

EXHIBIT J
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A T T O R N E Y S A T L A W

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July 18, 2013

VIA EMAIL

The Honorable Edward W. Miller
305 E. North Street, Suite 219
Greenville, SC 29601

RE: *D&C Builders, Inc. v. Richard M. Buckley*
C.A. No.: 2013-CP-23-1833

Dear Judge Miller,

I write in response to the correspondence directed to your office by Mr. Brian Martin and the Motion to Reconsider that he has filed on behalf of his client, D&C Builders, Inc.

The opinion rendered by the South Carolina Supreme Court in the *Townsend* case referenced by Mr. Martin specifically states that the Supreme Court's discussion in that case on the issue of Conflict of Interest "applies only to attorney guardians ad litem in child custody and support actions." *Townsend v. Townsend*, 323 S.C. 309, 315, 474 S.E.2d 424, 428 (1996). This is not such an action.

Further, notwithstanding our position that Rule 1.9(a) of the South Carolina Rules of Professional Conduct is inapplicable here due to, *inter alia*, the failure of the Plaintiff to prove the two matters are "substantially related", Rule 1.9(c) provides, in pertinent part:

"A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter: (1) use the information relating to the representation to the disadvantage of the former client except ... when the information has become generally known".

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Furthermore, Comment 2 to Rule 1.9 provides, in pertinent part:

The scope of a "matter" for purposes of this Rule may depend on the facts of a particular situation or transaction. The lawyer's involvement in a matter can also be a question of degree. When a lawyer has been directly involved in a specific transaction, subsequent representation of other clients with materially adverse interests in that transaction clearly is prohibited. On the other hand, a lawyer who recurrently handled a type of problem for a former client is not precluded from later representing another client in a factually distinct problem of that type even though the subsequent representation involves a position adverse to the prior client. ... 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.

Further still, Comment 3 to this Rule provides, in pertinent part:

... Information that has been disclosed to the public or to other parties adverse to the former client ordinarily will not be disqualifying. ... In the case of an organizational client, general knowledge of the client's policies and practices ordinarily will not preclude a subsequent representation; on the other hand, knowledge of specific facts gained in a prior representation that are relevant to the matter in question ordinarily will preclude such representation.

It remains our position that the 2 cases at issue are entirely separate and distinct situations/transactions with entirely distinct facts. The only similarity is that they both involve mechanic's liens - albeit on different properties, against different owners, securing different alleged debts and arising from completely unrelated facts. Moreover, no confidential information was gained by my firm in its prior representation of Plaintiff. What is also clear is that the Plaintiff allowed the information he is complaining about to be generally known - to (at a minimum) *the Defendant in this action*. And, he has yet to provide any proof whatsoever to the contrary. The Plaintiff has failed to provide any "specific" confidential facts to counter this position, despite its right to do just that.

Mr. Martin cites that portion of comment 3 to Rule 1.9 of the South Carolina Rules of Professional Conduct which states that a former client *is not required* to reveal the purported confidential information. In support of his Motion to Reconsider, Mr. Martin states that his client "will be forced to disclose confidential information to Defense Counsel *that may not have been previously disclosed to Defense Counsel in the*

prior representation"¹ This admission coupled with the clear desire of Plaintiff to not provide any of the purported confidential information all the while crying the (*potential*) existence of confidential information, presents the troubling scenario where the Plaintiff is attempting to use Rule 1.9 not as a shield but as a sword. This was surely not the intention behind the Rule.

It remains our position that the arguments and facts presented to the court show: (1) the two cases are not substantially related; (2) the existence of absolutely no specific confidential information learned in the first case such that there is no confidential information in the possession of Defendant's counsel that would be, or could be, of significance in the second case; and (3) Defendant's counsel will not be called on in this case to use against the Plaintiff any knowledge or information acquired by Defendant's counsel in the prior case that would injuriously affect the Plaintiff. Despite this clarity and despite the Court giving the Plaintiff the opportunity to produce anything to counter it, the Plaintiff has made it abundantly clear to the Court that it would rather assert what it argues is his right not to produce anything, including what he is alleging is *possibly* confidential information. Therefore, it is respectfully requested that the Court partially grant the Plaintiff's Motion to Reconsider by simply rescinding its original order and then enter an Order denying the Plaintiff's Motion to Disqualify.

Respectfully,

KENISON, DUDLEY & CRAWFORD, LLC



M. Stokely Holder

MSH/lw

cc: Brian A. Martin, Esq. (via e-mail)
H. Stewart James, Esq. (via e-mail)
Thomas A. Shook, Esq. (via e-mail)

¹ In paragraph 13 of Mr. Martin's Motion to Reconsider, he appears to go so far as to take the liberty of pontificating to the Court about how likely it is that an appellate court will consider the prior order to be in error.