

<b>Becker v Perla</b>
2015 NY Slip Op 01720
Decided on February 26, 2015
Appellate Division, First Department
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Decided on February 26, 2015

Gonzalez, P.J., Mazzarelli, Acosta, Moskowitz, DeGrasse, JJ.

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**[\*1] Ronny Becker, et al., Plaintiffs-Appellants,**

**v**

**Daniel Perla, et al., Defendants-Respondents.**

Alexander J. Wulwick, New York, for appellants.

Cooperman Lester Miller Caros LLP, Manhasset (Eric H. Gruber  
of counsel), for respondents.

Order, Supreme Court, New York County (Shirley Werner Kornreich, J.), entered on or about March 12, 2014, which, to the extent appealed from as limited by the briefs, granted defendants' motion to disqualify plaintiffs' counsel and sua sponte ordered that plaintiff Ronny Becker could not be represented by the same counsel as the other plaintiffs, unanimously reversed, on the law, without costs, the motion to disqualify denied, and the sua sponte order vacated.

Although plaintiffs concede that their lawyer represented some of the defendants in a prior matter, and that the parties' interests are now directly adverse, disqualification is not required. The present and prior matters are not substantially related, and plaintiff's attorney did not obtain confidential information from the defendants during the prior matter (*see Tekni-Plex, Inc. v Meyner & Landis*, 89 NY2d 123, 131 [1996]). In order to show that the matters are "substantially related," defendants must show that the issues in the matters are identical or essentially the same (*Lightning Park v Wise Lerman & Katz*, 197 AD2d 52, 55 [1st Dept 1994]). Defendants failed to make that showing. The prior matter involved the enforcement of a loan against a third party, and the present matter involves defendants' alleged diversion of monies intended for and earned by a project in the Dominican Republic. Further, the financial information involving

plaintiff Becker shared by some of the defendants with the attorney during the prior matter was not confidential, since it was disclosed to Becker or otherwise known to him.

The court erred in sua sponte directing that Becker must have separate counsel from the [\*2]other plaintiffs, as defendants never requested such relief and the relief is not supported by the parties' motion papers ([see \*Carter v Johnson\*, 84 AD3d 1141](#), 1142 [2d Dept 2011]). The court may, however, allow the parties to submit papers on the issue.

THIS CONSTITUTES THE DECISION AND ORDER

OF THE SUPREME COURT, APPELLATE DIVISION, FIRST  
DEPARTMENT.

ENTERED: FEBRUARY 26, 2015

CLERK

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