

[J-19-2017]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

SAYLOR, C.J., BAER, TODD, DONOHUE, DOUGHERTY, WECHT, MUNDY, JJ.

ROY H. LOMAS, SR., D/B/A ROY LOMAS CARPET CONTRACTOR,	:	No. 87 MAP 2016
	:	
Appellee	:	Appeal from the Order of the Superior Court dated December 21, 2015 at No. 2391 EDA 2011 Affirming the Judgment of the Court of Common Pleas of Montgomery County, Civil Division, entered on August 16, 2011 at No. 2000-05929.
v.	:	
	:	
JAMES B. KRAVITZ, CHERRYDALE CONSTRUCTION CO., ANDORRA SPRINGS DEVELOPMENT, INC., AND KRAVMAR, INC., F/K/A EASTERN DEVELOPMENT ENTERPRISES INC.,	:	ARGUED: March 8, 2017
	:	
Appellants	:	

OPINION

JUSTICE BAER

DECIDED: September 28, 2017

In this appeal, the Court is asked to determine whether a trial court erred by denying a motion to recuse the entire bench of the Court of Common Pleas of Montgomery County. Specifically, we consider whether the moving parties waived their recusal claim and, if not, whether the claim has merit. For the reasons set forth below, we hold that the recusal issue was untimely presented to the trial court and, thus, waived. Accordingly, we affirm the judgment of the Superior Court.

The relevant background underlying this matter, which now spans more than 25 years, can be summarized as follows. Appellant James B. Kravitz (“Kravitz”) was the sole officer, director, and shareholder of several companies known as the Andorra

Group, which included Appellants Cherrydale Construction Company (“Cherrydale”), Andorra Springs Development, Incorporated (“Andorra Springs”), and Kravmar, Incorporated, which was formally known as Eastern Development Enterprises, Incorporated (“Eastern”).¹ Kravitz also owned a piece of property known as the Reserve at Lafayette Hill (“Reserve”). Andorra Springs was formed to develop residential housing on sections of the Reserve. In 1993, Andorra Springs hired Cherrydale as the general contractor to build the homes on the Reserve. Eastern operated as the management and payroll company for the Andorra Group.

Appellee Roy H. Lomas, Sr., d/b/a Roy Lomas Carpet Contractor (“Lomas”) is the proprietor of a floor covering company. On November 10, 1994, Cherrydale and Lomas entered into a contract which required Lomas to supply and install floor covering in the homes being built by Cherrydale. Soon thereafter, Cherrydale breached that contract by failing to pay \$30,913 to Lomas. In January of 1995, Lomas demanded that Cherrydale submit Lomas’ claim to binding arbitration as mandated by the parties’ contract.

The parties arbitrated the matter, and a panel of arbitrators entered an interim partial award in favor of Lomas, finding that Cherrydale breached the parties’ contract and violated the Contractor and Subcontractor Payment Act, 73 P.S. §§ 501-516. Following Kravitz’s unsuccessful attempt to have the interim award vacated, the arbitrators issued a final award to Lomas in the amount of \$200,601.61, which included the \$30,913 that Cherrydale owed to Lomas for his unpaid work, as well as costs and fees. On September 10, 1998, judgment was entered against Cherrydale in the Court of Common Pleas of Montgomery County. Important to the issue before this Court,

¹ We will refer to Kravitz, Cherrydale, Andorra Springs, and Eastern collectively as “Appellants.”

then-Attorney, now-Judge Thomas C. Branca, Esquire, represented Lomas throughout the arbitration proceedings.

Since the entry of judgment in 1998, Kravitz has actively prevented Lomas from collecting his arbitration award by, *inter alia*, transferring all of the assets out of Cherrydale to himself and other entities under his control and, as the Superior Court put it, through “his campaign of incessant use and abuse of our civil litigation processes.”² *Lomas v. Kravitz*, 130 A.3d 107, 112 (Pa. Super. 2015). In March of 2000, Lomas commenced the instant action against Appellants. Then-Attorney Branca filed the complaint on behalf of Lomas. Lomas sought to pierce the corporate veil and to hold Kravitz personally liable for the debt Cherrydale owed to Lomas. Lomas also presented claims of fraud and fraudulent transfers under the Pennsylvania Uniform Fraudulent Transfers Act, 12 Pa.C.S. §§ 5101-5110. In terms of relief, Lomas asked that judgment be entered against Appellants in the amount of \$200,601.61. He also requested interest, costs, punitive damages, and attorneys’ fees.

In November of 2001, then-Attorney Branca was elected to serve as a judge on the Court of Common Pleas of Montgomery County. Prior to taking the bench, then-Judge-Elect Branca withdrew his appearance in the matter and referred the case to Lomas’ current counsel from the law firm of Spector, Gadon, & Rosen (“SGR”). After several years of tedious litigation, the parties agreed to a bifurcated bench trial. The presiding judge was the Honorable Thomas P. Rogers of the Court of Common Pleas of Montgomery County. Based upon the parties’ agreement, Judge Rogers first was tasked with determining whether Appellants were liable to Lomas. The second phase of

² The details of Kravitz’s numerous actions which have thwarted Lomas from collecting his arbitration award are irrelevant to the disposition of the issues before the Court; thus, we will not delve into all of those details.

trial, if necessary, would require Judge Rogers to examine whether Appellants should be required to pay attorneys' fees and punitive damages to Lomas.

Appellants concede that, before trial began, the parties met with Judge Rogers to discuss whether it was appropriate for him to preside over the trial in light of now-Judge Branca's previous representation of Lomas. Appellants' Brief at 10. Appellants also concede that the parties agreed to allow Judge Rogers to decide the matter; however, as we discuss *infra*, Appellants maintain that, during these pre-trial proceedings, they were unaware of Judge Branca's continued financial interest in the outcome of the case and his continuing discussions with counsel from SGR regarding at least certain aspects of this case after he took the bench. *Id.* at 10-11.

The three-day liability trial was held from January 16, 2007, through January 18, 2007. After that trial, the parties submitted proposed findings of fact and conclusions of law. In July of 2007, Judge Rogers entered an order declaring that Appellants are liable to Lomas. Accordingly, a bench trial on attorneys' fees and punitive damages was scheduled to begin in September of 2007. The first day of the trial on attorneys' fees and punitive damages occurred on September 4, 2007. The second and last day of the trial was September 6, 2007. Judge Branca was Lomas' first witness to testify on September 6th.

The direct examination of Judge Branca was relatively brief and focused on the attorneys' fees for which Judge Branca billed Lomas when he represented Lomas in this matter. N.T., 9/6/2007, at 3-14. Toward the end of the direct examination, counsel for Lomas asked Judge Branca whether he has had any communications with Lomas' current counsel, the law firm of SGR. N.T., 9/6/2007, at 13. Judge Branca answered the question in the affirmative and explained that the communications ordinarily involved the location of things like documents. *Id.* at 13-14. According to Judge Branca, the communications between him and SGR were informative to him, "not the other way

around.” *Id.* at 14. Judge Branca testified that, because he referred the case to the firm, SGR periodically updated him on the status of the case. The judge further testified that he had not had any communications with Judge Rogers concerning the case. *Id.*

Appellants’ cross examination of the judge was more extensive. *Id.* at 15-49. Appellants’ counsel comprehensively questioned Judge Branca regarding the communications that he had with SGR after the judge withdrew his appearance and took the bench. In addition, when counsel asked Judge Branca why SGR provided him with updates, the judge testified as follows:

Because I had an interest in the case, I have a financial interest in the case. I have -- I’m entitled to a referral fee. And so to the extent that I’m entitled to a referral fee, I’m entitled to know something about what’s happening with the case, not only for my information but for purposes of my disclosing whatever I might need to disclose if and when I get a fee.

Id. at 22. In terms of the amount of a fee to which he is entitled, Judge Branca explained that he “should get a third referral fee of the net proceeds as a fee.” *Id.* Judge Branca maintained that he had not discussed the case with anyone other than Lomas and SGR. *Id.* at 23.

After several more questions and answers, counsel for Lomas objected, contending that the line of questioning was irrelevant given that the sole issue to which Judge Branca could testify was the amount of attorneys’ fees that he billed Lomas. *Id.* at 25. A lengthy discussion then took place, during which counsel for Lomas suggested that Appellants’ line of questioning was “a red herring” and that Appellants simply were attempting to impugn the reputations of SGR, Judge Branca, and the trial court. *Id.* at 27. Lomas’ counsel also suggested that Appellants were attempting to divert attention away from the fact that Kravitz had fraudulently transferred millions of dollars to defraud his creditors. *Id.*

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