

At Last Sportswear, Inc. v RDG Global, LLC

2024 NY Slip Op 31419(U)

April 10, 2024

Supreme Court, New York County

Docket Number: Index No. 652369/2022

Judge: Robert R. Reed

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 43

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AT LAST SPORTSWEAR, INC., SUNIL AHUJA, SANJAY ISRANI,	INDEX NO.	<u>652369/2022</u>
Plaintiff,	MOTION DATE	<u>11/15/2023</u>
- v -	MOTION SEQ. NO.	<u>013</u>
RDG GLOBAL, LLC, GLENN DEBELLO, LESLIE BYRON,	DECISION + ORDER ON MOTION	
Defendant.		

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HON. ROBERT R. REED:

The following e-filed documents, listed by NYSCEF document number (Motion 013) 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395

were read on this motion to/for ATTORNEY - DISQUALIFY/RELIEVE/SUBSTITUTE/WITHDRAW.

In motion sequence 013, Shapiro Arato Bach LLP (“SAB”) moves, pursuant to CPLR §321(b)(2) and (c), for an order granting leave to withdraw as counsel.

Johnathan P. Bach, Esq., an attorney at SAB, submits an affirmation dated November 14, 2023. Counselor Bach affirms, under penalty of perjury, that SAB seeks to withdraw as counsel for plaintiff/counterclaim defendant At Last Sportswear, Inc. (“ALS”) and counterclaim defendants Sunil Ahuja and Sanjay Israni (collectively, the “ALS parties”) because the ALS parties “repeatedly failed to remit payment for legal services after SAB reminded them of their payment obligations and the need to withdraw as counsel as the result of nonpayment” (NYSCEF doc. no. 371, para 3). Further, Mr. Bach affirms that the representation of the ALS parties had become unreasonably difficult to carry out due to other professional considerations

related to effective communication between counsel and the ALS parties (NYSCEF doc. no. 371, para 4).

SAB requests that this Court stay all proceedings in this action pending adjudication of this motion and, upon granting permission for the firm to withdraw, staying all proceedings in this action for a period of no less than thirty days so that the ALS parties can secure new counsel.

In partial opposition to the motion, defendant, RDG Global, LLC (“RDG”) opposes the withdrawal subject to a hearing (or other directive of the court) for SAB to discharge its duty of candor to the court under Rule 3.3(a) of the Rules of Professional Conduct, 22 N.Y.C.R.R. 1200.0 (“RPC”). RDG seeks a hearing in connection with ALS’s “withdrawal of reliance” upon a previously filed contract between ALS and defendant/counterclaim plaintiff Glenn DeBello, which RDG claims is apparently inauthentic, and which potentially formed the basis of this court’s grant of a temporary restraining order and preliminary injunction against Mr. DeBello (NYSCEF doc. no. 37, para 2). Additionally, RDG asserts that ALS and SAB failed to withdraw reliance upon a previously filed affidavit of ALS’s CEO, Sunil Ahuja, who offered a potentially a forged document into evidence as purportedly authentic (*id.*).

CPLR 321 (b) (2) provides:

“[a]n attorney of record may withdraw or be changed by order of the court in which the action is pending, upon motion on such notice to the client of the withdrawing attorney, to the attorneys of all other parties in the action or, if a party appears without an attorney, to the party, and to any other person, as the court may direct.”

If an attorney deems it necessary to end the attorney-client relationship without the consent of the client, the attorney may move on such notice as may be directed by the court, to be relieved as counsel by court order (*Farage v Ehrenberg*, 124 AD3d 159 [2nd Dept 2014]).

The attorney must submit evidence of an irretrievable breakdown in the relationship or a failure

of cooperation by the client (*id.*). “The decision to grant or deny permission for counsel to withdraw lies within the discretion of the trial court, and the court's decision should not be overturned absent a showing of an improvident exercise of discretion” (*Applebaum v Einstein*, 163 AD3d 905, 907 [2nd Dept 2018]).

Here, SAB submitted sufficient evidence, by way of attorney affirmation, of a breakdown in the attorney-client relationship. SAB affirms that the ALS parties failed to pay legal fees on a monthly basis pursuant to their engagement letters and affirms issues regarding communication between counsel and the ALS parties (NYSCEF doc. no. 371, paras. 3-4). A party’s failure to communicate with its attorney and failure to pay legal fees are sufficient grounds to grant leave to withdraw (*Weiss v Spitzer*, 46 AD3d 675 [2nd Dept 2007][an attorney may be permitted to withdraw from employment where a client refuses to pay reasonable legal fees]; *Aragona v Shaibani*, 138 AD3d 649, 650 [2nd Dept 2016][an attorney may withdraw from representing a client if the client ‘fails to cooperate in the representation or otherwise renders the representation unreasonably difficult for the lawyer to carry out employment effectively’]).

RDG’s partial opposition does not bear on whether withdrawal is proper in this matter. SAB presented evidence of an irretrievable breakdown of the attorney-client relationship sufficient to be relieved as counsel by court order. As such, SAB’s motion for withdrawal should be granted.

Accordingly, it is hereby

ORDERED that the motion seq. no. 013 of Johnathan P. Bach, Esq. and SAB to be relieved as counsel for plaintiff/counterclaim defendant, ALS, and counterclaim defendants Sunil Ahuja and Sanjay Israni is granted, and it is further

ORDERED that, within 10 days from entry, said attorney shall serve a copy of this order with notice of entry upon the former client at its last known address by certified mail, return receipt requested, and upon the attorneys for all other parties appearing herein by e-filing to the New York State Courts Electronic Filing System; and it is further

ORDERED that, together with the copy of this order with notice of entry served upon the former client, moving counsel shall forward a notice directing the former client to appoint a substitute attorney within 30 days from the date of the mailing of the notice and the client shall comply therewith; and it is further

ORDERED that any new attorney retained by the plaintiffs shall file a notice of appearance with the Clerk of the General Clerk's Office (60 Centre Street, Room 119) and the Clerk of Part 43 within 40 days from the date the notice to retain new counsel is mailed; and it is further

ORDERED that no further proceedings may be taken against the former client without leave of this court for a period of 30 days after service on the former client of the aforesaid notice to appoint a substitute attorney; and it is further


ORDERED that the departing attorney shall, within 10 days from entry, serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (Room 119); and it is further

ORDERED that such service upon the Clerk of the General Clerk's Office, the filing of a notice of appearance as provided herein, and the filing of papers as aforesaid shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that a virtual conference will be held on May 16, 2024, at 10:00 a.m.

This constitutes the decision and order of this court.

4/10/24
DATE


ROBERT R. REED, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE