

PJSC Natl. Bank Trust v Pirogova
2021 NY Slip Op 31237(U)
April 13, 2021
Supreme Court, New York County
Docket Number: 656519/2020
Judge: Andrew Borrok
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ANDREW BORROK PART IAS MOTION 53EFM

Justice

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PJSC NATIONAL BANK TRUST
Plaintiff,

- v -

NATALIA PIROGOVA,
Defendant.

-----X

INDEX NO. 656519/2020
MOTION DATE 03/25/2021
MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 67, 68, 69, 70, 71, 78 were read on this motion to/for PRO HAC VICE.

PJSC National Bank Trust's (PJSC) motion for pro hac vice admission of Bruce S. Marks, Esq. is granted over the objection of Natalia Pirogova. Ms. Pirogova's objection is based entirely on the advocate-witness rule and does not at present raise any issue in this summary judgment in lieu of complaint proceeding, and, in any event, is more appropriately characterized an objection directed to the qualifications of PJSC's expert witness, Sergey S. Sokolov, and not an objection as to Mr. Marks' qualifications to be admitted pro hac vice in this action and, thus, has no bearing on this motion.

The advocate-witness rule, which is embodied in Rule 3.7 of the New York Rules of Professional Conduct, prohibits a lawyer from taking a case if the lawyer knows or it is obvious that the lawyer ought to be called as a witness on a significant issue on behalf of the client (22 NYCRR 1200.0, Rule 3.7; In re Diet Drug Litigation, 180 AD3d 483 [1st Dept 2020], affirming 2019 NY Slip Op 31815[U] [Sup Ct NY Cnty 2019] [disqualifying counsel where undisputed

that counsel will be called as a material witness in the case]). The burden of showing counsel should not be permitted to proceed in an action rests on the party seeking the disqualification (*Macro Cash & Carry Corp. v Berkman*, 81 AD2d 783 [1st Dept 1991] [explaining strong public policy of allowing persons to retain counsel of their choice and noting prejudice to client that may result from disqualification]).

Here, Ms. Pirogova argues that Mr. Marks should not be admitted *pro hac vice* because PJSC has submitted a supporting affidavit in this action from Sergey S. Sokolov, a member of Marks & Sokolov, which is also Mr. Marks' firm. Mr. Sokolov is the managing director of the firm's Russian practice and submits his affidavit in support of PJSC's motion to recognize Russian judgments in PJSC's favor and against Ms. Pirogova (*see* NYSCEF Doc. No. 3). Ms. Pirogova argues that "if Mr. Marks is admitted *pro hac vice* in this action, the Court will have the 'unseemly' spectacle of Mr. Marks arguing the credibility of his partner to this Court" (NYSCEF Doc. No. 78, ¶ 14).

This does not make Mr. Marks a "witness on a significant issue" in this matter (*Sokolow, Dunaud, Mercadier & Carreras, LLP v Lacher*, 299 AD2d 64 [1st Dept 2002]). Mr. Marks is simply *not* a witness in this matter. At most, Mr. Sokolov's relationship to Mr. Marks may be a basis for Ms. Pirogova to attack the reliability of Mr. Sokolov's affidavit. However, it is not at all clear that any future testimony from Mr. Marks in this action will be required, particularly since this is a summary judgment in lieu of complaint proceeding and, thus, intended to be resolved on the basis of one single motion. Under these circumstances, the court sees no basis to deny Mr. Marks *pro hac vice* admission and, more significantly, to deny PJSC its choice of

counsel. Should circumstances change and Mr. Marks' testimony become relevant, Ms. Pirogova may seek leave to move to disqualify him as counsel.

Accordingly, it is

ORDERED that the motion for leave to appear *pro hac vice* is granted and Ronald S. Marks, Esq. is permitted to appear and to participate in this action on behalf of the plaintiff, and it is further


ORDERED that he shall at all times during this action be associated with counsel who is a member in good standing of the Bar of the State of New York and is attorney of record for the aforesaid party; and it is further

ORDERED that all pleadings, briefs, and other papers filed with the court shall be signed by the attorney of record, who shall be responsible for such papers and for the conduct of this action; and it is further

ORDERED that, pursuant to Section 520.11 of the Rules of the Court of Appeals and Section 602.2 of the Rules of the Appellate Division, First Department, the attorney hereby admitted *pro hac vice* shall be familiar with and abide by the standards of professional conduct imposed upon members of the New York Bar, including the rules of the courts governing the conduct of attorneys and the Rules of Professional Conduct; and it is further

ORDERED that he shall be subject to the jurisdiction of the courts of the State of New York with respect to any acts occurring during the course of his/her participation in this matter; and it is further

ORDERED that said counsel shall notify the court immediately of any matter or event in this or any other jurisdiction that affects his standing as a member of the bar.



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4/13/2021
DATE

ANDREW BORROK, J.S.C.

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