

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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NAVAID ALAM, COBHAM CAPITAL, LLC, :
WESTERN FINANCIAL INVESTMENTS L.P., :
and LALANI HOLDINGS, LLC, each entity :
individually and derivatively on behalf of :
LOUISIANA PORT HOLDINGS LLC, :

Plaintiff(s), :

Vs. :

KABIR AHMAD, IFG GENERAL PARTNER :
LTD., KABIR CAPITAL LLC, IFG FUND, :
L.P., LOUISIANA PORT HOLDINGS LLC, :
Individually and as a nominal defendant, IFG :
PORT HOLDINGS, LLC., and TRADIVERSE :
CORPORATION, :

Defendant(s). :

Index No. 653651/2018
(NYSCEF case)

(Ostrager, J.)
IAS Part 61

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IFG GENERAL PARTNER LTD., IFG FUND, :
L.P., KABIR CAPITAL, LLC, and KABIR :
AHMAD, :

Third-Party Plaintiffs, :

Vs. :

ABDUL SULTAN LALANI, ABDUL :
SULTAN LALANI AND TALAT LALANI :
FAMILY TRUST, and LALANI :
CHILDREN'S TRUST :

Third-Party Defendants. :

Third Party Index No.:

**MEMORANDUM OF LAW IN OPPOSITION TO MOTION FOR
ADMISSION PRO HAC VICE OF JOHN M. PIERCE**

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Defendants respectfully submit this Memorandum of Law in opposition to the motion for admission *pro hac vice* of John M. Pierce (NYSCEF Doc. No. 374; the “Motion” or “Mot.”).¹

INTRODUCTION

Defendants are conscious that opposing a motion for an attorney to appear *pro hac vice* in a discrete action should only be done under extraordinary circumstances. However, Defendants have serious concerns about the circumstances surrounding the motion for John M. Pierce to appear *pro hac vice* in this matter and Mr. Pierce’s ability to abide by New York’s ethical rules. Defendants’ concerns center around the manner in which Mr. Pierce has operated his law firm, Pierce Bainbridge Beck Price & Hecht LLP (“Pierce Bainbridge”), that has led to multiple lawsuits and numerous liens filed against the assets of the firm including, on information and belief, any recovery received from the instant action.

These liens and actions provide Mr. Pierce with an economic motivation that may be not only contrary to his clients’ interests, but may also cause Mr. Pierce to take positions in this action that could unnecessarily prolong and complicate the case as he seeks a recovery to help defend his own lawsuits and to repay his personal debts and that of his firm. In fact, Mr. Pierce’s own former partner has publicly alleged that Mr. Pierce intentionally inflated the value of his cases to these lenders in order to secure their loans. It is clear that the present case is likely one of those subject to Mr. Pierce’s misrepresentations because Pierce Bainbridge itself argued that the mere possibility that Defendants’ counsel could gain any information concerning said valuation from Mr. Pierce’s

¹ The Notice of Motion seeking *pro hac vice* admission of John M. Pierce was filed on May 22, 2020 with a June 8, 2020 return date. (*See Mot.*) Shortly after filing, it appeared that the Motion was administratively rejected. Defendants monitored the status of the motion and when it appeared that the rejection was remedied, and a Motion Sequence Number assigned, Defendants filed this opposition on the same day.

former partner was sufficient to justify disqualifying that counsel, an issue that the Court itself noted was one of first impression.

For the reasons provided below, Defendants respectfully must oppose Plaintiff's motion for Mr. Pierce's admission *pro hac vice*.

PROCEDURAL BACKGROUND

Plaintiffs filed the original complaint in this action on July 20, 2018, with the representation of Pierce Bainbridge. (See NYSCEF Doc. No. 1.) Plaintiffs moved to disqualify Defendants' counsel, Law Office of Neal Brickman, P.C., on January 2, 2020, a motion that the Court granted, citing, in part, New York Rules of Professional Conduct and the court's discretion in reviewing a motion for disqualification. (NYSCEF Doc. No. 344 at 4-5.) On May 4, 2020, four Pierce Bainbridge attorneys who had appeared for Plaintiffs in this action filed motions to withdraw as counsel. (See NYSCEF Doc. Nos. 345 (motion of David L. Hecht to withdraw as counsel); 348 (motion of Michael Eggenberger to withdraw as counsel); 351 (motion of Michael Pomerantz to withdraw as counsel); 355 (motion of Andrew Wolinsky to withdraw as counsel).) Thereafter, on May 22, 2020, Mr. Pierce moved for admission to this Court *pro hac vice* pursuant to 22 N.Y.C.R.R. §§ 520.11 and 602.2 to appear and participate in this action on behalf of Plaintiffs and Counterclaim-Defendants Navaid Alam, Cobham Capital, LLC, Western Financial Investments L.P., and Lalani Holdings, LLC. (See NYSCEF Doc. No. 376, the "Pierce Affidavit" or "Pierce Aff.")

