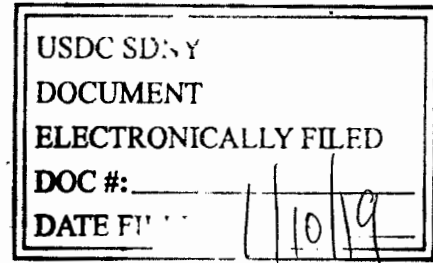


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



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MARTIN TROTT and CHRISTOPER SMITH, :
as Joint Official Liquidators and :
Foreign Representatives of :
PLATINUM PARTNERS VALUE ARBITRAGE :
FUND L.P. (in Official :
Liquidation) and PLATINUM :
PARTNERS VALUE ARBITRAGE FUND L.P. :
(in Official Liquidation), :
:
Plaintiffs, :
:
-v- :
:
PLATINUM MANAGEMENT (NY) LLC, :
et al., :
:
Defendants. :
-----X

18-cv-10936 (JSR)
MEMORANDUM ORDER

JED S. RAKOFF, U.S.D.J.

This is one of many cases arising out of the collapse of Manhattan-based hedge fund Platinum Partners L.P. In this action, plaintiffs Martin Trott and Christopher Smith, as Joint Official Liquidators and Foreign Representatives of Platinum Partners Value Arbitrage Fund L.P. (in Official Liquidation) ("PPVA"), and PPVA have brought a multi-count complaint against a bevy of defendants. Complaint ("Compl."), ECF No. 1. Of particular relevance to the instant motion are defendant Platinum Management (NY) LLC - PPVA's general partner - and defendant David Bodner - one of Platinum Management's co-founders. Id. ¶¶ 7, 27.

On December 26, 2018, plaintiffs moved to disqualify the law firm of Curtis, Mallet-Prevost, Colt & Mosle LLP ("Curtis Mallet" or "Curtis") from representing Bodner in this litigation. ECF No. 45. Bodner opposed. ECF No. 50. After receiving full briefing from the parties, the Court heard oral argument on January 4, 2019. Upon careful consideration, the Court issued a "bottom-line" Order the same day in which it denied plaintiffs' motion. ECF No. 62. This Memorandum sets forth the reasons for the Court's ruling.

It is well established that trial courts may "disqualify counsel where necessary to preserve the integrity of the adversary process in actions before them." Bd. of Ed. of City of New York v. Nyquist, 590 F.2d 1241, 1246 (2d Cir. 1979).¹ As relevant here, "an attorney may be disqualified from representing a client in a particular case if (1) the moving party is a former client of the adverse party's counsel; (2) there is a substantial relationship between the subject matter of the counsel's prior representation of the moving party and the issues in the present lawsuit; and (3) the attorney whose disqualification is sought had access to, or was likely to have

¹ Unless otherwise indicated, in quoting cases, all internal quotation marks, alterations, footnotes, and citations are omitted.

had access to, relevant privileged information in the course of his prior representation of the client." Evans v. Artek Sys. Corp., 715 F.2d 788, 791 (2d Cir. 1983).

It is undisputed that PPVA is a former client of Curtis's. See Memorandum in Support of Motion to Disqualify Curtis, Mallet-Prevost, Colt & Mosle LLP 2-7 ("DQ Mem."), ECF No. 47; Memorandum of Law in Opposition to Motion to Disqualify Curtis, Mallet-Prevost, Colt & Mosle LLP as Counsel to Defendant David Bodner 5-6 ("DQ Opp."), ECF No. 50. The parties disagree, however, about whether "there is a substantial relationship between the subject matter of [Curtis's] prior representation of [PPVA] and the issues in the present lawsuit." Evans, 715 F.2d at 791.

Plaintiffs argue that Curtis represented PPVA in connection with "multiple matters described in the Complaint." DQ Mem. 3. Furthermore, plaintiffs contend, "Curtis Mallet billed approximately \$15,000,000.00 in fees and expenses to Platinum-related entities and individuals for legal services, with at least \$9,379,277.43 of this amount attributable to legal work performed for PPVA by Curtis Mallet from April 2009 through August 2016." Id. at 2. However, as Curtis demonstrated to the Court's satisfaction in its written submission and at oral argument, Curtis actually represented PPVA in only two matters:

one in 2009 in connection with the bankruptcy of a Florida law firm, and the other in 2012 in connection with an SEC investigation into variable annuity insurance contracts. DQ Opp. 5-6. Neither of these matters was materially related to the instant case, and - with exceptions not relevant here - Curtis's representation in these matters accounts for the \$9,379,277.43 of legal work performed for PPVA. Id. at 15-16; Transcript dated January 4, 2019 at 14:20-18:14.

Furthermore, even if Curtis had represented PPVA in matters substantially related to the instant action, plaintiffs' motion fails, independently, under the reasoning of the Second Circuit's decision in Allegaert v. Perot, 565 F.2d 246 (2d Cir. 1977). In Allegaert, the court affirmed an order denying a disqualification motion, id. at 248, holding that, "before the substantial relationship test is even implicated, it must be shown that the attorney was in a position where he could have received information which his former client might reasonably have assumed the attorney would withhold from his present client." Id. at 250. In the instant case, Curtis argues - and plaintiffs do not meaningfully contest - that PPVA's "information was fully accessible by . . . Bodner," and "Bodner had the practical ability to access any [PPVA] information in connection with litigation matters in which Curtis served as

counsel." DQ Opp. 19. As such, it is difficult to see how Curtis "was in a position where [it] could have received information which [PPVA] might reasonably have assumed [Curtis] would withhold from [Bodner]." Allegaert, 565 F.2d at 250.

As a final point, plaintiffs argued in their written submission that Curtis should be disqualified under the attorney-witness rule. DQ Mem. 12-14. However, plaintiffs conceded at oral argument that the attorney-witness issue was premature. Transcript dated January 4, 2019 at 11:13-16. The Court agrees; but plaintiffs will not be precluded from renewing their disqualification motion at a later juncture if and when the attorney-witness issue becomes ripe.

For the foregoing reasons, the Court reaffirms its bottom-line Order dated January 4, 2019. Plaintiffs' motion is denied without prejudice to revisiting the attorney-witness issue in the future.

The Clerk of the Court is hereby directed to close document number 45 on the docket of this case.

SO ORDERED.

Dated: New York, NY
January 8, 2019


JED S. RAKOFF, U.S.D.J.