

IN THE CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT
IN AND FOR MARION COUNTY, FLORIDA

HEATH BROOK HILLS OWNERS'
ASSOCIATION, INC.,

CASE NO.: 2011-2953-CA-B

Plaintiffs,

v.

GARY SMITH, individually, and KELLY HILL,
individually,

Defendants.

ORDER ON DEFENDANTS' MOTION TO DISQUALIFY PLAINTIFF'S ATTORNEY OR,
IN THE ALTERNATIVE, MOTION TO COMPEL DEPOSITION OF PLAINTIFF'S
ATTORNEY

This cause having come before the Court on the Defendants' Motion to Disqualify Plaintiff's Attorney or, in the alternative, Motion to Compel Deposition of Plaintiff's Attorney (the "Motion"), and the Court having considered the Motion, and having held and evidentiary hearing and oral argument on the Motion on May 17, 2012, and being otherwise fully advised in the premises, the Court makes the following findings of fact:

1. Defendants' filed the Motion on May 7, 2012 arguing that counsel for Plaintiff should be disqualified because of an alleged conflict of interest and because he was alleged to be a material witness to the factual issues in this proceeding.
2. During the evidentiary hearing held on May 17, 2012, counsel for the Defendants called three (3) witnesses to testify in support of the Motion.
3. All of the witnesses testified uniformly that they have no knowledge of Plaintiff's attorney taking part in any of the factual events which gave rise to the recall dispute upon which this case has been brought.

4. There was no testimony or other evidence presented during the hearing to indicate that Plaintiff's counsel has, or had, any conflict of interest that would prevent him from continuing as counsel for the Plaintiff.
5. There was no testimony or evidence presented to indicate that Plaintiff's counsel has any personal knowledge, or personally took part, in any of the events giving rise to this dispute.
6. Accordingly, on the testimony and evidence presented at hearing, along with oral argument thereupon, the Court finds that Plaintiff's attorney does not have a conflict of interest which would prevent him from representing the Plaintiff, nor does Plaintiff's counsel have any personal knowledge as to any of the factual events which led to the filing of this dispute.

Based on the foregoing, it is ORDERED and ADJUDGED that:

1. Defendants' Motion to Disqualify Plaintiff's Attorney should be and is hereby DENIED;

2. Defendants' Motion, in the alternative, to Compel Deposition of Plaintiff's Attorney is hereby DENIED;

3. ~~This Court reserves jurisdiction to award attorney's fees and costs to Plaintiff.~~ FSK

Done and ordered in chambers at Ocala, Marion County, Florida, this 21st day of MaY, 2012.



Frances King
Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by United States Mail (unless otherwise indicated) this 22nd day of May, 2012 to the following:

R. Gregg Jerald, Esquire
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445 NE 8th Ave.
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Barbara Billiot Stage, Esquire
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Judge / Judicial Assistant / Clerk