

Fisher v Hauman

2021 NY Slip Op 32351(U)

November 15, 2021

Supreme Court, New York County

Docket Number: Index No. 654717/2021

Judge: Laurence L. Love

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LAURENCE LOVE PART 63M

Justice

-----X

MIASHA FISHER,

Plaintiff,

- v -

CONSTANCE HAUMAN, CHANNEL CREATIONS LLC DBA
ISOTOPIA RECORDS.

Defendants.

-----X

INDEX NO. 654717/2021

MOTION DATE October 29,
2021

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 93

were read on this motion to/for DISQUALIFY COUNSEL.

Upon the foregoing documents, it is

The following read on defendants' i) Order to Show Cause (NYSCEF Doc. No. 62) (Motion Sequence No. 2) to disqualify the law office of Moses & Singer LLP from representing the plaintiff on the basis of the attorney-witness rule, the former-client rule, and the appearance of impropriety, per 22 NYCRR Part 1200.20, and Rules 1.7, 1.9(a) and (c), 3.7(a) and (b), and 8.4 of the New York Rules of Professional Conduct; and staying all further proceedings in this action for thirty (30) days, and

A Microsoft Virtual Teams Appearance was held on October 29, 2021 at 12:00 pm where both sides were represented by attorneys. On said date, defendants' Order to Show Cause – disqualify counsel (NYSCEF Doc. No. 62) (Motion Sequence No. 2) was marked fully submitted. The original Order to Show Cause (Motion Sequence No. 1) filed by plaintiff was adjourned on same date to November 23, 2021 as, for a practical matter, the court could not address same until disposing of Defendants instant motion.

The standard for disqualification of counsel based on a prior representation has three requirements:

The party seeking disqualification of counsel is required to establish (1) the existence of a prior attorney-client relationship with opposing counsel, (2) that the matters involved in both representations are substantially related, and (3) that the interests of the parties are materially adverse; if all three prongs of the test are satisfied, an irrebuttable presumption of disqualification arises. (N.Y. Comp. Codes R. & Regs. Tit. 22, § 1200.00; *Graziano v. Andzel-Graziano*, 196 A.D.3d 879 (3d Dep't 2021); *Deerin v. Ocean Rich Foods, LLC*, 158 A.D.3d 603 [2d Dep't 2018]; *Lyons v. Lyons*, 50 Misc. 3d 876 [Sup. Ct. 2015]).

The affidavit of named defendant, Constance Hauman affirms,

“My relationship with Moses & Singer goes back to 2017. In November 2017, I met with Ms. Fisher and Liz Corradino, an attorney at Moses & Singer. This was at the insistence of Martin Edelman. The purpose of the meeting was for Ms. Corradino to look over the Naxos distribution contract that my label Isotopia Records had. I had already met with Mr. Edelman on several occasions from 2011 to 2017. In December 2017, Ms. Corradino looked over the contracts for a tour that I negotiated and was going to sign with Moondog Productions (George Clinton’s company) for the buy-on to his tour for Miss Velvet and The Blue Wolf productions. I had my own attorney but Mr. Edelman insisted that because Ms. Fisher was paying for the tour, Ms. Corradino would look over the contracts. In 2018, I accompanied Ms. Fisher to a meeting with Ms. Corradino about her obtaining the trademark for the artwork and logo font from the artist Miguel Villalobos for our first album. They paid him \$25,000. Ms. Corradino had me look over the contracts as well. In 2019, Universal Attractions Agency (“UAA”) added us to their roster. Ms. Corradino reviewed and discussed the contract with me on the phone with Nick Szatmari from UAA. But matters deteriorated in 2020 and early 2021, both because the COVID pandemic had essentially ended public performances. But in June 2021, George Clinton invited the band to play for fifteen minutes for free in Central Park on Jun 27. We had been on tour with him for two and a half years. Although we had been booked to play as Ms. Velvet and the Blue Wolf in April, Ms. Fisher told me to tell our bookers that she would not perform until the spring or summer of 2022, as she had decided that she was moving to California. I said, ‘so you’re quitting?’ And she said, ‘no, I’m just not performing until

then.’ And I said, ‘so you’re quitting.’ Mr. Clinton, knowing that she had canceled, offered to let the band play without her, as an instrumental introduction to him. The band had done the same thing in 2019, for his Grammy Lifetime Achievement Award event, an appearance which she had also canceled. My decision to allow the band to perform without her has led to this frivolous lawsuit. Then the day after the concert, on Jun 28, 2021, Mr. Edelman suddenly told me in an email that I will be hearing from Miasha’s attorney Liz Corradino, that is, not ‘our attorney,’ but ‘Miasha’s attorney.’” I and Isotopia had extensive dealings with Moses & Singer for many years, in which they supposedly represented my interests, when in reality the only interests that mattered to them were those which were directed by the deep pockets of Miasha Fisher. I was told repeatedly by Mr. Edelman that I could not consult my own counsel, and that I had to be represented by Moses & Singer (see NYSCEF Doc. No. 46 Pars. 12 – 18, 32).

Defendant Constance Hauman’s affidavit references Elizabeth A. Corradino, member of Moses & Singer LLP, along with Martin L. Edelman, of counsel to Paul, Hastings, Janofsky & Walker LLP.

Martin L. Edelman affirms,

“I am a personal attorney to plaintiff, Miasha Fisher, and I am also a trustee of a trust of which Fisher is a beneficiary. During the past few years, I have advised Fisher as she navigated through the early parts of her career as a singer, songwriter and performer. In that role, I was continuously apprised of and kept up to date on all significant matters taking place with respect to Fisher and her band, “Miss Velvet & The Blue Wolf,” I was informed when Fisher was presented with agreements or contracts relating to her music or to the Band, and I was also kept apprised of the Band’s finances. Because Fisher paid for all operations of the Band, whenever payments were to be made by her for the Band, I was made aware of those payments. In fact, nearly all of the money that made its way from Fisher into the Band’s bank account that was administered by Defendants, Hauman and Isotopia, came from the trust of which I am a trustee. I had to approve such payments and was therefore aware of them and their purposes. Defendants acted as Fisher’s and the Band’s music manager, agent and director. In that role, Defendants booked performances, produced records, assisted with content creation, and created and developed merchandise. Isotopia also performed the Band’s day-to-day administration, including bookkeeping, handling the Band’s money and bank account,

payroll, and paying vendors and other expenses out of money provided by Fisher or the Band's revenue. Hauman and Isotopia were paid a periodic fee for their services. In or around 2017, Hauman was preparing various documents and agreements concerning the production and distribution of Fisher's and the Band's music. Given the impact that those agreements would have on Fisher's legal rights and career, I insisted that Fisher have her own lawyers look at the paperwork. Fisher agreed, and we retained Elizabeth Corradino at Moses & Singer LLP to represent Fisher and the trust in connection with these agreements and transactions. I never indicated or suggested to Hauman, then or at any other time, that Moses & Singer represented her or her company. I also never told or suggested to Hauman that she could not have lawyers of her own choosing look at documents on her own behalf" (see NYSCEF Doc. No. 67 Pars. 2 – 6).

Mr. Edelman highlights various emails, "Liz Corradino will be representing Miasha and the Trust" (see NYSCEF Doc. No. 68 P. 3), and "miasha should not sign anything or grant any rights until LIZ [Elizabeth Corradino] and I have reviewed" (see NYSCEF Doc. No. 69 P. 2). "As [these] email[s] show[], and consistent with discussions on other occasions, Hauman knew that Elizabeth Corradino was representing Fisher's interests, just as I was, and that her role was counsel to Fisher, not to Hauman or her company" (see NYSCEF Doc. No. 67 Par. 10).

The affidavit of Elizabeth A. Corradino affirms,

"In or around December 2017, Moses & Singer, through myself, began representing Miasha Fisher concerning various contractual and transactional matters relating to Fisher's musical career. The engagement letter entered into by Fisher was also executed by Martin Edelman. My interactions with the Defendants have been solely in the course of Moses & Singer's representation of Fisher and her Band. Hauman and her company, Isotopia, have been acting as agents or managers or other service providers for Fisher and her Band. As counsel for Fisher, I have interacted with them in the same way as I interact with employees, agents or managers of other clients, but not as their own counsel. I have represented Fisher and her Band on transactions and matters over the last four years. While Hauman and Isotopia were involved in those transactions, they were invariably acting as the business arm of Fisher and the Band. Moses & Singer never represented Hauman or Isotopia in those transactions" (see NYSCEF Doc. No. 70 Pars. 4, 5, 9, 16)

Plaintiff provides the engagement letter from Moses & Singer Attorney Elizabeth A. Corradino signed and agreed to by Miasha Fisher and Martin L. Edelman (see NYSCEF Doc. No. 61).

