

Pryor Cashman LLP v U.S. Coal Corp.
2012 NY Slip Op 33974(U)
April 5, 2012
Supreme Court, New York County
Docket Number: 651908/2011
Judge: Melvin L. Schweitzer
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: MELVIN L. SCHWEITZER
Justice

PART 45

Index Number : 651908/2011
PRYOR CASHMAN LLP
vs.
U.S. COAL CORPORATION
SEQUENCE NUMBER : 001
COMPEL DISCLOSURE

INDEX NO.
MOTION DATE
MOTION SEQ. NO.

The following papers, numbered 1 to , were read on this motion to/for

Notice of Motion/Order to Show Cause — Affidavits — Exhibits No(s).
Answering Affidavits — Exhibits No(s).
Replying Affidavits No(s).

Upon the foregoing papers, it is ordered that this motion by defendant to compel production of documents pertaining to its affirmative defenses and counterclaims is GRANTED and plaintiff's cross motion for a protective order is DENIED; Plaintiff's motion for a protective order based on its retaining lien is DENIED, except that defendant shall be required to post a bond as provided in the attached Decision and Order.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: April 5, 2012

Handwritten signature of Melvin L. Schweitzer, Justice

- 1. CHECK ONE: CASE DISPOSED, NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED, DENIED, GRANTED IN PART, OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER, SUBMIT ORDER, DO NOT POST, FIDUCIARY APPOINTMENT, REFERENCE

US Coal is attempting to distract the court from the real issue at hand – its failure to pay Pryor Cashman over \$2 million in legal fees and expenses. Pryor Cashman argues that to do so, US Coal has asserted unfounded affirmative defenses and counterclaims, none of which is based in fact. Plaintiff's Memorandum of Law in Opposition to Defendant's Motion to Compel and in Support of Plaintiff's Cross-Motion for a Protective Order, dated January 18, 2012, at 2.

Asserting an attorney's retaining lien, Pryor Cashman refuses to turn over any documents to US Coal until US Coal first pays Pryor Cashman the fees and expenses it sues for in this case. The court recognizes that in certain cases a law firm suing for its fees may assert an attorney's retaining lien. *See e.g. Zito v Fishbein Badillo Wagner Harding*, 58 AD3d 532, 533 (1st Dept 2009); *Warsop v Novik*, 50 AD3d 608, 609 (1st Dept 2008). On the other hand, here US Coal asserts misconduct by Pryor Cashman. *See Ex. B (Answer, Affirmative Defenses and Counterclaims of US Coal) to Affirmation of Christopher M. Mason*, dated December 7, 2011. Pryor Cashman has not sought to dismiss US Coal's affirmative defenses or counterclaims. Instead, it asks the court to accept its representation that US Coal's allegations are a sham and frivolous. While that may very well be the case, the court cannot take Pryor Cashman's word on this. Given US Coal's allegation of Pryor Cashman's misconduct, the court will not permit Pryor Cashman's attorneys' retaining lien to bar discovery in this case. *See Franklin, Weinrib, Ruddell & Vassallo, P.C. v Stellato*, 240 AD2d 301, 301 (1st Dept 1997); *Saratoga Harness Racing, Inc. v Roemer*, 274 AD2d 887, 889 (3d Dept 2000).

Pryor Cashman, as a fall-back argument, requests that in the event the court orders disclosure, US Coal be required to post security. The court agrees that security is appropriate in this case given that US Coal utilized the legal services of Pryor Cashman for five years without

complaint and was not fired by US Coal but chose to withdraw from representing US Coal. Accordingly, US Coal shall post with the court a bond securing payment (or deposit payment in escrow) in the amount of \$2,455,478.86 prior to Pryor Cashman's producing the requested documents.

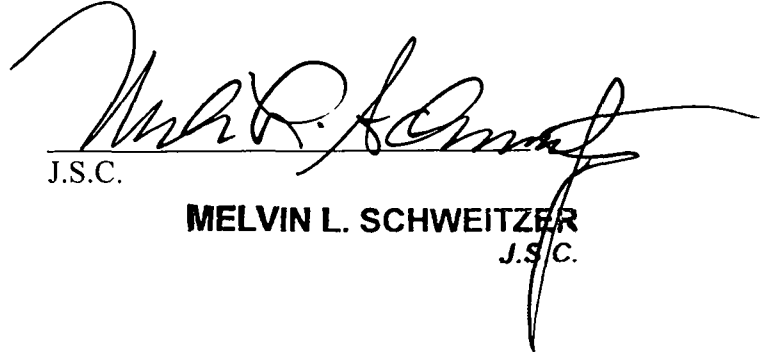
Accordingly, it is

ORDERED that defendant's motion to compel production of documents pertaining to its affirmative defenses and counterclaims is granted and plaintiff's cross-motion for a protective order is denied; and it is further

ORDERED that plaintiff's cross-motion for a protective order based on its retaining lien is denied except that defendant shall be required to post security as set forth above.

Dated: April 5, 2012

ENTER:


J.S.C.
MELVIN L. SCHWEITZER
J.S.C.