

**Philadelphia Indem. Ins. Co. v Magnum Real Estate  
Group, LLC**

2018 NY Slip Op 30094(U)

January 17, 2018

Supreme Court, New York County

Docket Number: 159000/2017

Judge: Kathryn E. Freed

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED

PART 2

*Justice*

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PHILADELPHIA INDEMNITY INSURANCE COMPANY A/S/O  
THE NEW AMSTERDAM SCHOOL,

INDEX NO. 159000/2017

Plaintiff,

- v -

MOTION SEQ. NO. 001

MAGNUM REAL ESTATE GROUP, LLC, ROBERT ETTINGER,  
P.E., P.C. D/B/A ETTINGER ENGINEERING ASSOCIATES,

Defendants.

**DECISION AND ORDER**

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The following e-filed documents, listed by NYSCEF document number 6, 7, 8, 9, 10, 11, 12, 13  
were read on this motion to/for PRO HAC VICE

Upon the foregoing documents, it is ordered is **denied with leave to renew upon proper papers.**

Plaintiff Philadelphia Indemnity Insurance Company (“Indemnity”) through its attorney, Brian E. Tetro, Esq. of the law firm of White and Williams LLP, moves for an order, pursuant to 22 NYCRR § 520.11(a)(1), for leave to admit Michael L. DeBona, Esq., an attorney at the same firm, as counsel for plaintiff. The motion is unopposed. Based on a review of the papers submitted and the relevant statutes and case law, the motion is **denied with leave to renew upon proper papers.**

**Factual and Procedural Background:**

In the captioned action, commenced on October 6, 2017, plaintiff alleges that the defendant Magnum Real Estate Group, LLC (“Magnum”) was negligent and breached a duty of care which resulted in damage to the subject property owned by the New Amsterdam School. Plaintiff demands a judgment against Magnum for water damage which, plaintiff alleges, occurred due to a faulty sprinkler system and resulted in damage to the subject property in the amount of \$102,912.51. Plaintiff additionally demands judgment against defendant Robert Ettinger, P.E., P.C.. d/b/a Ettinger Engineering Associates (“Ettinger defendants”), for his failure to exercise reasonable care under the circumstances and to design or provide plans for the subject property in a safe, defect-free and non-negligent manner and further alleges that they designed the faulty sprinkler system which caused the damage to the subject premises. Plaintiff moves for an order, pursuant to 22 NYCRR §520.11(a)(1), seeking to have Michael L. DeBona Esq., a member of the firm of White and Williams, LLP and an attorney admitted to the bar in the Commonwealth of Pennsylvania and the State of New Jersey, admitted pro hac vice to represent it this action.

In support of the motion, Tetro submits a notice of motion with the following attachments:

1) an affidavit by DeBona in which he attests that he is a member in good standing of the Pennsylvania and New Jersey bars, that he has no disciplinary proceedings pending against him in any state or federal court, that he is a member of the firm of White and Williams LLP, that he has never been convicted of a felony or misdemeanor or held in contempt by any court, that he is familiar with the standards of professional conduct imposed upon members of the New York Bar, including the Rules of Professional Conduct, and that he will be subject to the jurisdiction of the New York State courts for any acts occurring during his representation of plaintiff;

2) an affirmation by Tetro in which he avers, inter alia, that he is an associate with White and Williams LLP, that he is a member in good standing of the New York bar, that he requests DeBona's admission to the New York bar pro hac vice, that DeBona is a member in good standing of the Pennsylvania and New Jersey bars, that DeBona has no disciplinary proceedings pending against him in any state or federal court, that DeBona is a member of the firm of White and Williams LLP, and that DeBona has never been convicted of a felony or misdemeanor or held in contempt in any court;

3 DeBona's certificates of good standing from the Pennsylvania and New Jersey bars; and

4) a proposed order admitting him to practice pro hac vice in New York.

NYSCEF Docs. 7-10.

**Plaintiffs' Position:**

The sole reason proffered by Tetro for DeBona's admission pro hac vice is that since all parties anticipate conducting numerous examinations before trial, the admission of BeDona will allow the parties to more easily schedule discovery and comply with the Court's scheduling guidelines.

**Legal Conclusions:**

"Pursuant to 22 NYCRR §520.11(a)(1), whether an out-of-[s]tate attorney should be admitted pro hac vice to participate in a particular matter is a determination best left to [the] Supreme Court's discretion." *Neal v Ecolab, Inc.*, 252 AD2d 716 (3d Dept 1998); see *Perkins v. Elbilialia*, 90 AD3d 543 (1<sup>st</sup> Dept 2011). In the exercise of its discretion, this Court finds that plaintiff has failed to set forth sufficient reasons why DeBona should be admitted pro hac vice in this matter.

Although Tetro represents that plaintiff would like DeBona to serve as its counsel in this matter, he fails to apprise this Court of the specific facts of the instant case and why they warrant DeBona's intervention; whether Tetro intends to be replaced by DeBona in this action or if he is to be merely assisted by him; and how DeBona's expertise will benefit plaintiff.

Additionally, neither Tetro nor DeBona provides any detail whatsoever regarding any special skill or experience possessed by DeBona which would warrant his admission pro hac vice in this particular matter. *Cf., Perkins v Elbilis, supra* at 544. Further, Tetro and DeBona fail "to clarify" the role that DeBona would assume in the litigation. *Neal v Ecolab, Inc., supra* at 716.

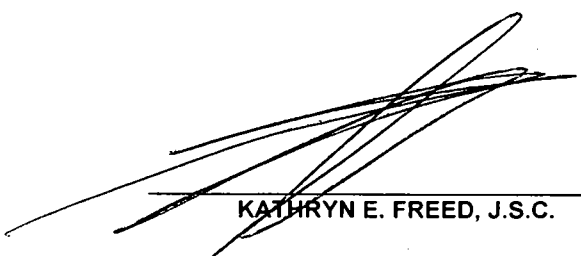
Finally, DeBona's affidavit, executed in the Commonwealth of Pennsylvania, does not bear a certificate of conformity and thus fails to meet the requirements of CPLR 2309(c).

Therefore, in accordance with the foregoing, it is hereby:

ORDERED that the motion by plaintiff Philadelphia Indemnity Insurance Company seeking to have Michael L. DeBona, Esq. admitted pro hac vice is denied, with leave to renew upon proper papers; and it is further,

ORDERED that this constitutes the decision and order of the Court.

1/17/2018  
DATE

  
KATHRYN E. FREED, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
	<input type="checkbox"/>	DO NOT POST	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE