

DOCKET NO. FST-CV15-5014808S)	SUPERIOR COURT
)	
WILLIAM A. LOMAS)	JUDICIAL DISTRICT OF
)	STAMFORD/NORWALK
Plaintiff,)	
)	
v.)	AT STAMFORD
)	
PARTNER WEALTH MANAGEMENT, LLC,)	
KEVIN G. BURNS, JAMES PRATT-HEANEY,)	
WILLIAM P. LOFTUS)	
)	AUGUST 28, 2015
Defendants.)	

**PLAINTIFF’S MEMORANDUM IN FURTHER SUPPORT
OF HIS OBJECTION TO MOTION FOR ADMISSION *PRO HAC VICE***

I. INTRODUCTION

Plaintiff William A. Lomas (“Lomas” or “Plaintiff”) submits this memorandum in response to Defendants’ Brief in Further Support of Attorney Lagasse’s Motion for Admission *Pro Hac Vice* [Dkt. No. 109] (“Defendants’ Brief”) and in further support of Lomas’ Objection to Motion to Admit *Pro Hac Vice* [Dkt. No. 107]. Defendants’ Brief and the Affidavits of Attorney Lagasse and Jeff Fuhrman filed therewith, fall short of establishing good cause for Attorney Lagasse’s admission *pro hac vice*.

First, while Lomas has no basis for disputing whether Attorney Lagasse has specialized skill or knowledge in the field of employee compensation programs, no such skill or knowledge is called for by this case. This is a contract case involving an agreed-upon buyout provision in the Partner Wealth Management Limited Liability Company Agreement (the “Agreement”). Attorney Lagasse had no hand in negotiating or drafting the Agreement for Partner Wealth Management, LLC (“PWM”) that is at issue in this case, and therefore Defendants cannot claim that he has any relevant skill or knowledge applicable to this case.

Second, to the extent Defendants claim that Attorney Lagasse's specialized skill or knowledge results from discussions, negotiations and disagreements about whether to amend the Agreement after Plaintiff had already tendered his withdrawal, the claim is problematic for the following reasons:

- These discussions, negotiations and disagreements occurred five years after the parties signed the Agreement including the contract language at issue in this case. They have no bearing on this case.
- To the extent Defendants claim that these discussions, negotiations and disagreements are relevant, their argument conflicts with their position that any evidence sought by Plaintiff from Attorney Lagasse can be obtained from other sources. Put differently, if Attorney Lagasse's specialized knowledge stems from the fact that he was involved in the effort to amend the contract language (as opposed to having a specific relevant legal skill), then any evidence about that knowledge can only be obtained from him.

II. ARGUMENT

A. This Is A Contract Case To Which Attorney Lagasse's Specialized Skill And Knowledge Is Irrelevant

This case involves the interpretation and enforcement of language in the Agreement, which was negotiated and signed in 2009. The relevant language is set forth in Article 8.5 thereof:

Withdrawal. If any Member withdraws from the Company for any reason except as provided in Sections 8.2 through 8.4, the Company or the remaining Members shall be obligated to purchase from the Member, and the Member shall be obligated to sell to the Company or the remaining Members, all of his interests of the Company at the price established in accordance with the provisions of Section 8.7(b). The Company Value to be utilized to determine the purchase price for such Member's Interests shall be the Company Value as of December 31 of the year prior to the

year in which withdrawal occurs. Each Member shall give at least three (3) months prior written notice of his desire to withdraw from the Company.

See Agreement, attached as Exhibit A to Plaintiff's Complaint. Attorney Lagasse was not involved in drafting the foregoing language, nor was he involved in drafting any other provision of the Agreement.

Lomas' Complaint sets forth causes of action for breach of contract, breach of fiduciary duty, common law and statutory accounting, and for a declaratory judgment. The Complaint does not involve any claims regarding employee or executive compensation. It involves the required purchase of Lomas' equity following his withdrawal in accordance with Article 8.5 of the Agreement, and the bad faith efforts on the part of the Defendants to avoid their contractual obligation, which was aided by Attorney Lagasse.¹ Thus, to the extent Defendants' claim of good cause rests upon Attorney Lagasse's skill or knowledge concerning executive compensation matters, it is irrelevant. Likewise, to the extent Defendants' claim of good cause is based upon Attorney Lagasse's skill or knowledge drafting agreements for the repurchase of owners' equity, this case involves an agreement that was drafted and agreed upon long ago, and is now in breach. There is no claim for reformation of the contract language in this case, and it is too late in the day to redraft the language. Attorney Lagasse's expertise is irrelevant to this contract litigation matter, and Defendants have not established good cause for his admission.

Defendants' reliance on *Wissink v. Goodrich* does not support their position, and actually demonstrates that there is no good cause to admit Attorney Lagasse. In *Wissink v. Goodrich*, the

¹ Paragraph 21 of the Fuhrman Affidavit claims that after Lomas delivered his notice of withdrawal the parties "immediately" disagreed over the price at which PWM would be "forced" to acquire the Plaintiff's ownership interest, and that the parties had "multiple discussions in an effort to find a negotiated resolution." Significantly absent from the Fuhrman Affidavit is any claim or suggestion that Article 8.5 of the Agreement as it already existed did not govern and control.

plaintiff filed a complaint alleging generally that the defendant doctor was negligent in performing her back surgery. No. 353773, 1994 Conn. Super. LEXIS 2904 at *5 (Conn. Super. Ct. Nov. 16, 1994). Plaintiff then sought the *pro hac vice* admission of two New York attorneys to represent her in the matter. *Id.* The Court found good cause for the attorneys' admission because they "focus[ed] their practice on medical malpractice cases and [were] experienced in handling complex medical malpractice cases" and because "importantly, the plaintiff was unable to find additional Connecticut counsel to assist in her representation." *Id.* at *2. The experience of the medical malpractice litigation lawyers was directly relevant to the litigation in which their admission was sought. Here, however, Defendants seek the admission of an employment compensation lawyer in a breach of contract and fiduciary duty action that does not involve employment compensation. It involves contract language that is clear and unambiguous. Attorney Lagasse's counseling and drafting experience has no relevance to a litigation involving contract language that already exists and which he had no hand in drafting. Additionally, the *Wissink* court found it "important" that the plaintiff was unable to find Connecticut counsel. But, of course, there are plenty of Connecticut barred trial lawyers in Fairfield County and throughout the state who are capable of handling contract and business tort claims. Indeed, Defendants have already retained such counsel at Berchem, Moses & Devlin.

B. Attorney Lagasse's Role As Counsel To PWM Is Not Specialized Skill Or Knowledge And, To The Extent Defendants Claim Otherwise, Any Relevant Evidence He Possesses Can Only Be Obtained From Him

Defendants' claim -- that Attorney Lagasse has a long standing relationship with PWM and the Individual Defendants such that there is good cause for his admission -- rings hollow.

First, Attorney Lagasse's Affidavit clearly establishes that the statement made by Defendants in their motion for *pro hac vice* admission that "Attorney Lagasse has a longstanding attorney-client relationship with the defendants Partner Wealth Management, LLC, Kevin G.

Burns, James Pratt-Heaney, and William Loftus” is untrue. Lagasse Aff. ¶16. He had no attorney-client relationship with the Individual Defendants. His longstanding attorney-client relationship was with Jeffrey Fuhrman, who he has represented in various employment matter but who is not a party to this litigation. Fuhrman Aff. ¶9; Lagasse Aff. ¶¶4-5.

Second, Defendants’ seem to argue that Attorney Lagasse has specialized knowledge as a result of having drafted the partner compensation plan and the later redraft of the Agreement. At the same time they claim that evidence concerning his involvement in these matters, *i.e.*, the facts resulting in this specialized skill or knowledge, can be obtained through other members of PWM’s management. They cannot have it both ways.

The Affidavits of Fuhman and Attorney Lagasse establish that Attorney Lagasse was initially retained in December 2013 to prepare a partner compensation plan. Defendants attempt to tie that plan to their later effort to rewrite the equity repurchase obligation. They make this attempt in order to suggest that Attorney Lagasse’s role in drafting the compensation plan is relevant to this dispute. Their attempt is in vain. First, their argument is defeated by the engagement letter, which mentions only the partner compensation plan, not the so-called “related” equity repurchase issues. Fuhrman’s Affidavit suggests that he considered these two tasks to be part of a package.² But nothing in the record establishes that the parties to this litigation – the members of PWM – viewed them in that way and, in fact, the two tasks were

² The Fuhrman Affidavit is unreliable. First it is clear that much of it is not based on personal knowledge, and some of it is based on hearsay. *See* ¶¶ 4-5, 7, 9, 19, 20. Second, it is vague on important facts at critical junctures. *See* ¶9 (what “parties” are referred to in the last sentence?), ¶10 (who at PWM agreed?), ¶17 (made sense to whom?), ¶18 (longer than contemplated by whom?), ¶26 (contemplated by whom?). Third, what Fuhrman planned, intended, made clear, what made sense to him, etc., is all irrelevant. *See* ¶ 11, 14-16. What is relevant is what the Agreement says and what the members of PWM – not Fuhrman – did. Fourth, Fuhrman was not an unbiased participant in these matters insofar as he himself was seeking an equity participation in the LLC.

addressed independently. Attorney Lagasse's affidavit explains the events as they unfolded: "I **completed** my work with regard to the PWM's compensation structure in or about April 2014" Lagasse Aff. ¶ 7 (emphasis added). "At this time, Mr. Fuhrman **next** sought advice on the ways the partners' desired to... modify the price PWM would pay to a departing partner..." Lagasse Aff. ¶ 8 (emphasis added). Attorney Lagasse's Affidavit suggests that he developed a presentation to show the members (referred to in the Lagasse Affidavit as "partners") how a theoretical or potential change to the Agreement would look in the event they agreed that the buyout provision should mirror the restructuring of the annual cash flow. *Id.* But clearly there was no obligation on the part of any member to agree to any change to the buyout provision. In fact, it was another five months before Attorney Lagasse drafted and the members reviewed any proposed language. Lagasse Aff. ¶¶8-11. The "process of having the partners agree on all of the changes to the partnership agreement was lengthy and difficult", suggesting that the work related to the partner compensation plan neither resolved, nor addressed or was necessarily tied to any issues related to the equity repurchase provision in the Agreement. Lagasse Aff. ¶¶ 8-11, Fuhrman Aff. ¶ 18. And the "partners" as a whole in fact never agreed to the changes. Lomas was decidedly opposed. Lagasse Aff. ¶ 13. Thus, there is at best a conflict in the evidence as to whether any attempt to amend the Agreement was tied to the compensation plan. Moreover, whether the partner compensation plan was related to the equity repurchase representation is irrelevant. The issue in this litigation concerns what the Agreement said on the date of Plaintiff's notice of withdrawal.

After trying to convince the Court that Attorney Lagasse's involvement in these unrelated matters constitutes specialized skill or knowledge, Defendants then argue that evidence concerning his involvement can be obtained from the management of PWM. This turnabout is

startling. First, there is clearly a conflict in the evidence submitted by Defendants as to whether the partner compensation plan was related to the equity repurchase representation. This alone makes Attorney Lagasse a necessary witness. Second, if the information learned by Attorney Lagasse and the facts and circumstances surrounding his representation are so special as to mandate that he be counsel, then he cannot be immunized from providing testimony in this matter as a witness. Defendants cannot have it both ways. Either Attorney Lagasse has specialized knowledge about the Defendants and the underlying amendment of the Agreement such that he is a necessary witness under the facts and circumstances of this case, or he does not have such knowledge and therefore does not meet the good cause requirement for admission. Either way, Attorney Lagasse should be precluded from appearing *pro hac vice*.

The Defendants have not even attempted to address or distinguish the Connecticut Supreme Court's ruling in *Enquire Printing & Publishing Co. v. O'Reilly* 193 Conn. 370, 374-75 (1984). In *Enquire Printing*, while acknowledging the general rule that a party should be allowed counsel of his or her choice, the Court held that the trial court properly denied *pro hac vice* admission of a lawyer who was reasonably likely to be called as a witness. *Id.* at 651-52. This precedent is directly on point. Defendants seize upon what they believe to be favorable language in the *Enquire* decision while ignoring the actual outcome which is fatal to their position. *See* Defendants' Brief at p. 11.

In light of his admitted involvement in the amendment of the Agreement and his first-hand knowledge of the facts and circumstances surrounding the amendment, Attorney Lagasse is a necessary witness. *See Enquire Printing*, 193 Conn. at 374-75. Defendants' argument that other people can testify to the topics on which he has first-hand knowledge is without merit. Only Attorney Lagasse can testify to the assistance he gave, what he knew, and what he was told

concerning his activities, which actually aided Defendants in their breach of contract and their violation of fiduciary obligations. While others may be able to testify on similar or related topics, the substance of their testimony is not necessarily the same as Attorney Lagasse's. Lomas is entitled to explore any differences there may be in the testimony. Indeed, Attorney Lagasse's Affidavit, sworn to under oath, already conflicts with Defendants' assertion that he has had a long-standing attorney-client relationship with them. Plaintiff must not be restricted in his ability to uncover and present additional inconsistencies. Moreover, even if others could testify as to Attorney Lagasse's knowledge, such testimony would not render Attorney Lagasse's testimony unnecessary. *See Marino v. Marino*, No. FA104052184, 2010 WL 5644922 at *1 (Conn. Super. Ct. Dec. 23, 2010)(denying *pro hac vice* admission where anticipated testimony of attorney could come from several other witnesses because "if the defendant calls her as a witness, she will have to testify and that will make her a "necessary" witness under the Rule.")³ As such, Attorney Lagasse is a necessary witness and should not be admitted *pro hac vice*.

III. CONCLUSION

For the foregoing reasons, and those set forth in Plaintiff's Memorandum of Law in Opposition to Motion for Admission *Pro Hac Vice* [Dkt. No. 107] and the accompanying Affidavit of William Lomas [Dkt. No. 108], Plaintiff respectfully requests that the Court deny Defendants' Motion for Admission *Pro Hac Vice*.

