Georgia State University College of Law
**Reading Room**

Georgia Business Court Opinions

Spring 4-23-2013

# Order on Hearing on April 12, 2013 (Melamud et al. v. Page, Perry & Associates)

Melvin K. Westmoreland

Follow this and additional works at: https://readingroom.law.gsu.edu/businesscourt

Part of the Business Law, Public Responsibility, and Ethics Commons

Institutional Repository Citation
Westmoreland, Melvin K., "Order on Hearing on April 12, 2013 (Melamud et al. v. Page, Perry & Associates)" (2013). *Georgia Business Court Opinions*. 279.
https://readingroom.law.gsu.edu/businesscourt/279

This Court Order is brought to you for free and open access by Reading Room. It has been accepted for inclusion in Georgia Business Court Opinions by an authorized administrator of Reading Room. For more information, please contact mbutler@gsu.edu.

COPY

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

FILED IN OFFICE
APR 23 2013
DEPUTY CLERK SUPERIOR COURT
FULTON COUNTY, GA

**ANATOLIY MELAMUD, LETOTECH, INC., QUANTPLAT, LLC and DEHAAN & CO. FINANCIAL PARTNERS, INC.,**

**Plaintiffs,**

**v.**

**PAGE, PERRY & ASSOCIATES, LLC and J. STEVEN PARKER,**

**Defendants.**

**Civil Action File No. 2012CV219444**

Bus 3

---

**<u>ORDER ON HEARING ON APRIL 12, 2013</u>**

On April 12, 2013, counsel appeared before the Court for oral argument on Defendants' Motion to Disqualify Wargo French LLP, Plaintiffs' Request for Sanctions, Defendants' Motion for a Protective Order to Limit Discovery Related to Punitive Damages, and Defendants' Motion to Compel Discovery of Legal Fees. Upon consideration of the motions, the briefs filed in connection with the motions, and the arguments of counsel for the parties and non-parties Anthony E. Gunter and Gunter & Associates, Inc., the Court finds as follows:

**1. Defendants' Motion to Disqualify Wargo French LLP**

Plaintiff Anatoliy Melamud ("Melamud") has filed this action against attorney, J. Steven Parker ("Parker"), and his law firm, Page Perry & Associates, LLC ("Page Perry"), for their alleged misconduct in covering up the fraud of Melamud's investment advisor and business partner, Benjamin Daniel DeHaan ("DeHaan"), who is currently the subject of an SEC investigation and a lawsuit for defrauding investors.

In 2010, Melamud, an investment software engineer, met and established a business relationship with DeHaan. Initially and over time Melamud invested funds in DeHaan's investment-advisory firm,

Lighthouse Financial Partners, LLC ("Lighthouse"). Additionally, DeHaan offered to partner with Melamud, who develops software, in a business venture. Ultimately, the parties agreed that Melamud would develop management software for investment portfolios for use by Lighthouse. In return, Melamud's company, Plaintiff Letotech, Inc., would receive ownership in DeHaan & Co. Financial Partners, Inc. ("DeHaan & Co.") and a licensing fee from Lighthouse.

In early 2012, Georgia regulators and the United State Securities Exchange Commission ("SEC") began investigating DeHaan and later initiated an action against DeHaan and Lighthouse. Melamud claims that he has failed to recover any of the amounts he invested. He also claims damages to the partnership he started with DeHaan on behalf of which he claims to be indebted to third-party vendors, in addition to the overall loss to the enterprise due to its connection with DeHaan and Lighthouse.

Plaintiffs are suing Defendants, attorneys for DeHaan and his related entities, claiming that they shielded DeHaan's fraudulent conduct, as well as the true financial picture of the affiliated entities, and established an attorney-client relationship with Plaintiffs by providing certain legal advice in connection with the parties' transactions. Plaintiffs contend that Defendants breached this fiduciary relationship by representing both adversaries during the transactions and by failing to adequately advise them of the financial and legal uncertainty of DeHaan and his affiliated entities.

In defense, Defendants point out that Melamud's daughter, Alina Singer, an associate with Wargo French, LLP ("Wargo French") counseled her father and his companies in the process of the negotiations with DeHaan and participated in drafting the agreements that reflected the parties' formal relationship. Additionally, on behalf of Wargo French, she forwarded an engagement letter to Plaintiff Letotech, Inc. and non-party DeHaan & Co. She also admits to using Wargo French resources, including personnel, in the performance of her work on her father's and the related entities' behalf. Accordingly, they filed a Notice of Intent to Seek Apportionment Against Non-Parties on February 18, 2013, indicating their plans to try and apportion liability against Wargo French, LLP and Alina Singer, among other individuals.

In light of Wargo French's involvement in this action, Defendants filed a Motion to Disqualify Wargo French, on the basis that its interest in defending the conduct of its associate conflicts with the best interest of its client, to whom Defendants believe Wargo French is liable.

A trial court has discretion to determine whether a law firm should be disqualified, and "the right to counsel is an important interest which requires that any curtailment of the clients' right to counsel of choice be approached with great caution. The mere fact that the public may perceive some conduct as improper is, without some actual impropriety, insufficient justification for interference with a client's right to counsel of choice." Blumenfeld v. Borenstein, 247 Ga. 406, 408 (1981).

> It is perhaps helpful to view the issue of attorney disqualification as a continuum. At one end of the scale where disqualification is always justified and indeed mandated, even when balanced against a client's right to an attorney of choice, is the appearance of impropriety coupled with a conflict of interest or jeopardy to a client's confidences. In these instances it is clear that disqualification is necessary for the protection of the client. Somewhere in the middle of the continuum is the appearance of impropriety based on conduct on the part of the attorney. As discussed above, this generally has been found insufficient to outweigh the client's interest to counsel of choice. This is probably so because absent danger to the client, the nebulous interest of the public at large in the propriety of the Bar is not weighty enough to justify disqualification. Finally, at the opposite end of the continuum is the appearance of impropriety based not on conduct but on status alone. This is an insufficient ground for disqualification. This is particularly clear in this case in light of the trial court's specific finding that there was no actual impropriety on the part of any of the parties." Id.

The parties adamantly dispute the issue of whether Ms. Singer was acting in the capacity as an agent of Wargo French during her role as advisor to her father in connection with the underlying transaction. However, assuming for the sake of argument that Wargo French was formally implicated in Ms. Singer's conduct, the Court nevertheless finds no impropriety so severe in Wargo French's current representation of Plaintiffs to overcome the presumption in favor of a party's right to choose his counsel.

Rule 3.7(b) of the Georgia Rules of Professional Conduct permits a lawyer to 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 of the Georgia Rules of Professional Conduct. Rule 1.7 of the Georgia Rule s of

Professional Conduct provides that "a lawyer shall not represent or continue to represent a client if there is a significant risk that the lawyer's own interests....will materially and adversely affect the representation of the client."

Defendants ask the Court to extrapolate from the ruling in In re Seven-O-Corp., 289 S.W.3d 390 (2009), to find an impermissible conflict in the potential that Wargo French may be liable to Plaintiff due to Ms. Singer's purportedly negligent transactional counsel to her father and his related entities. However, unlike In re Seven-O-Corp., Defendants have not identified a conflict involving *adversaries* in an actual lawsuit. Wargo French is not a party to this litigation. And Defendants are merely pointing the Court to a potential issue (Wargo French's purported liability) that would not result in Wargo French splitting its loyalty between actual, opposing parties. Because Plaintiffs have not pointed the Court to any authority that would support such drastic court interference with a party's right to choose his counsel, Defendants' Motion is **DENIED**.

**2. Plaintiffs' Request for Sanctions**

Plaintiffs seek sanctions against Defendants for filing what they deem to be a "frivolous motion." Under O.C.G.A. § 9-15-14, a court is required to award reasonable and necessary attorneys' fees and expenses of litigation if it finds that a party "has asserted a claim, defense, or other position with respect to which there existed such a complete absence of any justiciable issue of law or fact that it could not be reasonably believed that a court would accept the asserted claim" O.C.G.A. § 9-15-14(a). A court may also award such fees and expenses if an attorney or party "brought or defended an action, or any part thereof, that lacked substantial justification or that the action, or any part thereof, was interposed for delay or harassment." O.C.G.A. § 9-15-14(b).

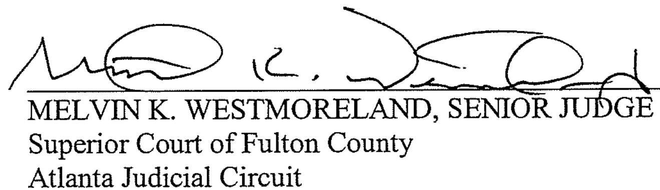
Plaintiffs assert that Defendants' position (that Wargo French represented Plaintiffs in the transaction with DeHaan) is "patently false," and therefore sanctionable under O.C.G.A. § 9-15-14. The Court disagrees. Whether or not Ms. Singer was acting as an agent of Wargo French will be an issue for

the trier of fact. Accordingly, the Court finds that Plaintiffs have failed to identify conduct on the part of Defendants that is so lacking in "any justiciable issue of law or fact that it could not be reasonably believed that a court would accept the asserted claim." Moreover, although the Court was not persuaded by Defendants' position, the Court cannot say that Defendants'' motion lacked substantial justification to justify an award of attorneys' fees. Wargo French has an interest in the litigation given Defendants' intent to seek to apportion liability against it. However, the Court did not identify it as an impermissible conflict. Plaintiffs' request is **DENIED**.

**3. Discovery Motions**

Upon argument of counsel at the hearing on April 12, 2013, and as stated in the record, Defendants' Motion for a Protective Order to Limit Discovery Related to Punitive Damages is, at this time, **GRANTED**. The Court also **GRANTS**, in part, Defendants' Motion to Compel Discovery of Legal Fees. Plaintiffs are **HEREBY ORDERED** to supply the information requested by Plaintiffs within ten days from the date of this written Order. Defendants' request to recover attorneys' fees in connection with the discovery dispute is **DENIED**.

**SO ORDERED this 22nd day of April, 2013.**



MELVIN K. WESTMORELAND, SENIOR JUDGE
Superior Court of Fulton County
Atlanta Judicial Circuit

**Copies to:**

| Attorneys for Plaintiffs | Attorneys for Defendants |
| --- | --- |

| | |
|---|---|
| Joseph D. Wargo<br>Ryan D. Watstein<br>Eric J. Garber<br>WARGO FRENCH LLP<br>99 Peachtree Street, N.E.<br>26th Floor<br>Atlanta, GA 30309<br>(404) 853-1500<br>jwargo@wargofrench.com<br>rwatstein@wargofrench.com<br>egarber@wargofrench.com | Christine L. Mast<br>Lane Young<br>Matthew G. McLaughlin<br>HAWKINS PARNELL THACKSTON & YOUNG, LLP<br>4000 SunTrust Plaza<br>303 Peachtree Street<br>Atlanta, GA 30308<br>(404) 617-7400<br>cmast@hptylaw.com<br>mmclaughlin@hptylaw.com |