

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED
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CLERK OF COURT
DISTRICT OF SOUTH CAROLINA

IN RE:)
)
Southern Textile Knitters, Inc.,)
)
Debtor,)
_____)
)
Robert F. Anderson, Trustee)
)
Plaintiff,)
vs.)
)
Samuel H. Simchon, Levy Simchon,)
Rebecca Simchon, Oded Simchon,)
Renee Simchon,)
Southern Textile Knitters of Greenwood,)
Inc., STK de Honduras Sewing, Inc.,)
Excel Dyeing and Finishing, Inc.,)
Center Point Construction, Inc. and)
Old Fort Industrial Park, L.L.C.,)
)
Defendants.)
_____)

Chapter 7
Case No.: 98-07203-W
Adv. Pro. No: 99-80026-W

ENTERED
SEP 27 1999
K.K.M.

ORDER ON MOTION TO DISQUALIFY
RICHARD R. GLEISSNER

This matter is before the Court upon Robert F. Anderson’s (the “Trustee”) Motion to Disqualify Richard R. Gleissner (the “Motion”). In the Motion, the Trustee requests that Richard R. Gleissner, Esquire (“Gleissner”) be disqualified from further representation of Samuel H. Simchon and Southern Textile Knitters de Honduras, A.S. (“STK de Honduras”) in this adversary proceeding. This Court holds that the Trustee has presented insufficient evidence to meet his burden of showing that Gleissner should be disqualified and therefore, the Motion is denied. In so holding, this Court makes the following finding of fact and conclusions of law.

FINDINGS OF FACT

1. In this adversary proceeding, Gleissner has represented all of the present defendants at one time or another. At present, Gleissner only represents Simchon and STK de Honduras. In addition, in the past, Gleissner represented Garrett, McCallum, Sheek and Bacot, P.A. (the "Garrett Firm") in bringing a motion for relief from the automatic stay in the main bankruptcy case.

2. None of Gleissner's former clients have objected to his continuing representation of Simchon and STK de Honduras. In fact, it appears that all support Gleissner's continued involvement in this adversary proceeding.

CONCLUSIONS OF LAW

1. Generally, in discussing conflicts of interest, the general principles have been spoken of as follows:

Two broad principles underlie all rules regulating conflicts of interest; that of loyalty and of confidentiality. Loyalty connotes that the lawyer must be in such a position that all options which might favor the client can be considered and that the lawyer's full expertise and energy can be devoted to the client's problems. Such service must be free from the advocacy or influence of any interest other than those of the client. Confidentiality requires that a client be free to divulge all information which a fully informed lawyer would wish to have in order to assess the client's legal position. The client must be able to give assistance to the lawyer free from the fear that the attorney may use the information against the client in favor of the lawyer's other clients. To test if a conflict exists, the proper criterion is whether there is a reasonable probability that one or both of these principles will be seriously impaired.

In re: Vanderbilt Associates, Ltd., 111 B.R. 347, 351-52 (Bankr. D. Utah 1990) (citing Wolfram, Modern Legal Ethics § 7.1.3 (1986)).

Gleissner did represent twelve different entities in this bankruptcy proceeding. None have complained and all support his continued involvement in this litigation. At present, Gleissner only

represents two clients, Samuel H. Simchon and STK de Honduras. Gleissner never represented the Debtor. There is no conflict of interest between the two entities that Gleissner presently represents. None of Gleissner's former clients wish to have him disqualified.

2. In the case of *Brown v. Daniel*, 180 F.R.D. 298 (D.S.C. 1998), the United States District Court for the District of South Carolina states:

In *Clinton Mills, Inc. v. Alexander & Alexander, Inc.*, 687 F. Supp. 226 (D.S.C. 1988), the court set out the general background for a motion to disqualify:

A motion to disqualify counsel is a matter subject to the court's general supervisory authority to ensure fairness to all who bring their case to the judiciary for resolution. Under District Court Local Rules 2.08 and 2.09(h)(i)(2), n2 the South Carolina Code of Professional Responsibility establishes the ethical standards governing the practice of law in this court. It is the court's responsibility to use its disqualification power to see that those who practice before the court adhere to the South Carolina Code.

...
While it is the court's responsibility to ensure the propriety of the bar, the act of disqualifying a firm "is ordinarily not taken without a strong showing." *Id.* at 228-29 (quoting *Stanwood Corp. v. Barnum*, 575 F. Supp. 1250 (W.D.N.C. 1983) (pre-dating the adoption of the Model Rules)). Our Court of Appeals has stated, "The drastic nature of disqualification requires that courts avoid overly-mechanical adherence to disciplinary canons at the expense of litigants' rights freely to choose their counsel; and that they always remain mindful of the opposing possibility of misuse of disqualification motions for strategic reasons." *Shaffer v. Farm Fresh*, 966 F.2d 142, 146 (4th Cir.) (addressing a motion for disqualification based on alleged conflict of interest) (citing *Woods v. Covington County Bank*, 537 F.2d 804, 813 (5th Cir. 1976)), *cert. denied*, 506 U.S. 1021 (1992). *See also Buckley v. Airshield Corp.*, 908 F. Supp. 299, 304 (D. Md. 1995), *appeal dismissed*, 86 F.3d 1175 (4th Cir. 1996); *Robert Woodhead, Inc. v. Datawatch Corp.*, 934 F. Supp. 181, 183 (E.D.N.C. 1995).

Id. at 300. Thus, this motion is within the inherent supervisory powers of the court and is within the discretionary authority to control attorneys. Motions to disqualify counsel are consequently

committed to the court's sound discretion. *Koch v. Koch Industries*, 798 F. Supp. 1525, 1530 (D. Kan. 1992).

In the case of *Shaffer v. Farm Fresh*, 966 F.2d 142 (4th Cir. 1992), the Fourth Circuit was dealing with a situation where a defendant was alleging a conflict of interest on the part of the plaintiff's counsel. The Fourth Circuit stated that some stronger objective indicator is needed to warrant the drastic step of disqualification of counsel. *Id.* at 145-46. In this case, the Trustee has not provided any evidence that reaches the standard of a strong "objective indicator" to warrant disqualification. It is therefore,

ORDERED, that the Trustee's Motion to Disqualify is denied.

AND IT IS SO ORDERED.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina

September 24, 1999.

