

COURT OF APPEALS OF OHIO, ELEVENTH APPELLATE DISTRICT, LAKE COUNTY

Shoregate Towers NS, L.L.C. v. Ruple Builders, Inc.

2025-Ohio-5287 · No. 2025-L-041 · Decided November 24, 2025

SUMMARY

The Ohio Eleventh District Court of Appeals affirmed the trial court’s order disqualifying Dennis R. Fogarty from representing Ruple Builders, Inc. The court held that Fogarty was a necessary witness under Ohio Prof.Cond.R. 3.7 because of his personal role in drafting, executing, and filing the mechanic’s lien affidavit, and that no substantial-hardship exception applied.

CASE DETAILS

COURT	Court of Appeals of Ohio, Eleventh Appellate District, Lake County
WRITING FOR THE COURT	Matt Lynch; Eugene A. Lucci; Scott Lynch
JURISDICTION	Ohio Court of Appeals, Eleventh Appellate District, Lake County
DECIDED	November 24, 2025
DOCKET	2025-L-041
DISPOSITION	affirmed
PROCEDURAL POSTURE	Dennis R. Fogarty appealed the Lake County Court of Common Pleas' order disqualifying him from representing Ruple Builders, Inc. in litigation brought by Shoregate Towers NS, L.L.C.
STANDARD OF REVIEW	A trial court's decision on a motion to disqualify counsel is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published Ohio Court of Appeals opinion
PARTIES	Dennis R. Fogarty v. Shoregate Towers NS, L.L.C.

TOPICS

- appellate procedure
- standard of review
- civil procedure
- construction law
- mechanics liens

PRACTICE AREAS

- appellate procedure
- civil procedure
- professional responsibility
- construction law
- commercial litigation

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by disqualifying Fogarty from representing Ruple under Ohio Professional Conduct Rule 3.7 because he was likely to be a necessary witness.
2. Whether the substantial-hardship exception to Ohio Professional Conduct Rule 3.7 permitted Fogarty to continue representing Ruple.

HOLDINGS

1. Fogarty was a necessary witness because his proposed testimony concerning his intent and knowledge when drafting and filing the mechanic's lien affidavit was material and relevant, and the testimony could not be obtained from another available witness.
2. Fogarty failed to establish that his disqualification would cause substantial hardship to Ruple; a longstanding attorney-client relationship, familiarity with the case, and the expense of obtaining new counsel were insufficient, particularly because the case remained in discovery and Ruple had time to retain substitute counsel.
3. The trial court did not abuse its discretion by disqualifying Fogarty from representing Ruple because he was a necessary witness and no exception under Ohio Professional Conduct Rule 3.7 applied.

KEY QUOTATIONS

“However, because of the potential use of the advocate-witness rule for abuse, disqualification “is a drastic measure which should not be imposed unless absolutely necessary.”” (¶ 19)

“A lawyer shall not act as an advocate at a trial in which the lawyer is likely to be a necessary witness[.]” (¶ 20)

“A necessary witness is not just someone with relevant information . . . but someone who has material information that no one else can provide.” (¶ 27)

FACTUAL BACKGROUND

Shoregate owned apartment buildings where a parking garage collapsed while Ruple, a subcontractor for 4G Construction, was working on the property. Ruple later filed a \$237,569 mechanic's lien affidavit, which Fogarty drafted and filed as Ruple's attorney. Shoregate alleged that Fogarty prepared and filed the affidavit with knowledge of false statements and the contractual lien waiver, and sought testimony from Fogarty concerning his intent and knowledge. Fogarty was also named as a defendant in related claims arising from the lien affidavit while continuing to represent Ruple.

PROCEDURAL HISTORY

Shoregate sued Ruple concerning a mechanic's lien filed on Shoregate's property and later asserted claims against Fogarty, Ruple's attorney, based on his preparation and filing of the lien affidavit. Shoregate moved to disqualify Fogarty under Ohio Professional Conduct Rule 3.7, arguing that he was a necessary witness. The trial court granted the motion, and the Eleventh District affirmed.

DISPOSITION

affirmed

CASES CITED

- Reo v. Univ. Hosps. Health Sys., 2019-Ohio-1411 (11th Dist.)
- 155 N. High, Ltd. v. Cincinnati Ins. Co., 72 Ohio St.3d 423 (1995)
- State v. Beechler, 2010-Ohio-1900, ¶ 62 (2d Dist.)
- Fordeley v. Fordeley, 2015-Ohio-2610, ¶¶ 25, 31 (11th Dist.)
- Waliszewski v. Caravona Builders, Inc., 127 Ohio App.3d 429, 433 (9th Dist. 1998)
- Mentor Lagoons, Inc. v. Rubin, 31 Ohio St.3d 256, 257, 260 (1987)
- McCormick v. Maiden, 2014-Ohio-1896, ¶ 11 (6th Dist.)
- Puritas Metal Prods., Inc. v. Cole, 2008-Ohio-4653, ¶¶ 34-35 (9th Dist.)
- Mettler v. Mettler, 928 A.2d 631, 633-634 (Conn. 2007)
- Knowledge A-Z, Inc. v. Sentry Ins., 857 N.E.2d 411, 418 (Ind. App. 2006)
- Harter v. Univ. of Indianapolis, 5 F. Supp. 2d 657, 665 (S.D. Ind. 1998)
- Lake Royale Landowners Assn. v. Dengler, 2022-Ohio-2929, ¶¶ 27-30 (11th Dist.)
- Crockett v. Crockett, 2003-Ohio-585, ¶ 14 (10th Dist.)
- Lytle v. Mathew, 2017-Ohio-1447, ¶¶ 17, 20 (8th Dist.)
- Popa Land Co., Ltd. v. Fragnoli, 2009-Ohio-1299, ¶¶ 18, 21-22 (9th Dist.)

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