

IN THE SUPREME COURT OF THE STATE OF NEVADA

HIGH RISE JV LLC AND IRWIN  
MOLASKY,  
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK, AND THE HONORABLE  
VALORIE J. VEGA, DISTRICT JUDGE,  
Respondents,  
and  
JWSRHS, LLC; JOHN SURGENT;  
GLENN MICHAEL FINANCIAL, INC.,  
AND NEVADA TITLE COMPANY,  
Real Parties in Interest.

No. 38119

**FILED**

**MAY 09 2002**

JANE LEE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richard*  
CHIEF DEPUTY CLERK

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges a district court order disqualifying Lionel Sawyer & Collins (LSC) from representing its clients, petitioners High Rise JV LLC and Irwin Molasky (High Rise), in litigation between High Rise and real parties in interest JWSRHS, LLC, John Surgent, Glenn Michael Financial, Inc., and Nevada Title Company.

Prior to instituting the underlying litigation, Surgent contacted High Rise about purchasing two condominium units. During preliminary discussions, LSC represented its client, High Rise. Attorney Raymond A. Grimes, a New Jersey attorney, represented Surgent, himself an attorney. In August 1999, Surgent asked LSC to form a Nevada company, JWSRHS, LLC, on his behalf in order to facilitate his purchase of two luxury condominiums from High Rise. Although LSC formed JWSRHS, LLC, the condominium sale did not occur. In September 2000, LSC filed a complaint on High Rise's behalf, alleging fraud against

Surgent in his individual capacity and breach of contract against JWSRHS, LLC for the failed condominium purchases.

In March 2001, Surgent moved to disqualify LSC from representing High Rise, alleging a conflict of interest on the grounds that LSC previously represented Surgent in the formation of JWSRHS, LLC. The district court found that LSC violated SCR 159(1) and 159(2) and granted the motion to disqualify. We disagree and grant LSC's petition for a writ of mandamus.<sup>1</sup>

SCR 159(1) provides that a lawyer may not represent another person in "a substantially related matter in which that person's interests are materially adverse to the interests of the former client." Here, however, LSC never represented Surgent. LSC's formation of JWSRHS, LLC was a moderate accommodation made at Surgent's request. It was completed in a matter of hours while the parties were negotiating across the table, so that the transaction between High Rise and Surgent could go forward. There was never any doubt that LSC represented High Rise in the condominium purchase negotiations between High Rise and Surgent. Surgent, himself an attorney, could not have had a reasonable expectation that LSC's formation of JWSRHS, LLC formed an attorney-client relationship between them. Even though LSC was a resident agent for JWSRHS, LLC for approximately one year, this was only a ministerial task; it did not form an attorney-client relationship between LSC and Surgent. Therefore, because Surgent is not a former LSC client, SCR 159(1) should not disqualify LSC from representing its client, High Rise.

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<sup>1</sup>See Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 604, 637 P.2d 534, 536 (1981) (stating that mandamus is available to correct a manifest abuse of discretion); see also NRS 34.160.

Furthermore, there is no evidence that Surgent supplied any confidential information to LSC that it, in turn, should not have given to High Rise. SCR 159(2) provides that a lawyer may not “[u]se information relating to the representation to the disadvantage of the former client.” Again, Surgent is not a “former client” of LSC. Moreover, Surgent only provided LSC with the name of the LLC, the name of its manager, who was Surgent, and his address. Additionally, Surgent provides no evidence, through use of a personal affidavit, that he provided any other information to LSC. Therefore, because Surgent did not supply LSC with any confidential information that LSC could use to his disadvantage and because Surgent is not a “former client” of LSC, SCR 159(2) does not disqualify LSC from representing its client, High Rise.

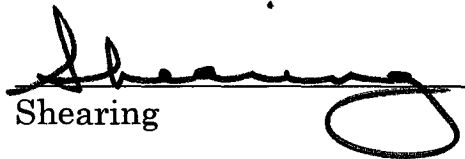
Before disqualifying LSC from representing High Rise in the underlying litigation, the district court should have balanced the parties’ interests in allowing LSC’s continued representation of High Rise. In Brown v. District Court, this court held that, in making a decision to disqualify counsel from representing its client, the district court must balance “the individual right to be represented by counsel of one’s choice, each party’s right to be free from the risk of even inadvertent disclosure of confidential information, and the public’s interest in the scrupulous administration of justice,” and “the prejudices that will inure to the parties as a result of its decision.”<sup>2</sup> Here, there is a long-term and well-established relationship between LSC and High Rise. High Rise regularly uses LSC’s services to advise it with respect to its condominium sales, which is the subject of the underlying litigation. Further, the record contains no evidence that Surgent is at “risk of even inadvertent

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<sup>2</sup>116 Nev. 1200, 1205, 14 P.3d 1266, 1270 (2000).

disclosure of confidential information,”<sup>3</sup> nor that LSC’s continued representation of High Rise would negatively impact the public’s interest. Under these circumstances, prejudice would inure to High Rise if we allow the district court order to stand. Accordingly, we

ORDER the petition GRANTED and direct the clerk of this court to issue a writ of mandamus instructing the district court to vacate its order disqualifying LSC from representing high rise in the underlying litigation.

  
\_\_\_\_\_, J.  
Shearing

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Becker

cc: Hon. Valorie J. Vega, District Judge  
Lionel Sawyer & Collins/Las Vegas  
Hale Lane Peek Dennison Howard & Anderson/Las Vegas  
Kravitz Schnitzer & Sloane, Chtd./Henderson  
Lewis & Roca/Las Vegas  
Clark County Clerk

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<sup>3</sup>Id.