

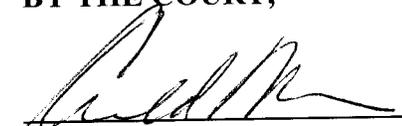
IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION-CIVIL

WFIC, LLC., : September Term 2011
Plaintiff, :
v. : No. 3183
DONALD LABARRE, JR., ESQUIRE, et. al., :
Defendants. : COMMERCE PROGRAM
: Control Number 11123249

ORDER

AND NOW, this *7th* day of March 2012, upon consideration of Bochetto & Lentz P.C.'s Petition to Disqualify Michael G. Trachtman, Esquire and Powell Trachtman Logan Carrle & Lombardo, P.C. and all responses in opposition, it hereby is **ORDERED** that the Petition to Disqualify is **Denied**.

BY THE COURT,


ARNOLD L. NEW, J.

Wfic, Llc Vs Labarre Et-ORDOP



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CIVIL ADMINISTRATION

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FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION-CIVIL**

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Plaintiff,	:	
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DONALD LABARRE, JR., ESQUIRE, et. al.,	:	COMMERCE PROGRAM
	:	
Defendants.	:	
	:	
	:	Control Number 11123249

OPINION

Presently before the court is Defendant Bochetto & Lentz, P.C.'s Petition to Disqualify Michael G. Trachtman, Esquire ("Trachtman") and Powell Trachtman Logan Carrle & Lombardo, P.C. ("Powell Trachtman") from representing plaintiff WFIC, LLC ("WFIC") in this matter.

This action arises from a series of loans made by Larry Martin ("Martin") to Polymer Dynamics, Inc. ("PDI") in 1998-1999 for \$1,400,000.00. PDI defaulted on the loans. Martin and PDI entered into a settlement agreement wherein PDI agreed to give Martin a security interest in the proceeds of a lawsuit that PDI brought against Bayer Corporation in Federal Court. Martin allegedly assigned his security interest in the proceeds of the federal lawsuit to WFIC. This action was instituted by WFIC to collect proceeds from the lawsuit. WFIC retained Trachtman and Powell Trachtman to represent it in this lawsuit. The action was filed against PDI as well as Bochetto & Lentz and various other entities and individuals including, William Peoples, Deborah Kocher, Duane Peoples and Craig Peoples (hereinafter "Peoples").

In 1999, Powell Trachtman was retained by Peoples to represent them in connection with a proposed merger between PDI and Celestial Ventures. A formal engagement letter was signed by William Peoples on June 18, 1999. During this representation, Powell Trachtman drafted and

negotiated individual employment agreements for Peoples with the new merged company. Powell Trachtman also drafted strategies of control and proposed merger documents. During the representation, Peoples claims that Trachtman provided PDI with legal advice and litigation strategy on the Bayer litigation. Peoples also claims Trachtman was provided with access to private and confidential information and documents concerning PDI including but not limited to information and documents concerning PDI's proposed merger with Celestial Ventures, PDI's finances, PDI's corporate structure, PDI's shareholders, PDI's business operations, debts including the loans from Larry Martin and lawsuits. Powell Trachtman invoiced Peoples for services provided in June 1999, August 1999 and in February 2000. Trachtman and Powell had no further communications with Peoples after February 2000.

Bochetto & Lentz now claim Powell Trachtman used confidential information provided to it during its prior representation of Peoples to file the instant action. As evidence of same, Bochetto & Lentz refers to the following allegations contained within the WFIC complaint:

10. Between October 1, 1998 and March 25, 1999, Larry Martin ...made three loans to PDI totaling \$1,400,000.00.
11. Thereafter PDI defaulted on the loans and as a result on June 28, 2001, Martin confessed judgment against PDI in the amount of \$1,402,000.31.
12. At the time, PDI's primary asset was a lawsuit against a major corporation, Bayer. PDI claimed that the Bayer machinery on which it had relied for the conduct of its business had malfunctioned, causing PDI to become insolvent. PDI and indepnedtn(sic) experts valuded(sic) PDI's claim against Bayer at well in excess of \$100 million.

Bochetto & Lentz now move to disqualify Trachtman and Powell Trachtman from representing WFIC in this action based on Trachtman and Powell Trachtman's prior representation of William Peoples, Deborah Kocher, Duane Peoples and Craig Peoples.¹

DISCUSSION

Pennsylvania Rule of Professional Conduct 1.9 Duties to Former Clients provides as follows:

- (a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent.
- (b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client.
 - (1) whose interests are materially adverse to the person; and
 - (2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter; unless the former client gives informed consent.
- (c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:
 - (1) use information relating to the representations to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or
 - (2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.²

In this case, it is undisputed that Peoples is a former client of Powell Trachtman and is being sued by Powell Trachtman's present client WFIC. Moreover, Peoples has not consented to Powell Trachtman's representation of Peoples. The remaining factor this court is to consider is

¹ The court notes that Peoples is not represented by Bochetto & Lentz. Bochetto & Lentz contend that they have standing to seek disqualification of the Powell Trachtman firm even though they do not have an attorney client relationship with that attorney. Standing is not a contested issue in this motion and therefore will not be addressed by this court.

² Pa. R. P. C. 1.9.

whether the former representation is the same or substantially related to the present matter. Matters are "substantially related" for purposes of Pa. R.P.C. 1.9 if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter.³

The determination of whether "matters" are "substantially related" under Pa. R.P.C. 1.9(a) requires a critical factual analysis and consideration of the following questions: (1) What is the nature and scope of the prior representation at issue, (2) What is the nature of the present lawsuit against the former client, (3) In the course of the prior representation, might the client have disclosed to his attorney confidences which could be relevant to the present action and could any such confidences be detrimental to the former client in the current litigation.⁴

Applying the foregoing to the facts at hand, it is clear Powell Trachtman's representation of Peoples in 1999 and Powell Trachtman's current representation of WFIC are not substantially related to warrant the disqualification of Powell Trachtman.

The record before the court demonstrates Powell Trachtman represented Peoples in June 18, 1999 to February 2000. During this attorney client relationship, Powell Trachtman provided Peoples with legal advice and services on a potential merger with Celestial Venture. The representation included drafting and negotiating individual employment agreements with the new company⁵ and providing Peoples with tax advice on whether tax benefits of founder stock in PDI would carry over when exchanged for stock in the new company.⁶

³Pa. R. Civ. P. 1.9 commt. 3.

⁴ Commonwealth Ins. Co. v. Graphix Hot Line, 808 F. Supp. 1200, 1204 (E. D. Pa. 1992)(citing INA Underwriters Ins. Co. v. Nalibotsky, 594 F. Supp. 1199, 1206 (E.D. Pa. 1984).

⁵ Peoples Affidavit p. 5.

Presently, Powell Trachtman represents WFIC against PDI, Peoples and other defendants in an action to enforce a security interest on proceeds from a lawsuit brought by PDI against Bayer. In the complaint, WFIC alleges Martin assigned to it all rights, claims and interests arising from Martin's unpaid loans and Martin's security interest in the proceeds from the Bayer lawsuit.

During Powell Trachtman's prior representation of Peoples, Peoples may have disclosed certain confidences regarding the nature of Martin loans and facts surrounding the Bayer litigation. However any confidences that may have been disclosed at that time are not detrimental to Peoples in the current litigation. All if not most of the details regarding Martin loans and the Bayer litigation are a matter of public record set forth in an action filed in federal court and captioned *Martin v. Alan Turner, Esquire and Turner & McDonald, P.C.*, civil action no. 10-1874 on April 27, 2010.

In this action, Martin alleged the existence of three loans to PDI, PDI's default of loans, Martin's confessed judgment on the loans, the settlement agreement entered between PDI and Martin, the creation of the security agreement on the proceeds from the Bayer litigation, and the Bayer litigation. Not only were facts alleged in the federal complaint concerning the loan, exhibits were attached to the federal complaint evidencing the settlement agreement, the promissory note, the collateral assignment, the security interest and the UCC filing statement. Additionally, Peoples was deposed in the action wherein he testified as to his dealings with Martin and the disposition of the Bayer proceeds. Hence any confidential information that may have been revealed to Powell Trachtman concerning loans is not disqualifying.⁷

⁶ See Exhibit "B" to Bochetto & Lentz's reply to Powell Trachtman's response to the motion to disqualify.

⁷ Pa. R. Civ. P. 1.9 commt. 3.

Furthermore, any confidential information revealed to Powell Trachtman in 1999 is stale since the basis for the instant action did not exist at the time of Powell Trachtman's representation of Peoples. Information acquired in a prior representation may be rendered obsolete by the passage of time and therefore can not be substantially related to the current matter at hand.⁸ During Powell Trachtman's limited representation of Peoples PDI had not defaulted on Martin's loans, Martin had not confessed judgment (June 28, 2001), a settlement agreement between Martin and PDI did not exist (October 24, 2001), and most importantly, the basis for this action, the security interest did not exist (October 24, 2001). Hence, Powell Trachtman did not possess any confidential information detrimental to Peoples in this action because the basis for this action did not exist at the time of the Powell Trachtman's representation of Peoples.

The court does not find persuasive Peoples reliance upon a replevin email as a basis to disqualify Powell Trachtman. Although Peoples copied Trachtman on emails concerning a replevin action filed by Bayer against PDI and a potential products liability claim to be filed by PDI against Bayer, it is clear that any advice provided by Trachtman was superficial. Indeed, Trachtman informed Peoples, "Not having a sophisticated understanding of the facts and issues, I raise this only as a possibility, and by way of stressing the need for quick action and involvement of whomever is handling the claim."⁹ Trachtman also stated in the email, "I strongly urge you to involve Mannino in this matter at the earliest possible time in at least an advisory capacity, if you have not already done so in order to avoid prejudicing the claim he is handling."¹⁰ At best, the replevin email shows Trachtman was aware that PDI was going to file a lawsuit against Bayer,

⁸ Pa. RPC 1.9, Explanatory Comment (emphasis added).

⁹ See Exhibit "A" to Bochetto & Lentz's reply to Powell Trachtman's response to the motion to disqualify.

¹⁰ Id.

however he was not aware of the facts and issues of the claim. Since, the basis of this claim did not exist at the time of Powell Trachtman's representation of Peoples it is highly unlikely that any confidential information was revealed to Powell Trachtman which could potentially harm Peoples in this matter.

CONCLUSION

Based on the foregoing, defendant Bochetto & Lentz's motion to disqualify is denied.

BY THE COURT,



ARNOLD L. NEW, J.