LEGAL STANDARD

Pursuant to New York Rules of Practice, "[a]n attorney and counselor at law . . . from another state . . . may be admitted *pro hac vice* to participate in the trial or argument of a particular cause in which the attorney may be employed, upon application to and in the discretion of the court

in which the cause is pending.” 22 N.Y.C.R.R. § 602.2(a); *see also* 22 N.Y.C.R.R. § 520.11(a). To be admitted to practice *pro hac vice*, an attorney is required to “be familiar with and . . . comply with the standards of professional conduct imposed upon members of the New York bar, including the rules of court governing the conduct of attorneys and the Rules of Professional Conduct.” 22 N.Y.C.R.R. § 520.11(e). “The purpose of [the] prohibition against the practice of law by one who is not a duly licensed New York attorney is to protect citizens against the dangers of legal representation and advice given by those not trained, examined and licensed for such work.” 18 *Int’l Ltd. v Interstate Exp., Inc.*, 116 Misc 2d 66, 67 (Sup Ct, NY County 1982) (citing *Jemzura v McCue*, 45 AD2d 797 (3d Dep’t 1974); *Spivak v Sachs*, 16 NY2d 163 (1965)). By compelling foreign attorneys to move for *pro hac vice* admission, the Court may “ensure that attorneys admitted in New York and practicing law there will practice ethically.” *Id.*

The Supreme Court has discretion to review and approve or deny a motion for a foreign attorney’s admission *pro hac vice*. *Neal v Ecolab Inc.*, 252 AD2d 716, 716 (1998) (“[W]hether an out-of-State attorney should be admitted *pro hac vice* to participate in a particular matter is a determination best left to Supreme Court’s discretion[.]”) “While *pro hac vice* admission furthers this State’s policy favoring representation by counsel of one’s own choosing, that policy must be balanced against the interest in promoting judicial efficiency and a trial court’s considerable authority to control its courtroom and calendar.” *Id.* (internal quotation marks and citations omitted).

DISCUSSION

Defendants, having become aware of numerous legal actions taken against the law firm of Pierce Bainbridge and Mr. Pierce individually, are compelled to oppose Mr. Pierce’s motion for admission *pro hac vice* in this matter in light of various, and serious, ethical concerns. In his

affidavit in support of the Motion, Mr. Pierce attests that “I am a member in good standing of all the jurisdictions in which I am admitted to practice” and “I have never been disciplined by any court, and no disciplinary proceedings are pending against me.” (Pierce Aff. ¶ 2.) While Defendants do not have sufficient knowledge to contest the veracity of these statements, Defendants have come to learn of various professional and legal actions being taken against Mr. Pierce personally that speak to a practice and pattern of at best questionable and at worst unethical conduct.²

In March 2020, Mr. Pierce’s own firm, Pierce Bainbridge, announced that Mr. Pierce had been placed on an indefinite leave of absence after an internal investigation showed he accepted money from a lender for personal use, guaranteed with certain assets of the firm. (Affirmation of Jeffrey W. Gutchess in Support of Opposition to John M. Pierce’s Motion for Pro Hac Vice Admission (“Gutchess Aff.”), Ex. A.)³ Public records reflect that Karish Kapital LLC, which describes itself on social media as providing “fast” cash advances for small and midsize businesses (*see* Gutchess Aff., Ex. B), filed a lien in New York Supreme Court on the assets of the Pierce Bainbridge firm, Mr. Pierce individually, and an entity identified as John M Pierce Enterprises LLC. Indeed, on May 27, 2020, Mr. Pierce filed an affidavit of confession of judgment in Manhattan Supreme Court in which Mr. Pierce confirmed that he and Pierce Bainbridge owed Karish Kapital for all future receivables, which the lender had purchased on February 19, 2020. (Gutchess Aff., Ex. C.) According to the confession of judgment, the value of the receivables is

² Defendants note that a search for Mr. Pierce in the New York State Unified Court System’s Attorney Search directory reveals that John Mark Pierce, was admitted in New York in 2007 (Registration No. 4530549) but notes that his registration status as “Resigned.” *See* Attorney Search, New York State Unified Court System (accessed May 28, 2020), <http://iapps.courts.state.ny.us/attorney/AttorneySearch>.

