

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

ANDREW ROSE, ESQ.,
RICHARD ALTOMARE, and
BARBARA ALTOMARE,

Petitioners,

Appellate Division (Civil)
CASE NO.: 502007AP000106XXXXMB
L.T.: 502006CC001439XXXXSBRD
Division: 'AY'

v.

ADDISON GALLERY, INC.,

Respondent.

Opinion filed:

✓ Appeal from the County Court in and for Palm Beach County, Florida
Judge Frank Castor.

✓ For Petitioners: Peter Ticktin, Esq., 3700 Coconut Creek Parkway, Suite 160,
Coconut Creek, FL 33066.

✓ For Respondent: Joanne Fanizza, Esq., 1995 East Oakland Park Boulevard, Suite 210,
Ft. Lauderdale, FL 33306.

PER CURIAM

Petitioners, Andrew Rose, Esq., and Richard and Barbara Altomare ("the Altomares"), seek review of the trial court's order granting Respondent Addison Gallery Inc.'s ("the Gallery") Motion to Disqualify Rose & Rose Law Firm, entered March 9, 2007. This Court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(2).

The Altomares purchased several pieces of fine art from the Gallery between 2003 and 2004. After making partial payments towards their purchases, the Altomares refused to remit full payment. The Gallery sued the Altomares for the balance owed. The Altomares filed a counterclaim, alleging that the Gallery misrepresented the value of the art.

At the time of the suit, counsel for the Altomares, Andrew Rose, Esq., ("Rose") also represented the consignor of the artwork, SI Fine Arts ("the Consignor"), who was not a party to the suit. During the course of Rose's representation of the Consignor, Rose learned the price that the Gallery was to pay the Consignor for the artwork that is the subject of the suit. At no time did Rose ever represent the Gallery. After the Gallery learned that Rose represented the Consignor, it filed a motion to disqualify the Rose & Rose Law Firm. The trial court, after holding a non-evidentiary hearing, disqualified Rose.

Motions for disqualification are generally viewed with skepticism because disqualification infringes on a party's right to hire an attorney of his or her choice, and such motions are often imposed for tactical purposes. *Alexander v. Tandem Staffing Solutions*, 881 So. 2d 607 (Fla. 4th DCA 2004). For these reasons, disqualification is an extraordinary remedy and should be resorted to sparingly. *Estate of Gory*, 570 So. 2d 1381 (Fla. 4th DCA 1990). The Court finds that the trial court's order of disqualification cannot be upheld on the record presented.

The order of disqualification reveals that the trial court relied on Rules 4-1.7 and 4-1.9, Florida Rules of Professional Conduct. Rule 4-1.9 addresses conflicts between current and former clients. As Rose represented the Consignor, the trial court's reliance on this rule was flawed since Rose never represented the Gallery. Rule 4-1.7 is applicable; however, there is nothing in the record to reflect that the trial court addressed the matter of whether a conflict was waived by informed consent of the Altomares and the Consignor.

Additionally, this Court finds that the trial court erred when it failed to hold an evidentiary hearing on the motion. See *Quality Air Conditioning Co. v. Vrstil*, 895 So. 2d 1236 (Fla. 4th DCA 2005) (Where there is a dispute over the disqualification of an attorney and the

parties do not agree on the issue presented, an evidentiary hearing is necessary.) In order to determine whether the price of the artwork was confidential the trial court should have undertaken a review of a written agreement, if one exists, between the Gallery and the Consignor. Based on the foregoing, it is

ORDERED that the Petition for Writ of Certiorari is GRANTED and the issue remanded to the trial court to hold an evidentiary hearing on the Gallery's Motion to Disqualify. At this time, we make no ruling regarding whether a factual basis exists which would warrant Rose's disqualification and leave that matter to the sound discretion of the trial court. Additionally, Respondent's Motion to Tax Attorney's Fees, filed pursuant to Fla. Stat. §57.105 is DENTED.

STERN, CROW AND HOY, JJ., concur.