

AT&T Mobility LLC v Harman Connected Servs., Inc.
2025 NY Slip Op 32617(U)
July 9, 2025
Supreme Court, New York County
Docket Number: Index No. 659609/2024
Judge: Andrew Borrok
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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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AT&T MOBILITY LLC	INDEX NO.	<u>659609/2024</u>
Plaintiff,	MOTION DATE	<u>02/05/2025,</u> <u>02/20/2025</u>
- v -	MOTION SEQ. NO.	<u>001 002</u>
HARMAN CONNECTED SERVICES, INC.,		
Defendant.	DECISION + ORDER ON MOTION	

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 14, 15, 31
 were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 65, 66, 67
 were read on this motion to/for DISQUALIFY COUNSEL.

Upon the foregoing documents and for the reasons set forth on the record (*tr.* 7.8.25) and as otherwise set forth below, Harman Connected Services, Inc. (**Harman**)’s motion to dismiss (Mtn. Seq. No. 001) AT&T Mobility LLC (**AT&T**)’s causes of action for unjust enrichment and equitable indemnification is GRANTED.

As discussed (*tr.* 7.8.25), Harman does not dispute the validity of the Master Purchase Agreement (NYSCEF Doc. No. 2) dated May 17, 2013, by and between AT&T and Harman International Industries, Inc. which governs the rights and obligations of the parties as it relates to this dispute (NYSCEF Doc. No. 31 at 1; *tr.* 7.8.25). As such, there is no basis for AT&T to proceed in the alternative or otherwise based on alternative theories sounding in unjust

enrichment or equitable indemnification (*New Hackensack Realty, LLC v Lawrence Dev. Realty, LLC*, 226 AD3d 799, 803 [2d Dept 2024]; *Allergan Fin., LLC v Pfizer Inc.*, 67 Misc 3d 1206(A) [Sup Ct 2020]).¹

The motion (Mtn. Seq. No. 002) to disqualify Baker & Hostetler LLP (**Baker**) is DENIED.

Whether a motion to disqualify should be granted rests in the sound discretion of the court (*Mayers v Stone Castle Partners, LLC*, 126 A.D.3d 1, 6 [1st Dept 2015], citing *Macy's Inc. v J.C. Penny Corp., Inc.*, 107 AD3d 616, 617 [1st Dept 2013]). There is a “heavy burden” on the party seeking disqualification of an attorney to show that it is warranted (*Dietrich v Dietrich*, 136 AD3d 461, 462 [1st Dept 2016])

A lawyer is precluded from engaging in concurrent representation where “the representation will involve the lawyer in representing differing interests,” or “there is a significant risk that the lawyer's professional judgment on behalf of a client will be adversely affected by the lawyer's own financial, business, property or other personal interests” (*McGuire v McGuire Group, Inc.*, 237 AD3d 1535, 1537 [4th Dept 2025]). An attorney may also be disqualified based on “(A)(1) the existence of a prior attorney-client relationship between the moving party and opposing counsel, (2) that the matters involved in both representations are substantially related and (3) that the interests of the present client and former client are materially adverse” (*Tekni-Plex, Inc. v. Meyner & Landis*, 89 N.Y.2d 123, 131 [1996]) or (B) that the attorney previously received confidential information substantially related to the present litigation (*Lightning Park v Wise*

¹ For the avoidance of doubt, inasmuch as the Court is relying Harman’s representation that the contract is a valid binding contract, they are judicially estopped from claiming otherwise. It is however entirely irrelevant that they have asserted certain defenses to its enforcement or the enforcement as to certain of its provisions.

Lerman & Katz, P.C., 197 AD2d 52, 55 [1st Dept 1994]). To demonstrate that the matters are substantially related, a party must “establish that the issues in the present litigation are identical to or essentially the same as those in the prior representation or that they received specific, confidential information substantially related to the present litigation (*Consumers Beverages, Inc. v Kavcon Dev. LLC*, 227 AD3d 1381, 1384 [4th Dept 2024]). The movant seeking disqualification must identify the “specific confidential information imparted to the attorney” (*Saftler v Govt. Empls. Ins. Co.*, 95 AD2d 54, 57 [1st Dept 1983]).