³ In rejecting the statement issued by a spokesperson of his own firm, Mr. Pierce reportedly stated that his leave was to “seek treatment for substance abuse and other addictive behavior.” (Gutchess Aff., Ex. F.)

\$3.75 million. (*Id.* ¶ 4.) On information and belief, the future receivables securing this confessed unpaid debt appear to include hourly fees and the possibility of a contingency fee arising from the firm's representation of Plaintiffs and Third-Party Defendants in the current action.

Similarly, at least three lawsuits have been filed against Mr. Pierce and Pierce Bainbridge by litigation funders alleging breach of contract stemming from failure to pay contractually agreed upon future receivables of the firm. In a complaint filed on March 12, 2020 in Erie County, West Coast Business Capital, LLC alleged that Pierce Bainbridge and Mr. Pierce, as personal guarantor of the transaction, breached an agreement to pay 25 percent of the firm's daily receivables in exchange for a \$260,000 up front payment by West Coast Business Capital. *See West Coast Business Capital, LLC v Pierce Bainbridge Beck Price & Hecht LLP*, Index No. 803696/2020 (N.Y.S. Erie Cty. Mar. 12, 2020) at NYSCEF Doc. No. 1, ¶¶ 10-16, 23. Mr. Pierce, according to the complaint, is "personally liable for any losses suffered" by the litigation funder as a result of the firm's breach of their contract. *Id.* at ¶ 40. Similarly, on March 17, 2020, Slate Advance LLC filed suit against Mr. Pierce and Pierce Bainbridge in Nassau County, alleging that defendants had breached their agreement to pay \$749,500 in future receivables for an up-front payment of \$500,000. *See Slate Advance LLC v Pierce Bainbridge Beck Price & Hecht L.L.P.*, Index No. 604227/2020 (N.Y.S. Nassau Cty. Mar. 17, 2020) at NYSCEF Doc. No. 1, ¶ 7. As in *West Coast Business Capital*, Mr. Pierce had also personally guaranteed performance of the Slate Advance contract, an agreement that he allegedly breached. *Id.* at ¶¶ 18-19.

A similar suit was filed by Creative Capital Funding LLC in Texas state court on April 24, 2020, alleging damages totalling almost \$225,000 for breach of a funding agreement entered by Mr. Pierce and his firm. (*See Gutchess Aff., Ex. D.*) Recently, one of Pierce Bainbridge's litigation funders, Virage Capital Management, moved to intervene in this action, alleging that as

provided in its loan agreement with the law firm, “Pierce Bainbridge’s debt obligations to Virage would be secured by valid, perfected, and enforceable liens on all right, title, and interest held by Pierce Bainbridge in the proceeds from all of its legal matters.” (Gutchess Aff., Ex. E ¶ 3.) Sources cited in Law360 estimate that Pierce Bainbridge is in debt to Virage Capital Management for approximately \$65 million. (Gutchess Aff., Ex. F.) Moreover, two attorneys who have worked with Mr. Pierce have publicly alleged that Mr. Pierce has overvalued the firm’s litigations to funders.⁴

Given the loan defaults faced by Mr. Pierce and Pierce Bainbridge and allegations of double-pledging the firm’s assets including, on information and belief, any proceeds the firm would earn from their representation of Plaintiffs and Third-Party Defendants in this matter, Defendants fear that Mr. Pierce and Pierce Bainbridge are faced with an irreconcilable ethical conflict that challenges their ability to represent their clients with professional independence. The New York Rules of Professional Conduct speak to when an attorney might be impermissibly conflicted to represent a client. According to Rule 1.7, “a lawyer shall not represent a client if a reasonable lawyer would conclude that . . . there is a significant risk that the lawyer’s professional judgment on behalf of a client will be adversely affected by the lawyer’s own financial, business, property or other personal interests.” N.Y. R. Prof. Conduct 1.7(a)(2). Rule 5.4(a) further

⁴ The allegations in a suit by one of Mr. Pierce’s former partners, specifically that “Pierce Bainbridge inflated case valuations to obtain financing that the firm otherwise would not qualify for,” formed part of the basis for Plaintiffs’ motion to disqualify Defendants’ counsel Law Offices of Neal Brickman, P.C. (See NYSCEF Doc. No. 309 at 5.) Similarly, a lawsuit filed by a former co-counsel of Mr. Pierce and his firm alleges that the firm has misrepresented to litigation funders the value of at least one of its litigations. See *Law Offices of Bruce J. Chasan, LLC v Pierce Bainbridge Beck Price & Hecht, LLP*, No. 2:20-cv-01338 (E.D. Pa.) (alleging that Mr. Pierce, in valuing a litigation at approximately \$1 billion, “grossly exaggerated the merit and value” of the litigation to a litigation funder which was allegedly worth less than \$1 million). Defendants have alleged that Pierce Bainbridge and the litigation funders have caused Plaintiffs to inflate the value of the current action. (See Third-Party Complaint, NYSCEF No. 332 at ¶ 5.)

admonishes that “[a] lawyer or law firm shall not share legal fees with a nonlawyer” except in situations not relevant here. N.Y. R. Prof. Conduct 5.4(a).⁵

Mr. Pierce’s personal financial entanglements and the multiple lawsuits he is defending against various lenders point directly to a conflict of interest that Defendants fear would impact Mr. Pierce’s representation in this matter. Mr. Pierce’s own “financial, business, [and] property . . . interests,” including liens filed on the firm’s cases by non-attorney litigation funders and a personal confession of judgement signed by Mr. Pierce, would impermissibly conflict with his duties as an attorney admitted to practice in New York. *See* N.Y.R. Prof. Conduct 1.7(a)(2). Therefore, Defendants respectfully request that the Court exercise its discretion over the *pro hac vice* admission of foreign attorneys, to “ensure that attorneys admitted in New York and practicing law [here] will practice ethically,” *18 Int’l Ltd.*, 116 Misc 2d at 67, and deny Mr. Pierce’s Motion.⁶

⁵ On July 30, 2018, the New York City Bar Association’s Professional Ethics Committee issued advisory Opinion 2018-5, which concluded that nonrecourse commercial litigation funding agreements between a lawyer or law firm and a litigation funder violate Rule 5.4(a)’s prohibition on sharing fees with nonlawyers. *See* The Association of the Bar of the City of New York Committee on Professional Ethics, *Formal Opinion 2018-5: Litigation Funders’ Contingent Interest in Legal Fees* (July 30, 2018), https://s3.amazonaws.com/documents.nycbar.org/files/2018416-Litigation_Funding.pdf.

⁶ Attorneys from the recently-established law firm of Warren Terzian LLP have provided notice that they intend to move for *pro hac vice* admission to also represent Plaintiffs in this matter. (*See* NYSCEF Doc. No. 378 (indicating Warren Terzian LLP as counsel for Plaintiffs and Third-Party Defendants, with “*pro hac vice* forthcoming”).) The partnership of Warren Terzian is comprised entirely of attorneys who recently departed Piece Bainbridge (*see* Lawyers, Warren Terzian LLP, <https://www.warrenterzian.com/lawyers> (accessed June 3, 2020)). In light of the liens filed against the assets of Pierce Bainbridge by the litigation funders noted above, and because this case, on information and belief, is one of the assets subject to those liens, Defendants have similar concerns about the ability of Warren Terzian LLP to discharge their obligations as attorneys in an ethical and professionally independent manner. *See* N.Y. R. Prof. Conduct 5.4(a).

CONCLUSION

For the reasons detailed above, Defendants respectfully oppose John M. Pierce's motion for admission *pro hac vice*.

Dated: New York, New York
June 3, 2020

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ATTORNEY CERTIFICATION PURSUANT TO COMMERCIAL DIVISION RULES 17

I, Jeffrey W. Gutchess, an attorney duly admitted to practice law before the courts of the State of New York, hereby certify that this Memorandum of Law in Opposition to Motion for Admission Pro Hac Vice of John M. Pierce complies with the word count limit set forth in Rule 17 of the Commercial Division of the Supreme Court, 22 NYCRR 202.70(g) because it contains 2,483 words, excluding the parts of the memorandum exempted by Rule 17. In preparing this certification, I have relied on the word count of the word processing system used to prepare this memorandum of law.