³ A copy of the *Marino* decision is attached hereto as Exhibit "A".

Dated: August 28, 2015
Hartford, Connecticut

THE PLAINTIFF,
WILLIAM A. LOMAS

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CERTIFICATE OF SERVICE

This is to certify that on August 28, 2015, a copy of the foregoing was served by e-mail and first class mail, postage prepaid, to all counsel of record as follows:

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EXHIBIT A

2010 WL 5644922

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

Superior Court of Connecticut,
Judicial District of Hartford.

Pamela G. MARINO

v.

Joseph A. MARINO.

No. FA104052184. | Dec. 23, 2010.

West Key Summary

I Attorney and Client

Admission of Practitioners in Different
Jurisdiction

Attorney and Client

Acting in Different Capacities; Counsel as
Witness

In child custody dispute, Florida attorney was denied admission pro hac vice to assist mother's counsel in order to avoid a serious ethical conflict of interest. The Florida attorney was a relative of the mother and, apparently, was willing to provide legal assistance at no cost or reduced cost. The father's counsel had indicated that they planned to call the Florida attorney as a witness and, therefore, the Florida attorney acting as counsel in the same proceeding could create an ethical conflict. The denial of the Florida attorney's motion did not prevent the mother from being allowed to have counsel of her own choice with the same special qualities the Florida attorney might have been able to offer. Rules of Professional Conduct Rule 3.7.

Cases that cite this headnote

Opinion

ADELMAN, J.

*1 The plaintiff seeks to have Attorney Jennifer L. Grosso of Sarasota, Florida, a member of the Florida Bar, admitted pro hac vice so as to assist her Connecticut counsel with the case. The Florida attorney is a relative¹ and, apparently, is willing to provide legal assistance at no cost or perhaps at a reduced cost to the plaintiff. The plaintiff argues that the legal fees in the matter are growing quickly and the addition of Attorney Grosso's free efforts will help keep future bills down.

The defendant objects. He argues that Attorney Grosso will be a witness in the trial and that she has already provided the Guardian ad litem (GAL) with a detailed statement stating her opinion of the defendant as a parent. He indicates that if there is a trial, he will call her as a witness if she submits herself to the jurisdiction of this court by filing an appearance for the plaintiff. As a witness in the same proceeding in which she is counsel, she could create an ethical conflict for herself under the Rules of Professional Conduct Rule 3.7 "Lawyer as Witness." The Rule states that "A lawyer shall not act as an advocate at a trial in which the lawyer is likely to be a necessary witness ..." The Rule allows for the situation in which the testimony is very limited and not contested in nature, but that is not the fact pattern in this matter.

The plaintiff focuses her comments on the meaning of the word "necessary" and represents that there is nothing in the anticipated testimony of Attorney Grosso that would not also come from several other family member witnesses; that Attorney Grosso does not possess any unique information regarding the custody, or any other issue to be determined in this matter. Regardless, if the defendant calls her as a witness, she will have to testify and that will make her a "necessary" witness under the Rule.

The case law is somewhat limited, but it does set forth some clear guidelines for courts to follow in deciding such cases and can be distilled easily to one sentence: The right to have counsel of one's own choice, although not absolute, is important enough to require a legitimate state interest before a person can be deprived of that right. *Herrmann v. Summer Plaza Corp.*, 201 Conn. 263, 268-69, 513 A.2d 1211 (1986). See also *Enquire Printing & Publishing Co. v. O'Reilly*, 193 Conn. 370, 477 A.2d 648 (1984).

The instant matter is somewhat different than the majority of such cases. A denial of plaintiff's motion will not deprive her of her counsel of choice. It has been made clear to the court that Connecticut counsel is the primary lawyer in this matter. Attorney Grosso does not possess any unique or

special skills in the area of family law; it is not her primary area of practice. What she offers is a family connection to the plaintiff, someone with legal knowledge and skill that the plaintiff truly trusts. She also offers the plaintiff the ability to perform some of the legal work, research, etc. at no or little cost to her. So while the plaintiff should certainly be allowed to have counsel of her own choice, a negative ruling on this motion would not deny the plaintiff of those special qualities Attorney Grosso might be able to offer. On the other hand, allowing Attorney Grosso to file an appearance in this matter would set up a serious ethical conflict and the court has a duty

to avoid such a situation if it can. On balance, the better part of discretion is to keep Attorney Grosso's participation on an informal basis.

***2** The Court, having heard the motion, **ORDERS** that the motion is **DENIED**.

All Citations

Not Reported in A.3d, 2010 WL 5644922

Footnotes

1 The representation to the court was that Attorney Jennifer L. Grosso of Florida is the plaintiff's sister-in-law.

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