

IN THE CIRCUIT COURT OF THE
SIXTH JUDICIAL CIRCUIT IN AND FOR
PINELLAS COUNTY, FLORIDA

CASE NO. 2016-CA-004641

JENNIFER MCCOY PARKER,
and LINDA C. HEIN,

Plaintiffs,

v.

The CITY OF MADEIRA BEACH, a
Municipal Government of the State of
Florida,

Defendant.

VERIFIED MOTION TO DISQUALIFY COUNSEL

COME NOW, M.H.H. Enterprises, Inc. (“MHH”) and C&T Enterprises, Inc. (“C&T”) (collectively the “Enterprises”), by and through their undersigned counsel, and pursuant to R. Regulating Fla. Bar 4-1.9, file this Verified Motion to Disqualify Counsel and move to disqualify Timothy W. Weber, Esq. (“Mr. Weber”), the law firm of Weber, Crabb & Wein, P.A. (“Weber, Crabb & Wein”) and Kenneth L. Weiss, Esq. (“Mr. Weiss”) as the attorneys for the Plaintiffs, Jennifer McCoy Parker and Linda C. Hein (the “Plaintiffs”), in this action. In support thereof, the Enterprises allege as follows:

1. On or about July 14, 2016, the Plaintiffs, by and through their counsel, Mr. Weber of Weber, Crabb & Wein and Mr. Weiss, filed a three count “Complaint for Declaratory Judgment” claiming that the re-zoning of the Enterprises’ property was invalid and void *ab initio* and requesting that this Court make a determination on the validity of Ordinance 2015-18.

2. Ordinance 2015-18 re-zones certain real property, owned by the Enterprises, generally described as 555 150th Avenue, Madeira Beach, Florida 33708 and 565 150th Avenue, Madeira Beach, Florida 33708 (the “Property”) from Marine Commercial to Planned Development.

3. The re-zoned real property includes three parcels, Parcel 09-31-1-00000-140-0100 and Parcel 09-31-15-00000-140-0120, both owned by MHH, and parcel 09-31-15-00000-110-0100, owned by C&T.

4. James W. Holton (“Mr. Holton”) is the President and sole owner of both MHH and C&T.

5. Mr. Weber and his current law partner at Weber, Crabb & Wein, Stephen J. Wein (“Mr. Wein”) previously represented the Enterprises, Mr. Holton, and other individuals closely associated with the Enterprises on matters substantially related to the matter at issue in the instant case and, along with their co-counsel, Mr. Weiss, should be disqualified from representing the Plaintiffs in this case.

6. A party moving to disqualify counsel must establish two elements: (1) that an attorney-client relationship once existed and (2) that the lawyer previously represented the moving party in a legal matter that is the same or substantially related to the matter presently in controversy. *State Farm Mut. Auto. Ins. Co. v. K.A.W.*, 575 So. 2d 630 (Fla. 1991).

7. Disqualification is required without proof of actual harm if the lawyer has previously represented the opposing party in a matter that is the same or substantially similar to the matter in the present controversy. Where previous representation has occurred, proof of an attorney-client relationship gives rise to an irrefutable presumption that confidences were disclosed during that relationship. See *State Farm Mut. Auto. Ins. Co. v. K.A.W.*, 575 So. 2d 630 (Fla. 1991).

8. The Enterprises and Mr. Holton, individually, were previously represented by Battaglia, Ross, Dicus & Wein, P.A., now known as Battaglia, Ross, Dicus & McQuaid, P.A., (“Battaglia Ross”) whose offices are in St. Petersburg, Florida.

9. Mr. Weber was a partner with Battaglia Ross throughout the attorney-client relationship between the Enterprises and Battaglia Ross.

10. The Enterprises retained Battaglia Ross in 2006 to represent the Enterprises and Mr. Holton in litigation filed by Crest Partners against the Enterprises and Mr. Holton stemming from an aborted sale of the Property to Crest Partners. See *Crest Partners LLC v. MHH Enterprises, INC, et al.*, Pinellas County Case No. 06-008059-CI (the “Crest Litigation”).

11. Following the Crest Partners litigation, Battaglia Ross represented the Enterprises in an attempted auction of the Property and an attempted sale of the Property to another developer as well as litigation that stemmed from those aborted sales attempts.

12. As part of those sales attempts, full due diligence packets were distributed among the parties which contained confidential information regarding the Property.

13. Throughout the attorney-client relationship, Battaglia Ross also advised the Enterprises on a number of other highly sensitive matters relating to the development of the Property including providing counsel to the Enterprises concerning re-zoning the Property for commercial and residential use.

14. Battaglia Ross further helped the Enterprises secure and maintain State permits for the Property and dealt with the Florida Department of Environmental Protection on behalf of the Enterprises with regards to the Enterprises’ submerged land leases for the Property.

15. As partners at Battaglia Ross, Mr. Weber had complete access to confidential documents concerning the Property.

16. The title policy to the Property, highly confidential surveys, reports, tests, renderings, financial records, and detailed plans regarding the Property's use and future development were disclosed to Mr. Weber in detail.

17. The attorney-client relationship between Battaglia Ross and the Enterprises ended on or around March 29, 2012 and the attorney-client relationship between Battaglia Ross and Mr. Holton ended on or around December 28, 2012.

18. Battaglia Ross and Mr. Weber also represented the developer Ron G. Meers ("Mr. Meers") in litigation arising out of the same set of facts as the Crest Litigation. That litigation is titled Nick Kotaiche, individually, Fadi Saba, MD, individually and Crest Partners, LLC vs Ron G. Meers, Dennis G. Biggs, et al. Pinellas County Case No. 07-6833-CI-2-0 ("Meers Litigation").

19. Due to his representation of Mr. Meers, Mr. Weber had access to confidential and sensitive matters concerning the due diligence performed by Mr. Meers in connection with the purchase the Property, including information that neither the Enterprises nor Mr. Holton was privy to, as well as other information relating to the prospective development of the Property.

20. Mr. Weber acknowledged in an e-mail correspondence to Mr. Holton dated on or about December 10, 2012 and attached as **Exhibit "A"** that the confidential information which Mr. Weber was in possession of could be used to the disadvantage of Mr. Holton and the Enterprises' as an adverse witness in the Meers Litigation on cross-examination or in a deposition.

21. Therefore, Mr. Holton, Mr. Meers, Mr. Weber and Battaglia Ross agreed that Mr. Holton would not be deposed or cross-examined as a witness by Mr. Weber or any other attorney with Battaglia Ross in relation to the Meers Litigation.

22. Furthermore, on or about May 12, 2015, at the Pinellas County Courthouse, Mr. Weber during a conversation with Mr. Holton enquired into the status of the Enterprises' development project on the Property.

23. Without knowledge that Mr. Weber would file this action, Mr. Holton inadvertently disclosed to Mr. Weber a detailed account of the development project, including issues relating unit density and the building height restrictions set by the City of Madeira Beach (the "City"), the City's process of amending their Comprehensive Plan, and how the Enterprises were working with the City and various consultants to develop a site plan, development agreement etc. in order to properly develop the Property.

24. These confidences were disclosed to Mr. Weber on mistaken belief that Mr. Weber would hold that information confidential due to his previous representation of the Enterprises and that Mr. Weber would not use that information to the disadvantage of his former clients.

25. It is clear that an attorney-client relationship once existed between Mr. Weber and the Enterprises and that as a result of that attorney-client relationship Mr. Weber was privy to a substantial amount of sensitive confidential information relating to the Property.

26. Lawyers owe confidentiality obligations to former clients. In order to ensure the fair administration of justice, any information acquired by a lawyer in the course of representing a client may not subsequently be used by the lawyer to the disadvantage of the former client without that former client's consent. See R. Regulating Fla. Bar 4-1.9.

27. Due to the substantial amount of sensitive confidential information disclosed by the Enterprises to Mr. Weber and Mr. Wein, it would be impossible to ensure the fair administration of justice in this action if Mr. Weber and Weber, Crabb & Wein are not disqualified as attorneys for the Plaintiffs.

28. Furthermore, since the development of the Property is under direct attack, by way of the Plaintiffs' challenge to the validity of the re-zoning ordinance, this case involves a legal matter that is the same or substantially related to the work Mr. Weber, Mr. Wein and Battaglia Ross previously performed for the Enterprises.

29. Therefore, because Mr. Weber and Mr. Wein previously represented the Enterprises in legal matters that are the same or substantially related to the matter presently in controversy, the irrefutable presumption that confidences were disclosed applies and Mr. Weber and Weber, Crabb & Wein should be disqualified from representing the Plaintiffs in this matter.

30. According to R. Regulating Fla. Bar 4-1.9, a conflict of interest that applies to an attorney associated with a law firm is to be imputed to other partners and associates working in that firm.

31. Along with Mr. Weber and Mr. Wein, all other attorneys at Weber, Crabb & Wein should also be disqualified from representing the Plaintiffs in this matter due to the conflict of interest created by Mr. Weber's and Mr. Wein's prior representation of the Enterprises.

32. Furthermore, confidential knowledge attributed to a lawyer or law firm who previously had an attorney-client relationship with the adverse party should be imputed to their co-counsel. *Zarco Supply Co. v. Bonnell*, 658 So. 2d 151 (Fla. 1st DCA 1995) (Stating in fn. 2 that, "[t]o the extent the two firms worked together to draft the complaint and bring the lawsuit, it appears illogical to assume the two firms have *not* exchanged confidential information. Thus, for purposes of analysis under rule 4-1.10(b), the two firms may be viewed as one "law firm."); R. Regulating Fla. Bar 4-1.10(b).

33. Therefore, the knowledge of information gained by Mr. Weber and Mr. Wein during their representation of the Enterprises should be imputed to Mr. Weiss who is acting as co-

counsel with Mr. Weber and Weber, Crabb & Wein on this matter, and Mr. Weiss should also be disqualified from representing the Plaintiffs in this matter.

WHEREFORE, the Enterprises respectfully request this Court to disqualify Mr. Weber, Weber, Crabb & Wein, and Mr. Weiss as the attorneys for the Plaintiffs and grant any other relief in favor of the Enterprises and against the Plaintiffs as this Court deems just and appropriate.

(Signatures on following pages)

VERIFICATION

Under penalty of perjury, I declare that I have read the foregoing Motion and the facts alleged therein are true and correct.

FURTHER AFFIANT SAYETH NAUGHT.

M.H.H. ENTERPRISES, INC.

By: [Signature]
Name: James W. Holton
Title: President

C&T ENTERPRISES, INC.

By: [Signature]
Name: James W. Holton
Title: President

STATE OF FLORIDA
COUNTY OF Pinellas

Sworn to and subscribed before me this 4 day of August, 2016, by James W. Holton, as President of M.H.H. Enterprises, Inc. and C&T Enterprises, Inc., each a Florida corporation, on behalf of the corporations. He is (personally known) to me or has produced _____ as identification. If no type of identification is indicated, the above-named person is personally known to me.

(Notary Seal)

[Signature]
Signature of Notary Public
Lacy K Maguire
Print Name of Notary Public



I am a Notary Public of the State of Florida.

Respectfully submitted,

**GRIMES GOEBEL GRIMES HAWKINS
GLADFELTER & GALVANO, P.L.**



WILLIAM S. GALVANO, ESQUIRE

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Attorney for M.H.H. Enterprises, Inc. & C&T
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail on this 5th day of August, 2016 to the following:

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WILLIAM S. GALVANO, ESQUIRE

Begin forwarded message:

From: Tim Weber <TWEBE@brdwlaw.com>
Date: December 10, 2012 at 2:17:04 PM EST
To: James Holton <jim@holtoncompanies.com>
Subject: Kotaiche/Meers

Jim:

We have discussed on a couple of occasions this firm's representation of Ron Meers adverse to Nick Kotaiche, Crest Partners, and Dr. Saba. While we discussed that there was not a conflict of interest within the meaning of the rules, I recognize that you are concerned from the standpoint of this firm's potential possession of information that could be used to your disadvantage in connection with cross-examination of you as a potential witness in the case.

In an effort to retain us as counsel, Mr. Meers will agree that our firm will not cross-examine you as a witness at any deposition, hearing, or trial of this matter. We, of course, will not divulge or share any information required to be kept confidential pursuant to R.Reg.Fla.Bar 4-1.6. Mr. Meers will either hire separate counsel for purposes of cross-examination or not question you at all. Let me know if that sufficiently allays your concerns.

Regards,



Timothy W. Weber, Esquire

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Board Certified Appellate Lawyer



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