

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

<p>SANDADI V. REDDY, Plaintiff, v. ATUL K. PATEL, GHANSHYAM PATEL, DHARMENDRA BAROT, AND EAST HANOVER HOTEL AND CONFERENCE HOSPITALITY, LLC a/k/a RAMADA Defendant, GHANSHYAM PATEL, Third Party Plaintiff, v. EAST HANOVER HOTEL AND CONFERENCE MANAGEMENT, LLC Third Party Defendant.</p>	<p>Civil Action No. 16-8256-JMV-JBC</p>
--	---

**MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFF'S MOTION TO DISQUALIFY COUNSEL
DEFENDANTS FOR ATUL K. PATEL AND DHARMENDRA BAROT**

SALDUTTI LAW GROUP
Andrew P. Chigounis, Esquire
800 Kings Highway North
Cherry Hill, NJ 08030
Attorney for Ghanshyam Patel

By: Andrew P. Chigounis, Esquire, I.D. 029372011

TABLE OF CONTENTS

I. PRELIMINARY STATEMENT.....1

II. PROCEDURAL HISTORY1

III. STATEMENT OF FACT2

 COMPANY FORMATION2

 MANAGEMENT AND WRONGFUL CONDUCT3

 ATUL AND BAROT’S TERMINATION OF SAM’S OWNERSHIP INTEREST IN THE
 COMPANY’S4

 ARCHER LAW’S REPRESENTATION OF THE COMPANIES5

IV. LEGAL ARGUMENT6

 a. THE ARCHER ATTORNEYS MUST BE DISQUALIFIED PURSUANT TO R.P.C. 1.76

 b. THE ARCHER ATTORNEYS MUST BE DISQUALIFIED PURSUANT TO R.P.C. 1.9.....8

 c. DEFENDANTS ATUL K. PATEL AND DHARMENDRA BAROT MUST BE
 RESTRAINED FROM USING COMPANY ASSETS TO PAY THEIR INDIVIDUAL
 ATTORNEYS10

TABLE OF AUTHORITIES

RULES OF PROFESSIONAL CONDUCT	PAGE(S)
R.P.C. 1.7	6,7,8
R.P.C. 1.9	8,9
STATUTES	PAGE(S)
N.J.S.A.42:2C-39	10
CASE LAW	PAGE(S)
<i>Cf. Comando v. Nugiel</i> 436 N.J. 203 (App. Div. 2014).....	7
<i>Dewey v. R.J. Reynolds Tobacco Co.</i> , 109 N.J. 201 (1988)	6
<i>Gov't of India v. Cook Indus., Inc.</i> , 569 F.2d 737 (2d Cir. 1978)	6
<i>J.G. Ries & Sons, Inc. v. Spectraserv, Inc.</i> , 384 N.J. Super. 216 (App.Div. 2006)	7
<i>Kramer v. Ciba–Geigy Corp.</i> , 371 N.J.Super. 580 (App.Div. 2004)	7
<i>State ex rel. S.G.</i> , 175 N.J. 132 (2003).....	7
<i>Twenty-First Century Rail Corp v. N.J. Transit Corp.</i> , 210 N.J. 264 (2012).....	9

I. PRELIMINARY STATEMENT

Patrick Papalia, Esquire, Michael Forino, Esquire and Archer Law (the “Archer Attorneys”) must be disqualified from representing Defendants Atul K Patel (“Atul”) and Dharmendra Barot (“Barot”) because they also serve as counsel to EH Associates, LLC (“EH”) and their ownership group. Atul, Barot and Defendant Ghanshyam Patel (“Sam”; collectively the “Patel Group”) own 50% of EH. There is no question that the Archer Attorneys have represented and continue to represent EH, in as many as three lawsuits. The Archer Attorneys representation of EH and its owners relates significantly to the ownership, management of EH. More specifically, the Archer Attorneys representation relates to and exposed them to Atul and Barot’s oppressive and wrongful conduct direct towards Sam. For these reasons, that reasons set forth more fully herein, the Archer Attorney’s must be disqualified from representation of Atul and Barot in this matter.

II. PROCEDURAL HISTORY

In September of 2016, Plaintiff, Sandadi Reddy (“Plaintiff”), filed a Verified Complaint against Defendants Atul, Barot and Sam. (Doc. No. 1). While Plaintiff did serve the complaint upon Atul and Barot, he never made any effort to locate or serve Sam. Certification of Ghanshyam Patel (“GP Cert.”) Ex. “A”. Ultimately, the matter was transferred to the District of New Jersey. After becoming aware of the matter and without any attempts to serve Sam, in February of 2019, Sam filed an Answer, Cross Claim and Third-Party Complaint alleging claims against Atul and Barot, for breach of contract, membership oppression, breach of fiduciary duties, fraud and other claims. (Doc. No. 32).

III. STATEMENT OF FACTS

COMPANY FORMATION

In 2011, Atul and Barot and Sam began to discuss the potential purchase of a hotel (the “Hotel”) in East Hanover, New Jersey. GP Cert. at ¶2. Ultimately, it was decided that Atul, Barot and Sam would form a limited liability company, East Hanover Hotel and Conference Management, LLC (“Management”), to purchase a 50% interest in the limited liability company, EH which owned and operated the Hotel. GP Cert Ex. “B”; GP Cert Ex. “C” (signature pages omitted); GP Cert Ex. “D”. Atul and Barot represented to Sam that Sam would be made an equal 1/3 member in Management and its ownership of the Hotel, including access to company books and accounting, a pro rata distribution of profit and access to tax filings. *Id.*

The other 50% interest in EH was owned by a second purchasing group, East Hanover Route 10, LLC (“Route 10”), owned by Gurmail Singh (“Gurmail”) and Harbans Singh (“Harbans”; collectively the “Singh Group”). GP Cert. Ex. “C” (signature pages omitted). To effectuate the purchase Management and Route 10 formed another limited liability company, East Hanover Hotel and Conference Hospitality, LLC (“Hospitality”), to hold the entire EH membership interest (Management, Hospitality and EH are collectively referred to as the “Companies”). *Id.* Management and Hospitality named Gurmail Singh as the only member of Hospitality for the purpose of formation. *Id.*

Gurmail executed the Hospitality Operating Agreement, which makes no mention of membership transfers and leaving the default rules for transfers under the RULLCA to govern. GP Cert. Ex. “E”. Over the life of Management and to help facilitate the Hotel purchase, Sam made capital contributions to the business of \$183,000.00, as follows:

a. On October 17, 2011, Sam caused \$100,000.00 to be wired, by way of Sam's daughter and son-in-law's account (Falguni and Ritesh Kalra), to the Hospitality bank account, to help effectuate the purchase of EH and the Hotel. GP Cert. Ex. "F".

b. In December of 2011, Sam endorsed a cashier's check in the amount of \$50,000.00 and issued it to Atul as a contribution to Management. GP Cert. Ex. "G".

c. Upon the request of Atul and Barot, Sam delivered \$33,000.00 in cash to Barot as a contribution to Management, at a meeting at a Saddlebrook, NJ hotel.

Sam was issued K-1's and other tax documents for the years 2012, 2013 and 2014 evidencing his ownership interest in Management and the Hotel. GP Cert. Ex. "H". Thereafter, Atul and Barot refused to issue Sam any further tax documentation.

MISMANAGEMENT AND WRONGFUL CONDUCT

From 2011 to current, Sam made repeated requests of Atul and Barot to inspect the books and accountings of Management, Hospitality and EH. GP Cert. at ¶4. From 2011 to current, Sam made repeated requests of Atul and Barot for a distribution of company profits from Management, Hospitality and EH. GP Cert. at ¶5. From 2011 to current, Atul and Barot, at the direction of the Archer Attorneys, have willfully refused and to provide Sam with access to company books and accounting, a pro rata distribution of profit and access to all tax filings. GP Cert. Ex. "I"

From 2011 to current, Atul and Barot have willfully mismanaged and neglected their obligation to manage the Companies causing damage to the Companies. GP Cert Ex. "J". As a result of Atul and Barot's mismanagement the Companies lost, at least temporarily, their liquor license, resulting in the closure of the Hotel's bar and restaurant and at least \$30,000.00 per month in lost revenue. *Id.* In 2015, Atul and Danny sold the Management business for \$1.8M,

plus a \$700,000.00 finders fee, to Ashok Bhatt and AIMS Capital Investments, LLC (“AIMS”). GP Cert. Ex. “K” at ¶8. Atul and Barot received this money and failed to make any distribution of same to Sam Patel. Atul and Barot have failed to account for the expenditure of these funds. *Id.*; GP Cert. Ex. “L”.

Route 10 retained an accountant, Mike Hanssanali, CPA, to perform a comprehensive review of the Companies financials. GP Cert. Ex. “M”. On May 15, 2018, Hassanali issued a report (the “Hassanali Report”) detailing extensive misappropriations of EH assets by Atul and Barot. By way of example, the Hassanali Report identified nearly \$500,000.00 in unsubstantiated withdraws from the Company operating account, \$131,120.00 in payments to unrelated Wyndham Hotel Group activities, and over **\$120,000.00 paid to Archer Law for litigation which had not been consented to by the partners of EH.** *Id.* These expenditures are just the tip of the iceberg.

ATUL AND DANNY’S ATTEMPT TO TERMINATE SAM’S OWNERSHIP IN THE COMPANIES

Atul and Barot transferred or otherwise terminated Sam’s ownership interest in the Companies and the Hotel, without Sam’s knowledge or consent. In their Answer to Sam’s Third Party Complaint, Atul and Barot claim that Sam “relinquished” his interest in the Companies. GP Cert Ex. “N” at ¶18. To date, Atul and Barot have not produced anything to support that claim.

In fact, the discovery produced in this matter contradicts that claim and show that Sam continued to be a member in the Companies:

- December 28, 2014, email (subject East Hanover Hotel) from Atul to Danny and Sam: Atul says he had a long “with Sam Patel and Danny and all other partner” regarding a potential purchase agreement which was never finalized. GP Cert Ex. “O”.

- On March 29, 2015 (the year after Atul and Danny claim Sam Relinquished his ownership of the Companies), the Atul and Danny entered a Memorandum of Understanding (the “Second MOU”) whereby EH and Hospitality agreed to sell the hotel business¹ to AIMS. GP Cert Ex. “P”. The Second MOU mentions Sam as part of the Patel Group, which is referred to as an ownership group for EH and Hospitality. Sam did not consent to or sign the Second MOU, despite the presence of a signature line for Sam. *Id.*
- On November 3, 2019, Atul acknowledged that Sam was a 1/3 member and remains a 1/3 partner in their 20% total membership in EH Associates and he would be issued a K1. GP Cert Ex. “Q”.
- In the Winter of 2019, Atul sent Sam text messages confirming that he was an owner of EH Associates. GP Cert Ex. “R”.
- On Nov. 3, 2019, Atul copied Sam on an email from Papalia regarding the EH Litigations. GP Cert Ex. “S”.

ARCHER LAW’S REPRESENTATION OF THE COMPANIES

On March 29, 2015, the Atul and Danny entered a the Second MOU whereby EH and Hospitality agreed to sell the hotel business to AIMS. GP Cert Ex. “P”. . The Second MOU mentions Sam as part of the Patel Group, which is referred to as an ownership group for EH and Hospitality. In 2015, Atul and Danny sold the Management Business for \$1.8M, plus a \$700,000.00 finders fee, to Ashok Bhatt and AIMS. GP Cert Ex. “K”.

In 2016, After the relationship between AIMS and EH soured, AIMS brought a lawsuit (The “AIMS Lawsuit”) against EH and the Hotel landlord². EH retained Archer Law, Patrick Papalia and Michael Forino (collectively, the “Archer Attorneys”)to represent them in that matter. GP Cert Ex. “T”. That matter remains pending at this time. The Archer Attorneys also represented the EH in an lawsuit brought by the hotel landlord, Eric-Richard, LLC³ (the “Eric-Richard Lawsuit”) and in the matter of *East Hanover Route 10, LLC, Gurmail Singh and Harbans Singh v. East Hanover Hotel and Conference Management, LLC, Atul Patel, Ghanshyam Patel, Dharmendra Barot, Archana Nagar*⁴ (the “Route 10 Lawsuit”). GP Cert Ex. “S”.

IV. LEGAL ARGUMENT

a. The Archer Attorneys Must Be Disqualified Pursuant to R.P.C. 1.7

The Archer Attorneys have represented EH in a multitude of lawsuits and in a corporate capacity, and now they attempt to represent a portion of the owners of EH in a lawsuit against the remaining minority owner. “[A] motion for disqualification calls for us to balance competing interests, weighing the ‘need to maintain the highest standards of the profession’ against a ‘client's right freely to choose his [or her] counsel.’ “ *Dewey v. R.J. Reynolds Tobacco Co.*, 109 N.J. 201, 218 (1988) (quoting *Gov't of India v. Cook Indus., Inc.*, 569 F.2d 737, 739 (2d Cir. 1978)). R.P.C 1.7 addresses concurrent conflicts of interest as follows:

- (a) Except as otherwise provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
 - (1) the representation of one client will be directly adverse to another client; or

² AIMS Capital Investments, LLC v. EH Associates, LLC, Docket No. MRS-C-108-16

³Docket No. MRS-LT-965-18

⁴ Docket No. MRS-C-16-18

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer.

Thus, R.P.C. 1.7 prohibits two types of concurrent representations: (1) direct adversarial representations, and (2) representations that pose a significant risk of material limitation in the lawyer's responsibility to a client. "R.P.C. 1.7 reflects 'the fundamental understanding that an attorney will give complete and undivided loyalty to the client [and] should be able to advise the client in such a way as to protect the client's interests, utilizing his [or her] professional training, ability and judgment to the utmost.'" *J.G. Ries & Sons, Inc. v. Spectraserv, Inc.*, 384 N.J. Super. 216, 223 (App.Div. 2006) (quoting *State ex rel. S.G.*, 175 N.J. 132, 139 (2003)); *Kramer v. Ciba-Geigy Corp.*, 371 N.J. Super. 580, 602–05 (App.Div. 2004) (discussing conflicts of interest in the joint representation of a corporation and individual defendants).

In *Cf. Comando v. Nugiel*, the court found that there is a strong likelihood of a conflict of interest where a firm, NNM, which had served as counsel for the corporation then represented a majority shareholder accused of oppression against a minority shareholder. 436 N.J. 203, 215–217 (App. Div. 2014). In *Comando*, Comando (the minority shareholder) and Nugiel (the majority shareholder) formed an entity called Centre 10. *Id.* Comando brought suit against Nugiel alleging shareholder oppression and misappropriation of company assets. *Id.* The court found it particularly problematic for NNM to represent the corporation and also the majority shareholder, where the minority shareholder accused the majority of denying her access to the company records and financials. *Id.* at 216–17. Furthermore, the court held that a law firm's representation of the majority owner in such a matter would "impinge upon the [corporate party's] interest raising 'a significant risk that the representation of one or more clients would be materially limited by the lawyer's responsibilities to another client.'" *Id.* at 217.

There is no question that the Archer Attorneys have represented and continue to represent EH. Sam was a member of Management, which owned EH through the Hospitality entity. When Atul and Barot took the unauthorized action to dissolve Management, Atul, Barot and Sam took ownership of EH. Atul has sent written confirmation that Sam is an owner of EH. GP Cert Ex.s “Q” and “R”. In November 3, 2018, Atul sent Sam an email from Patrick Papalia, Esquire, wherein Mr. Papalia confirms that he is representing EH in the present matter, the Route 10 Lawsuit, and the AIMS Lawsuit. GP Cert Ex. “S”.

In the present matter, Sam alleges claims against Atul and Barot for membership oppression, breach of fiduciary duty, misappropriation of Company assets, fraud and other claims related to Atul and Barot’s refusal to allow Sam to access company records, participate in the management and operation of the Company, misappropriation of Company assets, fraudulent conversion of Sam’s interest in the businesses and other wrongful conduct.

Additionally, in the Route 10 Lawsuit, Atul and Barot entered a confidential settlement agreement whereby they agreed to transfer 30% of the ownership interest in EH to Route 10. They entered this agreement without the knowledge or consent of Sam. That transfer serves as part of the basis for Sam’s fraud claim against Atul and Barot. That transfer requires the assistance of counsel, presumably the Archer Attorneys. The transfers occurred at a time when Archer was representing Atul and Barot. The dissolution of Sam’s ownership interest in Management would also require the assistance of counsel, presumably the Archer Attorneys. Accordingly, Sam requests that the Archer Attorneys be disqualified pursuant to R.P.C. 1.7.

b. The Archer Attorneys Must Be Disqualified Pursuant to R.P.C. 1.9

The Archer Attorneys must be disqualified due to the previous representation of the EH ownership group in at least three lawsuits, prior to the present action. “A lawyer who has

represented a client in a matter shall not thereafter represent another client in the same or a substantially related matter in which that client's interests are materially adverse to the interests of the former client unless the former client gives informed consent confirmed in writing.” RPC 1.9(a) Representation is prohibited where previous representation make the attorney aware of the adverseness of the current and former clients’ positions in the same dispute. *Twenty-First Century Rail Corp v. N.J. Transit Corp.*, 210 N.J. 264, 276 (2012).

The Archer Attorney’s admit that they represented EH, and more specifically, Atul, Barot and Sam (the “Patel Group”), with respect to their ownership portion of the Companies. GP Cert Ex. “S”. In the AIMS Lawsuit, the Archer Attorneys represented the Patel Group against AIMS in an action regarding the management and ownership of EH. In the Eric-Richard Lawsuit, the Archer Attorneys represented the Patel Group against the landlord regarding the management of the hotel premises.

Finally, and most importantly, the Archer Attorneys represented the Patel Group in the Route 10 Lawsuit, without Sam’s knowledge or approval. That lawsuit ended with a confidential settlement agreement, the total terms of which remain sealed. However, it is clear that the Patel Group relinquished 30% of their ownership share of EH in the settlement, without Sam’s knowledge or consent. Only years later, was Sam informed of the settlement in an email from Atul where he is assured he remains an owner of EH. GP Cert Ex. “Q”. There is no question that the Archer Attorneys represented the Patel Group in matters intimately related to the ownership, management and governance of their ownership interest in the Companies. Now, the Archer Attorney’s attempt to represent a portion of the ownership group against a minority member who has been fraudulently pushed out of the Companies and had his ownership interest stolen from

him. Accordingly, Sam requests that the Archer Attorney's be disqualified from representation of Atul and Barot in this matter.

c. Defendants Atul K. Patel and Dharmendra Barot Must Be Restrained From Using Company Assets To Pay Their Individual Attorneys

Atul and Barot must be ordered to refrain from misappropriating Company assets by paying for their attorneys. Under New Jersey's Revised Uniform Limited Liability Company Act (the "Act"), a member of an LLC owes the other members and the company a fiduciary duty of loyalty. That duty of loyalty includes an obligation "to account to the company and to hold as trustee for it any property, profit, or benefit derived by the member in the conduct or windup of the company's activities [and/or] from a use by the member of the company's property."

N.J.S.A.42:2C-39.

Atul and Barot continue to use the Company funds to pay their personal attorneys, while Sam shoulders the cost of litigation on his own. *See* GP Cert Ex. "Q". At present, these payments exceed \$120,000.00. GP Cert. Ex. "M". Atul and Barot's misappropriation of Company's funds constitutes a breach of their fiduciary duty of loyalty to the Companies. Accordingly, Defendant kindly requests that this Court enter an Order for all individuals to pay their own attorney's fees and any fees paid on behalf of the individuals by the Companies be repaid.

Respectfully submitted,
SALDUTTI LAW GROUP

/s/ Andrew P. Chigounis, ESQUIRE

ANDREW P. CHIGOUNIS, ESQUIRE

Dated: April 19, 2019