

TARAS S. DIAKIWSKI vs CRAFT CONSTRUCTION
S. Walsh, Judge Lisa on 04/11/2024

IN THE CIRCUIT COURT FOR THE
11TH JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CASE NO. 2015-028846-CA-02

TARAS S. DIAKIWSKI,
Plaintiff,

ORIGINAL

vs.

CRAFT CONSTRUCTION COMPANY, LLC,
a Florida limited liability company,
and BARRY CRAFT, et al.,

Defendant.

The above-entitled cause came on for hearing before the
HONORABLE JUDGE LISA S. WALSH, as Presiding Judge at the
Miami-Dade County Courthouse, All Parties Appeared
Remotely Pursuant to Florida Supreme Court Order
AOSC20-23 on the 11th day of April 2024, commencing at
9:53 a.m.

REPORTED BY:
CECILIA L. VILLAVICENCIO CER, COURT REPORTER
STATE OF FLORIDA

1 APPEARANCES OF COUNSEL

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1 (Thereupon, the following proceedings were
2 had.)

3 THE COURT: Diakiwski v. Craft.

4 MR. TAYLOR: Good morning, Your Honor. Tim
5 Taylor on behalf of Taras Diakiwski as Appellate
6 Counsel.

7 MR. MURRAY: Good morning, Your Honor. Frank
8 Murray on behalf of Mr. Craft and Craft
9 Construction joined by Gabriel Craft.

10 THE COURT: We are done with the hearing. So,
11 what -- where -- when are we -- when are we
12 completing this hearing?

13 MR. TAYLOR: Yeah, Judge, if you recall you
14 issued a disqualification order. We've -- since
15 Mr. Diakiwski has exercised his rights to appeal
16 that disqualification, we're here today on an
17 appellate motion 9.310 for a motion to stay the
18 proceedings while Mr. Diakiwski gets review of the
19 disqualification order.

20 As you know we've been Counsel for Mr.
21 Diakiwski over the last eight years, tried this
22 case through liability, have the institutional
23 knowledge the Court put in its order. Obviously,
24 this disqualification was going to greatly harm Mr.
25 Diakiwski.

1 THE COURT: No. Why should -- let me just not
2 to steal your thunder. Mr. Murray, why should this
3 motion not be granted?

4 MR. MURRAY: This motion should not go forward
5 as a threshold issue, Your Honor, because Mr.
6 Taylor has been disqualified from this case. Since
7 that disqualification order, we have moved to
8 disqualify him in the appeal because he is
9 attempting to serve as Appellate Counsel. And just
10 last night, the Third District Court of Appeal
11 directed him to respond to that motion as to why he
12 should not be disqualified.

13 He should also not be here today litigating
14 this motion because this motion should be filed by
15 new Counsel. This Court gave Mr. Diakiwski 60
16 days. Since then, Mr. Taylor has flouted that
17 order. He appears to still be counseling Mr.
18 Diakiwski. And the law is clear both in the First
19 District Court of Appeal and the Third that
20 disqualified counsel cannot masquerade as appellate
21 counsel. They're disqualified for the entire case.
22 And that --

23 THE COURT: Can I just ask a question? Mr.
24 Taylor, given the posture this is in, and as you
25 have stated your appearance as Appellate Counsel,

1 since I have entered an order and there's been no
2 relief from that order yet, and you've been ordered
3 disqualified with -- you know, with leave to obtain
4 successive counsel, let me just see.

5 The order was entered in February. I think I
6 granted an extended period of time to obtain
7 successor counsel for 60 days from the date of that
8 order. May I ask if your client has obtained
9 successor trial counsel yet or no?

10 MR. TAYLOR: No, Your Honor, he has not, he's
11 not been able to obtain successor trial counsel.
12 And just to --

13 THE COURT: So, I would suggest that it be
14 since you're here in my Court that I not hear this
15 frankly until after April 18th, which is when this
16 expires. He is required to comply with this and
17 that successor counsel argue the motion for stay
18 because, you know, I have to enforce my own orders
19 right or wrong until the Appellate Court tells me
20 otherwise. I can't ignore my own orders, right or
21 wrong, okay.

22 MR. TAYLOR: Yeah, Your Honor --

23 THE COURT: I understand. I entered an order,
24 you are disqualified, so -- and there is no stay on
25 disqualification right now for me to entertain your

1 argument. And I want your client's argument to be
2 heard, I want his motion to be heard, but I have an
3 order here.

4 MR. TAYLOR: I understand.

5 THE COURT: And I would -- I mean, you're
6 asking for a stay on the case. You -- you know,
7 your client may be entitled to that. I'm not
8 denying, you know, his entitlement to have the
9 motion heard. But you're placing the Court in a
10 very difficult position where I would have to be
11 flouting and ignoring my own Court order, and
12 that's a fundamental precept of our system of
13 justice.

14 And so, rather than tee up that uncomfortable
15 issue before me, why can this not merely be reset
16 so your client can be heard. And for the purpose
17 of hearing a motion for stay that will -- you know,
18 that's not a huge deal. Your client can hire
19 successor counsel to argue the motion for stay.
20 And if it's meritorious it will be granted.

21 And why do I have to hear you make this
22 argument in Trial Court where I have entered an
23 order directly contrary to your being in my Court
24 today? Why are you placing the Court in this
25 uncomfortable position where I am being required

1 merely by entertaining this today to -- for -- you
2 know, to basically sow anarchy in the case where I
3 am ignoring my own order in order to entertain your
4 motion for stay?

5 Can you please answer why I should not just
6 continue this until after April 18th when your
7 client will have had 60 days to get a lawyer, a
8 breathing body that is a member of the Florida Bar
9 to merely come to Court and argue this motion,
10 which if it's meritorious it will be granted.

11 MR. TAYLOR: Sure, Judge, because as Appellate
12 Counsel I've got to bring this motion pursuant to
13 rule 9.310. I've also filed a notice of
14 supplemental exemplary authority, 15 cases in
15 addition to four cases you cited in your
16 disqualification order where the disqualified
17 counsel acted as appellate counsel to challenge a
18 disqualification order. I'm not acting as merits
19 counsel. I'm not here in the Trial Court --

20 THE COURT: I have no problem with you being
21 in the Appellate Court. That's for you to argue to
22 the Third District Court of Appeal. I have no -- I
23 have no position on that issue. You are in my
24 Court now. And I understand you are arguing
25 pursuant to the order relating to stay. And that

1 you are required to come to the -- not you, but
2 your client is required to come to the Trial Court
3 first.

4 So, I have a real problem here with you in my
5 Court representing your client on the simple,
6 simple issue of whether a stay should be granted.
7 So, quite frankly -- and you filed the motion?

8 MR. TAYLOR: Yes, Your Honor.

9 THE COURT: Okay. I just don't understand why
10 you would place the Court in this position as
11 oppose to just -- I understand you're Appellate
12 Counsel, but there is trial counsel, there should
13 be trial counsel. You can't leave your client
14 unrepresented, right?

15 MR. TAYLOR: Okay. I mean -- and that's just
16 what has happened after eight plus years when you
17 disqualify counsel trying to get you --

18 THE COURT: I'm not here on the merits of my
19 order. The order is final. I have no authority to
20 touch it.

21 MR. TAYLOR: I understand --

22 THE COURT: I have lost jurisdiction regarding
23 the order. I cannot reconsider it, so now I have
24 to enforce it.

25 MR. TAYLOR: Well, and Judge --

1 THE COURT: So why put me in that position, I
2 can stay the case --

3 MR. TAYLOR: Correct.

4 THE COURT: -- but I can't stay my order of
5 disqualification, okay. I can stay the case.

6 MR. TAYLOR: And that's what I --

7 THE COURT: Of course I can stay the case.
8 But you can't ask me to stay the case that's the
9 problem.

10 MR. TAYLOR: Well, respectfully, Judge, I
11 believe if I have --

12 THE COURT: But you're not acting as
13 appellate --

14 MR. TAYLOR: -- but I'll get -- I'll -- for
15 the limited purpose after --

16 THE COURT: Correct.

17 MR. TAYLOR: -- hearing this motion, I will
18 get somebody to come on in here and argue.

19 THE COURT: So, I -- all I'm going to do right
20 now, I'm just going to continue it. Mr. Murray,
21 you're welcome to place this on the calendar. You
22 don't have to wait for the Plaintiff to place on
23 the motion for stay. You can just reset it after
24 April 18th. And hopefully there will be a member
25 of the Florida Bar who is not subject to my order,

1 who can argue the motion and I'll rule on it, okay?

2 MR. TAYLOR: Thank you, Your Honor --

3 THE COURT: All right. Thanks a lot. Have a
4 good day.

5 MR. TAYLOR: You too.

6 (Hearing concluded at 10:00 a.m.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

I, CECILIA L. VILLAVICENCIO, Court Reporter and Notary Public for the State of Florida, do hereby certify that I was authorized to and did digitally report and transcribe the foregoing proceedings, and that the transcript is a true and complete record of my notes.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

Witness my hand this 15th day of April, 2024.



CECILIA L. VILLAVICENCIO CER, COURT REPORTER
STATE OF FLORIDA