

Gordon C. Benjamin
P.O. Box 1834, G&L Office Bldg., Rm. 4
Majuro, MH 96960, Marshall Islands
692-455-1824 cell; 692-625-2889 ph
gordonbenjamin@gmail.com
Attorney for Plaintiff

FILED

NOV 11 2014

S. U. Le

ASST. CLERK OF COURTS
REPUBLIC OF MARSHALL ISLANDS

**IN THE HIGH COURT
OF THE
REPUBLIC OF THE MARSHALL ISLANDS**

Eigigu Holdings Corporation

Plaintiff,

v.

**Leander Leander and Lijun
Leander**

Defendants.

Civil Action No.: 2014-067

**PLAINTIFF'S INITIAL
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO DISQUALIFY JOHN
MASEK AS COUNSEL TO
DEFENDANTS**

I. SUMMARY OF ARGUMENT

Attorney John Masek ("Masek") represented Eigigu Holdings Corporation's ("EHC") former employee, Mr. Rubin Tsitsi, in numerous civil actions (CA 2012-202; CA 2013-005; CA 2012-144). During the tenure of that representation, Masek had access to EHC's proprietary information and business records held by his client Mr. Rubin Tsitsi, as Mr. Tsitsi had claimed to have these business records and intimated that he, Mr. Tsitsi would provide those business records to EHC after EHC met Mr. Tsitsi's demands. In addition, Masek had access to the EHC's employee's place of business and access to EHC's business records, while EHC was refused access to such office and business records by Masek's client, Mr. Tsitsi. In the current action, Masek

represents persons, the Leanders, who entered into leases with EHC's former employee Mr. Tsitsi. There is at least a reasonable presumption that material confidences (business records and information) about EHC would have been provided to Masek by Mr. Tsitsi, that could now be used against EHC. Also, certain EHC records could have been provided to Masek by Tsitsi about the business transactions between Mr. Tsitsi, holding himself out as a representative of EHC, and the Leanders, that EHC now has no access to.

These facts, when viewed through the lens of court cases on ethics, compel the conclusion that Masek must be immediately disqualified from representing the Leanders in this proceeding.

II. STATEMENT OF FACTS

1. Masek was privy to Plaintiff EHC's business records and documents when Masek represented a former employee of the Plaintiff, Mr. Rubin Tsitsi, in Civil Action 2012-202 (*seeking employment benefits*);

2. Masek was privy to Plaintiff EHC's business records and documents when Masek represented Mr. Rubin Tsitsi again in Civil Action 2013-005, an action brought by EHC on January 16, 2013 attempting to remove Mr. Tsitsi from the Plaintiff's premises. Paragraph 15 of CA 2013-005 January 16, 2013 petition for an injunction, documents EHC's concern about business records and documents in Mr. Tsitsi's control based on Mr. Tsitsi's admission that he possessed those business records and documents.

3. During the time of Masek's representation of Mr. Tsitsi, in the CA 2012-202 and CA 2013-005 matters, Mr. Tsitsi remained on the business premises and refused EHC the opportunity to manage EHC's premises. In addition, Mr. Tsitsi continued to collect rent from ECH sub-lessees but never provided any documentation to ECH. See Petitioners'

Exhibit 7 to CA 2013-005, a January 16, 2013 Affidavit of an employee of EHC, Krakouer Waqa, who was attempting to collect rental payments. Mr. Waqa states in paragraph 5 of his January 16th Affidavit “When I ask the tenants for copies of the receipts of the recent payments they have made to Mr. Rubin Tsitsi, even after Mr. Rubin Tsitsi was released in April 2012, the tenants tell met (sic) to go to Mr. Rubin Tsitsi, to wait for their boss, or to go see their legal counsel.” These and other documents that Plaintiff EHC has been attempting to secure from Mr. Tsitsi, during the whole tenure of Masek’s representation of Mr. Tsitsi, have never been provided to the Plaintiff.

III. ARGUMENT

Disqualification of counsel may be ordered to preserve the public trust and integrity of the bar.

A motion to disqualify opposing counsel addresses the sound discretion of the trial court. Disqualification of counsel may be ordered “to control, in furtherance of justice, the conduct of its ministerial officer, and of all other persons in any manner connected with a judicial proceeding before it, in every manner pertaining thereto.” CCP §128(a)(5), cited in *People v. Speedee Oil Change Systems, Inc.* (1999) 20 Cal.4th 1135 at 1145 (hereafter cited as “Speedee.”). Motions to disqualify counsel involve a conflict between the client’s right to counsel of choice and the need to maintain ethical standards of professional responsibility. *Comden v. Superior Court*, 20 Cal.3d 906, 915 (1978). Masek, like all attorneys, has the obligation not only to protect his client’s interests, but also to “respect the legitimate interests of fellow members of the bar, judiciary, and the

administration of justice.” *Kirsch v. Duryea* (1978) 21 Cal.3d 303, 309, cited in *Rico v. Mitsubishi Motors Corp.* (2007) 42 Cal.4th 807, 818.

Even if we consider the situation where if Mr. Tsitsi had been re-hired by EHC, and EHC brought this current action against the Leanders, Masek would not be allowed to represent the Leanders against Mr. Tsitsi’s former employer EHC unless at least Mr. Tsitsi waived the conflict. And, even when a client has knowingly chosen to waive a conflict, the courts have come down in favor of disqualification to preserve the public trust in the scrupulous administration of justice and the integrity of the bar. When, as here, there has been no such waiver, and Mr. Tsitsi has passed on without transferring any EHC business records and documents to EHC, disqualification is all the more necessary.

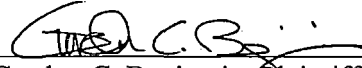
“The paramount concern must be to preserve the public trust in the scrupulous administration of justice and the integrity of the bar. The important right to counsel of one’s choice must yield to ethical considerations that affect the fundamental principles of our judicial process.” *Speedee*, 20 Cal.4th at 1145.

IV. CONCLUSION

The fact is that Masek has represented a former EHC employee, Mr. Tsitsi, against ECH, and the RMI Government in removal proceedings, and Mr. Tsitsi has withheld business records and documents from EHC until now, at least during all the time of Masek’s representation of Mr. Tsitsi. The possibility and probability that relevant EHC business records and documents could have been, and continue to remain, in Masek’s possession or ability to possess, color his qualification to represent the Leanders in this matter, and therefore Masek should be disqualified.


Respectfully submitted,


Date: November 11, 2014


Gordon C. Benjamin, Plaintiff's Attorney

Certificate of Service

I, Gordon C. Benjamin, counsel to Plaintiff, do hereby certify that I emailed a copy of the above to Defendants' counsel, Mr. John Masek, at his email address "jemesq@hotmail.com" on November 11, 2014.

FILED
NOV 11 2014

ASST. CLERK OF COURTS
REPUBLIC OF MARSHALL ISLANDS


Gordon C. Benjamin, Plaintiff's Attorney