

AL Infinity LLC v Britelite Enters. Inc.

2022 NY Slip Op 34408(U)

December 23, 2022

Supreme Court, New York County

Docket Number: Index No. 654458/2021

Judge: Andrew Borrok

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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AL INFINITY LLC,		INDEX NO. <u>654458/2021</u>
Plaintiff,		MOTION DATE <u>11/23/2022</u>
- v -		MOTION SEQ. NO. <u>003</u>
BRITELITE ENTERPRISES INC., SAKAR INTERNATIONAL, INC.		
Defendant.		DECISION + ORDER ON MOTION

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 76, 77, 78, 79, 80, 81, 83, 84, 85, 91, 92

were read on this motion to/for ATTORNEY -
DISQUALIFY/RELIEVE/SUBSTITUTE/WITHDRAW.

Upon the foregoing documents, Marc Wohlgemuth & Associates, P.C.'s (**Marc Wohlgemuth**) motion to be relieved as counsel for the defendant Britelite Enterprises Inc. (**Britelite**) and fixing a charging lien on Britelite's claims in this action must be granted without opposition because Britelite discharged Marc Wohlgemuth as its attorneys without cause with outstanding fees. The branch of the motion seeking a stay is denied.

When a client discharges an attorney without cause, the attorney is entitled to recover compensation from the client measured by the fair and reasonable value of the services rendered whether that be more or less than the amount provided in the contract or retainer agreement (*In re Montgomery's Est.*, 272 NY 323, 326-327 [1936]; *Lai Ling Cheng v Modansky Leasing Co.*, 73 NY2d 454, 458 [1989]). Pursuant to Judiciary Law § 475, "[f]rom the commencement of an action...the attorney who appears for a party has a lien upon his or her client's cause of

action... which attaches to a verdict, report, determination, decision, award, settlement, judgment or final order in his or her client's favor.”

In this action, Marc Wohlgemuth is registered as Britelite's counsel of record. The retainer agreement between Britelite and Marc Wohlgemuth dated November 12, 2021 (**Retainer Agreement**) provides:

If, in the Firm's judgment there has been an irreconcilable breakdown in the attorney-client relationship or a material breach of the terms of this retainer agreement, the Firm may decide to make application to the court, in which the Client's action is pending to be relieved as attorneys of record. In such event, the Client will be provided with notice of the application and the opportunity to be heard. Should any fees be due and owing to the Firm at the time of its discharge, the Firm shall have the right, in addition to any other remedy permitted at law or equity, to seek a charging lien upon the property which is awarded to the Client as a result of any judgment rendered in the Client's case.

(NYSCEF Doc. No. 80, at 3)

As of Britelite's termination of its relationship with Marc Wohlgemuth, the outstanding attorney's fees payable to Marc Wohlgemuth total the sum of \$31,977.50 (NYSCEF Doc. No. 79). Pursuant to Judiciary Law § 475 and the Retainer Agreement, Marc Wohlgemuth is entitled to a charging lien in the amount of \$31,977.50 on Britelite's claims in this action.

For completeness, this Court had issued an order dated December 19, 2022 (NYSCEF Doc. No. 86) indicating that this motion may be granted as unopposed and directing Marc Wohlgemuth to serve a copy of said order to Britelite in a manner reasonably calculated to reach Britelite. Mr. Doberman had done so by email on December 20, 2022 (NYSCEF Doc. No. 92).

The parties shall appear for a status conference on January 19, 2023, at 12 PM. If Britelite fails to appear, the plaintiff may move for appropriate relief.

Accordingly, it is ORDERED that Marc Wohlgemuth & Associates, P.C.'s motion to be relieved as attorney for Britelite Enterprises Inc. is granted without opposition upon filing of proof of compliance with the following conditions; and it is further

ORDERED that, within 10 days from entry, said attorney shall serve a copy of this order with notice of entry upon the former clients at their last known addresses by certified mail, return receipt requested, and upon the attorneys for all other parties appearing herein by posting to the New York State Courts Electronic Filing System; and it is further

ORDERED that, together with the copy of this order with notice of entry served upon the former client, moving counsel shall forward a notice directing the former client to appoint a substitute attorney within 30 days from the date of the mailing of the notice and the client shall comply therewith, except that, in the event defendants intend instead to represent themselves, they shall notify the Clerk of the Part of this decision in writing within said 30-day period; and it is further

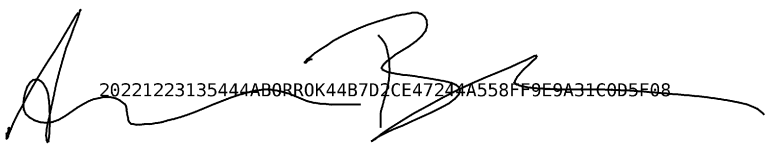
ORDERED that any new attorney retained by defendants shall file a notice of appearance with the Clerk of the General Clerk's Office and the Clerk of the Part within 40 days from the date the notice to retain new counsel is mailed; and it is further

ORDERED that the departing attorney shall, within 10 days from entry, serve a copy of this order with notice of entry on the Clerk of the General Clerk’s Office; and it is further

ORDERED that such service upon the Clerk of the General Clerk’s Office, the filing of a notice of appearance as provided herein, and the filing of papers as aforesaid shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website); and it is further

ORDERED that the branch of the motion seeking a stay is denied; and it is further

ORDERED that the parties shall appear for a status conference on January 19, 2023, at 12 PM.


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ANDREW BORROK, J.S.C.

12/23/2022

DATE

CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
 GRANTED DENIED GRANTED IN PART OTHER
 APPLICATION: SETTLE ORDER SUBMIT ORDER
 CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE