

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FOURTH JUDICIAL DEPARTMENT

Thompson, Coreen N. v. Peters, Joan

1190 CA 14-00112 · No. 1190 CA 14-00112 · Decided January 2, 2015

SUMMARY

The New York Appellate Division, Fourth Department, affirmed an order denying Joan Peters’s motion to disqualify the petitioner’s attorney and stay proceedings in an estate matter. Although the court found that Peters established a prior attorney-client relationship, substantial relatedness, and materially adverse interests, it held that she waived any objection by waiting approximately one year while actively participating in the litigation. The court concluded that the motion was an offensive tactical measure and affirmed without costs.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
WRITING FOR THE COURT	Scudder, P.J.; Smith, J.; Peradotto, J.; Carni, J.; Sconiers, J.
JURISDICTION	New York
DECIDED	January 2, 2015
DOCKET	1190 CA 14-00112
DISPOSITION	affirmed
PROCEDURAL POSTURE	Respondent appealed from an order of the Genesee County Surrogate's Court denying her motion to disqualify petitioner's attorney and law firm and to stay proceedings pending substitution.
STANDARD OF REVIEW	Review of the Surrogate's Court order denying attorney disqualification; the court applied the governing attorney-disqualification and waiver standards.
PRECEDENTIAL VALUE	Published memorandum and order of the New York Appellate Division; precedential value under New York law is not otherwise specified in the opinion.
PARTIES	Joan Peters v. Coreen N. Thompson, Administratrix C.T.A.

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QUESTIONS PRESENTED

1. Whether respondent waived her objection to petitioner's attorney representing petitioner by knowingly delaying her motion to disqualify while actively participating in the litigation.
2. Whether the Surrogate's Court properly denied respondent's motion to disqualify petitioner's attorney and his law firm.

HOLDINGS

1. Respondent waived her objection to the attorney's representation because she knew or should have known of the alleged conflict for an extended period, actively participated in the litigation for more than a year, and delayed moving for disqualification until the motion could provide a tactical advantage.

KEY QUOTATIONS

“In determining whether a party has waived any objection to a conflict of interest, “courts consider when the challenged interests became materially adverse to determine if the party could have moved [for disqualification] at an earlier time” (at 3)

“Given the complexity of the litigation, the hardship that would be inflicted on petitioner and the estate, and the one-year delay in bringing the motion, we conclude that this motion was made “as an offensive tactic”” (at 4)

FACTUAL BACKGROUND

Petitioner's attorney had previously represented respondent and the decedent in an action concerning ownership of real property located within the Tonawanda Seneca Nation Territory. The decedent's will attempted to devise that property and related businesses to petitioner, while respondent claimed superior ownership under asserted matriarchal tribal law. Respondent knew of the attorney's representation of petitioner and the alleged conflict while participating in the probate litigation for more than a year, but delayed moving for disqualification until after petitioner sought forfeiture and disgorgement of respondent's bequests.

PROCEDURAL HISTORY

The decedent's will was offered for probate in September 2011. After actively participating in the probate-related litigation for more than a year while knowing the identity of petitioner's attorney and the potential conflict, respondent moved in January 2013 to disqualify that attorney based on his prior representation of respondent and the decedent. The Surrogate's Court denied the motion, and the Appellate Division unanimously affirmed.

DISPOSITION

affirmed

CASES CITED

- Peters v Noonan, 871 F Supp 2d 218
- Matter of Tonawanda Seneca Nation v Noonan, 122 AD3d 1334
- Edgewater Constr. Co., Inc. v 81 & 3 of Watertown, Inc. [appeal No. 2], 24 AD3d 1229, 1231
- Jamaica Pub. Serv. Co. v AIU Ins. Co., 92 NY2d 631, 636-638
- Solow v Grace & Co., 83 NY2d 303, 310, 313
- S & S Hotel Ventures Ltd. Partnership v 777 S. H. Corp., 69 NY2d 437, 443
- Tekni-Plex, Inc. v Meyner & Landis, 89 NY2d 123, 132, rearg denied 89 NY2d 917
- Hele Asset, LLC v S.E.E. Realty Assoc., 106 AD3d 692, 693-694
- Gustafson v Dippert, 68 AD3d 1678, 1679
- Lake v Kaleida Health, 60 AD3d 1469, 1470

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