DOCKET NO: NWH-CV20-6005937-S	SUPERIOR COURT
A. MARK GETACHEW, et al.	JUDICIAL DISTRICT OF STAMFORD/NORWALK
V.	AT NORWALK HOUSING SESSION
L&S INVESTMENTS, LLC, et al	OCTOBER 20, 2020

MEMORANDUM OF DECISION RE: PLAINTIFFS' MOTION TO DISQUALIFY COUNSEL (#102)

The plaintiffs seek to disqualify defendants' counsel, Attorney Eric Grayson pursuant to Rule 3.7 of the Rules of Professional Conduct, alleging that he is a necessary witness in this matter.

This is a residential dispute over repairs alleged as necessary on the premises rented by the plaintiffs. In an escape from New York because of Covid, they claim they quickly negotiated a lease on the perfect property for their family and moved in shortly after finding the premises and without time for a detailed inspection by a professional. Attorney Grayson represented the landlords in the leasing contract and had at least one nineteen minute conversation with one of the plaintiffs discussing the rider to the form Greenwich rental contract during which representations were made as to the property condition. Additionally, Attorney Grayson represents the defendants in a similar separate action in this Court. The plaintiffs claim that these representations were false, or at least uninformed, and they claim that the second action may be relevant to this case. In their Amended Complaint, the plaintiffs claim that they have expended in excess of $44,000 in repair costs because items such as the pool and gas line were not in working order and other disrepair. (Docket Entry #109 at paragraph 38).

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

The parties have drafted extensive pleadings and provided the Court with exhibit books. A remote evidentiary hearing was held on October 15, 2020 via Microsoft Teams. The Court has considered all of the evidence provided and the testimony of the plaintiff, A. Mark Getachew, Esq. The Court did not require testimony from other parties in making this decision.

"The trial court has the authority to regulate the conduct of attorneys and has a duty to enforce the standards of conduct regarding attorneys." (Citations omitted.) Bergeron v. Mackler, 225 Conn. 391, 397 (1993).

"In disqualification matters, however, we must be solicitous of a client's right freely to choose his counsel . . . mindful of the fact that a client whose attorney is disqualified may suffer the loss of time and money in finding new counsel and may lose the benefit of its longtime counsel's specialized knowledge of its operations. . . . The competing interests at stake in the motion to disqualify, therefore, are: (1) the defendant's interest in protecting confidential information; (2) the plaintiffs' interest in freely selecting counsel of their choice; and (3) the public's interest in the scrupulous administration of justice." (Citations omitted; internal quotation marks omitted.) Bergeron at 397-98.

"In view of the strong public policy favoring a party's right to select its own counsel, the law places the burden of showing that disqualification is required upon the moving party . . . . A party moving for disqualification of an opponent's counsel must meet a high standard of proof . . . . [B]efore permitting a party to disqualify an attorney the moving party bears the burden of proving facts which indicate disqualification is necessary. . .

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

.The courts should act very carefully before disqualifying an attorney and negating the right of a client to be represented by counsel of choice." (Internal citations and quotation marks omitted.) Trails of Courage, Inc., v. Markwell, (Order on Motion for Disqualification, Superior Court, Judicial District of Danbury, Docket No. DBD-CV19-6030475, July 9, 2019, J. D'Andrea).

Rule 3.7 of the Rules of Professional Conduct provides: "(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless: (1) The testimony relates to an uncontested issue; (2) The testimony relates to the nature and value of legal services rendered in the case; or (3) Disqualification of the lawyer would work substantial hardship on the client. (b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9."

The Official Commentary to Rule 3.7, provides, in part: "The tribunal has proper objection when the trier of fact may be confused or misled by a lawyer serving as both advocate and witness. The opposing party has proper objection where the combination of roles may prejudice that party's rights in the litigation. . . . To protect the tribunal, subsection (a) prohibits a lawyer from simultaneously serving as an advocate and necessary witness except in those circumstances specified in subsections (a)(1) through (a) (3)."

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

"The Rules of Professional Conduct establish the guidelines for our determination of what constitutes a conflict of interest . . . . We have interpreted [R]ule 3.7 to require an attorney to withdraw if he or she *reasonably foresees* that [they] will be called as a witness to testify on a *material* matter . . . ." (Citation omitted; emphasis in original; internal quotation marks omitted.) State v. Crespo, 246 Conn. 665, 685 n.14, (1998).

Will Attorney Grayson be a necessary witness in this matter?

"A necessary witness is not just someone with relevant information, however, but someone who has material information that no one else can provide. Whether a witness ought to testify is not alone determined by the fact that he has relevant knowledge or was involved in the transaction at issue. Disqualification may be required only when it is likely that the testimony to be given by the witness is necessary. Testimony may be relevant and even highly useful but still not strictly necessary. A finding of necessity takes into account such factors as the significance of the matters, weight of the testimony and availability of other evidence. . . . A party's mere declaration of an intention to call opposing counsel as a witness is an insufficient basis for disqualification even if that counsel could give relevant testimony. . . . There is a dual test for necessity. First the proposed testimony must be relevant and material. Second, it must be unobtainable elsewhere." (Emphasis omitted; internal quotation marks omitted.) DiNardo Seaside Tower, LLC v. Sikorsky Aircraft Corp., 153 Conn. App. 10, 49 (2014).

In the present matter, this Court finds that the plaintiffs have failed to meet their burden of indicating that the disqualification of Attorney Grayson is required or that he will be a

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

necessary witness at trial. His testimony would largely be centered upon representations he made regarding habitability of the premises and conditions of the pool on the day before the plaintiffs took occupancy of the premises. Mr. Getachew claims that he relied more heavily on the passing statements of Attorney Grayson in making his decision to execute the lease than he did on similar statements made by the listing agent and non-licensed handymen that inspected the premises who would have actual knowledge of the premises. Even so, if Attorney Grayson's testimony regarding his statements were relevant and material, it is not testimony unobtainable elsewhere as one of the plaintiffs, Mr. Getachew, himself, was on the other side of the conversation and can testify as to the conversation at trial - as he did at this hearing. Also, Mr. Getachew has previous working knowledge of pools and spas that Attorney Grayson lacks.

Further, exception (a)(1) applies to this matter as it does not appear that the testimony from Mr. Getachew regarding the conversation is contested. The real issue in this matter is the amount expended for alleged repairs – not whether there was an actual need for those repairs or if the pool, spa and gas lines were in a state of disrepair when the plaintiffs took possession rather than whether the plaintiffs only rented this property solely on the brief statements of Attorney Grayson. The Prayer for Relief still requesting a judicial declaration that the plaintiffs can purchase the property does not manifest a regret by the plaintiffs for entering into this lease as they still must covet the property. The language of the lease and rider will speak for themselves at trial.

DOCKET ALARM
Find authenticated court documents without watermarks at docketalarm.com.

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.

WHAT WILL YOU BUILD? | sales@docketalarm.com | 1-866-77-FASTCASE

fastcase® Smarter legal research.