The attorney-client relationship arises only when a client contracts with an attorney for the purpose of obtaining legal advice or services (see *Matter of Priest v. Hennessy*, 51 N.Y.2d 62, 68 – 69 [1980]). An attorney – client relationship may arise from the words and actions of the parties, one party’s unilateral beliefs and actions do not confer upon him or her the status of a client (see *Solondz v. Barash*, 225 A.D.2d 996, 998 [3d Dep’t 1996]).

In determining whether an attorney – client relationship exists, courts have considered 1) whether a fee arrangement was entered into or a fee paid; 2) whether a written contract or retainer agreement exists indicating that the attorney accepted representation; 3) whether there was an informal relationship whereby the attorney performed legal services gratuitously; 4) whether the attorney actually represented the individual in one aspect of the matter; 5) whether the attorney excluded the individual from some aspect of a litigation in order to protect another client’s interest; and 6) whether the individual reasonably believed that the attorney was representing him or her (see *Reyes v. Leuzzi*, 10 Misc. 3d 1064(A), 814 N.Y.S.2d 564 (Sup. Ct. 2005); *First Hawaiian Bank v. Russell & Volkening, Inc.* 861 F. Supp 233, 238 [S.D.N.Y. 1994]).

Through these elements defendants 1) do not show a fee arrangement 2) nor a written contract. The 3) informal relationship cannot be shown as Moses & Singer did not perform legal services gratuitously for defendants, nor did they 4) actually represent defendants. Further, Moses & Singer 5) did not exclude defendants, and 6) the reasonable belief that Moses & Singer

was representing defendants is negated by Constance Hauman's affidavit, "I had my own attorney" (see NYSCEF Doc. No. 46 Par. 13).

Also, Constance Hauman was employed by Miasha Fisher as an agent and manager. "Unless the parties have expressly agreed otherwise in the circumstances of a particular matter, a lawyer for a corporation represents the corporation, not its employees" (see *Eurycleia Partners, LP v. Seward & Kissel, LLP*, 12 N.Y.3d 553, 562 [2009]). "It is well settled that a corporation's attorney represents the corporate entity, not its shareholders or employees" (see *Bayit Care Corp. v. Einbinder*, 41 Misc.3d 1202(A), 977 N.Y.S.2d 665 [Sup. Ct. 2013]).

Further, "[d]isqualification of the attorney will be granted where the party seeking disqualification establishes either a substantial relationship between the issues in the litigations and the subject matter of the prior representation, or where the party's former counsel had access to confidential material substantially related to the litigation" (see *Avigdor v. Rosenstock*, 47 Misc. 3d 1220(A), 16 N.Y.S.3d 791 (Sup. Ct. 2015)).

This litigation involves infringement of the "Miss Velvet & The Blue Wolf" trademark, conversion, and refusal to deliver funds and property. Moses & Singer reviewed band related contracts and hence are not "substantially related" to this litigation.

"Because disqualification can affect a party's federal and state constitutional rights to counsel of his or her own choosing, the burden is on the party seeking disqualification to show that it is warranted" (see *Nyahsa Servs., Inc. v. People Care Inc.*, 156 A.D.3d 1205 [3d Dep't 2017]).

After review of all the relevant facts and applying them to the pertinent case law and elements, a party is allowed to hire the counsel of their choosing and disqualification is a high standard that is not met here.

In the case at bar defendant has simply failed to show a sufficient basis for disqualifying plaintiff's counsel.

ORDERED that defendants' Order to Show Cause (NYSCEF Doc. No. 62) (Motion Sequence No. 2) to disqualify the law office of Moses & Singer LLP from representing the plaintiff on the basis of the attorney-witness rule, the former-client rule, and the appearance of impropriety, per 22 NYCRR Part 1200.20, and Rules 1.7, 1.9(a) and (c), 3.7(a) and (b), and 8.4 of the New York Rules of Professional Conduct; and staying all further proceedings in this action for thirty (30) days is DENIED.

11/15/2021
DATE


LAURENCE LOVE, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE