

Icon Trade Servs. LLC v Tribeca Fashion House LLC
2023 NY Slip Op 31270(U)
April 18, 2023
Supreme Court, New York County
Docket Number: Index No. 654820/2022
Judge: Arlene P. Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

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ICON TRADE SERVICES LLC,

Plaintiff,

- v -

TRIBECA FASHION HOUSE LLC, TRIBECA18HOLDINGS
LLC, JOSEPH CHEHOVA, ALBERT CHEHOVA, JOHN
DOE, XYZ CORP.

Defendant.

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INDEX NO. 654820/2022

MOTION DATE 04/14/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58

were read on this motion to/for DISQUALIFY COUNSEL.

Defendants’ motion to disqualify Wachtel Missry LLP as counsel for plaintiff is denied.

Background

In this action, plaintiff contends it entered into an oral contract with defendant Joseph Chehova to supply defendant Tribeca Fashion House, LLC (“Tribeca Fashion”) with luxury goods. It claims it sent items in response to thirteen orders placed by Tribeca Fashion and that the outstanding balance owed to plaintiff is over \$215,000.

In this motion, defendants move to disqualify plaintiff’s counsel on the ground that Morris Missry (a named partner at the firm) has a long relationship with defendant Joseph Chehova. Mr. Chehova submits an affidavit in which he claims that his former father-in-law (Mr. Edery) is a longtime friend of Mr. Missry and that the two of them were business partners in various ventures, including the plaintiff here.

Mr. Chehova claims that plaintiff included a defendant named as XYZ Corp, which is, in reality, an LLC owned by plaintiff that Mr. Missry's firm helped create. He observes that Mr. Missry is the agent for service of process for this LLC (which concerns real estate) and that he (Mr. Chehova) retains an interest in this LLC, as does Mr. Missry and Mr. Edery. He explains that his relationship with Mr. Edery deteriorated when he commenced divorce proceedings against his wife, Edery's daughter.

In opposition, defendants submit an affidavit from Mr. Edery and an affirmation from Mr. Missry. Mr. Edery, a member of plaintiff, insists that he wants to retain Wachtel Missry LLP as counsel or plaintiff and that he has used this firm on many prior occasions. He acknowledges that Wachtel Missry offered guidance (at his suggestion) with respect to the purchase of a home for his daughter and Mr. Chehova, but that they did not end up purchasing that home nor was payment ever made for this work to Wachtel Missry.

He insists that his daughter and Mr. Chehova were never clients of Wachtel Missry. Mr. Edery explains that a commercial condominium was purchased by an entity called Tristate 177 Prince LLC for \$8 million and that, sometime later, he presented an offer to his daughter and Mr. Chehova to acquire a 4.17% interest in a corporate entity that, through another corporate entity, owned an interest in Tristate 177 Prince LLC. Mr. Edery insists that the payment to Wachtel Missry was for the purchase price of their interest in the corporate entity and that the firm was merely acting as an escrow agent for the money.

Mr. Missry admits he is a member of plaintiff, but emphasizes that this is not a conflict of interest and that he never represented Mr. Chehova. He also observes that no attorney client relationship was formed with respect to an email attached in the moving papers concerning the lease of a property in Brooklyn. Mr. Missry observes that Mr. Chehova made a similar motion to

disqualify Wachtel Missry in his divorce proceedings (Wachtel Missry represented his ex-wife), although that motion was not decided prior to the settlement of that dispute.

In reply, defendants claim that Mr. Missry has a direct interest in the outcome of this action and that plaintiff commenced this case in spite of knowing, in intimate detail, Mr. Chehova's "financial shortcomings" as part of the divorce proceeding. Defendants characterize the instant action as evidence of harassment and that this litigation is simply a personal effort to go after Mr. Chehova.

Discussion

"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. The court must carefully scrutinize such requests, balancing the right to counsel of one's choice against a potential client's right to have confidential disclosures made to a prospective attorney subject to the protections afforded by an attorney's fiduciary obligation to keep confidential information secret" (*Dietrich v Dietrich*, 136 AD3d 461, 462, 25 NYS3d 148 [1st Dept 2016] [internal quotations and citations omitted]).

The Court denies the motion because defendants did not meet their "heavy burden" to show disqualification is warranted (*id.*). As an initial matter, the fact that Mr. Missry has a financial interest in plaintiff is not a basis upon which defendants can seek to disqualify plaintiff. Certainly, attorneys should tread carefully when bringing actions in which they have a personal financial interest. But Mr. Edery clearly wants to use an attorney he has hired many previous times and defendants did not establish how Mr. Missry's financial stake in plaintiff presents a conflict of interest that requires disqualification. In fact, it appears that the interests are aligned—plaintiff is seeking to recover based upon a breach of contract. The Court is not

concerned that plaintiff might not receive proper representation based on Mr. Missry's interest. And, after all, Mr. Edery is well aware of these issues and can choose whether or not he wants to keep Wachtel Missry as his counsel in this case.

The Court also finds that the acquisition of the property interest by Mr. Chehova and his ex-wife does not justify disqualification. There is no basis to find that an attorney-client relationship ever formed between Mr. Chehova and Wachtel Missry LLP. No retainer agreement was ever presented or signed. Instead, the facts presented suggest that Mr. Chehova's father-in-law presented an investment opportunity to him and that Wachtel Missry just so happened to be the law firm involved with the overall corporate structure. As stated above, the property was owned through a convoluted series of ownership interests and corporate subsidiaries and Mr. Chehova acquired a very small (under 5%) interest in a corporate LLC that, indirectly, had an ownership stake in the actual property. But simply interacting with a law firm (by wiring funds to them) does not create a conflict that requires disqualification in a later and unrelated action. That is simply how the transaction to acquire the ownership stake was finalized.

Similarly, a single email about a rent payment (NYSCEF Doc. No. 44) in which a non-party emailed Mr. Edery and copied Mr. Missry (Mr. Edery then forwarded the email for Mr. Chehova) does not establish a basis for disqualification. There is no reasonable way to interpret the email to create an attorney client relationship.

Summary

To be sure, there is no question that Mr. Chehova had some interactions with Wachtel Missry. But nothing submitted on this record demonstrates that Wachtel Missry was ever his attorney or that Mr. Chehova passed along confidential information that would compromise the instant action. Although Mr. Chehova had a few discreet dealings with Wachtel Missry, these


interactions were always initiated or related to Wachtel Missry’s relationship with his father-in-law (Mr. Edery). And Mr. Edery, who is a member of plaintiff, is entitled to choose his attorney unless defendants can meet their heavy burden to show why this drastic remedy is appropriate. In other words, the fact that Mr. Chehova occasionally interacted with this former father-in-law’s attorney does not prevent Mr. Edery from using that attorney.

The Court recognizes that Mr. Chehova believes the instant action is merely an effort by Mr. Edery to go after him in spite of his financial situation. But that claim, whether it is true or not, has little to do with whether plaintiff’s expansive right to pick its own counsel should be restricted.

Accordingly, it is hereby

ORDERED that defendants’ motion to disqualify counsel for plaintiff is denied.

Conference: July 24, 2023 at 11:30 a.m. By July 17, 2023, the parties are directed to upload 1) a discovery stipulation signed by all parties, 2) a discovery stipulation of partial agreement that identifies the areas in dispute or 3) letters explaining why no discovery agreement could be reached. Based on these submissions, the Court will assess whether an in-person conference is necessary. The failure to upload anything by July 17, 2023 will result in an adjournment of the conference.

<u>4/18/2023</u> DATE			 <hr/> ARLENE P. BLUTH, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE