

Pfanner v Anderson

2024 NY Slip Op 32108(U)

June 18, 2024

Supreme Court, Kings County

Docket Number: Index No. 509789/2024

Judge: Leon Ruchelsman

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8

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ANDREAS PFANNER, POK MILL LLC, and
POK 1-3 GRAND LLC,

Plaintiff,

Decision and order

- against -

Index No. 509789/2024

ERIC GUSTAVE ANDERSON, URBAN GREEN EQUITIES,
LLC, POK MILL HOUSING DEVELOPMENT FUND
CORPORATION, POK 325 MAIN LLC, WALLACE
CAMPUS MANAGER LLC,

Defendants,

June 18, 2024

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PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #3 & #4

The plaintiff has moved pursuant to CPLR §2221 seeking to reargue a decision and order dated May 7 2024 which denied the plaintiff's request to admit Marcin Muszynski Esq. pro hac vice. The court found that Mr. Muszynski should not be admitted in New York because he has been practicing law in New York without a license to do so pursuant to Judiciary Law §478. Upon reargument Mr. Muszynski argues that while it is true he is not licensed to practice law in New York, he is a licensed attorney in good standing in the state of California and is therefore permitted to practice immigration law pursuant to 8 CFR §1292.1(a)(1). Therefore, the court should reconsider its determination and admit him as counsel in this case pro hac vice.

A motion to reargue must be based upon the fact the court overlooked or misapprehended fact or law or for some other reason mistakenly arrived at in its earlier decision (Deutsche Bank

National Trust Co., v. Russo, 170 AD3d 952, 96 NYS3d 617 [2d Dept., 2019]).

8 CFR §1292.1(a)(1) states that "any attorney as defined in §1001.1(f) of this chapter and who, once the registration requirements in paragraph (f) of this section have taken effect, is registered to practice with the Executive Office for Immigration Review" (id). 8 CFR §1001.1(f) states that "the term attorney means any person who is eligible to practice law in and is a member in good standing of the bar of the highest court of any State, possession, territory, or Commonwealth of the United States, or of the District of Columbia, and is not under any order suspending, enjoining, restraining, disbaring, or otherwise restricting him in the practice of law" (id). Ethics Opinion 863 by the Committee of Professional Ethics (May 10, 2011) of the New York State Bar Association was asked whether an attorney admitted in another state and not the state of New York could exclusively practice immigration law in New York. The Ethics Committee noted that question was a legal one and was beyond the scope of the Committee's jurisdiction and could not issue any ruling. However, the Ethics Committee of the Nassau County Bar Association issued an opinion in this matter. In Opinion Number 2015-1 the Ethics Committee held that "an exclusive immigration practitioner may advise on only Federal immigration matters without being a member of the New York bar"

(id). However, the opinion concluded that "the out-of-jurisdiction attorney may advise and represent exclusively in Federal immigration laws, but must only remain in this limited capacity, and must coordinate with a member of the New York bar about the New York-related consequences of the Federal practice so as to properly advise the client. The attorney also may advertise services, so long as all other advertisement requirements under the Rules of Professional Conduct are adhered to, and the attorney makes proper disclosures so as to inform the public of the limited nature of the practice at issue" (id).


Thus, Mr. Muszynski insists that he maintains an office in Brooklyn and only deals with immigration law and thus is entitled to be admitted pro hac vice. However, Mr. Muszynski states in his affidavit that "I am a close friend to Mr. Pfanner, Plaintiff in this matter. I have been providing counseling to Mr. Pfanner on various legal matters related to his dealings with the entities co-owned by Mr. Pfanner and Mr. Anderson in California and in New York" (see, Affidavit of Marcin Muszynski, ¶10 [NYSCEF Doc. No. 40]). Further, the same affidavit states that "I am currently managing and supervising 3 different law firms that are involved in the litigation between Mr. Pfanner and Mr. Anderson - 2 in California and 1 in New York (id., at ¶12). There is no dispute that this lawsuit or any disputes between the parties do not involve any immigration issues at all. Thus, Mr. Muszynski's admission that he is managing and supervising a law firm in New York in non-immigration matters surely raises questions whether

Mr. Muszynski is practicing non-immigration law in New York without a license. Further, a subsequent affidavit dated ten days after the first affidavit submitted by Mr. Muszynski states that "up to this point in time, Mr. Dweck has been the New York attorney to the Plaintiff Andreas Pfanner and has been the only attorney giving New York legal advice to the Plaintiff" (see, Affidavit of Marcin Muszynski, ¶11 [NYSCEF Doc. No. 46]). It is true that the first affidavit which states Mr. Muszynski is managing and supervising three lawsuits is vague and does not explain the nature of the management and supervision, nevertheless, there are surely implications that some form of law practice is involved even if not providing specific and actual advice to Mr. Pfanner. Thus, while the second affidavit may not contradict the first one, providing legal advice is not the test whether a non-registered attorney has practiced law in the state. The test is whether the non-registered attorney has practiced any law in the state. There are surely questions raised which compel the court to deny the request to admit Mr. Muszynski pro hac vice. Thus, the motion seeking reargument is denied.

So ordered.

ENTER:

DATED: June 18, 2024
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC