

STATE OF NORTH CAROLINA
GUILFORD COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
24CVS004669-400

RYAN HAYS, individually and
derivatively on behalf of
GUNNERSON ENTERPRISES LLC,

Plaintiff,

v.

MATTHEW LEWIS and
GUNNERSON ENTERPRISES LLC,

Defendants.

**ORDER ON PLAINTIFF'S AMENDED
MOTION TO DISQUALIFY COUNSEL**

1. Plaintiff Ryan Hays and Defendant Matthew Lewis are erstwhile romantic partners who co-own a real-estate investment company called Gunnerson Enterprises LLC. Pending is Hays's amended motion to disqualify Amiel J. Rossabi and the law firm of Rossabi Law PLLC as counsel for Lewis. (ECF No. 32.) For the following reasons, the Court **GRANTS** the motion.

2. **Background.** Gunnerson has just two member-managers: Hays and Lewis. The company's assets include several rental properties, as well as property in Sugar Mountain, North Carolina, where it is in the process of building a new home for future sale. The Sugar Mountain property is Gunnerson's largest asset. (*See* Aff. R. Hays ¶¶ 3, 7, ECF No. 33.1.)

3. In recent years, Rossabi and his firm have represented Gunnerson in at least six matters, three of which relate to the Sugar Mountain property. These three matters include acquiring the property in August 2023, retaining Paul Joseph Custom, Inc. as a contractor in January 2024, and suing Cranberry Construction LLC

in February 2024 for breach of contract. In the lawsuit against Cranberry, Rossabi represented not only Gunnerson but also Hays and Lewis. Along with engagements related to the Sugar Mountain property, Gunnerson has engaged Rossabi and his firm to handle various issues involving its other properties (a dustup with a homeowners association, for example). (See Aff. R. Hays ¶ 9; Aff. A. Rossabi ¶ 2, ECF No. 55.)

4. A few weeks after the lawsuit against Cranberry began, Hays ended her romantic relationship with Lewis. This was no casual breakup—the couple have children, a family home, shared bank accounts, and a cohabitation agreement (of disputed validity). In the first of many bitter legal battles to follow, Hays accused Lewis of domestic violence and obtained a protective order against him.¹ She then accused him of misusing Gunnerson’s assets and demanded that he and the company take corrective action. With hostilities between Hays and Lewis multiplying, Rossabi withdrew as counsel in the litigation against Cranberry, citing Rules 1.7, 1.13, and 1.16 of the North Carolina Rules of Professional Conduct. (See Aff. R. Hays ¶¶ 4, 5; Pl.’s Ex. 5, ECF No. 33.5; *see also* Compl. Exs. D–G, ECF No. 3.)

5. Hays then brought this lawsuit against Lewis, asserting both individual claims for personal injuries and derivative claims for injuries to Gunnerson. The complaint alleges that Lewis took over \$200,000 from their joint personal accounts, that he took over \$200,000 more from Gunnerson’s accounts, that he is occupying one

¹ During the hearing on the protective order, the presiding judge expressed concern about conflicts that Rossabi and his firm may have in representing Lewis against Hays. (See Pl.’s Ex. 2, ECF No. 33.2.)

of Gunnerson's rental properties without permission, and that he is obstructing both the construction at the Sugar Mountain property and the related litigation against Cranberry. On Gunnerson's behalf, Hays asserts derivative claims for conversion, embezzlement, breach of fiduciary duty, and unjust enrichment, as well as a remedial claim for injunctive relief. Individually, she asserts claims to dissolve Gunnerson, for breach of its operating agreement, for breach of the cohabitation agreement, and for certain declaratory relief. (*See, e.g.*, Compl. ¶¶ 12, 18, 26, 27, 30, 32, 55, 61, 67, 72, 80, 86, 89, 99, 106, 116.)

6. Upon filing suit, Hays immediately moved *ex parte* for an order attaching the funds that Lewis allegedly misappropriated. The presiding judge granted her motion. In compliance with that order, Lewis's bank placed a hold on his account and, eventually, deposited several hundred thousand dollars to be held by the clerk of court. (*See* Order of Attach., ECF No. 6; *see also* Mot. for Pre-Judg. Attach., ECF No. 31; Order on Mot. Direct. Garnishee to Deposit Funds, ECF No. 29.)

7. Meanwhile, Gunnerson received a complaint from a local official about debris at the Sugar Mountain construction site. Lewis referred the official to Rossabi for "any questions or concerns" and "supporting documentation," while stating that "the property is currently in a dispute" and that "the contractor has been instructed along with designer and other owners with Gunnerson . . . to cease and desist any and all activity." Hays urged the official to disregard Lewis's message and stated that Rossabi "is no longer representing our company." (Pl.'s Ex. 6, ECF No. 33.6.)

8. Around this time (it is not clear when), Lewis retained Rossabi to represent him in this case. Hays responded by moving to disqualify Rossabi, contending that his earlier representations of her and Gunnerson gave rise to a conflict that neither she nor the company had waived.² Unknown to Hays, Lewis had also retained Rossabi to represent Gunnerson, and on the heels of Hays's motion to disqualify, Rossabi filed a spate of motions for both Lewis and the company. Among them was a motion to dismiss Hays's derivative claims. (*See* Pl.'s Mot. Disqualify, ECF No. 14; Defs.' Mot. Dismiss Deriv. Claims, ECF No. 21; Aff. R. Hays ¶ 19.)

