

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

WESTPAW FILMS INC., directly and  
derivatively on behalf of the D&D Production,

Plaintiff,

-against-

JAMES SPRATTLE, MICHAEL ANDREW  
PASCAL, and FANTASY GAME FILMS  
LLC,

Defendants,

and

the D&D Production,

Nominal Defendant

Index No. 505665/2014

**AFFIRMATION OF**  
**JOSHUA G. GRAUBART, ESQ.**

Joshua G. Graubart, an attorney duly admitted to practice before the courts of the State of New York, affirms the following under penalty of perjury:

1. I am of counsel to Winslett Studnický McCormick & Bomser LLP ("WSMB"), attorneys for defendants James Sprattley, Michael Andrew Pascal, and Fantasy Game Films LLC (collectively, "the FGF Defendants") in the above entitled action, and as such, I am familiar with the facts of this case.
2. I submit this affirmation in support of the instant application which seeks (1) leave for the undersigned to withdraw as attorneys for the FGF Defendants; (2) a stay of all proceedings of the action is imposed for thirty (30) days to permit the FGF Defendants to retain new counsel, and (3) such other and further relief as may be just and proper.
3. The above-entitled action alleges breaches of fiduciary duty, conversion, unfair competition, unjust enrichment and fraud by the defendants in connection with their separation from the plaintiff and its documentary film project.
4. Pursuant to N.Y. C.P.L.R. § 321(b)(2), an attorney of record may withdraw by order of the Court in which the action is pending upon motion or upon such notice to the client of the withdrawing

attorney, to the attorneys of all 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.

5. The Appellate Division for the Second Department has held that "as a general rule, an attorney may terminate the attorney-client relationship at any time for a good and sufficient cause and upon reasonable notice." *See, e.g., Riviardeneria v. N.Y. City Health & Hosp. Corp.*, 306 A.D.2d 394 (2d Dep't 2003). Further, the Second Department has held that "it is well settled that an attorney will be permitted to withdraw ... where a client refuses to pay reasonable fees." *Galvano v. Galvano*, 193 A.D.2d 779 (2d Dep't 1993). Good and sufficient cause also exists where a client's conduct renders it unreasonably difficult for the attorney to carry out its employment effectively. *Id.*
6. The FGF Defendants have not paid WSMB for more than seven months, and now owe outstanding fees substantially in excess of \$50,000. The FGF Defendants have indicated that they will not pay these fees in the foreseeable future.
7. WSMB has repeatedly informed the FGF Defendants that unless payment is made current, WSMB will not proceed to represent them in continuing litigation, including in emails dated November 17, 2014; March 29, 2015; and May 14, 2015. The FGF Defendants have explicitly acknowledged this, as – for example – in an April 18, 2014 email stating that if they are forced to litigate further, "then we will represent ourselves in court." By telephone today, defendant Andrew Pascal indicated that he was aware that WSMB would today withdraw from representing the FGF Defendants.
8. Nevertheless, and notwithstanding the FGF Defendants failure to pay, WSMB has consented since late last year to continue to represent the FGF Defendants in an effort to end this dispute by an amicable settlement agreement.
9. Since this Court's order of a preliminary injunction on August 4, 2014, both the plaintiff and the FGF Defendants have diligently attempted to negotiate a comprehensive settlement agreement. A highly technical draft settlement agreement, which was intended to permit both parties to pursue their respective film projects, was crafted over many months. Since October 1, 2014 alone, WSMB has recorded in excess of seventy-five attorney hours in attempting to finalize a settlement of this matter.
10. Over more than seven months, WSMB has consulted with the FGF Defendants, addressing their concerns and drafting and re-drafting language; at each stage, the FGF Defendants have agreed to proposed terms as the parties drew closer to a final settlement, slowly narrowing the issues which remained open.
11. At both parties most recent appearance in this case on April 22, 2015, the Court – in view of the serious health problems of defendants Pascal's wife – indicated it expected this matter either to have settled or to be ready to proceed by May 20, 2015. Since that time, in conjunction with the efforts of Mavronicolas & Dee LLP, WSMB believes that it has negotiated an advantageous settlement agreement which awaits only the approval of the FGF Defendants.

12. However, despite the impending deadline and WSMB's best efforts, including several emails and telephone calls to the FGF Defendants over the last several days, the FGF Defendants failed either to approve or disapprove the final terms of the proposed settlement agreement, or to respond substantively to requests for information.
13. Finally, after almost a week of evading WSMB's requests for their cooperation, the FGF Defendants today (May 18, 2015) replied by email, rescinding their approval of all prior drafts of the settlement agreement and returning to their original posture of late 2014.
14. The FGF Defendants' refusal to pay their accumulated legal fees, their extended failure to communicate with counsel when faced with an impending deadline, and their sudden and complete eleventh-hour rejection of settlement terms to which they had explicitly and repeatedly agreed over many months has rendered it unreasonably difficult for WSMB to carry out its employment effectively.
15. Withdrawal at this stage, where trial is not impending, constitutes no hardship to either the FGF Defendants or the plaintiff. A stay of thirty (30) of all proceedings is requested to allow the FGF Defendants to retain new counsel and/or prepare their *pro se* defense.
16. No prior application has been made for the same or similar relief.

WHEREFORE, it is requested that this application be granted and that this law firm be permitted to withdraw as counsel for the FDF Defendants, and upon the granting of such application, that all further proceedings be stayed for thirty (30) days after the granting of this motion to enable the FGF Defendants to obtain new counsel.

Dated:           New York, New York  
                    May 18, 2015



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JOSHUA G. GRAUBART