

Hall v Middleton

2023 NY Slip Op 30847(U)

March 20, 2023

Supreme Court, New York County

Docket Number: Index No. 655003/2019

Judge: Jennifer G. Schecter

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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: COMMERCIAL DIVISION**

PRESENT: HON. JENNIFER G. SCHECTER

PART 54

Justice

-----X

INDEX NO. 655003/2019

CHARLES HALL,

MOTION SEQ. NO. 007

Plaintiff,

- v -

REGGIE MIDDLETON, VERITASEUM, LLC, VERITASEUM
SECURITIES LLC, VERITASEUM ASSETS LLC,
VERITASEUM HOLDINGS LLC**DECISION + ORDER ON
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 007) 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

Because at all times defendants remained represented by counsel, this motion is baseless (*see Moray v Koven & Krause, Esqs.*, 15 NY3d 384, 390 [2010] [the statute is "intended to protect litigants faced with the unexpected **loss of legal representation**"] [emphasis added]). As this court repeatedly recognized, a stay was never warranted pursuant to CPLR 321(c). Until March 16, 2023, Misung Lee, Esq., was defendants' counsel of record. She was one of two attorneys listed on the signature block of defendants' answer that she herself filed in 2019 (Dkt. 11 at 14), and on virtually every document defendants e-filed in this case, including their post-trial brief (*see* Dkt. 139 at 30). Defendants' attempt to besmirch her competency and minimize her role is disheartening and disingenuous.

When Ms. Lee's co-counsel, Sheridan L. England, Esq., withdrew, the court noted in a February 24, 2022 order that Ms. Lee "signed the answer along with Mr. England and e-filed Mr. Middleton's most recent letter" and that she "is registered as counsel of record on NYSCEF" (Dkt. 44). This was not a gratuitous observation; it was noted in the context of defendants' pre-trial delay tactics as the reason the court refused to issue a CPLR 321 stay (*see id.*).

Carl I. Brundidge, Esq. was admitted pro hac vice by order dated March 8, 2022 (Dkt. 55). Ms. Lee remained counsel of record and continued to file defendants' documents on NYSCEF. After all, as a condition of serving as Mr. Brundidge's sponsoring attorney, Ms. Lee was required to remain "the attorney of record" and had to be "responsible" for the substance of all of his filings "and for the conduct of this action" (*id.*; *see* 22 NYCRR § 520.11[c] ["No attorney may be admitted pro hac vice ... unless he or she is associated with

an attorney who is a member in good standing of the New York bar, **who shall be the attorney of record in the matter**] [emphasis added]). Thus, setting aside the open question about the applicability of CPLR 321(c) when more than one attorney is arguably counsel of record (*see Matter of Cassini*, 182 AD3d 13, 41 [2d Dept 2020] ["Where a client is represented by a law firm with multiple attorneys, it may be argued that the death, suspension, or disability of one attorney in that law firm **does not** trigger application of CPLR 321(c)"] [emphasis added]),* here, there is no question that Ms. Lee, pursuant to 22 NYCRR § 520.11(c), was defendants' counsel of record (*id.* ["there may be only one attorney of record for a party in a single action"]; *see Kitsch v Riker Oil Co.*, 23 AD2d 502 [2d Dept 1965] ["To allow more than one attorney for a party in a single action would play havoc with the established responsibility in respect to professional representation in civil proceedings and in the processes of litigation"]; *see also Perkins v Elbilis*, 90 AD3d 543, 544 [1st Dept 2011] ["The out-of-state attorney submitted proof that she is a member in good standing of the bar of the Commonwealth of Massachusetts, that she will be associated with a New York attorney, **who will be the attorney of record**"] [emphasis added]). That is why, prior to this motion being filed, this court repeatedly held that Ms. Lee was defendants' counsel of record.

After the court issued its post-trial decision on December 28, 2022 (Dkt. 149), Mr. Brundidge's last contact with the court was on February 3, 2023, when, after the parties had fully briefed the fee application and submitted proposed judgments, he provided the court with his clients' address for insertion in the judgment. The court issued its fee decision (Dkt. 172) and signed and uploaded the judgment for entry on February 6, 2023. The Clerk entered the judgment on February 15, 2023 (Dkt. 176).

By letter dated February 17, 2023, Ms. Lee filed a letter informing the court that, tragically, Mr. Brundidge had passed away on February 10 (Dkt. 179). Ms. Lee averred that a stay under CPLR 321 was warranted (*id.*). After plaintiff responded by noting that CPLR 321(c) did not apply but graciously consented to a partial stay (Dkt. 180), the court issued the following order:

While CPLR 321(c) only applies "before judgment" **and though defendants remain represented by counsel**, the court, based on plaintiff's consent, will extend

* Defendants maintain that "unbeknownst to the Court, Brundidge & Stanger, P.C., ended all attorney client relationship with the Defendants upon the passing of Carl I. Brundidge, Esq. or upon entry of the Judgment" (Dkt. 203 at 10-11); however, they do not cite any authority supporting that an attorney purporting to end its attorney-client relationship without notifying the court excuses noncompliance with court-ordered deadlines (*see Shurka v Shurka*, 100 AD3d 566 [1st Dept 2012]). On the contrary, if and when that occurs the attorney must move to be relieved as counsel to obtain the benefit of a CPLR 321 stay. And to be sure, even if Ms. Lee had made such a motion in mid-February the result, too, would have been the same--no more than a one-month extension would have been granted. This court would not have been willing to grant a longer stay given Middleton's history of disregarding court orders.

the time for Middleton to comply with the injunctive portion of the judgment while allowing plaintiff to ensure that its judgment-enforcement rights are not prejudiced, such as by being able to serve restraining notices and information subpoenas. Accordingly, it is ORDERED that Middleton's February 15, 2023 deadline set on the first page of the judgment (Dkt. 176) is extended to March 17, 2023, and his deadline to file an affidavit and proof of compliance is extended to March 20, 2023. And it is further ORDERED that if defendants' deadline to respond to any article 52 subpoenas falls on a date prior to March 20, 2023, such deadline shall automatically be extended to March 31, 2023.

Middleton should not assume the court will grant a further extension and if he intends to hire replacement counsel he should promptly do so (Dkt. 181 [emphasis added]; *see also Matter of Cassini*, 182 AD3d at 41 ["the court has the authority to grant leave for proceedings to be conducted despite the stay"]).

On the eve of Middleton's compliance deadline, on March 16, 2023, Barak P. Cardenas, Esq. filed a substitution of counsel, replacing Ms. Lee (Dkt. 182). He filed this proposed motion by order to show cause on March 17, 2023, seeking an immediate stay. He claims that Ms. Lee was not "competent to assume this complex case" and that her "practice is focused on patent preparation and prosecution" (Dkt. 203 at 11-12, n 8). Defendants, however, cite no authority establishing that a CPLR 321 stay turns on the qualifications of the attorney. Ms. Lee should not, and likely would not, have taken on the serious ethical responsibilities of counsel of record from the outset if she was incapable of serving in that capacity. Regardless, it is indisputable that Ms. Lee was counsel of record as a matter of law.

Furthermore, while Ms. Lee advocated for the applicability of CPLR 321(c), she did not move to be relieved as counsel and seek a stay on that basis. Nor did she object to the court's extended March 17, 2023 deadline or the order in which Middleton was advised that such deadline would not be extended. The court, moreover, does not credit Middleton's in-any-event unavailing complaint that he was not promptly informed of the new deadline in light of his prior similar contention (*see* Dkt. 40 at 1-2) and based upon his utter lack of credibility at trial.

If Mr. Brundidge had passed away while there was more litigation activity to be done prior to judgment the court would have certainly issued a discretionary stay to ensure defendants were not prejudiced by the terms of any contemplated judgment. But the court had already made all of its decisions and signed the judgment on February 6, prior to Mr. Brundidge's passing. All that occurred afterward was the Clerk performing the ministerial act of entering the judgment. Defendants' claimed prejudice is spurious. Rather than filing this motion, they could have taken the time to comply with the judgment.

Regardless, as this court has repeatedly held, defendants were never without counsel of record after they appeared in this action. Just as CPLR 321 did not require a stay when

Mr. England withdrew, it did not require a stay after Mr. Brundidge passed away. Even if Middleton felt "the Court mistakenly entered an Order dated February 17, 2023" (*see* Dkt. 202 at 5), his current counsel surely knows that making arguments that have been rejected by the court on multiple occasions is problematic.

Additionally, even if this motion had any merit--and it does not even sufficiently merit opposition from plaintiff--at this point, nothing would be accomplished. The court would simply order immediate compliance now that there is replacement counsel. This motion is nothing more than yet another frivolous delay tactic. This court had to threaten to strike defendants' pleadings to get them to appear for depositions (Dkt. 19); they baselessly pled ignorance and threw Mr. England under the bus in an attempt to delay pre-trial proceedings (*see* Dkts. 39, 40, 44); and on the eve of trial they filed a baseless motion and tried to engage in trial by ambush (*see* Dkts. 113, 128). Furthermore, in the post-trial decision, the court found that Middleton's arguments were based on "revisionist history proffered in an attempt to steal the Company's primary assets for himself" and addressed his illegal behavior and explained why punitive damages were warranted (Dkt. 149 at 1, 5). This motion unfortunately is just more of the same.

In the end, defendants' cynical attempt to leverage the tragic death of Mr. Brundidge and their unfounded impugning of Ms. Lee's professionalism, abilities and ethics is low and distressing. Given the potential enforcement proceedings that may lie ahead, Mr. Cardenas is strongly cautioned that further assertion of frivolous arguments may result in sanctions. And Mr. Middleton is cautioned that if he does not immediately comply with the injunctive portion of the judgment, plaintiff may move to hold him in contempt.

Accordingly, it is ORDERED that defendants' motion to vacate the judgment and for a stay of enforcement is DENIED.

3/20/2023

DATE

CHECK ONE:

CASE DISPOSED
 GRANTED

DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART

OTHER

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JENNIFER G. SCHECTER, J.S.C.