

**Focacci v One E. River Place Realty Co., L.L.C.**

2019 NY Slip Op 30856(U)

March 28, 2019

Supreme Court, New York County

Docket Number: 157599/2016

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 IAS MOTION 2EFM

*Justice*

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INDEX NO. 157599/2016

CLAUDIA FOCACCI,

Plaintiff,

MOTION SEQ. NO. 002

- v -

ONE EAST RIVER PLACE REALTY COMPANY, L.L.C., SOLOW  
MANAGEMENT CORP., EAST RIVER POOL CLUB, INC., AND  
IOWA SPORTS MANAGEMENT, INC.,

**DECISION AND ORDER**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 36, 37, 38, 39, 40, 41

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.**

In this personal injury action, third-party defendant Hayneedle, Inc. (“Hayneedle”) moves, through its attorney, Patricia A. O’Connor, Esq. (“O’Connor”) of the law firm of Brody, O’Connor & O’Connor, Esqs., for an order, pursuant to 22 NYCRR § 520.11(a)(1), for leave to admit Andrew N. Kohn, Esq. of the law firm of Pettit Kohn Ingrassia Lutz & Dolin, 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 September 12, 2016, plaintiff alleges that she was injured at a rooftop health club owned, operated, and/or maintained by defendants and Hayneedle, when a gust of wind caused a large patio umbrella to become dislodged from a table, striking her. Plaintiff moves for an order, pursuant to 22 NYCRR §520.11(a)(1), seeking to have Andrew N. Kohn, Esq. ("Kohn"), a member of the California bar, admitted pro hac vice to represent it this action.

In support of the motion, O'Connor submits a notice of motion with the following attachments:

1) an affidavit by Kohn in which he attests, inter alia, that he is a shareholder in the firm of Pettit Kohn Ingrassia Lutz & Dolin in San Diego, California; that he has been admitted to the California bar in good standing continuously since 1993; that he has never been charged with, or convicted of, a felony or misdemeanor; that he has been a trial attorney for over 25 years and that his experience includes, among other things, personal injury and premises liability cases; and that he is familiar with, and will comply with, the standards of professional conduct imposed upon members of the New York Bar, including the rules of court governing the conduct of attorneys and the Rules of Professional Conduct; and

2) an affirmation by O'Connor in which she avers, inter alia, that she is a partner in the firm of Brody, O'Connor & O'Connor, Esqs.; that she is a member in good standing of the New York bar; that she requests Kohn's admission to the New York bar pro hac vice; that Kohn has been a member in good standing of the California bar since 1993; that Kohn has never been arrested, charged or convicted of a felony or misdemeanor; that no charge or complaint was ever made against Kohn by the California Office of Professional Conduct in connection with his practice of law; and that Kohn is familiar with and shall comply with the standards of professional conduct imposed on members of the New York bar, including the rules of court governing attorney conduct and the Rules of Professional Conduct;

3) Kohn's certificate of good standing from the California bar; and

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

NYSCEF Docs. 36-40.

**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 Elbilila*, 90 AD3d 543 (1<sup>st</sup> Dept 2011). In the exercise of its discretion, this Court finds that Hayneedle has failed to set forth sufficient reasons why Kohn should be admitted pro hac vice in this matter.

Although O’Connor seeks to have Kohn serve as counsel for Hayneedle, she fails to apprise this Court specifically why the facts of the instant case warrant Kohn’s intervention. O’Connor asserts that she would like Kohn “to participate” in this matter but does not elaborate as to whether she and Kohn will be co-counsel or whether one will assist or supervise the other. She thus fails “to clarify” the role that Kohn would assume in the litigation. *Neal v Ecolab, Inc.*, *supra* at 716. Further, although O’Connor and Kohn attest to Kohn’s skill and expertise (*see Perkins v Elbilila*, *supra* at 544), they do not explain how and why his skill and expertise are necessary to assist Hayneedle in this action.

O’Connor and Kohn also fail to declare under oath that, if admitted pro hac vice, Kohn “shall be subject to the jurisdiction of the courts of [New York State] with respect to any acts occurring during the course of [his] participation in the matter.” 22 NYCRR 520.11(d)(2).

Although O’Connor represents that the “California Office of Professional Conduct has never received any charge or complaint against Mr. Kohn in connection with his practice of law”,

she annexes as an exhibit to her motion a document entitled "State Bar of California Office of Chief Trial Counsel Complaint History Report (Confidential)." Doc. 39. The document reflects that a complaint of misconduct was made against Kohn in 2016 and was dismissed that same year due to "insufficient evidence". It is unclear whether the document was sent to the California Office of Professional Conduct or whether that body is related to the California Office of Chief Trial Counsel.

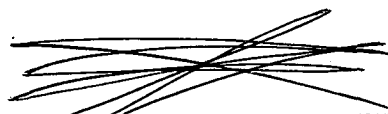
Finally, Kohn's affidavit, executed in California, does not bear a certificate of conformity and thus fails to meet the requirements of CPLR 2309(c).

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

ORDERED that the motion by Hayneedle, Inc. seeking to have Andrew N. Kohn, 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.

3/28/2019  
DATE

  
KATHRYN E. FREED, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	