Simply put, Harman fails to meet its burden that disqualification is warranted because (i) Harman fails to establish either a concurrent representation or (ii) any specific confidential information that was imparted to any of the lawyers at Baker which would be implicated in the current lawsuit involving a specifically designed product for the plaintiff, AT&T.

Previously, Baker represented Harman in a certain lawsuit captioned as *Cellport Systems, Inc. v. Harman International Industries, Inc.*, No. 4:22-cv-00808-SDJ (the **Cellport Case**; NYSCEF Doc. No. 18) pursuant to an engagement letter (NYSCEF Doc. No. 19). The Cellport Case was dismissed based on a Samsung Settlement Agreement on March 24, 2024 – **approximately eight months before this lawsuit was filed** and before discovery in the case took place. In fact, according to Harman, the last filing in that case by Baker on behalf of Harman was in May, 2024 – seven months before this lawsuit was filed in December, 2024 and solely in connection with a fee award application; The fee application was submitted from Melissa Smith of Gilliam Smith, LLP together with certain Baker lawyers who are no longer with Baker. Thus, the representation was effectively over long before this lawsuit was filed. It is irrelevant that the formal motion to

withdraw was filed and approved in February 2025. No concurrent representation occurred.²

Finally, the Court notes that although an appeal was filed, Baker is not handling the appeal.

Harman has retained other lawyers for that purpose.

Harman also fails to meet its burden that disqualification is warranted based on the prior Cellport representation. Initially, the Court notes that, according to Baker, all but one of the Baker lawyers involved in the Cellport Case has left the firm and Baker has created an appropriate ethical wall between the lawyers working on this case and the rest of the firm (*tr* 7.8.25; NYSCEF Doc. No. 56, 2-3). More importantly, the matters are not substantially related, and Harman fails to allege any specific confidential information that any lawyers at Baker obtained which would prejudice them in this case (NYSCEF Doc. No. 17). The closest they come in fact is indicating that the Cellport Case involved Spark and that the current case involves Spark. This is insufficient. The current case is based on a specific product designed for AT&T involving Spark and at issue is whether it operates properly. Additionally, the Court notes that Harman does not allege that it ever objected when Baker ultimately filed its formal withdrawal in the Cellport Case indicating that it would be prejudiced by any such withdrawal because Baker would be proceeding in this case in this forum as one would expect. Inasmuch as they undoubtedly filed a written consent (or did not object) such consent would seem to satisfy their right to consent to any adverse representation on a one-off basis as set forth in the engagement letter.

² The Court notes that it is entirely irrelevant that in February 2023, Baker asserted an indemnification request letter to Harman on behalf of its client which they conceded *at that time* would constitute a concurrent conflict because they clawed back that letter. It is not alleged that they continued an adverse representation at that time or otherwise until on or about the time that they filed the complaint in this case in December 2024. As discussed above, months before that time, their work for Harman had ended and Harman had retained Hogan Lovells to work on an any appeal of the Cellport Case.

The Court has considered the parties remaining arguments and finds them unavailing.

Accordingly, it is hereby

ORDERED that Harman motion to dismiss AT&T’s alternative causes of action for unjust enrichment and equitable indemnification is GRANTED, and it is further

ORDERED that the motion to disqualify Baker from representing AT&T in this case is DENIED.

7/9/2025

DATE

CHECK ONE:

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CASE DISPOSED

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GRANTED

☐ DENIED

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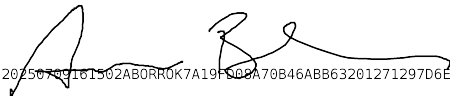
SETTLE ORDER

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INCLUDES TRANSFER/REASSIGN

APPLICATION:

CHECK IF APPROPRIATE:


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ANDREW BORROK, J.S.C.

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NON-FINAL DISPOSITION

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GRANTED IN PART

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OTHER

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SUBMIT ORDER

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FIDUCIARY APPOINTMENT

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REFERENCE