IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS
DIVISION OF SAINT CROIX AT KINGSHILL

ANNETTE SCOTT, Plaintiff, vs. BARBARA CURRY JAMES, Defendant.	CIVIL NO. 167/1997 ACTION FOR DAMAGES JURY TRIAL DEMANDED NOT FOR PUBLICATION

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MEMORANDUM OPINION

(December 14, 1999)

This matter is before the Court on Defendant, Barbara Curry James' Motion to Disqualify Plaintiff's counsel, attorney Lee J. Rohn. In her motion, James asserts that Plaintiff's counsel should be disqualified because Attorney Rohn represented James in a prior debt action. Plaintiff, Annette Scott, responds that Attorney Rohn should not be disqualified because the prior action was totally unrelated and too remote in time to warrant such action. For reasons which follow, James' Motion to Disqualify Counsel is denied.

I. FACTS

The records shows that in 1989 Attorney Rohn represented James in the case of Barbara James v. Mary Morris d/b/a Monique's Beauty Salon, Civ. No. 751/1989 (Terr.Ct. 1989). James v. Morris was a debt action which was resolved by the parties in 1990 pursuant to a settlement agreement which allowed Morris to pay James $6,500 over a period of several years. It appears that Morris has not satisfied the entire debt and still owes James $2,500.00. James asserts in an affidavit that it may be necessary to file an action against Morris because she has defaulted on payments under the settlement agreement. In an opposing affidavit, Morris acknowledges that she owes James the money, but contends that they have "entered into an agreement that [she] can pay her the remainder when [she] can."[1]

In the instant case, Scott sued James alleging that on January 10, 1996, "James operated her vehicle in a negligent manner such that she struck the vehicle being driven by Plaintiff."[2] James asserts that Attorney Rohn should be disqualified from representing Scott because when Attorney Rohn represented James in the in the previous action, "James discussed with Attorney Rohn her problems with alcohol, and additional details involving her personal life including her financial resources."[3] Although James acknowledges that the instant case is an "unrelated matter" and that "there are no allegations . . . that [she] was under the influence of alcohol at the

[1] Affidavit of Mary Morris at paragraph 2.

[2] Complaint at paragraph 4.

[3] Motion to Disqualify, Memorandum of law at 2.

time of the accident," she contends that "the information provided to Plaintiff's counsel by Ms. James regarding her problems with alcohol and her financial assets may potentially enter this lawsuit."[4]

II. DISCUSSION

Potential conflicts created by prior representation of an adverse party are governed by the American Bar Association's Model Rules of Professional Conduct. *See* L.R.Ci. 83.2(a)(1). Model Rule 1.9(a) provides that "[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 consents after consultation." Model Rules of Professional Conduct Rule 1.9(a) (1983) (emphasis supplied). Courts in this jurisdiction employ a three-part inquiry to determine whether there is a substantial relationship between the prior and present representations. Bluebeard's Castle, Inc. v. Delmar Marketing, Inc., 886 F.Supp. 1204, 1207 (D.V.I. 1995). The Court will examine:

> (1) the nature and scope of the earlier representation; (2) the nature of the present lawsuit; and (3) the possibility that the client might have disclosed confidences during the earlier representation which could be relevant and detrimental to the present action.

Id. In addition, a court should balance a client's interest in the continued loyalty of prior counsel against the opposing party's interests in retaining her chosen counsel who is familiar with the issues involved and in avoiding the time and expense required to familiarize a new attorney with

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[4] Id.

the matter. *See* id.; Brice v. Hess Oil Virgin Islands Corp., 769 F.Supp. 193, 195 (D.V.I. 1990). Finally, a court must consider the policy "that attorneys be free to practice without excessive restrictions." Id.

Upon applying the three-part inquiry and the balancing test in this case, the Court concludes that Attorney Rohn's prior representation of James does not warrant disqualification. The prior action and this action are not substantially related. James acknowledged this fact in her Motion to Disqualify, and the limited evidence on the issue compels the same conclusion. As stated above, the prior case was a debt action that was resolved shortly after suit was filed. The instant case, filed approximately eight years later, is a personal injury action with no apparent common facts or legal issues. Although James contends that in her previous representation Attorney Rohn learned "details of her personal life including her [problems with alcohol] and her financial resources,"[5] James only speculates that such matters "may potentially enter this lawsuit."[6] Not only is there no evidence supporting such speculation, James candidly admits that alcohol consumption is not an issue in this case and discovery responses contained in the Court's file show that Scott is not claiming that James' consumption of alcohol had anything to do with the collision. Rather, it appears that the heart of the dispute is whether James' brakes were functioning properly. Furthermore, even assuming that Attorney Rohn gathered some insight into James' financial resources during her prior representation, that information is not relevant to issues concerning her liability for the accident at issue in this case or any damages Scott may have suffered. In any event, over nine years has passed since that litigation concluded and there is nothing indicating that James' financial resources have remained unchanged over the passage of time.

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[5] Id.

[6] Id.

Furthermore, although James is entitled to rely on the continued loyalty of her former counsel, under the facts presented, Attorney Rohn's representation of Scott will not violate that duty of loyalty. "'[D]isqualification is never automatic,' U.S. v. Miller, 624 F.2d 1198, 1201 (3rd Cir. 1980)" Brice 769 F.Supp. at 195, and the evidence shows that the two actions are totally unrelated. Balanced against James' interest in the continued loyalty of her former counsel, is Scott's interests in retaining her chosen counsel. Attorney Rohn filed this action on Scott's behalf over two and one-half years ago. During that time Attorney Rohn has filed motions, conducted discovery and retained an expert witness on Scott's behalf. Considering the lack of prejudice to James, Scott should not be expected to forfeit her chosen counsel at this stage of the proceedings and incur additional time and possibly expense in pursuit of her claim.

III. CONCLUSION

For the foregoing reasons, the Court concludes that Defendant's Motion to Disqualify should be denied. Although Plaintiff's counsel represented Defendant in a prior action, that case is unrelated to the present case, and Defendant's interest in the continued loyalty of her former attorney, is outweighed by Plaintiff's interest in retaining her chosen counsel.

MARIA M. CABRET
Territorial Court Judge

A T T E S T:
YVONNE V. WESSELHOFT
Clerk of the Court

By:__________________
Deputy Clerk
Dated:____________