

CAUSE NO. 2022-15034

AMERICAN WESTERN STEEL, LLC § **IN THE DISTRICT COURT OF**
V. § **HARRIS COUNTY, TEXAS**
§ **TRIPLE STAR TRIUMVERATE** §
INVESTMENTS, LLC; JERRY DU; §
AND WHITNEY HANCOCK BANK § **334th JUDICIAL DISTRICT**

DEFENDANT’S MOTION TO DISQUALIFY OPPOSING COUNSEL

COMES NOW Triple Star Triumvirate Investments, LLC, Defendant herein, asking the Court to disqualify Yonatan Z. Gerber as well as The Gerber Law Firm, P.C. from representing Plaintiff in this matter and would show the Court as follows:

INTRODUCTION

American Western Steel, LLC sued Defendants for causes of action including breach of contract, fraud, unjust enrichment, and quantum meruit related to a construction contract.

BACKGROUND

Yonatan Z. Gerber as well as Gerber Most PLLC have an unambiguous conflict of interest which precludes them from representing any party in this matter. In particular, a core document in this lawsuit is the AIA Document A102 – 2017 dated March 20, 2018 (the “Construction Contract”) which was executed between the primary parties to this lawsuit and which governs the rights of the parties. A true and correct copy of the Construction Contract is attached hereto as Exhibit “1” and incorporated herein for all purposes. Article 13 of the Construction Contract provides that Mr. Yonatan Z. Gerber – Gerber Most PLLC is the initial decision maker regarding any disputes between American Western Steel, LLC and Triple Star Triumvirate Investments, LLC which relate to the Construction Contract. As such, there is no way that Mr. Yonatan Z. Gerber – Gerber Most PLLC can be BOTH the initial decision maker as

well as the Plaintiff's legal counsel – Mr. Gerber is not allowed to wear more than one hat to this rodeo. Moreover, since Mr. Gerber has filed a lawsuit on behalf Plaintiff in this matter, it is readily apparent that Mr. Gerber is biased in favor of Plaintiff in this matter and, as such, must be disqualified from being the initial decision maker in this matter.

ARGUMENT AND AUTHORITIES

An attorney must be disqualified if (1) he personally represented a formal client, ((2) he is now representing a client in a matter adverse to the former client, (3) he does not have the former client's consent to represent the other client, or (4) any of the following apply:

- a. In the pending matter the client questions the validity of the attorney's services or work performed for the former client. Tex. Disciplinary Rules Prof' 1 Conduct R. 1.09 (a)(1).
- b. In the pending matter, the attorney's representation of the client will in reasonable probability involve a violation of Texas Disciplinary Rule of Professional Conduct 1.05, governing the use of a client's confidential information. Tex. Disciplinary Rules Prof' 1 Conduct R. 1.09 (a)(2).
- c. The pending matter is the same as or substantially related to the earlier matter. Tex. Disciplinary Rules Prof' 1 Conduct R 1.09(a)(3). A matter is "substantially related" "when the facts of the earlier representation are so related to the pending litigation that there is a genuine threat confidence revealed Will be divulged to a present adversary. In re EPIC Holdings, Inc 958 S.W.2nd 41, 51 (Tex. 1998).

CERTIFICATE OF SERVICE

I certify that the above foregoing document was served upon all counsel and/or parties of record in accordance with the Texas Rules of Civil Procedure via electronic and/or hand delivery on the 25th day of May, 2022.

Yonatan Z. Gerber
The Gerber Law Firm
5555 W Loop South, Suite 400
Bellaire, TX 77401

/s/ Robert C. Vilt
ROBERT C. VILT

CAUSE NO. 2022-15034

AMERICAN WESTERN STEEL, LLC	§	IN THE DISTRICT COURT OF
V.	§	HARRIS COUNTY, TEXAS
TRIPLE STAR TRIUMVERATE	§	
INVESTMENTS, LLC; JERRY DU;	§	
AND WHITNEY HANCOCK BANK	§	334th JUDICIAL DISTRICT

DEFENDANT’S MOTION TO DISQUALIFY OPPOSING COUNSEL

COMES NOW Triple Star Triumvirate Investments, LLC, Defendant herein, asking the Court to disqualify Yonatan Z. Gerber as well as Gerber Most PLLC from representing any party in this matter and would show the Court as follows:

INTRODUCTION

American Western Steel, LLC sued Defendants for causes of action including breach of contract, fraud, unjust enrichment, and quantum meruit related to a construction contract.

BACKGROUND

Yonatan Z. Gerber as well as Gerber Most PLLC have an unambiguous conflict of interest which precludes them from representing any party in this matter. In particular, a core document in this lawsuit is the AIA Document A102 – 2017 dated March 20, 2018 (the “Construction Contract”) which was executed between the primary parties to this lawsuit and which governs the rights of the parties. A true and correct copy of the Construction Contract is attached hereto as Exhibit “1” and incorporated herein for all purposes. Article 13 of the Construction Contract provides that Mr. Yonatan Z. Gerber – Gerber Most PLLC is the initial decision maker regarding any disputes between American Western Steel, LLC and Triple Star Triumvirate Investments, LLC which relate to the Construction Contract. As such, there is no way that Mr. Yonatan Z. Gerber – Gerber Most PLLC can be BOTH the initial decision maker as

well as the Plaintiff's legal counsel – Mr. Gerber is not allowed to wear more than one hat to this rodeo. Moreover, since Mr. Gerber has filed a lawsuit on behalf of Plaintiff in this matter, it is readily apparent that Mr. Gerber is biased in favor of Plaintiff in this matter and, as such, must be disqualified from being the initial decision maker as well.

ARGUMENT AND AUTHORITIES

An attorney must be disqualified if (1) he personally represented a formal client, ((2) he is now representing a client in a matter adverse to the former client, (3) he does not have the former client's consent to represent the other client, or (4) any of the following apply:

- a. In the pending matter the client questions the validity of the attorney's services or work performed for the former client. Tex. Disciplinary Rules Prof' 1 Conduct R. 1.09 (a)(1).
- b. In the pending matter, the attorney's representation of the client will in reasonable probability involve a violation of Texas Disciplinary Rule of Professional Conduct 1.05, governing the use of a client's confidential information. Tex. Disciplinary Rules Prof' 1 Conduct R. 1.09 (a)(2).
- c. The pending matter is the same as or substantially related to the earlier matter. Tex. Disciplinary Rules Prof' 1 Conduct R 1.09(a)(3). A matter is "substantially related" "when the facts of the earlier representation are so related to the pending litigation that there is a genuine threat confidence revealed Will be divulged to a present adversary. In re EPIC Holdings, Inc 958 S.W.2nd 41, 51 (Tex. 1998).

CONCLUSION

Yonatan Z. Gerber as well as Gerber Most PLLC is precluded from representing any party in this matter due to the provisions of the Construction Contract. Further, Mr. Gerber's actions in this matter demonstrate that he is biased toward Plaintiff and, as such, is precluded from participating as the initial decision maker as well.

PRAYER

For these reasons, Triple Star Triumvirate Investments, LLC asks the Court to disqualify Yonatan Z. Gerber as well as Gerber Most PLLC from participating any further in this matter.

Respectfully submitted,

VILT LAW, P.C.

By: /s/ Robert C. Vilt
ROBERT C. VILT
Texas Bar Number 00788586
Email: clay@viltlaw.com
5177 Richmond Avenue, Suite 1142
Houston, Texas 77056
Telephone: 713.840.7570
Facsimile: 713.877.1827
ATTORNEYS FOR DEFENDANTS
TRIPLE STAR TRIUMVIRATE INVESTMENTS, LLC
AND JERRY DU

CERTIFICATE OF SERVICE

I certify that the above foregoing document was served upon all counsel and/or parties of record in accordance with the Texas Rules of Civil Procedure via electronic and/or hand delivery on the 25th day of May, 2022.

Yonatan Z. Gerber
The Gerber Law Firm
5555 W Loop South, Suite 400
Bellaire, TX 77401

/s/ Robert C. Vilt
ROBERT C. VILT

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Nicolas Vilt on behalf of Robert Vilt
Bar No. 788586
nicolas@viltlaw.com
Envelope ID: 64865630
Status as of 5/26/2022 10:34 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Nicolas Vilt		nicolas@viltlaw.com	5/25/2022 5:34:08 PM	SENT
Robert C. Vilt		clay@viltlaw.com	5/25/2022 5:34:08 PM	SENT
Yonatan Gerber		ygerber@thegerberlawfirm.com	5/25/2022 5:34:08 PM	SENT