9. In mid-June 2024, the Chief Justice designated the case to this Court as a mandatory complex business case. More motions followed. Hays amended her motion to disqualify, arguing not only that Rossabi was conflicted but also that he could not represent Gunnerson without her approval as a member. Rossabi then filed a motion to dissolve or modify the attachment order; this motion, like the motion to dismiss, was on behalf of both Lewis and Gunnerson. And finally, contending that her estrangement from Lewis had left Gunnerson deadlocked, Hays moved to put the company into receivership. (*See* Pl.'s Am. Mot. Disqualify, ECF No. 32; Defs.' Mot. Dissolve Attach., ECF No. 38; Pl.'s Mot. Appt. Receiver, ECF No. 50.)

10. The receivership motion drew no opposition from Lewis.³ So, with the parties' consent, the Court appointed Kevin L. Sink as receiver for Gunnerson, giving

² As early as March 2024, Hays had put Rossabi on notice that she did "not consent, explicitly or otherwise, to your representation of [Lewis] individually, in light of your prior representation of her individually, Gunnerson Enterprises and various other business entities associated with" Lewis. (Pl.'s Ex. 7, ECF No. 33.7.)

³ Lewis's only objection had to do with the scope of the receiver's authority, which the parties later resolved by consent. (*See* Resp. in Partial Consent to Mot. Appt. Receiver, ECF No. 60.)

him broad authority to hire counsel, manage its properties, take custody of the attached funds traceable to its accounts, and decide whether to allow Lewis to continue living at the rental property that he had occupied since his split with Hays. But the receiver wasn't working with a blank slate. The motions that Rossabi had filed as Gunnerson's counsel of record remained pending. In short order, the receiver retained new counsel, and Rossabi withdrew his appearance for Gunnerson while continuing to represent Lewis. The receiver also shifted the company's stance on the pending motions. He concluded that Gunnerson had no interest in dissolving the attachment order, having already been given custody of company funds that had been subject to that order. In addition, he retracted the motion to dismiss, deciding that it was in Gunnerson's best interest to let Hays pursue the derivative claims. As for the motion to disqualify, he took no direct position but allowed Hays to assert on Gunnerson's behalf any conflicts arising from its past attorney-client relationship with Rossabi. (*See* Consent Order on Pl.'s Mot. Appt. Receiver, ECF No. 64; Order on Mot. Withdraw, ECF No. 72; Consent Order on Pending Mots., ECF No. 73.)

11. Hays's motion to disqualify is now fully briefed, and the Court held a hearing on 9 December 2024. The motion is ripe for decision.

12. **Discussion.** Whether to disqualify counsel is a matter within the trial court's discretion. *See, e.g., Travco Hotels, Inc. v. Piedmont Nat. Gas Co.*, 332 N.C. 288, 295 (1992). "The movant seeking to disqualify his former counsel must meet a particularly high burden of proof." *Worley v. Moore*, 370 N.C. 358, 364 (2017).

13. The issue here is whether Rossabi has a disqualifying conflict of interest. Under Rule 1.9(a) of the Rules of Professional Conduct, “[a] lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person’s interests are materially adverse to the interests of the former client” absent written consent. N.C. Rev. R. Prof’l Conduct 1.9(a). “This rule balances an attorney’s ethical duties of confidentiality and loyalty to a former client with a party’s right to its chosen counsel.” *Worley*, 370 N.C. at 359.

14. There is no dispute that “an attorney–client relationship existed between” Rossabi and both Hays and Gunnerson. *Id.* at 364–65. He represented them in the litigation against Cranberry, and he also represented Gunnerson in a variety of other matters, including this litigation before Sink’s appointment as receiver.

15. Similarly, there is no dispute that “the interests of” Rossabi’s current client, Lewis, “are materially adverse to those of” his former clients, Hays and Gunnerson. *Id.* at 365. Hays alleges that Lewis emptied their joint accounts and breached the promises that he made in their cohabitation agreement. She also alleges, with the receiver’s blessing, that Lewis harmed Gunnerson by stealing its assets, interfering with its properties, obstructing its litigation against Cranberry, and more. Denying these allegations across the board, Lewis opposes any recovery by either Hays or Gunnerson.

16. What is disputed is whether “the present action involves a matter that is the same as or substantially related to the subject of” Rossabi’s past representations of

Hays and Gunnerson. *Id.* The test is objective: is there “a substantial risk that confidential information as would normally have been obtained in the prior representation would materially advance the client’s position in the subsequent matter”? *Id.* at 367 (cleaned up).

