

**BT Supplies W., Inc. v Brookline, LLC**

2025 NY Slip Op 30730(U)

February 28, 2025

Supreme Court, New York County

Docket Number: Index No. 651364/2023

Judge: Margaret A. Chan

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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**

<b>PRESENT:</b>	<u>HON. MARGARET A. CHAN</u>	<b>PART</b>	<b>49M</b>
	<i>Justice</i>		
-----X			
BT SUPPLIES WEST, INC.,		INDEX NO.	651364/2023 (Action # 1), 654626/2023 (Action # 2)
Plaintiff,		MOTION DATE	N/A
- v -			
BROOKLINE, LLC D/B/A LILOGY,		MOTION SEQ. NO.	006 (Action #1), 002 (Action # 2)
Defendant.			

-----X

BROOKLINE, LLC D/B/A LILOGY,	<b>DECISION + ORDER ON MOTION</b>
Petitioner,	
- v -	
BT SUPPLIES WEST, INC.,	
Respondent.	

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 006) 111, 112, 113 were read on this motion to/for SUBST/RELIEVE/WITHDRAW COUNSEL.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 23, 24, 27, 30 were read on this motion to/for SUBST/RELIEVE/WITHDRAW COUNSEL.

Schlam Stone & Dolan LLP (Withdrawing Counsel), counsel for BT Supplies West, Inc. – plaintiff (in Action #1) and respondent (in Action #2), moves, by order to show cause (OSC), for an order pursuant to CPLR 321(b)(2) granting it leave to withdraw as counsel in both Action #1 and Action # 2.

To support both of its motions, Withdrawing Counsel offers the affirmation of Jeffrey M. Eilender (NYSCEF # 112 [Action # 1]; NYSCEF # 24 [Action # 2] – Eilender aff). Counselor Eilender affirms that BT Supplies West, Inc. (BT Supplies) has failed to pay any of the duly-billed fees and costs invoiced by Withdrawing Counsel despite repeated requests for repayment (Eilender aff ¶¶ 4, 6). Specifically, Counselor Eilender attests that BT Supplies has refused to pay Withdrawing Counsel for nearly \$70,000 of work that has been performed in connection with both Action #1 and Action # 2 (*id.* ¶ 4).

In making its motion, Counselor Eilender requests that both Action # 1 and Action # 2 be stayed for a period of 30-days (Eilender aff ¶ 7). With regard to Action # 1, Counselor Eilender asserts that a 30-day stay is necessary to give BT Supplies time to obtain new counsel and avoid any prejudice in light of this court's recent directive that the parties submit a proposed preliminary conference order by March 3, 2025, and appear for a virtual status conference on April 16, 2025 (Eilender aff ¶ 7 [Action # 1]; NYSCEF # 109 at 1-2). As for Action # 2, Counselor Eilender affirms that a stay is needed because it is anticipated that Lilogy will seek to enter judgment pursuant to this court's February 11, 2025 ruling granting Lilogy's motion to confirm its arbitration award (Eilender aff ¶ 7 [Action # 2]).

No opposition was filed by any party in response to the OSC filed in Action # 1. But in Action # 2, petitioner Brookline, LLC d/b/a Lilogy (Lilogy) filed an opposition (NYSCEF # 30 [Action # 2] – Levenson aff). In opposing, Lilogy makes clear that it does not oppose Withdrawing Counsel's request to withdraw as counsel for BT Supplies (Levenson aff ¶ 2). Lilogy, however, opposes any stay of proceedings, arguing that it would be prejudiced by such a stay because the petition to confirm the Final Arbitration Award has already been granted and judgment has been submitted for entry (*id.* ¶ 4). Lilogy further explains that, because the sole basis for Withdrawing Counsel's motion is that BT Supplies has failed to pay its legal fees, the court has the discretion to permit this matter to proceed without a stay (*id.* ¶ 5). Lilogy also notes that BT Supplies' motion came only after the court confirmed the Final Arbitration Award in Lilogy's favor (*id.*). Thus, a stay in Action # 2 would essentially function as a month-long stay of execution of the judgment without BT Supplies having to establish its entitlement for such relief (*id.* ¶ 6).

On February 27, 2025, the court held a video conference with the parties on the withdrawal OSC. During the video conference, Withdrawing Counsel confirmed that BT Supplies was served with and notified of the OSC and the OSC appearance, and that it has not communicated any opposition to the motion. Counsel for Lilogy also re-confirmed that it did not oppose Withdrawing Counsel's motion in Action # 1 and only opposed the motion in Action # 2 insofar as it seeks a stay.

In view of the above, the court finds sufficient grounds for Withdrawing Counsel to withdraw. Withdrawing Counsel has adequately shown that its client failed to pay attorney's fees for work performed (*Applebaum v Einstein*, 163 AD3d 905, 907 [1st Dept 2018] [“[a]n attorney may be permitted to withdraw from employment where a client refuses to pay reasonable legal fees”] [internal quotation marks omitted]). Furthermore, because Action # 1 is at an early stage and Action # 2 is essentially disposed, granting withdrawal will not create prejudice to either BT Supplies or Lilogy (*see generally Holmes v Y.J.A. Realty Corp.*, 128 AD2d 482, 483-484 [1st Dept 1987] [parties not “visibly prejudiced” by any delay because no not of issue had been filed]). Therefore, the motion for withdrawal is granted in both Action # 1 and Action # 2.

Turning to Withdrawing Counsel's request for a stay of both Action # 1 and Action # 2, the court has differing opinions. Regarding Action # 1, the court concludes that a stay of 30 days is appropriate and provides sufficient time for BT Supplies to retain new counsel who can, in turn, litigate this case on BT Supplies' behalf as the matter moves into discovery (*see Dragons 516 Ltd. v Knights Genesis Investment Ltd.*, 75 Misc 3d 1233[A], at \*3 [Sup Ct, NY County, Aug. 10, 2022] [observing that "the court has the discretion to impose a stay on proceedings"]). The court, however, declines to enter a stay in Action # 2. As Lilogy persuasively noted, Action # 2 has already been effectively disposed and all that remains is to enter judgment in its favor on the confirmed Final Arbitration Award. A stay in Action #2—which is only being sought after the court has rendered its final decision on Lilogy's petition and solely as a result of BT Supplies' apparent failure to pay its legal fees—would be tantamount to an inappropriate stay of enforcement of judgment that prejudices Lilogy's rights. Given these circumstances, the court sees no basis to exercise its discretion to stay proceedings (*see Sarlo-Pinzur v Pinzur*, 59 AD3d 607, 608 [2d Dept 2009] ["Where, however, the attorney's withdrawal is caused by a voluntary act of the client, the court has the discretion to permit the matter to proceed without such a stay"]).

Accordingly, it is hereby

ORDERED that the motion by Schlam Stone & Dolan LLP to withdraw as counsel for BT Supplies West, Inc., as plaintiff in Action # 1 under Index No. 651364/2023 and as respondent in Action # 2 under Index No. 654626/2023, is granted; and it is further

ORDERED that, within ten (10) days from entry of this order, Schlam Stone & Dolan LLP shall serve a copy of this order with notice of entry (i) upon BT Supplies West, Inc., as plaintiff in Action # 1 and as respondent in Action # 2, by email and certified mail, return receipt requested, and (ii) upon the attorneys for all other parties appearing herein by email, Federal Express, overnight priority delivery, and e-filing on NYSCEF; and it is further

ORDERED that, together with the copy of this order with notice of entry served upon BT Supplies West, Inc., as plaintiff in Action # 1 and as respondent in Action # 2, Schlam Stone & Dolan LLP shall forward a notice directing that BT Supplies West, Inc. has thirty (30) days from the date of the mailing of the notice to substitute attorney; and it is further

ORDERED that all proceedings in Action # 1 are stayed for a period of thirty (30) days after service on plaintiff of the aforesaid notice to appoint a substitute attorney; and it is further

ORDERED that any new attorney retained by BT Supplies West, Inc. shall file a notice of appearance with the Clerk of the Court; and it is further

ORDERED that the departing attorney shall, within ten (10) days from entry, serve a copy of this order with notice of entry on the Clerk of the Court; and it is further

ORDERED that service upon the Clerk of the Court, the filing of a notice of appearance as provided herein, and the filing of papers as required under this order 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](http://www.nycourts.gov/supctmanh)).

2/28/2025  
DATE

  
MARGARET A. CHAN, 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"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	