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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

PEANUT'S BREAD & BUTTER,
LLC,

Plaintiff and Appellant,

v.

JOHN THOMAS JONES,

Defendant and Respondent.

B279654

(Los Angeles County
Super. Ct. No. BC614812)

APPEAL from an order of the Superior Court of
Los Angeles County. Ruth Ann Kwan, Judge. Affirmed.

The Kernan Law Firm, S. Michael Kernan, R. Paul
Katrinak, and Ryan E. Carreon for Plaintiff and Appellant.

The Law Offices of David J. Glaubiger and David J.
Glaubiger for Defendant and Respondent.

Peanut's Bread & Butter, LLC, (PBB) challenges a trial court order denying its motion to disqualify David J. Glaubiger, Esquire, (Glaubiger) from representing John Thomas Jones (Jones) in this lawsuit.

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In 2005, James Glenn Brill (Jim) and Jeannette Brill (Jeannette) married. Shortly after their marriage, in 2008, Jim formed PBB, a company that rents vehicles to movie production companies. PBB is a single member LLC, with Jim as the sole PBB member. Jeannette was named the initial manager of PBB and an officer of the company.

In 2015, Jeannette sought and obtained a restraining order against Jim.

On January 21, 2016, Jeannette filed a petition for divorce. One month later, she applied for and obtained an order of the family court giving her temporary exclusive managerial control over PBB, effective immediately.

On March 24, 2016, PBB filed the instant lawsuit against Jones. According to the first amended complaint, filed in May 2016, Jones "defrauded [PBB] by working with one of its employees to illegally take money for drugs using company funds." Specifically, Jones wrongfully took monies from PBB, falsely represented that equipment was being provided to PBB (when it was not), and actually used those monies to provide drugs to Jim.

At some point, Jones retained Glaubiger to represent him. Jones, represented by Glaubiger, filed an answer to the FAC in or around July 2016.

Meanwhile, in June 2016, Jim met with Glaubiger for two reasons: (1) To consult with Glaubiger regarding his possible retention of him in his ongoing marital dissolution proceeding; and (2) For Glaubiger to investigate the allegations in the FAC, “specifically the actual ownership of [PBB] during the period when the alleged narcotics transactions took place.” When Glaubiger met with Jim, he asked him about the allegations in the FAC; Jim represented “that he, alone, owned and operated [PBB] during the period of December 2012 through July 2015.” He told Glaubiger that the allegations in the FAC were a “fairytale” and that his client, Jones, was “an innocent by-stander in his marital dispute.”

In August 2016, Glaubiger obtained a waiver of privilege from Jim and obtained PBB’s tax returns for the years 2012 and 2014. According to Glaubiger, the tax returns showed that PBB only had one member during these years and that member was Jim. The returns also showed that PBB had elected to be a “disregarded” entity and have all of its profits payable to Jim personally.

Because he did not receive the 2013 tax return, Glaubiger contacted Jim and asked him if PBB had filed one that year. Jim offered to contact his accountant. Later, Jim advised Glaubiger that he could not get the accountant to send the tax return to him; Jim asked Glaubiger to contact the accountant. Glaubiger telephoned the accountant; informed her that he represented Jim (not PBB); and asked her to send Jim his 2013 tax return. Later that month, Glaubiger received from Jim a copy of the 2013 tax return. As with the 2012 and 2014 tax returns, this tax return indicated that PBB had only one member/owner and that PBB

had elected to be a “disregarded entity” and have all its profits payable to Jim personally.

On November 18, 2016, PBB filed a motion to disqualify Glaubiger from representing Jones. PBB argued that Glaubiger’s communications with Jim violate California Rules of Professional Conduct, rule 2-100 (rule 2-100)¹ and mandate his disqualification.

Glaubiger opposed the motion.

The motion was heard and denied on December 13, 2016. The trial court reasoned “that the only information that counsel obtained from Jim . . . was the tax return 2012 and 2014. And I don’t find this to be prejudicial to [PBB] in that the information obtained by counsel did not create an unfair advantage for [Jones] or impact the fairness of the trial or integrity of the judicial system, and that is even assuming that there was a violation of Rule 2-100.” In so ruling, the trial court noted that Jim’s interest did “not necessarily align with [PBB] based on the

¹ Rule 2-100 provides, in relevant part: “(A) While representing a client, a member shall not communicate directly or indirectly about the subject of the representation with a party the member knows to be represented by another lawyer in the matter, unless the member has the consent of the other lawyer. [¶] (B) For purposes of this rule, a ‘party’ includes: [¶] (1) An officer, director, or managing agent of a corporation or association, and a partner or managing agent of a partnership; or [¶] (2) An association member or an employee of an association, corporation, or partnership, if the subject of the communication is any act or omission of such person in connection with the matter which may be binding upon or imputed to the organization for purposes of civil or criminal liability or whose statement may constitute an admission on the part of the organization.”

allegation that he somehow conspired with [Jones].”
Furthermore, Jim was still a member of PBB, “but he was not an officer of the LLC or a controlling member of the LLC.”
Moreover, “even if there was a violation, I don’t have any evidence . . . that defense counsel obtained information that is protected by the attorney-client privilege or work product doctrine.”

