

**Lewis v Pierce Bainbridge Beck Price Hecht LLP**

2020 NY Slip Op 30944(U)

April 14, 2020

Supreme Court, New York County

Docket Number: 155686/2019

Judge: Andrea Masley

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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. ANDREA MASLEY PART IAS MOTION 48EFM

Justice

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DONALD LEWIS,

Plaintiff,

INDEX NO. 155686/2019

- v -

MOTION DATE N/A

PIERCE BAINBRIDGE BECK PRICE HECHT LLP, JOHN  
PIERCE, DENVER EDWARDS, CAROLYNN K. BECK,  
LITTLER MENDELSON, P.C., SYLVIA JEANINE CONLEY,  
PUTNEY TWOMBLY HALL & HIRSON LLP, MICHAEL YIM,  
JANE DOE,

MOTION SEQ. NO. 009

DECISION + ORDER ON  
MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 009) 176, 177, 178, 179, 180, 182, 183, 184, 185

were read on this motion to/for

ATTORNEY -

Upon the foregoing documents, it is

On March 13, 2020, attorney Marc L. Mukasey moved pursuant to CPLR 321 for an order relieving Mukasey Frenchman & Sklaroff LLP (MFS) as counsel for defendant Pierce Bainbridge, Beck, Price & Hecht LLP (PB). Mukasey states that the request is required by Rule 1.16(b)(1)<sup>1</sup> and permissive pursuant to Rule 1.16(c)(5), (7) and (12). (NYSCEF Doc. No. [NYSCEF] 177, Mukasey 3/12/2020 Aff.). MFS was to serve PB with the OSC by March 18, 2020, but an affidavit of service has yet to be filed to establish compliance with that requirement. (NYSCEF 178, OSC). Opposition was due April 3 and reply papers were due April 8. (*Id.*). In the meantime, COVID 19 shut down the courts except to essential matters, and as of March 22, 2020, no papers were to be

<sup>1</sup> Rule 1.16 provides: "(b) Except as stated in paragraph (d), a lawyer shall withdraw from the representation of a client when: (1) the lawyer knows or reasonably should know that the representation will result in a violation of these Rules or of law."

filed in NYSCEF. (AO78/20). Nevertheless, the parties filed opposition and reply in this matter in NYSCEF. (NYSCEF 182, 183, 184, 185). The stay of the action implemented on March 13, 2020 was to be addressed at the argument of this motion. The return date is April 13, 2020 but that appearance is cancelled in light of COVID 19 and the closure of the courts except to essential matters. (Chief Administrative Judge Marks's Memos 3/13/2020 and 3/15/2020). "[A]ll motions in civil matters shall be taken on submission." (Chief Administrative Judge Marks's Memo 3/13/2020).

Effectively, there is no opposition to Mukasey's withdrawal. (NYSCEF 184, Belous 4/7/20 Aff. ¶4; NYSCEF 183, Rice 4/7/20 Aff. ¶3). Rather, without citing any authority, plaintiff asks this court to "explore *in camera* what ethical violations would result from the Mukasey firm's continued representation of the [PB]." (NYSCEF 182, Leonard Aff., ¶2). Based on Mukasey's request to withdraw, plaintiff seeks reconsideration of the court's decision granting a motion to compel arbitration.<sup>2</sup> (*Id.*) Mukasey denies that he has an ethical obligation under Rule 3.3 to inform the court of any fraud on the court or that false information has been provided to the court. (NYSCEF 185, Mukasey Reply Aff, ¶6). The court accepts Mukasey's statement as sufficient, as it must. (NYS Bar Association Comment 3 to Rule 1.16). Otherwise, the court will be delving into protected attorney-client communications. This motion and plaintiff's assertion that PB corrupted the proceedings or misled the court is disturbing, but the court is compelled to reject it at this juncture as speculation. The requested relief, however, is between attorney and client; plaintiff simply has notice. CPLR 321 requires an order to show cause so the court may direct the attorney to serve its client

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<sup>2</sup> Such a request is properly made by motion under CPLR 2221.

which is effectively unrepresented in the unique withdrawal of counsel situation. This is not an opportunity to be exploited by plaintiff for discovery.

Based on Mukasey's withdrawal, plaintiff also asks the court to delay its decision on Putney's motion to dismiss to allow time for discovery. (NYSCEF 182, Leonard Aff., ¶7). Defendant Putney, Twombly, Hall and Hirson LLP (Putney) was engaged by PB to conduct an internal investigation of the workplace claims against plaintiff. (NYSCEF 184, Belous 4/7/20 Aff. ¶3). In addition to Putney's motion to dismiss (02) being unrelated to plaintiff's requested discovery, the court's denial of plaintiff's request to explore the reasons for Mukasey's withdrawal, renders plaintiff's request to delay decision moot. Moreover, plaintiff's request is procedurally improper under CPLR 2215. (*Fried v Jacob Holding Inc.*, 110 AD3d 56, 65 [2d Dept 2013]).

For the same reasons, the court denies plaintiff's request to delay the decision on the Littler defendants' motion to dismiss. (NYSCEF 182, Leonard Aff., ¶7).

Accordingly, it is

ORDERED that the parties shall comply with all COVID19 orders including those issued by Chief Administrative Judge; and it is further

ORDERED that the motion of Mukasey Frenchman & Sklaroff LLP (moving counsel) to withdraw as counsel for defendant Pierce Bainbridge, Beck, Price & Hecht LLP is granted to the extent directed in this order, upon moving counsel's filing proof of compliance with all of the following conditions; and it is further

ORDERED moving counsel shall file in NYSCEF an affidavit(s) of service in NYSCEF within 3 days of the Chief Administrative Judge's order re-opening NYSCEF; and it is further

ORDERED moving counsel shall serve a copy of this order with notice of entry upon the last known address of defendant Pierce Bainbridge, Beck, Price & Hecht LLP by USPS mail and by electronic mail; and it is further

ORDERED moving counsel shall also serve a copy of this order with notice of entry upon all counsel of record through NYSCEF within 3 days of the Chief Administrative Judge's order re-opening NYSCEF; and it is further

ORDERED that Pierce Bainbridge, Beck, Price & Hecht LLP must appoint substitute counsel, pursuant to CPLR 321 and the New York Limited Liability Company Law because an LLC cannot prosecute or defend an action without representation by an attorney; failure to appoint substitute counsel within 10 days of service of this order with notice of entry in NYSCEF may result in Pierce Bainbridge, Beck, Price & Hecht LLP's answer being stricken by the court or some other penalty. Pierce Bainbridge, Beck, Price & Hecht LLP's is referred to the New York City Bar Association's Legal Referral Service (212) 626-7373 for assistance with engaging substitute counsel; and it is further

ORDERED that within 10 days of filing this order with notice of entry in NYSCEF, any substitute counsel retained by Pierce Bainbridge, Beck, Price & Hecht LLP shall file a notice of appearance with the Clerk of the Trial Support Office (Room 158) and the Clerk of Part 48 (Room 242), and electronically record the representation and file the notice of appearance on NYSCEF; and it is further

ORDERED that no further proceedings may be taken against defendant Pierce Bainbridge, Beck, Price & Hecht LLP without leave of this court until 10 days after the Chief Administrative Judge's order re-opening NYSCEF; and it is further

ORDERED that the matter of the amount of moving counsel's charging lien, costs and disbursements, if any, may be referred to a Special Referee to hear and report upon request by either moving counsel or Pierce Bainbridge, Beck, Price & Hecht LLP within 30 days after the Chief Administrative Judge's order re-opening NYSCEF. Either party may notify the court by letter emailed to [SFCPart48@nycourts.gov](mailto:SFCPart48@nycourts.gov) and filed in NYSCEF and it is further

ORDERED plaintiff's request for an *in camera* review is denied; and it is further ORDERED plaintiff's request that the court reconsider its decision granting a motion to compel arbitration is denied; and it is further

ORDERED plaintiff's request to delay decision on Putney and Littler defendants' motions to dismiss to allow time for discovery is denied.

4/14/20  
DATE

*E. Eden*  
*[Signature]*

CHECK ONE:

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