

Property Dispute Ethics of heiress' ex-lawyers questioned

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By: Forrest Norman

A new court filing questions the ethics of two former attorneys for elderly Miami heiress Marjorie Brickell, who filed a lawsuit on her behalf claiming that an ex-Italian Olympic boxer who now runs a popular riverfront cafe conned her out of land and money.

Roberto Villasante, who represents defendant Giuseppe "Pino" Bottiglieri, the owner of the Big Fish restaurant, filed a motion last Thursday asking Miami-Dade Circuit Judge Mary Barzee to dismiss an amended complaint by Brickell's new attorney, Alice Hector of Akerman Senterfitt.



Giuseppe 'Pino' Bottiglieri

Brickell is the 84-year-old matron of one of Miami's founding families. Hector replaced Charles Johnson of Richman Greer Weil Brumbaugh Mirabito & Christensen in West Palm Beach, and Robert Gallagher of Stearns Weaver Miller Weissler Alhadeff & Sitterson in Miami, who recently stepped aside. They withdrew from the case after Villasante filed a motion citing their possible conflict of interest.

Villasante had alleged that Johnson and Gallagher were involved in preparing the documents in late 2004 transferring Brickell's property to Bottiglieri. Johnson is needed as a witness regarding Brickell's mental and emotional state at the time he prepared the documents transferring property to Bottiglieri, Villasante said.

Johnson and Gallagher did not return calls for comment before deadline Tuesday. Hector declined to comment.

Villasante's new motion states that Brickell has been declared incapacitated, and that Gallagher was appointed co-trustee of the Marjorie O. Brickell Revocable Living Trust.

The legal maneuvering comes after Brickell filed a lawsuit in September claiming that she qualified as a vulnerable adult under Florida's Adult Protective Services Act, and that Bottiglieri had taken advantage of her. She alleged that he charmed her out of \$300,000 in cash and valuable riverfront property.

Brickell is the widow of the grandson of Miami pioneers William and Mary Brickell. She owned the quarter-acre property where Bottiglieri's open-air Big Fish restaurant is located, on the Miami River just south of downtown Miami. She inherited the land after her son, former movie stuntman William "Butch" Brickell, died unexpectedly in 2003.

According to her initial complaint, Bottiglieri befriended Brickell after her son's death. The suit alleges that it was Bottiglieri's intent from the beginning of his relationship with Brickell to charm her out of the property. The suit states that Brickell was in a vulnerable mental state due to the death of her only child and due to her age.

Brickell's suit seeks to undo a series of quitclaim deeds and special warranty deeds by which Brickell transferred the Big Fish property to Bottiglieri.

In a motion filed Oct. 1, Villasante had asked that Johnson and Gallagher be disqualified from representing Brickell because their names appeared on the papers transferring the property to Bottiglieri.

“[Brickell's] counsel, who prepared the various deeds on her behalf and presumably at her instruction, obviously did not perceive any impairment at the time they prepared the conveyances for her execution and delivery,” Villasante wrote.

Villasante said Johnson might have violated The Florida Bar's Rules of Professional Conduct. Rule 4-3.7 states that “a lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness on behalf of the client.”

Villasante's [motion](#), to disqualify is based on Florida Bar Rule 4-3.7, as well as two other rules governing attorney-client relationships. Before any hearing on the motion, Brickell's two lawyers withdrew from the case.

But in the interim, according to Villasante's new motion, the two lawyers, “with no notice to defendants or this court ... had Mrs. Brickell declared incapacitated, at least with respect to her property management and pecuniary interests.”

In addition, the motion says, “unabashedly, one of the same attorneys about which [Bottiglieri] raised concerns of an impermissible conflict, successfully got himself appointed as the co-trustee of the Brickell Trust — effectively placing him in control of the very litigation allegedly tainted by his prior conflict.”

Hector, Brickell's new attorney, would not answer questions, but referred a reporter to portions of her [amended complaint](#), which speak specifically to Villasante's accusations. In that complaint, Hector writes that Brickell was declared incapacitated by a judge after a lengthy procedure, and that Johnson and Gallagher were not the attorneys who handled that process.

Brickell's initial lawsuit was filed on her behalf and on behalf of the Brickell Trust. Gallagher, as co-trustee, is now a named plaintiff in the suit. Gallagher was named co-trustee because a provision of the trust specifically required that he be named co-trustee in the event that Brickell is declared incapacitated.

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Giuseppe 'Pino' Bottiglieri photo by A.M. Holt