Finally, the trial court left the door open for a renewed motion, should PBB “find something different later on.”

This timely appeal ensued.

DISCUSSION

I. Standard of review

“We review a trial court’s ruling on a disqualification motion for abuse of discretion, and we accept as correct all express or implied findings that are supported by substantial evidence. . . . “However, the trial court’s discretion is limited by the applicable legal principles. . . . Thus, where there are no material disputed factual issues, the appellate court reviews the trial court’s determination as a question of law. . . . [A] disqualification motion involves concerns that justify careful review of the trial court’s exercise of discretion.” [Citations.]” (*Apple Computer, Inc. v. Superior Court* (2005) 126 Cal.App.4th 1253, 1263.)

“Motions to disqualify counsel are especially prone to tactical abuse because disqualification imposes heavy burdens on both the clients and courts: clients are deprived of their chosen counsel, litigation costs inevitably increase and delays inevitably occur. As a result, these motions must be examined ‘carefully to ensure that literalism does not deny the parties substantial

justice.’ [Citation.]” (*City of Santa Barbara v. Superior Court* (2004) 122 Cal.App.4th 17, 23, fn. omitted.)

II. *The trial court did not abuse its discretion*

After careful review of the appellate record, we conclude that Glaubiger did not violate rule 2-100. The analysis is simple: As the trial court found, Jim was not represented by counsel at the time of his meeting with Glaubiger.² Because Jim was not represented by counsel, Glaubiger did not violate rule 2-100 by communicating with him.³

In urging us to reverse, PBB argues that because Jim was still a member of PBB, it was inappropriate for Glaubiger to speak with him. But, PBB overlooks the fact that, at the time Glaubiger spoke with Jim, an adversarial relationship existed between PBB and Jim. Pursuant to *La Jolla Cove Motel & Hotel Apartments, Inc. v. Superior Court* (2004) 121 Cal.App.4th 773, 785, the attorney who represented (and continues to represent) PBB could not have represented Jim, an adverse member.

PBB further argues that the receipt of confidential tax returns requires disqualification under *Rico v. Mitsubishi Motors Corp.* (2007) 42 Cal.4th 807 (*Rico*). *Rico* is readily

² He certainly was not represented by PBB’s counsel; that would make no sense. How could PBB’s counsel represent Jim and accuse him of civil and criminal misconduct in the FAC?

³ It follows that *Chronometrics, Inc. v. Sysgen, Inc.* (1980) 110 Cal.App.3d 597 is factually distinguishable. In that case, it was “undisputed in the opposing declarations that [an attorney] did communicate with [a witness] without the consent of his attorney of record in the litigation.” (*Id.* at p. 603.) Here, Jim was not represented by an attorney.

distinguishable because, regardless of whether the tax returns were privileged information that should not have been disclosed, those tax returns were Jim's.⁴ Because the tax returns belonged to Jim, Glaubiger did not violate rule 2-100 by contacting the accountant.

Finally, PBB argues that Glaubiger violated California Rules of Professional Conduct, rule 3-310(C)⁵ by representing Jim and Jones, alleged clients with adverse interests. PBB does not explain how it has standing to raise this objection. (*Blue Water Sunset, LLC v. Markowitz* (2011) 192 Cal.App.4th 477, 485.)

⁴ Not surprisingly, this is a hotly disputed issue: PBB asserts that tax returns belong to it; Jim contends that the tax returns belong to him. Substantial evidence, namely Glaubiger's and Jim's declarations, supports the trial court's implied finding that the tax returns belong to Jim. (*People ex rel. Dept. of Corporations v. Speedee Oil Change Systems, Inc.* (1999) 20 Cal.4th 1135, 1143 [We defer to the "trial court's express or implied findings [if they are] supported by substantial evidence"].)

⁵ California Rules of Professional Conduct, rule 3-310(C), provides, in relevant part: "A member shall not, without the informed written consent of each client: [¶] (1) Accept representation of more than one client in a matter in which the interests of the clients potentially conflict; or [¶] (2) Accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict."

DISPOSITION

The order is affirmed. Jones is entitled to costs on appeal.

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_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
CHAVEZ

_____, J.
HOFFSTADT