

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

RIGHTHAVEN LLC)
Plaintiff)
)
v.)
)
DANA EISER,)
Defendant)

Case No. 2:10-CV-3075-RMG-JDA

**MOTION FOR LEAVE
TO WITHDRAW AS COUNSEL
AND TO STAY PROCEEDINGS**

Movant, Edward A Bertele, Esq. (“counsel”), respectfully moves for leave to withdraw as counsel for plaintiff Righthaven LLC (“Righthaven”) in this matter and to stay proceedings for thirty days (30) days to allow Righthaven the opportunity to obtain new counsel. Counsel relies upon the following as the basis for this motion.

BASIS FOR THIS MOTION

Plaintiff filed a single count copyright infringement action against defendant Eiser. Doc. # 1. The parties subsequently amended their pleadings and each moved for dismissal. Presently pending before the Court are defendant’s motion to dismiss for lack of subject matter jurisdiction, Doc. # 60 and plaintiff’s motion to dismiss the Second Amended Answer and Counterclaims pursuant to FRCP 8(a) and 12 (b)(6). Doc. # 78. The Court previously entered an Order staying discovery pending a decision on these motions. Doc. # 73. The Court subsequently issued an Order to Show Cause for plaintiff to explain why this action should not be dismissed for lack of subject matter jurisdiction in view of the terms of the Copyright Alliance Agreement. Doc. # 81. Righthaven has filed a response and a decision is pending.

Counsel seeks leave to withdraw because Righthaven has failed to abide by material terms of the retainer which it executed with counsel at the start of his engagement in May 2011. Counsel has previously advised Righthaven that unless it cured its default, counsel would seek leave to withdraw. Counsel has given Righthaven a reasonable time to cure its default but Righthaven has failed to do so. In addition, defendant has recently filed a supplemental document in support of her prior motion to dismiss indicating that Righthaven has consented to appointment of a receiver of its assets in a pending case in Nevada, Righthaven v Hoehn, Case No. 2:11-cv-00050. Doc. # 88. Under the present conditions, i.e. that Righthaven has failed to abide by material terms of its engagement and is in receivership, it would be a financial hardship for counsel to continue in his representation of the company in this matter.

South Carolina Rules of Professional Conduct, Rule 1.16 (b) (1) & (5) provide that counsel may withdraw where the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services or payment and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled and withdrawal can be accomplished without material adverse effect on the interests of the client.

Counsel asserts that leave should be granted because Righthaven has failed to abide by the terms of the retainer and counsel's withdrawal will not have an adverse affect upon its interest. The pending motions have been fully briefed. The order to Show Cause has been addressed. Discovery has been stayed pending decision on the various motions. A copy of this motion has been served on Righthaven at its last known mailing address and counsel has separately advised Righthaven that a corporation cannot proceed without counsel who is admitted in this District. Finally, counsel has conferred with opposing counsel who has consented to the relief requested.

Accordingly, counsel moves for an Order granting leave to withdraw as counsel for Righthaven and a stay of all proceedings in this matter for thirty (30) days after the Court's entry of an Order on this motion to allow Righthaven to obtain substitute counsel.

Respectfully submitted,

s/ Edward A. Bertele/

Edward A. Bertele
Fed. ID. No. 10293
1812 Pierce Street
Charleston, SC 29492
(843) 471-2082 phone
(843) 471-2082 fax
ebertele@msn.com
Attorney for Plaintiff Righthaven LLC

Charleston, SC
December 19, 2011

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing Motion for leave to Withdraw and to Stay Proceedings on Plaintiff Righthaven LLC by depositing the same in the United States Mail with sufficient postage on this day addressed as follows and sending it by facsimile to the person listed below at the fax number listed below:

/s/ Edward A. Bertele
Edward A. Bertele

Charleston, SC
Dated: December 19, 2011

Steve Gibson, Esquire
President
Righthaven LLC
Conquistador Business Park
9960 West Cheyenne Avenue, Suite 210
Las Vegas, NV 89129
Ph: (702) 527-5900
Fax: (702) 527-5909