

**Lewis v Pierce Bainbridge Beck Price & Hecht,
L.L.P.**

2020 NY Slip Op 30945(U)

April 13, 2020

Supreme Court, New York County

Docket Number: 652931/2019

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,

- v -

PIERCE BAINBRIDGE BECK PRICE & HECHT, L.L.P.,
JOHN PIERCE, CAROLYNN BECK, DAVID HECHT,
JAMES BAINBRIDGE, MAXIM PRICE, AMMAN KHAN,
ANDREW LORIN, CAROLINE POLISI, CHRIS LAVIGNE,
CONOR MCDONOUGH, CRAIG BOLTON, DOUG
CURRAN, ERIC CREIZMAN, JONATHAN SORKOWITZ,
MELISSA MADRIGAL, MIKE POMERANTZ, PATRICK
BRADFORD, LAUREN SCHAFER-GREEN, PUTNEY,
TWOMBLY, HALL & HIRSON LLP, MICHAEL YIM

Defendant.

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INDEX NO. 652931/2019
MOTION DATE N/A
MOTION SEQ. NO. 005

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 005) 141, 142, 143, 144, 145, 147, 148, 149

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)¹ and permissive pursuant to Rule 1.16(c)(5), (7) and (12). (NYSCEF Doc. No. [NYSCEF] 142, Mukasey 3/12/2020 affirmation). 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 143, OSC). Opposition was due

¹ 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."

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 filed in NYSCEF. (AO78/20). Nevertheless, the parties filed opposition and reply in this matter in NYSCEF. (NYSCEF 147, 148, 149). 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 148, Belous 4/7/20 Aff. ¶4). 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 147, Leonard aff., ¶2). Based on Mukasey's request to withdraw, plaintiff seeks reconsideration of the court's decision granting a motion to compel arbitration.² (*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 149, 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

² Such a request is properly made by motion under CPLR 2221.

client; plaintiff simply has notice. CPLR 321 requires an order to show cause so the court may direct the attorney to serve its client 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 147, 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 148, 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]).

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 NYSCF, 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 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's motion to dismiss to allow time for discovery is denied.

4/13/2020
DATE

Enter.


CHECK ONE: CASE DISPOSED GRANTED DENIED NON-FINAL DISPOSITION OTHER

APPLICATION: SETTLE ORDER SUBMIT ORDER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE