

**AT&T Mobility Holdings B.V. v Grupo Salinas
Telecom, S.A. DE C.V.**

2024 NY Slip Op 32801(U)

August 8, 2024

Supreme Court, New York County

Docket Number: Index No. 650330/2020

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
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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AT&T MOBILITY HOLDINGS B.V.,

Plaintiff,

- v -

GRUPO SALINAS TELECOM, S.A. DE C.V., GRUPO
SALINAS TELECOM II, S.A. DE C.V.,

Defendant.

INDEX NO. 650330/2020

MOTION DATE 07/12/2024

MOTION SEQ. NO. 015

DECISION + ORDER ON
MOTION

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 015) 751, 752, 753, 754, 757, 758, 759, 760, 761, 764

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

Paul, Weiss, Rifkind, Wharton & Garrison, LLP (PW) moves pursuant to CPLR 321(b)(2) and rule 1.16(c) of the Rules of Professional Conduct (22 NYCRR 1200.0) to be relieved as counsel for defendants Grupo Salina Telecome, S.A. DE C.V and Grupo Salina Telecome II, S.A. DE C.V. (Grupo) because (1) Grupo has terminated PW and consented to PW's withdrawal, and (2) Grupo has determined to pursue a course of action with which PW has a fundamental disagreement. (NYSCEF Doc. No [NYSCEF] 753, Jay Cohen aff ¶ 10; NYSCEF 752, Memo of Law at 1.) The motion is granted.

Since PW was terminated, it need not establish good and sufficient cause. "[A] client may, as a matter of public policy, discharge an attorney at any time, with or without cause . . . in the manner prescribed by statute." (Moustakas v Bouloukos, 112 AD2d 981, 983 [2d Dept 1985] [citations omitted].) Here, Grupo terminated PW to avoid payment of a \$20 million judgment.¹ There has been no breakdown in communication. Indeed, PW continues to represent Grupo in an action in the United States District Court for the Southern District of New York. (See BNY Mellon v TV Azteca, 1:22-cv-08164 [SD NY]; In re TV Azteca S.A.B. de C.V., 1:23-bk-10385 [SD NY] wherein PW represents thirty-five Grupo entities.) Further, PW is identified for the purpose of notification in the agreement at issue in this case and there has been no effort to modify that provision. (NYSCEF 293, JX-1 ¶ 9.5.) Grupo's intention in terminating PW to avoid AT&T's \$20 million judgment is clear from its actions. Grupo started to remove its

¹ A bench trial took place in September 2023 and the court rendered its decision on the bench. On December 27, 2023, the Court entered judgment in favor of AT&T Mobility Holdings B.V. (AT&T) and against Grupo in the amount of \$20,150,760.96. (NYSCEF 577, Judgment at 2.)

assets from the United States three days after the court's judgment.² Grupo has not provided required information. (Motion Seq. 012.) Now, Grupo terminates its counsel PW.³

Under these unusual circumstances, as discussed on the record on July 23, 2024, which is incorporated in this decision, and on consent, PW shall continue to receive service of documents in this case and forward such documents to Grupo. (See *Hendry v Hilton*, 283 AD 168 [2d Dept 1953] [construing the predecessor of CPLR 321(b) and holding that the withdrawing attorney shall be treated as the client's authorized agent until CPLR 321 is satisfied]; *Gabriel v The City of New York*, 2023 NY Slip Op 32968(U), *4 [Sup Ct, NY County 2023].) Consistent with the agreement, AT&T shall also serve all documents in this matter upon Grupo's General Counsel Francisco Borega by email.⁴

Grupo is a corporation and must be represented in this matter by an attorney. (CPLR 321.) The purpose of this rule is "to ensure that the corporation has a licensed representative who is answerable to the court and other parties for his or her own conduct in the matter." (*Jimenez ex rel. Disla v Brenillee Corp.*, 48 AD3d 351, 352 [1st Dept 2008] [internal quotation marks and citation omitted].) For strategic reasons – to avoid payment of a \$20 million judgment – Grupo has declared to this court that it chooses not to have an attorney in this matter. Failure to appoint corporate counsel is a default. (*Mail Boxes Etc. USA, Inc. v Higgins*, 281 AD2d 176 [1st Dept 2001] [corporation's failure to engage counsel is grounds for a default judgment], *appeal dismissed* 6 NY3d 841 [2006]; *World on Columbus, Inc. v L.C.K. Rest. Group, Inc.*, 260 AD2d 323, 324 [1st Dept 1999].) However, default is meaningless here; AT&T already holds a \$20 million judgment against Grupo and seeks to collect on the judgment. As stated, on September 22, 2023, three days after the judgment, Grupo began removing its assets from the United States. Grupo has also indicated its intention to abandon its action against AT&T. (*Grupo Salinas Telecom, S.A. de C.V. and Grupo Salinas Telecom II, S.A. de C.V. v. AT&T Mobility Holdings B.V. and New Cingular Wireless*

² On September 22, 2023, Grupo transferred shares of its affiliate, Grupo Elektra, worth \$10.25 million, from a US brokerage account to Banco Azteca, a Grupo affiliate based in Mexico. (NYSCEF 660, Grupo Sept. 2023 Vector Statement at 4/6; NYSCEF 656, R&Os to Information Subpoena at 17, 19 [Response Nos. 15(a), 16(a)].) On September 27, 2023, Grupo sent \$5.65 million from undisclosed bank accounts at Intercam Banco in Mexico to a Canadian entity called Security International Investments, Inc. (SII) which is allegedly affiliated with Grupo and its principal, Ricardo Salinas Pliego. (See NYSCEF 658, Deutsche Bank Resp. at 2 [3rd and 4th rows from bottom]; NYSCEF 659, Proceso Article at 5.) On October 16, 2023, Grupo liquidated \$10.12 million in SII shares, and delivered those funds to its wholly-owned subsidiary, Servicios TPlay S.A. de C.V. (NYSCEF 656, R&Os to Information Subpoenas at 21-22 [Response No. 16(d)].)

³ PW's written ex parte declaration adds nothing to this fact.

⁴ See NYSCEF 519, JX-25 at 16-17 (Mr. Borrego is the "senior-most attorney at Grupo Salinas," who "oversee[s]" litigation).

Services, Inc., Index No. 652411/2022.) Grupo's gamesmanship will not be countenanced by this court. (See *Jones v Camar Realty Corp.*, 167 AD2d 285, 287 [1st Dept 1990] [a New York Court has "the inherent power" "to protect its jurisdiction and judgments" (internal quotation marks and citation omitted)], *appeal dismissed* 77 NY2d 939 [1991], *cert denied sub nom. Hanft. Camar Realty Corp.*, 502 US 940 [1991].)

Accordingly, it is

ORDERED that the motion is granted upon filing of proof of compliance with the following conditions:

ORDERED that PW is directed to serve a copy of this order with notice of entry upon the former clients at their last known addresses by OVERNIGHT INTERNATIONAL MAIL and by email, all service to be made by August 12, 2024, and by posting to the New York State Courts Electronic Filing System (NYSCEF); and it is further

ORDERED that together with the copy of this order with notice of entry served upon the former clients, PW shall forward a notice directing the former clients to appoint a substitute attorney. As stated, defendants must appear by counsel. (CPLR 321; *Park v Song*, 61 Misc 3d 1047, 1050 [Sup Ct, NY County 2018]) and failure to do so may constitute a default; and it is further

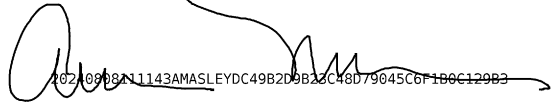
ORDERED that any new attorney retained by defendants shall file a notice of appearance with the Clerk of the General Clerk's Office and the Part 48 Clerk; and it is further

ORDERED that the filing of a notice of appearance with the Clerk of the General Clerk's Office, 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 at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that there is no stay of this action; and it is further

ORDERED that the issue of the reasonable value of legal services rendered and disbursements paid by PW will be severed and referred to the Special Referee Clerk for assignment to a Special Referee to hear and report if PW or defendants informs the court of their request for such a referral within 10 days of the date of this order. Otherwise, such a referral is waived; and it is further

ORDERED that PW shall continue to receive service of documents in this case and forward such documents to the former client.



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8/8/2024

DATE

ANDREA MASLEY, J.S.C.

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