**) from Arnstein & Lehr from 2011-2013 for work on matters that related to Ms. Goren’s allegations in this case, including the International Gem Tower Fund LLC Operating Agreement (the **Operating Agreement**) and the finder’s fee arrangements (NYSCEF Doc. No. 63). The Invoices were paid by the Regional Center or Mr. Barnett’s company, Extell Development Company (**Extell**). At least three Arnstein & Lehr attorneys who worked on these matters for the Regional Center are now partners at Saul Ewing.

The Invoices submitted by the Defendants establish that the subject matter of Arnstein & Lehr's prior representation of the Regional Center in connection with the Operating Agreement and finder's fee arrangements is substantially related to the issues in this case and that Ms. Goren's interests are materially adverse to those of Gary Barnett and the Regional Center. In addition, Saul Ewing's representation of both Ms. Goren and the Regional Center presents a concurrent conflict of interest because it would require the firm to argue that the same transactions that it previously advised the Regional Center to undertake were part of the fraudulent scheme alleged by Ms. Goren. Finally, the former Arnstein & Lehr attorneys' conflicts of interest are imputed to the entire firm of Saul Ewing under Rule 1.10 (a) of the Rules of Professional Responsibility, therefore no lawyer in the firm may undertake the representation.

For the foregoing reasons, the motion to disqualify is granted.

Accordingly, it is

ORDERED that the motion to disqualify counsel for plaintiff is granted and Saul Ewing Arnstein & Lehr LLP is hereby disqualified from representing plaintiff in this matter, and it is further

ORDERED that counsel for the movant, within 21 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 plaintiff; and it is further

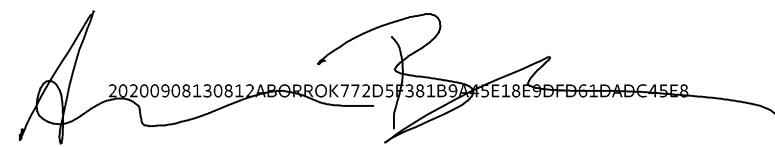
ORDERED that the action is stayed from this date until 30 days after service of a copy of this order with notice of entry upon counsel for all parties and upon plaintiff, who shall, within said period, retain another attorney in place of the attorney named above; and it is further

ORDERED that the new attorney retained by plaintiff 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); and it is further

ORDERED that in the event that plaintiff intends to proceed pro se pursuant to CPLR 321, plaintiff is directed to notify the Clerk of the Part in writing within said 30-day period; and it is further

9/08/2020
DATE



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ANDREW BORROK, J.S.C.

CHECK ONE:

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CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE