Bravia Capital H.K. v. Hna Group Co.

Supreme Court of New York, New York County

October 24, 2022, Decided

Index No. 652320/2021

Reporter
2022 N.Y. Misc. LEXIS 6172 *; 2022 NY Slip Op 51039(U) **

[1]** Bravia Capital Hong Kong Limited, Plaintiff, against HNA Group Co., Limited, HNA GROUP NORTH AMERICA LLC, Defendant.

Notice: THIS OPINION IS UNCORRECTED AND WILL NOT BE PUBLISHED IN THE PRINTED OFFICIAL REPORTS.

Prior History: *Bravia Capital Hong Kong Ltd. v. HNA Grp. Co., 2021 N.Y. Misc. LEXIS 6499 (N.Y. Sup. Ct., Dec. 14, 2021)*

Core Terms

withdraw, sealing, notice, affirmation, further order, cooperate, good cause, proceedings, former client, appearance, discovery, documents, Sequence

Judges: **[*1]** ***ROBERT*** R. ***REED***, J.S.C.

Opinion by: ROBERT R. REED

Opinion

Robert R. Reed, J.

The following e-filed documents, listed by NYSCEF document number (Motion 014) 181, 182, 183, 184, 189, 193, 194 were read on this motion to SEAL.

The following e-filed documents, listed by NYSCEF document number (Motion 015) 185, 186, 187, 188, 190, 195, 196 were read on this motion for ATTORNEY - DISQUALIFY/RELIEVE/SUBSTITUTE/WITHDRAW.

Motion sequences 014 and 015 are consolidated herein for disposition.

In this commercial action for monetary damages arising out of a payment and indemnity agreement, King & Wood Mallesons LLP, Vincent Filardo Jr., Esq., and Aaron Wolfson, Esq. ("KWM"), counsel for HNA Group Co., Limited and HNA Group North America LLC ("defendants"), move by order to show cause pursuant to *CPLR §321(b)(2)*, for an order granting leave to withdraw as counsel (motion seq. no. 015).

In motion sequence 014, KWM moves, by order to show cause pursuant to *22 NYCRR 216.1*, to permanently seal portions of KWM's application to withdraw as counsel to defendants.

Motion Sequence 015 - KWM's Motion to Withdraw

Aaron T. Wolfson Esq., an attorney with King & Wood Mallesons LLP, submits an affirmation dated August 26, 2022. Counselor Wolfson affirms, under penalty **[*2]** of perjury, that KWM seeks to withdraw as counsel for defendants because defendants, "failed to cooperate with counsel and have made it unreasonably difficult for counsel to effectively carry out their representation" (NYSCEF doc. no. 184 para 6). Counsel affirms that KWM advised defendants of their obligation to comply with discovery demands, but despite several assurances from defendants, did not receive documents and information needed to comply with discovery obligations. Counsel Wolfson warned defendants that "KWM may be forced to withdraw from representing HNA group because neither KWM nor counsel can countenance a willful violation of the court's discovery orders" (NYSCEF doc. no. 184, para 13), but claims defendants have not responded to counsel's emails or phone calls (NYSCEF doc. no. 184, para 19). Counselor **[**2]** Wolfson further affirms that defendants have "refused to agree to a reasonable payment schedule" and have "failed to pay KWM's fees in connection with this action" (NYSCEF doc. no. 184, para 19).

KWM requests that this court stay all proceedings in this action pending adjudication of this motion and, upon granting permission for the firm to withdraw, staying all proceedings **[*3]** in this action for a period of no less than thirty days so that the defendants can retain new counsel.

In opposition, Peter N. Wang, Esq., an attorney with Foley & Lardner LLP, counsel for plaintiff Bravia Capital Hong Kong Limited ("Bravia"), refutes the argument that KWM is withdrawing from its representation for good cause (NYSCEF doc. no. 195, para 2). Counselor Wang contends that KWM's withdrawal is merely a delay tactic. Counselor Wang argues that a stay of this action is not warranted and will be unduly prejudicial to Bravia because it would reward defendants for their refusal to cooperate with their attorneys engage in court-ordered discovery (NYSCEF doc. no. 195, para 47).

CPLR 321 (b) (2) provides that:

> "[a]n attorney of record may withdraw or be changed by order of the court in which the action is pending, upon motion on such notice to the client of the withdrawing attorney, to the attorneys of all other parties in the action or, if a party appears without an attorney, to the party, and to any other person, as the court may direct."

If an attorney deems it necessary to end the attorney-client relationship without the consent of the client, the attorney may move on such notice as may be directed **[*4]** by the court, to be relieved as counsel by court order (*Farage v Ehrenberg, 124 AD3d 159, 996 N.Y.S.2d 646 [2nd Dept 2014]*). The attorney must submit evidence of an irretrievable breakdown in the relationship or a failure of cooperation by the client (*id.*). "The decision to grant or deny permission for counsel to withdraw lies within the discretion of the trial court, and the court's decision should not be overturned absent a showing of an improvident exercise of discretion" (*Applebaum v Einstein, 163 AD3d 905, 907, 81 N.Y.S.3d 525 [2nd Dept 2018]*).

Here, KWM submitted sufficient evidence, by way of attorney affirmation, of a breakdown in the attorney-client relationship. KWM affirms that defendants refuse to pay legal fees and consent to a fee arrangement, have failed to comply with KWM's reasonable requests for defendants' cooperation with discovery, and affirms that defendants have ceased communication with them (NYSCEF doc. no. 184, paras. 6-19). A party's failure to communicate with its attorney, refusal to pay legal fees, and lack of overall general cooperation with its attorney, are sufficient grounds to grant leave to withdraw (*Applebaum v Einstein, 163 AD3d 905, 907, 81 N.Y.S.3d 525 [1st Dept 2018]*[finding the court improvidently exercised its discretion in denying leave to withdraw when the plaintiff was in substantial arrears in payment of fees, failed to cooperate with his legal **[*5]** representation and failed to oppose the motion]; *Weiss v Spitzer, 46 AD3d 675, 848 N.Y.S.2d 237 [2nd Dept 2007]*[an attorney may be permitted to withdraw from employment where a client refuses to pay reasonable legal fees]; *Klagsbrun v Klagsbrun, 192 AD2d 306, 595 N.Y.S.2d 456 [1st Dept1993]*[defendant's insistence that his attorneys pursue unjustified and unethical claims causes a breakdown in the attorney-client relationship sufficient to warrant withdrawal]; *Sansiviero v Sanders, 117 AD2d 794, 499 N.Y.S.2d 431 [2nd Dept 1986]*[attorney should be allowed to withdraw from representing client where attorney and client differed irreconcilably on proper course to be pursued in litigation]; *Aragona v Shaibani, 138 AD3d 649, 650, 29 N.Y.S.3d 68 [2nd Dept 2016]*[an attorney **[**3]** may withdraw from representing a client if the client 'fails to cooperate in the representation or otherwise renders the representation unreasonably difficult for the lawyer to carry out employment effectively']).

According, KSW's motion to withdraw is granted.

Motion Sequence 014 — KSM's Motion to Seal

In motion sequence 014, KWM requests that this court issue an order permanently sealing its affirmation and memorandum of law in support of withdrawal.

Under New York law, there is a presumption that the public is entitled to access to judicial proceedings and court records (*Mancheski v Gabelli Group Capital Partners, 39 AD3d 499, 501, 835 N.Y.S.2d 595 [2d Dept 2007]*). The public's right to access, however, is not absolute, and a court is empowered to seal or redact court records **[*6]** pursuant to section 216.1 (a) of the Uniform Rules for Trial Courts upon a showing of "good cause" (*Danco Labs v Chemical Works of Gedeon Richter, 274 AD2d 1, 8 [1st Dept 2000]*).

Section 216.1(a) of the Uniform Rules for Trial Courts provides:

> "(a) [e]xcept where otherwise provided by statute or rule, a court shall not enter an order in any action or proceeding sealing the court records, whether in whole or in part, except upon a written finding of good cause, which shall specify the grounds thereof. In determining whether good cause has been shown, the court shall consider the interests of the public as well as the parties. Where it appears necessary or desirable, the court may prescribe appropriate notice and an opportunity to be heard."

A finding of good cause "boils down to ... the prudent exercise of the court's discretion" (*Applehead Pictures LLC v Perelman, 80 AD3d 181, 913 N.Y.S.2d 165 [1st Dept 2010]* *citing,* *Mancheski v. Gabelli Group Capital Partners, 39 AD3d 499, 502, 835 N.Y.S.2d 595 [2007]*).

In the commercial context, sealing has been found to be appropriate to preserve the confidentiality of materials which involve internal finances of a party. Courts also permit records to be sealed when trade secrets are involved or when disclosure of information contained in documents "could threaten a business's competitive advantage" (*Mosallem v Berenson, 76 AD3d 345, 350-351, 905 N.Y.S.2d 575 [1st Dept 2010]*).

However, the presumption of the benefit of public access to court proceedings take precedence and the sealing of court papers is permitted only to serve compelling objectives (*Applehead, 80 AD3d at 191-92*). The court is required **[*7]** to make its own inquiry to determine whether sealing is warranted, and the court will not approve wholesale sealing of motion papers, even when both sides to the litigation approve of it (*id., citing,* *Matter of Hofmann, 284 AD2d 92, 93, 727 N.Y.S.2d 84 [1st Dept 2001]*[confidentiality is clearly the exception, not the rule, and the court is always required to make an independent determination of good cause]).

Here, the court is not persuaded that the KWM's memorandum of law (NYSCEF doc. no. 183) or its affirmation in support (NYSCEF doc. no. 184) require sealing. KWM did not identify any trade secrets or confidential proprietary information that implicated defendants' privacy interests. The affirmation and memorandum of law merely recites defendants' conduct and provides insight to this court on the grounds for which KWM seeks to withdraw. The documents do not disclose any information that could threaten defendants' business or destroy its competitive advantage (*Mosallem 76 AD3d 350-351*). In keeping with the general rule that courts should "limit the public nature of judicial proceedings sparingly, and then, only when unusual circumstances necessitate it" (*id.*), KWM's request for an order permanently sealing **[**4]** KWM's application to withdraw, is denied.

Accordingly, it is hereby **[*8]**

ORDERED that KWM's order to show cause to permanently seal its application to withdraw (motion seq. no. 014) is denied; and it is further

ORDERED that the motion of King & Wood Mallesons LLP, Aaron T. Wolfson, Esq., and Vincent Filardo, Jr., Esq., to be relieved as counsel for defendants HNA Group Co. Limited and HNA Group North America LLC (motion seq. no. 015), is granted upon filing of proof of compliance with the following conditions; and it is further

ORDERED that, within 10 days from entry, said attorneys shall serve a copy of this order with notice of entry upon its former clients at their last known addresses by certified mail, return receipt requested, and upon the attorneys for all other parties appearing herein by e-filing on 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 clients, moving counsel shall forward a notice directing the former clients to appoint a substitute attorney within 30 days from the date of the mailing of the notice and the clients shall comply therewith; and it is further

ORDERED that any new attorney retained by defendants shall file a notice **[*9]** of appearance with the Clerk of the General Clerk's Office (60 Centre Street, Room 119) 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 no further proceedings may be taken against the former clients without leave of this court for a period of 40 days after service on the former client of the aforesaid notice to appoint a substitute attorney; and it is further

ORDERED that the departing attorneys 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 (Room 119); 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 at the address www.nycourts.gov/supctmanh)]; and it is further

ORDERED that the virtual status conference previously scheduled for October 25, 2022, at 10:00am, is hereby adjourned to Tuesday December **[*10]** 6, 2022, at 12 noon.

This constitutes the decision and order of this court.

DATE 10/24/2022

ROBERT R. REED, J.S.C.

End of Document