

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

WOODLANDS BANK,	: CV 2024-00140
Plaintiff,	:
v.	:
	: CIVIL ACTION - LAW
PRCM HOLDINGS, LLC,	:
Defendant.	:

**OPINION AND ORDER ON MOTION FOR DISQUALIFICATION, RECUSAL,
AND TO VACATE**

I. Introduction:

This matter came before this Court for oral argument on May 7, 2024, on Defendant’s Motion for Disqualification, Recusal, and to Vacate, filed April 24, 2024. The basis of that Motion is that this Court served as counsel for the Plaintiff in many unrelated civil matters between 1985 and 2020. The pleadings in many of those matters were introduced into evidence at the hearing, by stipulation. There was no testimony in support of the Motion, beyond the introduction of the pleadings.

At the conclusion of oral argument, the Court made various disclosures on the record in open court, the contents of which are incorporated herein by reference. By way of summary, this Court was engaged in the general civil private practice of law between 1985 and August 5, 2022. Among many other civil matters, this Court had a concentration in commercial litigation, including the representation of a number of financial institutions. This Court managed a great many matters on behalf of Jersey Shore State Bank, Commonwealth Bank (and its successor banks), Citizens and Northern Bank, Peoples State Bank, and Woodlands Bank. None of those matters involved the Defendant in this matter.

This Court regularly handled matters for Woodlands Bank until approximately 2017. The primary Woodlands Bank contact for those matters was Andrew Gallagher, who was a commercial loan officer for the Bank. The Court believes that, beginning in 2017, Woodlands Bank retained other counsel. Between 2017 and 2020, this Court handled limited matters for Woodlands Bank on old or existing files, through March of 2020. The Court believes that no matters were handled for Woodlands Bank, thereafter.

This Court retired from the private practice of law, effective August 5, 2022. Neither this Court nor the Court's spouse has ever maintained any personal banking relationship with Woodlands Bank, nor do any family members work for the Bank. At the oral argument on May 7, 2024, counsel for Woodlands advised the Court that Andrew Gallagher would not be a material witness in this matter, and that the banking relationship between Woodlands and the Defendant commenced approximately nine (9) months after this Court completed its professional services for the Bank.

II. Questions Presented:

1. Whether Defendant's Motion to Disqualify Should Be Granted.
2. Whether Defendant's Motion Seeking Recusal Should Be Granted.
3. Whether Defendant's Motion to Vacate This Court's Order of April 15, 2024, Should Be Granted.

III. Brief Answer:

1. The Court Has Been Unable to Identify Any Basis for Disqualification Under Rule 2.11 of the Code of Judicial Conduct.
2. Based Upon the Fact that the Court Formerly Served As Counsel for Woodlands Bank in Many Unrelated Matters, the Court Will Grant the Motion Seeking Recusal Based Upon the Spirit of Rule 1.2 Of the Code of Judicial Conduct.
3. There Is No Basis Upon Which this Court Should Vacate the Order of April 15, 2024.

IV. Discussion:

1. The Court Has Been Unable to Identify Any Basis for Disqualification Under Rule 2.11 of the Code of Judicial Conduct.

During the hearing conducted on May 7, 2024, the Court inquired of counsel for the Defendant whether he had identified any basis for disqualification of this Court under Rule 2.11 of the Code of Judicial Conduct. Counsel responded that he had not.

This Court has reviewed Rule 2.11(A)(1) through (6). None of the issues listed in that Rule provide a basis for disqualification. If the Court had any personal bias or prejudice concerning any party, Rule 2.11(A)(1) would require disqualification. It does not, since the Court is completely unaware of the nature of this dispute, and has no

relationship with any of the likely witnesses. If the Court or any member of the Court's family had any relationship to any party, or any financial interest in the matter, Rule 2.11(A)(2) or (3) would require disqualification. It does not. If any party or counsel had any role in the Court's campaign, or the Court has made any public statements regarding the matter, Rule 2.11(A)(4) or (5) would require disqualification. It does not. If the Court had participated on behalf of either party in the subject transaction, or the Court was familiar with the underlying transaction, Rule 2.11(A)(6) would require disqualification. It does not. Out of an abundance of caution, the Court also sought a confidential advisory opinion through the Administrative Office of Pennsylvania Courts. After thorough consideration, the Court has concluded that there is no basis for disqualification.

2. Based upon the fact that the Court Formerly Served As Counsel for Woodlands Bank in Many Unrelated Matters, the Court Will Grant the Motion Seeking Recusal Based Upon the Spirit of Rule 1.2 of the Code of Judicial Conduct.

The issue presented by Defendant's Motion to Recuse is whether the fact that the Court represented Woodlands Bank in many unrelated matters over many years, standing alone, creates an appearance of impropriety under Rule 1.2 of the Code of Judicial Conduct. In making that determination, the Court must weigh a variety of factors.

First, the Court has had no professional contact with Woodlands Bank since March of 2020. The Court's former Bank contact, Andrew Gallagher, does not appear to be a material witness in this matter. The relationship between Woodlands Bank and the Defendant apparently commenced nine (9) months after the Court's professional relationship with the Bank ended. Thus, the chance that the Court's prior relationship with the Bank would somehow affect the ability of the Court to be fair and impartial in this matter appears very remote.

Second, the Court has no personal banking relationship with Woodlands Bank, nor any known personal relationship with any Bank employee involved in this matter.

Third, the Lycoming County bench consists of only five (5) commissioned judges. In a populous county served by a large bench, the Court might have the luxury of several judges routinely handling civil matters. This Court has primary responsibility for civil and orphan's court matters. Other members of the Lycoming County bench

routinely manage criminal matters, juvenile and dependency matters, children and youth matters, domestic relation matters, problem solving courts, and many others. Under those circumstances, the Court must give due consideration to its responsibility to decide under Rule 2.7 of the Code of Judicial Conduct.

Fourth, this Court represented hundreds of clients between 1985 and August 5, 2022, including many hundreds of files for several financial institutions. If the Court were to adopt a rigid policy of recusal in every case involving any former client, the ability of this Court to serve the citizens of Lycoming County would be severely compromised.

Finally, this Court represented Woodlands Bank in hundreds of unrelated matters, over many years. Despite the fact that there is little basis for the assumption that the Court cannot preside impartially, it is impossible for the Court to be confident that no party to this litigation would reach that conclusion. In point of fact, counsel for the Defendant has reached that conclusion.

3. There Is No Basis Upon Which this Court Should Vacate the Order of April 15, 2024.

Defendant seeks to have the Court vacate its order of April 15, 2024, denying Defendant's Preliminary Objections, filed April 4, 2024, and directing Defendant to file an Answer within twenty (20) days thereafter. Those Preliminary Objections sought dismissal of the Complaint with prejudice, which is a demurrer. Such a demurrer may be granted only in cases which are free from doubt:

A demurrer can only be sustained where the complaint is clearly insufficient to establish the pleader's right to relief. *Firing v. Kephart*, 466 Pa. 560, 353 A.2d 833 (1976). For the purpose of testing the legal sufficiency of the challenged pleading a preliminary objection in the nature of a demurrer admits as true all well-pleaded, material, relevant facts, *Savitz v. Weinstein*, 395 Pa. 173, 149 A.2d 110 (1959); *March v. Banus*, 395 Pa. 629, 151 A.2d 612 (1959), and every inference fairly deducible from those facts. *Chappell v. Powell*, 303 A.3d 507, 511 (Pa.Super. 2023); *Hoffman v. Misericordia Hospital of Philadelphia*, 439 Pa. 501, 267 A.2d 867 (1970); *Troop v. Franklin Savings Trust*, 291 Pa. 18, 139 A. 492 (1927). The pleader's conclusions or averments of law are not considered to be admitted as true by a demurrer. *Savitz v. Weinstein, supra*.

Since the sustaining of a demurrer results in a denial of the pleader's claim or a dismissal of his suit, a preliminary objection in the nature of a demurrer should be sustained only in cases that clearly and without a doubt fail to state a claim for which relief may be granted. *Schott v. Westinghouse Electric Corp.*, 436 Pa. 279, 259 A.2d 443 (1969); *Botwinick v. Credit Exchange, Inc.*, 419 Pa. 65, 213 A.2d 349 (1965); *Savitz v. Weinstein, supra*; *London v. Kingsley*, 368 Pa. 109, 81 A.2d 870 (1951); *Waldman v. Shoemaker*, 367 Pa. 587, 80 A.2d 776 (1951). If the facts as pleaded state a claim for which relief may be granted under any theory of law then there is sufficient doubt to require the preliminary objection in the nature of a demurrer to be rejected. *Packler v. State Employment Retirement Board*, 470 Pa. 368, 371, 368 A.2d 673, 675 (1977); *see also, Schott v. Westinghouse Electric Corp.*, *supra*, 436 Pa. at 291, 259 A.2d at 449.

Mudd v. Hoffman Homes for Youth, Inc., 543 A.2d 1092, 1093–94 (Pa. Super. Ct. 1988) (quoting *County of Allegheny v. Commonwealth*, 490 A.2d 402, 408 (Pa. 1985)); *Accord Ritz v. Ramsay*, 305 A.3d 1056, 1061 (Pa. Super. Ct. 2023) (“Preliminary objections which seek the dismissal of a cause of action should be sustained only in cases in which it is clear and free from doubt that the pleader will be unable to prove facts legally sufficient to establish the right to relief.”)(quoting *Feingold v. Hendrzak*, 15 A.3d 937 (Pa. Super. Ct. 2011)).

Defendant filed Preliminary Objections suggesting that the Complaint fails to state a cause of action against the Defendant. Any fair reading of the Complaint leads to the conclusion that it certainly does. The Court notes that Defendant has filed an Answer. Thus, the Court finds no basis upon which to vacate its Order of April 15, 2024.

ORDER

AND NOW, this 15th day of May, 2024, for the foregoing reasons, Defendant’s Motion for Disqualification and to Vacate, filed April 24, 2024, is denied. Despite the

Court's belief that Rule 2.7 of the Code of Judicial Conduct requires this Court to hear and decide this matter, the Court's concern about the appearance of impropriety arising from the Court's former representation of Woodlands Bank is such that the Court recuses itself from future proceedings in this matter. This matter will be transferred to another member of the Lycoming County bench. The Office of the Court Administrator is requested to reassign this matter.

By the Court,

William P. Carlucci, Judge

WPC/aml

cc: Court Administrator
Nancy L. Butts, President Judge
Eric R. Linhardt, Judge
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