

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

MICHAEL DEMIL,

Plaintiff,

vs.

Case No. 2013-3468-CK

RMD PROPERTIES, LTD.,

Defendant.

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ROBERT E. DEMIL,

Plaintiff,

vs.

Case No. 2013-4291-CB

MICHEAL DEMIL and CRAIG
FENTON

Defendants.

_____ /

OPINION AND ORDER

Michael Demil (“M. Demil”) has filed a motion in each case to disqualify Robert E. Demil (“R. Demil”) and RMD Properties, Ltd.’s (“RMD Properties”) counsel Lawrence M. Scott and O’Reilly Rancilio, P.C. R. Demil and RMD Properties, Ltd. request the Court deny M. Demil’s motion.

These matters are before the Court as a part of a group of related cases: 2012-889-CK (“Demil 1”), 2013-3468-CK (“Demil 2”), 2013-4291-CB (“Demil 3”), and 2013-5020-CK (“Demil 4”). Each of these cases involves businesses owned in part or wholly

owned by R. Demil and M. Demil. Mr. Scott and the firm O'Reilly Rancilio, P.C. are only involved in Demil 2 and Demil 3.

In 2011, M. Demil allegedly consulted with Mr. Scott and other attorneys at O'Reilly Rancilio, P.C. regarding the brothers' jointly owned interests and his options for separating some of his interests from R. Demil. The representation ended in September 2011.

M. Demil now moves to have Mr. Scott and O'Reilly Rancilio, P.C. disqualified based on their prior relationship with him. Specifically, M. Demil contends that they should be disqualified because he was their former client and advised him regarding at least one of the jointly owned entities at issue.

“The party seeking disqualification bears the burden of demonstrating specifically how and as to what issues in the case the likelihood of prejudice will result.” *Kubiak v Hurr*, 143 Mich App 465, 471; 372 NW2d 341 (1985). In this case, M. Demil spends almost his entire motion in support of his contention that he previously had an attorney-client relationship with Mr. Scott and the O'Reilly Rancilio firm, a fact that neither party disputes. However, M. Demil fails to set forth specifically how he will be prejudiced by Mr. Scott's representation. While the parties dispute whether Mr. Scott and/or other members of the firm were obtained or used any of M. Demil's confidential information, M. Demil has failed to demonstrate how their access to such information, if any, 3 years ago, prejudices him in connection with these matters. Accordingly, M. Demil has failed to satisfy his burden under *Kubiak*. Consequently, his motion must be denied.

Conclusion

Based upon the reasons set forth above, Michael Demil's motion to disqualify Robert E. Demil and RMD Properties, LTD.'s counsel Lawrence Scott and O'Reilly Rancilio, P.C. is DENIED. In compliance with MCR 2.602(A)(3), the Court states this *Opinion and Order* does not resolve the last claim and does not close either of the cases.

IT IS SO ORDERED.

/s/ JOHN C. FOSTER
JOHN C. FOSTER, Circuit Judge

Dated: May 7, 2014

JCF/sr

Cc: *via e-mail only*

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