

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

GMAC BANK, a Utah Industrial Bank,)	
)	CIVIL ACTION
Plaintiff,)	
)	
vs.)	No. 06 CV 5291
)	
HTFC CORPORATION,)	
)	
Defendant.)	

**REPLY MEMORANDUM IN FURTHER
SUPPORT OF MOTION FOR LEAVE TO WITHDRAW
AS COUNSEL FOR DEFENDANT HTFC CORPORATION**

Joseph R. Ziccardi, Esquire (“Ziccardi” or “Counsel”), hereby submits this reply memorandum in further support of his Motion For Leave To Withdraw As Counsel For Defendant HTFC Corporation (“Motion To Withdraw”). Filed in connection with this memorandum is the Affidavit Of Joseph R. Ziccardi, Esquire, which is incorporated by reference herein.

I. FACTS & BACKGROUND

The Memorandum and Order entered by this Court on February 29, 2008 gave rise to an immediate and very sharp conflict of interest between lawyer (Ziccardi) and client (defendant HTFC). Within moments of reading the Court’s Memorandum in its entirety, Ziccardi immediately consulted with an attorney whose practice focuses exclusively on issues of lawyers’ professional responsibility for the purpose of determining the appropriate ethical and legal course of action. As a result of, *inter alia*, that consultation (and others), careful consideration of the facts, the law, the rules, the procedural circumstances, and the potential impact on the interests of all concerned, Ziccardi concluded that the only proper course of action was for him to

immediately seek leave to withdraw from the representation of HTFC. Based on the honest and reasonable belief that in light of the Court's February 29 Memorandum and Order continued representation of HTFC would likely result in a violation of the Rules of Professional Conduct, and just six days after this Court issued its Memorandum and Order, Ziccardi promptly filed his Motion To Withdraw.

GMAC, by way of contrast, interposes a response that utterly fails to consider the relevant Rules of Professional Conduct, mischaracterizes potentially controlling case law, ignores recent factual and procedural developments in the case at bar, and ultimately amounts to nothing more than a frivolous objection that serves no purpose other than to increase needlessly the cost of the litigation. GMAC relies heavily on the assertion that Ziccardi's withdrawal will prejudice GMAC by causing "delay." Conspicuously absent from that argument is any mention of the fact that the parties have executed a stipulation consenting to the entry of judgment against HTFC, which if entered, will resolve all pending claims and thus there would be nothing to "delay." The purported concern over potential "delay" is of course merely a pretext; GMAC's true intention and likely hope is that Ziccardi will remain and function as "guarantor" of payment of the monetary sanctions.¹

II. THE LEGAL STANDARD

A. GMAC Urges This Court To Apply A Legal Standard That Omits Consideration Of The Rules Of Professional Conduct

The gravamen of Ziccardi's Motion To Withdraw is that, in light of the conflict created by the Court's February 29 Memorandum and Order, continued representation of defendant will likely constitute a violation of one or more of the Rules of Professional Conduct. GMAC's

¹ Even if Ziccardi were granted leave to withdraw his appearance as counsel for defendant, he nevertheless remains subject to the jurisdiction of this Court for purposes of adjudicating the issues raised in his Motion To Reconsider the Court's Memorandum and Opinion of February 29, 2008, and remains subject to the jurisdiction of this Court until those issues are fully and fairly litigated and finally resolved.

presentation of the applicable legal standard – in fact its entire memorandum – omits any reference to the Rules of Professional Conduct (“RPC” or “Rules”). Certain of those rules provide the entire basis for the Motion To Withdraw. By neglecting to address those rules, GMAC fails to refute the sound reasoning underlying Ziccardi’s request to withdraw from the representation of defendant. Perhaps more important, by neglecting to address those rules, GMAC’s analysis omits from its “balancing test” certain fundamental interests that will be significantly affected by the Court’s decision on the issue presented by the instant motion.

B. The Appropriate Legal Analysis Includes Consideration Of The Rules Of Professional Conduct With Particular Attention To “Mandatory” vs. “Permissive” Withdrawal

Ziccardi has identified two bases for his Motion To Withdraw, both of which are governed (at least in part) by the Rules of Professional Conduct. The first basis, a concurrent conflict of interest between attorney and client, gives rise to “mandatory withdrawal” from the representation under the Rules. The second basis for Ziccardi’s motion, the client’s failure to meet its financial obligations to the lawyer and the resulting financial hardship on the lawyer, presents a “permissive withdrawal” situation. In the former situation, “mandatory withdrawal,” the Rules provide that the lawyer must terminate the representation. In the latter situation, “permissive withdrawal,” the Rules provide that the lawyer may terminate the representation, after considering other factors and complying with certain formalities. Thus, the correct legal analysis includes consideration of the following rules.

Mandatory Withdrawal is addressed in Rule 1.7(a), which provides in pertinent part that:

(a) Except as provided in paragraph (b), a lawyer **shall not** represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

* * *

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

Pa. Rules of Prof. Conduct, Rule 1.7(a)(2). (Emphasis added.)

Permissive Withdrawal is addressed in Rule 1.7(b), which provides that:

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer **may** represent a client **if**:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; **and**

(4) each affected client gives informed consent.

Pa. Rules of Prof. Conduct, Rule 1.7(b). (Emphasis added.)

III. GMAC'S RESPONSE IN OPPOSITION TO ZICCARDI'S MOTION INTERPOSES NOTHING MORE THAN A FRIVOLOUS OBJECTION AND NEEDLESS INCREASE IN THE COST OF LITIGATION

This case could have been concluded more than two months ago, when HTFC offered to consent to the entry of judgment against it. Ignoring that significant fact in its response in opposition to Ziccardi's Motion To Withdraw, GMAC reduces Ziccardi's grounds for withdrawal to the following, which appears – ironically enough – in a footnote to its argument that the “effective administration of justice” would be hindered by allowing withdrawal. GMAC states that:

Ziccardi seeks to withdraw because of a claimed conflict concerning this Court's sanctions. Such a conflict, even if it existed, is limited to the sanctions for which Ziccardi has already obtained counsel and filed a pro se Motion for [sic] Reconsideration. Ziccardi fails to identify any conflict that would prevent him from continuing to represent HTFC on the substantive claims of GMAC Bank.

(GMAC Response, p. 5, footnote 1.)

The implication that no conflict exists is simply astounding in light of the findings and conclusions made by this Court with regard to Ziccardi's purported conduct, as set forth in this Court's Memorandum of February 29, 2008. Contrary to GMAC's suggestion, the conflict is not "limited to the issue of sanctions." Serious allegations that go to the heart of a lawyer's integrity have been made against Ziccardi, and that implicates far more than the financial interest implicated by the Order to pay monetary sanctions. Ziccardi's defense against the Court's accusations will necessarily involve disclosure of confidential communications, at a minimum. While such disclosure is expressly authorized by Rule 1.6(c)(4),² the mere act of disclosure (even without regard to the content of the disclosure) is adverse to the client's interest in that, *inter alia*, it undermines (if not obliterates) the trust that is said to be the foundation of the attorney-client relationship.

GMAC asserts four reasons for opposing Ziccardi's request for leave to withdraw as counsel for defendant: (1) HTFC has not obtained substitute counsel; (2) the monetary sanctions have not been paid to GMAC; (3) Wider has not yet appeared for his court-ordered deposition; and (4) "any further delay in the resolution of this case will be prejudicial to GMAC Bank." (GMAC's Memorandum In Opposition, pp. 1-2.) None of those reasons are responsive to the grounds for Ziccardi's Motion To Withdraw.

The cases relied upon by GMAC are inapposite, and in certain instances, do not stand for the proposition for which they are cited by GMAC. In nearly every case, the attorney seeking leave to withdraw cited "irreconcilable differences" with the client as the "reasonable ground"

² Rule 1.6(c)(4) provides that: "A lawyer may reveal such information to the extent that the lawyer reasonably believes is necessary to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim or disciplinary proceeding against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client."

for withdrawal. Here, Ziccardi cites and demonstrates a concurrent conflict of interest that mandates his withdrawal from the representation if he is to comply with the Rules of Professional Conduct. Clearly, this is not a “permissive withdrawal” situation as in the cases cited by GMAC and asserting “irreconcilable differences” as the “reasonable ground” for counsel’s requested leave to withdraw. Ziccardi presents far more compelling reasons than “irreconcilable differences” in support of his motion and GMAC simply chooses to ignore those reasons and urges the Court to ignore the important interests implicated by those reasons.

Most egregious, however, is GMAC’s characterization of D’Amico v. Panasonic, 1998 WL 54405 (E.D. Pa. 1998). GMAC incorrectly reads D’Amico and suggests that it stands for the proposition that “extensive non-compliance” during discovery will justify a court’s denial of counsel’s request for leave to withdraw. That is not the holding of D’Amico. In fact, the court specifically stated that it was “not precluding the withdrawal of counsel should the litigation continue” but that counsel would first have to comply with the requirement of **notice to his client**, as a threshold matter, which counsel in D’Amico had not done.

Finally, GMAC requests that this Court impose two conditions precedent to Ziccardi’s withdrawal yet cites absolutely no authority that supports the proposition that a court may impose such conditions. GMAC argues that, before Ziccardi may be granted leave to withdraw, three things must occur: (1) substitute counsel must appear for defendant; (2) the monetary sanction award must be paid; **and** (3) Aaron Wider must appear for his court-ordered deposition. This argument is devoid of any legal support. If substitute counsel were to appear on behalf of defendant, **nothing more** would be required to facilitate Ziccardi’s withdrawal from the representation. That utterly disingenuous argument by GMAC reveals that its response in

opposition to Ziccardi's Motion To Withdraw is nothing more than a poorly disguised and improper motion to enforce the Order imposing sanctions³ and an exercise in legal fees.

III. CONCLUSION

WHEREFORE, Joseph R. Ziccardi, Esquire, respectfully requests that this Honorable Court enter an Order granting his Motion For Leave To Withdraw As Counsel For Defendant HTFC Corporation.

Respectfully submitted,

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s/ Joseph R. Ziccardi

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³ GMAC is well aware that Ziccardi has filed a Motion For Reconsideration of that Memorandum and Order.

