IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

ANATOLIY MELAMUD, LETOTECH, INC., QUANTPLAT, LLC and DEHAAN & CO. FINANCIAL PARTNERS, INC.,	)	
Plaintiffs,	)	
v.	)	**Civil Action File No. 2012CV219444**
PAGE, PERRY & ASSOCIATES, LLC and J. STEVEN PARKER,	)	
Defendants.	)	

ORDER

On August 14, 2013, this Court held a telephonic conference on Plaintiffs' request to compel the production of certain documents withheld on the basis of the attorney-client and work-product privilege. Upon consideration of the parties' arguments, the documents at issue and the relevant authority, the Court hereby **GRANTS** Plaintiffs' request.

At issue are intra-firm emails exchanged between attorneys who work for Page Perry & Associates, LLC ("Page Perry"). Defendants have withheld them from production, claiming the "in-house" communication doctrine set forth in St. Simons Waterfront, LLC v. Hunter, Maclean, Exley & Dunn, P.C., 2013 WL 3475328 (Ga. July 11, 2013).

In the St. Simons case the Georgia Supreme Court evaluated when a law firm can claim the attorney-client privilege or the work-product doctrine and withhold production of intra-firm communications. Eschewing the approach specifically adopted by the Court of Appeals, the Georgia Supreme Court directed trial courts to apply the same privilege framework that governs

in any other case: 1) Is there an attorney-client relationship between a firm's lawyers and in-house counsel? 2) Was the communication in question intended to advance the firm's interests in limiting exposure to liability rather than the client's interests in obtaining sound legal representation? 3) Have the communications been maintained in confidence? and 4) Are exceptions to the attorney-client privilege applicable? Id. at *4. The privilege is narrowly construed and the burden is on the party claiming the privilege to prove grounds exist to warrant its application. Id. at *3.

Applying the Supreme Court's analysis to the communications at issue in this case, this Court finds the emails in question fail to demonstrate an attorney-client relationship as required under St. Simons.

> To assess the existence of an attorney-client relationship in the law firm in-house counsel context, the trial court must determine that the attorney purporting to act as the firm's in-house counsel was actually acting in that capacity with regard to anticipated legal action against the firm or other matters related to the firm's compliance with its legal and ethical obligations. The firm should be clearly established as the client before or in the course of the in-firm communication for the attorney-client privilege to attach. Whether the firm has attained the status of its in-house counsel's "client" in a given situation is a fact-based determination....
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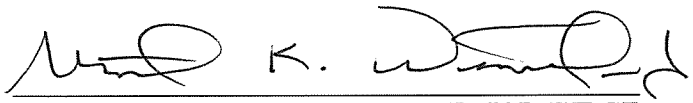
> Id. at *4.

After reviewing the subject emails, the Court is unable to find the special relationship necessary to indicate the firm has attained the status of a client in a communication with someone acting in the capacity as an in-house counsel. The communications in question involved the discussion between several attorneys of possible options upon discovery of the fraudulent conduct of a client. There is nothing to suggest one attorney in particular was acting as counsel with one or more of the others acting as a client. In view of the rule the privilege is

narrowly construed and must be proved applicable by the party asserting the privilege, the Court finds Defendants have failed to carry the burden required here. Accordingly, Plaintiffs' request is GRANTED and Defendants are ordered to produce the emails instanter.

SO ORDERED this 21st day of August, 2013.



MELVIN K. WESTMORELAND, SENIOR JUDGE
Superior Court of Fulton County
Atlanta Judicial Circuit

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