

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

MOHAMMED HAMED by his authorized agent)
WALEED HAMED,)
Plaintiff/Counterclaim Defendant,)
v.)
FATHI YUSUF and UNITED CORPORATION,)
Defendants/Counterclaimants,)
v.)
WALEED HAMED, WAHEED HAMED,)
MUFEED HAMED, HISHAM HAMED, and)
PLESSEN ENTERPRISES, INC.,)
Counterclaim Defendants.)

CIVIL NO. SX-12-CV-370
ACTION FOR DAMAGES,
INJUNCTIVE RELIEF and
DECLARATORY JUDGMENT

ORDER RE DISQUALIFICATION OF DUDLEY, TOPPER, AND FEUERZEIG

THIS MATTER is before the Court on Plaintiff/Counterclaimant Mohammad Hamed's Motion to Disqualify Dudley, Topper, and Feuerzeig (DTF) from any Further Involvement in these Proceedings (Motion), filed January 29, 2016; Defendants/Counterclaimants Fathi Yusuf (Yusuf) and United Corporation's (United) (collectively, the Defendants) Opposition thereto, filed February 17, 2016; and Plaintiff's Reply thereto, filed February 22, 2016; and Plaintiff's Supplemental Authority Re Motion to Disqualify Dudley, Topper and Fuererzeig [sic] (Supplement), filed July 20, 2016. For the reasons that follow, Plaintiff's Motion will be denied.

Legal Standard

Virgin Islands Rules of Professional Conduct, as established by Supreme Court Rule 211, effective February 1, 2014, govern the conduct of members of the Virgin Islands Bar Association. *Cianci v. Chaput*, 2016 V.I. Supreme LEXIS 24, *15-17 (V.I. 2016) (citing *In re Nevins*, 60 V.I. 800, 804 n.1 (V.I. 2014)).

Discussion

Virgin Islands Supreme Court Rule 211.1.7 governs conflicts of interest pertaining to current clients, as follows:

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.
- (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
 - (2) the representation is not prohibited by law;
 - (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
 - (4) each affected client gives informed consent, confirmed in writing.

V.I.S. Ct. R. 211.1.7.

Plaintiff contends that DTF's simultaneous representation of the Hamed-Yusuf Partnership and Fathi Yusuf "requires it to be disqualified from continuing to represent Defendants herein." Motion, at 1. To support his contention, Plaintiff states that the ethical rules of representation have been violated because "a lawyer cannot represent potentially adverse interests in the same transaction." *Id.* at 2. Plaintiff cites *King v. Appleton*, 61 V.I. 339, 354 (V.I. 2014) to illustrate that a lawyer cannot serve as a trustee while acting as counsel for both the settlor and the beneficiary because doing so "could give rise to such a 'significant risk' of material limitation of King's representation of one of these clients due to concurrent responsibilities to them both or his own personal interest in this matter." *Id.* (citing *King*, 61 V.I. at 353 n.12). However, unlike the instant case wherein the Court appointed Yusuf as Liquidating Partner, the attorney in *King* appointed himself as trustee and was not subject to the extensive judicial oversight that is applicable in this case.

Plaintiff avers that counsel attempts to represent adverse parties, noting that "DTF's billing includes work done for the partnership that is directly adverse to the partnership's interests." *Id.* at 3. Plaintiff argues that "DTF has filed pleadings and sent correspondence that has taken both sides of [a property dispute] issue at different times for different parties." *Id.* at 4; Exhibit 1. "In short, DTF is acting directly contrary to its 'client,' the partnership, and for the benefit of DTF's other two clients, Yusuf and United." *Id.*¹ Plaintiff also highlights that "DTF was clearly warned about avoiding any ethical conflict and agreed it would not represent the partnership or be paid from partnership funds." Reply, at 2.

¹ Plaintiff considers the Liquidating Partner and the Partnership to be one legal entity, a view that Defendants reject.

Defendants respond that the motion to disqualify DTF is simply a smokescreen to dispute Judge Ross's approval of billings by DTF paid out of Partnership funds. Opposition, at 7.² Defendants state that DTF's representation is appropriate and that to hire an outside attorney to represent the Liquidating Partner would be unnecessary and add greater expense to the Partnership. *Id.* at 5. Defendants explain that

Hamed's failure to even try to support the notion that the Liquidating Partner is the Partnership is understandable, because that clearly is not the case. The Partnership between Hamed and Yusuf was a business organization formed by the two of them for operating three supermarkets on St. Thomas and St. Croix. The Liquidating Partner is a position created by the Court to facilitate the liquidation and winding up of the Partnership under judicial supervision. The court order creating this position carefully circumscribes the duties of the Liquidating Partner and makes the exercise of all of those duties subject to oversight by the Master, Judge Ross. The duties of the Liquidating Partner, as set forth in the Order creating that office, include the "power and authority to sell and transfer Partnership Assets, engage legal, accounting and other professional services, sign and submit tax matters, execute and record a statement of dissolution of the Partnership, pay and settle debts, and marshal Partnership Assets for equal distribution to the Partners following payment of all Debts and a full accounting by the Partners.

Id. at 3. (citing Windup Plan § 4).

The Court finds that it is unnecessary to disqualify DTF. The Court is satisfied that the strict system of judicial oversight over all decisions made by the Liquidating Partner via the bi-monthly reports serves as a sufficient safeguard against such potential conflict. That is, even to the extent that the dual roles of Yusuf and DTF may involve conflicting interests, there is sufficient transparency in the liquidation process to avoid impropriety and collusion between Yusuf as an individual, and Yusuf in his capacity as the Liquidating Partner. Thus, the Court finds that the Partnership, the Liquidating Partner, and Yusuf's interests are not so directly adverse to each other to require the attorney's disqualification.

The Court has already considered whether Yusuf should have been conflicted out of serving in the role of Liquidating Partner and found Yusuf, notwithstanding the conflicting interests, to nonetheless be the most appropriate choice for Liquidating Partner. *See* Order adopting Final Windup Plan, entered January 7, 2015. To the extent that Plaintiff objects to specific, individual items in DTF's billing, it is more appropriate to resolve billing issues following submission of the Master's Report and

² "[I]n a January 23, 2016 email to Judge Ross not attached to Hamed's motion, his attorney, Joel H. Holt, admitted that so long as DTF was not being paid by the Partnership for any services it provided to the Liquidating Partner, there would be no basis for 'ethical action' by Hamed. As such, it is clear that this motion is not about any supposed ethical conflicts at all, but is instead about whether Judge Ross should have approved and paid the DTF billing in full, or should have disapproved payment for some of the entries." *Id.* at 3.

Recommendation rather than by the disqualification of DTF. The Court notes that Plaintiff has filed responses and objections to the bi-monthly reports of the Liquidating Partner. Such filings are the appropriate vehicle for raising such objections that will ultimately be resolved at the conclusion of the litigation.

In light of the foregoing, it is hereby

ORDERED that Plaintiff's Motion to Disqualify Dudley, Topper and Feuerzeig from any Further Involvement in these Proceedings is DENIED.

DATED: August 5, 2016.



DOUGLAS A. BRADY
Judge of the Superior Court

ATTEST:

ESTRELLA GEORGE
Acting Clerk of the Court

By:



Court Clerk Supervisor
8/5/16