

STATE OF MICHIGAN  
SIXTEENTH JUDICIAL CIRCUIT COURT

ANIL SHAH,

Plaintiff/Counter-Defendant,

vs.

Case No. 18-2879-CB

STEVEN DUFFY,

Defendant/Counter-Plaintiff/  
Third-Party Plaintiff/ Third-Party  
Counter-Defendant,

vs.

SHELBY PACKAGING COMPANY, INC,

Third-Party Defendant/  
Third-Party Counter-Plaintiff.

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SHELBY PACKAGING COMPANY, INC.,

Plaintiff,

vs.

Case No. 18-3766-CB  
CONSOLIDATED

J.K. GRINDING, INC, d/b/a TRI-Precision Tool,

Defendant.

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OPINION AND ORDER

Steven Duffy and J.K. Grinding, Inc. ("JK Grinding") filed a joint Motion to disqualify Garratt & Bachand, P.C. ("G&B") from representing either Shelby Packaging Company, Inc. ("Shelby") or Anil Shah.

I. Background

Shelby manufactures box liners and packaging products. Steven Duffy and Felix Adler formed Shelby in 1993, with each owning a 50% interest. Mr. Adler left the

business and Mr. Duffy became the sole owner of Shelby. In May 2016, Mr. Duffy and Mr. Shah, an accountant, signed a non-binding Letter of Intent regarding Mr. Shah's purchase of an interest in Shelby. In June 2016, Mr. Shah purchased from Mr. Duffy 50% of the stock of Shelby for \$160,000.

Mr. Duffy is also a co-owner of JK Grinding. JK Grinding is a tooling company that occupies the same building as Shelby. Shelby and JK Grinding have shared some expenses, vehicles, employees, and each other's services. In November 2018, Mr. Duffy resigned from Shelby. Anil Shah originally sued Steven Duffy for claims related to Mr. Shah's buy-in to Shelby. Steven Duffy countersued Anil Shah. Mr. Shah and Mr. Duffy settled their claims with each other.

However, Mr. Duffy also sued Shelby for breach of contract. Specifically, Mr. Duffy claims that he loaned to Shelby the \$160,000 from Mr. Shah's buy-in because instead of receiving the money, it went to pay creditors of Shelby. Mr. Duffy now seeks repayment of the amount he claims he did not personally receive. As a result of Mr. Duffy's claim, Shelby retained G&B to represent Shelby as an entity. G&B does not represent Mr. Shah. In this matter, attorney Dennis Harris represented Mr. Shah. Mr. Duffy resigned as an officer and director of Shelby in November 2018.

Shelby also countersued Mr. Duffy. Essentially, Shelby claims Mr. Duffy caused Shelby to pay Duffy's personal obligations and to transfer funds to JK Grinding. By consolidated action with the claims above, Shelby sued JK Grinding in case 18-3766-CB. Essentially, Shelby claims JK Grinding failed to repay a loan of \$42,566 and an indebtedness of \$544,895.

Mr. Duffy and JK Grinding filed a joint motion to disqualify G&B from representing either Shelby or Anil Shah. The Court heard oral argument on the motion on October 7, 2019 and took the matter under advisement.

## II. Arguments, Law and Analysis

Mr. Duffy and J.K. Grinding, argue that: an attorney cannot represent a corporation and shareholder without danger of violating the fiduciary relationship; G&B “has taken sides”; Mr. Shah withdrew \$25,800 from Shelby’s bank account to pay Mr. Garratt; there has been no accounting of the funds; and “it is apparent Mr. Garratt is acting to vindicate Anil Shah” based on the “tone and tenor of the pleadings.” Further, movants argue that as a shareholder of Shelby, Mr. Duffy is entitled to know the advice given to Mr. Shah. Finally, Mr. Duffy and JK Grinding argue that G&B cannot be acting in the best interest of Shelby because they ignore that Mr. Shah took funds and that Shelby is insolvent.

In Response, Shelby argues: JK Grinding has no standing; Mr. Duffy is not a client of G&B; G&B never represented Mr. Duffy, JK Grinding or Mr. Shah; Mr. Duffy is a minority shareholder of Shelby and is in litigation with Shelby; G&B denies being an advocate for Mr. Shah; Mr. Duffy resigned as an officer and director of Shelby; Mr. Shah never sued Shelby; and G&B has a duty to represent Shelby, which is now an adversary to movants, so it would be unethical to share privileged communications with Mr. Duffy.

When an attorney is hired to represent a corporation, the attorney’s client is the corporation and not the shareholders. *Fassih v Sommers, Schwartz, Silver, Schwartz & Tyler, PC*, 107 Mich App 509, 514; 309 NW2d 645 (1981). “Although an attorney

must necessarily communicate with a corporation's human agents to effectively represent the corporation, the purpose of the communication is representation of the corporation, not the agents themselves." *Prentis Family Found v Barbara Ann Karmanos Cancer Inst*, 266 Mich App 39, 44; 698 NW2d 900 (2005) citation omitted. A party seeking disqualification of counsel based on a conflict of interest "bears the burden of demonstrating specifically how and as to what issues in the case the likelihood of prejudice will result." *Rymal v Baergen*, 262 Mich App 274, 319; 686 NW2d 241 (2004).

As an initial matter in the present case, although JK Grinding and Mr. Duffy combine their briefing, they are distinct movants and their positions should be analyzed separately. JK Grinding has not established a basis to object to G&B representing Shelby. The only connection JK Grinding has with Shelby or G&B appears to be that Mr. Duffy also has an ownership interest in JK Grinding and JK Grinding and Shelby have pending litigation against each other.

Clearly Mr. Duffy's ownership interest in JK Grinding does not provide JK Grinding a basis to object to Shelby's choice of counsel. The mere fact that JK Grinding also has a pending case against Shelby does not give JK Grinding any reason to seek the disqualification of counsel of an opposing party in the litigation. JK Grinding has no interest in Shelby. G&B represents only Shelby. Therefore, JK Grinding's motion lacks any merit and is denied.

Regarding Mr. Duffy's motion to disqualify counsel for Shelby, Mr. Duffy cites no authority requiring or even permitting G&B to share confidential information with a minority shareholder engaged in litigation with the company. In his Reply, Mr. Duffy

appears to concede the point and states, “[t]o the extent that there are communications that would go to legal advice for Shelby Packaging, this may generally be true.” Yet Mr. Duffy proceeds to argue that he is entitled to discover the personal advice rendered to Mr. Shah. Mr. Duffy exceeds the scope of his present motion, which is not a motion to compel but to disqualify. Further, G&B denies having an attorney-client relationship with Mr. Shah and denies the existence of confidential communications with Shah. Mr. Duffy has not shown that G&B represents Mr. Shah or rendered any legal advice to him. The Court is unable to find a legal reason for disqualification of G&B from Mr. Duffy’s dislike of “the tone and tenor” of the pleadings.

Mr. Duffy cites *Elluru v Great Lakes Plastic, Reconstructive & Hand Surgery, PC*, unpublished per curiam Opinion of the Court of Appeals, issued February 6, 2018 (Docket No. 333661), an unpublished case that held an attorney could not represent both a corporation and an individual shareholder without danger of violating the fiduciary relationship. That case does not bind this Court and is factually distinguishable. Here, G&B only represents Shelby, not Mr. Shah. Therefore, the attorney does not represent both the corporation and an individual shareholder.

Additionally, the present case does not concern an attorney who will be called as a witness, who has a conflict of interest, or who represents clients with a conflict of interest. Rather, Mr. Duffy seeks to disqualify Shelby’s counsel merely because as a minority shareholder of Shelby, Duffy feels like G&B favors Mr. Shah who is the majority shareholder. It is unclear how Mr. Duffy expects G&B to avoid the appearance of “favoritism” as G&B defends Shelby against Mr. Duffy’s claims. Of note, Mr. Shah is no longer a party to the present litigation. Mr. Duffy has not established that he or Mr.

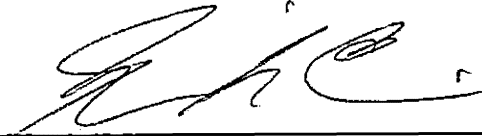
Shah has an attorney-client relationship or a fiduciary relationship with G&B. Clearly then, G&B represents only Shelby in the present litigation and has no obligation to Mr. Duffy in his personal capacity.

In short, Mr. Duffy is an opposing party in litigation with Shelby. Mr. Duffy is also a minority shareholder of Shelby. Any conflict that arises results from Mr. Duffy's litigation with a company in which he has an interest. Nothing in Mr. Duffy's motion provides any legal basis for the Court to disqualify G&B from representing Shelby. Mr. Duffy's arguments relating to privilege and whether G&B should communicate with Mr. Duffy, or account for funds, do not support disqualification of G&B. At best, the question of privilege regarding communications would be a discovery issue or relate to a motion to compel, which is not presently before the Court. To the extent Mr. Duffy is unhappy with Shelby's selection of G&B as counsel as a consequence of his litigation with Shelby, or the manner in which G&B receives payment, that decision would seem best resolved by Shelby's internal corporate governance. This Court has no reason to interfere in a party's selection or payment of counsel. For these reasons, Mr. Duffy's motion to disqualify lacks any merit and is denied.

### III. Conclusion

For the reasons stated above, the motion to disqualify is DENIED. In accordance with MCR 2.602(A)(3), this *Opinion and Order* neither resolves the last pending claim nor closes this case.

IT IS SO ORDERED.



HONORABLE RICHARD L. CARETTI  
Circuit Court Judge

DATE: November 20, 2019

cc: Dennis J. Harris, Esq.  
Edward J. Gudeman, Esq.