17. The answer, as to Gunnerson, is unquestionably yes. Rossabi entered an appearance to represent Gunnerson *in this case*. Before withdrawing, he filed several motions for the company, one of which would have extinguished Hays’s derivative claims if successful. Confidences that would normally have been obtained in the company’s evaluation of the derivative claims against Lewis would certainly advance Lewis’s position in defending against those very same claims. *See SVB Fin. Grp. v. Fed. Ins. Co.*, 2024 U.S. Dist. LEXIS 34603, at *7 (E.D.N.C. Feb. 28, 2024) (“Farella Braun represented Silicon Valley Bank in *this* action, and thus any confidential information shared is material to this action.”); *see also* N.C. Rev. R. Prof’l Conduct 1.9 cmt. 2 (“The underlying question is whether the lawyer was so involved in the matter that the subsequent representation can be justly regarded as a changing of sides in the matter in question.”).

18. The Court also concludes that Rossabi’s other past representations of Hays and Gunnerson present similar risks, if not quite as glaring. This is especially true for representations related to the Sugar Mountain property. Gunnerson engaged Rossabi’s services in acquiring the property, retaining Paul Joseph Custom as a contractor, and suing Cranberry. Hays engaged Rossabi’s services only for the Cranberry litigation. Over the course of these engagements, a client would normally

share confidential information with counsel concerning its financial condition, business strategy, reasons for pursuing the initial transaction, valuation of the property, contingency plans, assessment of the strength of its legal claims, and willingness to settle its claims and on what terms, among other things. This information, individually and taken together, is relevant at least to the derivative claim for breach of fiduciary duty, which is based partly on allegations that Lewis has delayed the Sugar Mountain construction, instructed contractors not to communicate with Hays, impeded the litigation against Cranberry, and impaired Gunnerson's ability to pay its construction-related debts. *See, e.g., Vincelette v. Court*, 2024 NCBC Order 77, ¶¶ 27–30 (N.C. Super. Ct. Oct. 8, 2024).

19. In his opposition brief, Lewis says nothing about Rossabi's past representations of Gunnerson, arguing only that the representation of Hays in the Cranberry litigation is not substantially related to this action. This is so, according to Lewis, because Rossabi received no confidential information from Hays. But the Supreme Court has made clear that it is error to try "to determine whether [the former client] actually shared confidential information with" the attorney. *Worley*, 370 N.C. at 366. The test is objective, asking "whether a client in [Hays's] position would normally have shared confidential information," and "does not rely on the subjective assessment provided by the former client or the attorney." *Id.* at 365, 366. Hays meets that objective test, given the nexus between the Cranberry litigation and her allegations here that Lewis is interfering with that litigation and delaying the construction project at issue in the litigation.

20. Lewis also argues that he has independent knowledge of any information that Rossabi could have obtained from Hays, meaning that the information could not be confidential. Sister courts have rejected similar arguments. When “confidential information would have likely been shared by clients jointly represented by the same counsel,” that counsel may not, absent informed consent, “then represent one or more of those clients in either the same or a substantially related matter after a dispute has arisen among the clients.” *SVB Fin. Grp.*, 2024 U.S. Dist. LEXIS 34603, at *7 (citing N.C. Rev. R. Prof'l Conduct 1.9 cmt. 1); *see also Vincelette*, 2024 NCBC Order 77, at ¶ 31 n.51. Nothing in the record suggests that Hays agreed to any “limitations on confidentiality at the time” she engaged Rossabi, much less that she acquiesced to the possibility that Rossabi might represent Lewis against her in a substantially related matter. *Worley*, 370 N.C. at 366.

21. In any event, even if Rossabi’s past representation of Hays is not disqualifying, his past representations of Gunnerson in this case and in at least half a dozen other matters are disqualifying. Lewis offers no basis to conclude otherwise. *See* N.C. Rev. R. Prof'l Conduct 1.9 cmt. 3 (“In the case of an organizational client, . . . knowledge of specific facts gained in a prior representation that are relevant to the matter in question ordinarily will preclude such representation.”).

22. **Conclusion.** For all these reasons, the Court **GRANTS** Hays’s motion to disqualify. Amiel J. Rossabi and the law firm of Rossabi Law PLLC are disqualified as counsel for Lewis in this action.

23. In addition, the Court **STRIKES** Lewis's answer, his motion to dissolve or modify the attachment order, and all briefs and supporting materials filed by Rossabi on his behalf, (*see, e.g.*, ECF Nos. 38–40, 81). *See, e.g., Turner v. Hunt Hill Apts., LLC*, 2020 NCBC LEXIS 16, at *13 (N.C. Super. Ct. Feb. 11, 2020) (striking filings by disqualified counsel); *Battles v. Bywater, LLC*, 2014 NCBC LEXIS 54, at *17 (N.C. Super. Ct. Oct. 31, 2014) (same).

24. Finally, the Court **STAYS** all discovery for 30 days to allow Lewis to retain new counsel. If Lewis does not retain new counsel, he shall take action to associate himself to this case through the Court's e-filing system no later than 30 days from the date of this order. Any questions or requests for further instruction as to the Court's e-filing system may be directed to the assigned law clerk via e-mail. This stay shall not affect or limit the receiver's ability to carry out his duties in any way.

SO ORDERED, this the 21st day of January, 2025.

/s/ Adam M. Conrad
Adam M. Conrad
Special Superior Court Judge
for Complex Business Cases