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PERSPECTIVE

The dangers of attorney disqualification motions

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A recent appellate ruling reversed a trial court's decision to disqualify a law firm from defending its client in a suit brought by the client's retained real estate broker. In *Lynn v. George*, 15 Cal. App. 5th 630 (2017), the 4th District Court of Appeal found that there was insufficient evidence to support the trial court's finding of a "confidential nonclient relationship" between the broker and the law firm. It declined to uphold the disqualification based on the trial court's finding of the law firm's "potential attorney-client relationship with [an] alleged partnership" formed by the law firm's client and the real estate broker.

This ruling provides guidance on when a court may find that there are sufficient grounds for disqualification due to a confidential relationship and serves as a critical reminder that law firms must remain vigilant in their interactions with nonclients, lest they inadvertently form an attorney-client relationship or a confidential nonclient relationship.

The Trial Court

Angelica Lynn and Angel Lynn Realty, Inc. sued Steve George and Real Estate Portfolio Management, LLC for breach of an alleged oral partnership agreement and other claims. The plaintiffs alleged that they and the defendants had orally agreed to form a partnership for the purpose of buying and selling real property. The defendants claimed no part-

nership was formed and instead that the parties at all times were in a brokerage relationship.

Attorney Kevin A. Spainhour and his law firm, Spainhour Law Group had represented Real Estate Portfolio Management in investment matters for years, including in its dealings with the plaintiffs. During the course of those dealings, Spainhour communicated with Lynn several times by email, copied her on some emails sent to Real Estate Portfolio Management, and spoke with her at least once by telephone.

Spainhour Law Group continued to represent Real Estate Portfolio Management in *defending against* Lynn and Angel Lynn Realty's lawsuit. The plaintiffs filed a motion to disqualify the law firm.

The trial court ruled that Lynn and Angel Lynn Realty had not established a "personal attorney-client relationship" with Spainhour Law Group. The trial court nonetheless granted the motion to disqualify because, (1) the "confidential nonclient relationship" between the law firm and the plaintiffs, and (2) the "potential attorney-client relationship" the law firm had "with the alleged partnership" between the plaintiffs and Real Estate Portfolio Management.

On the first ground, the trial court found that the evidence — in particular, a series of emails between Lynn and the law firm — "suggest[ed] that a confidential nonclient relationship had been established between plaintiffs and [the law firm] so as to pose a conflict with respect to

... [the law firm's] current representation of defendants." On the second ground, the trial court declined to make a finding that there was an *actual* partnership in place. It granted the motion to disqualify instead based solely on "the potential attorney-client relationship with the *alleged* partnership."

The Court of Appeal

The Court of Appeal said neither ground supported disqualification of counsel.

On the first ground, the "confidential nonclient relationship," the Court of Appeal focused on the fact that the trial court did not find that Lynn or Angel Lynn Realty had formed a partnership with Real Estate Portfolio Management, but instead that the parties were at all times in an arms-length broker-client relationship. As a result, the Court of Appeal held that the communications between Lynn and Spainhour Law Group were made by Lynn in her capacity as the broker for Real Estate Portfolio Management. The court also noted that none of Lynn's communications disclosed any information to the law firm that was confidential to the plaintiffs, because the information Lynn disclosed either was shared with persons other than Spainhour Law Group (and therefore was not confidential) or else was related to her role as Real Estate Portfolio Management's broker. Thus, the court held that there was nothing in the evidence of the communications to suggest that the law firm may have acquired confidential information from Lynn.

On the second ground, the Court of Appeal noted that the trial court declined to make an express finding that there was in fact a partnership. In the absence of an express finding of a partnership, the Court of Appeal declined to infer that the trial court had made an implied finding of a partnership. Consequently, the Court of Appeal held that "a mere potential attorney-client relationship with an alleged partnership" is "not enough" to justify attorney disqualification.

The Takeaway

Despite its holding, the Court of Appeal's decision (as well as the trial court's order) serves as a reminder that courts take seriously their role in enforcing lawyers' and law firms' ethical duties of confidentiality in cases involving potential confidential relationships. Disqualification motions involve a conflict between the clients' right to counsel of their choice and the need to maintain ethical standards of professional responsibility. In working with clients as well as with nonclients, law firms should be vigilant with regards to the formation of potential attorney-client relationships and confidential nonclient relationships. Failure to do so can have significant consequences.

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