UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 16-21301-CIV-GAYLES

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ARIEL QUIROS, *et al*,

Defendant.
_____/

DEFENDANT ARIEL QUIROS'
RESPONSE TO LEON COSGROVE LLC AND MITCHELL, SILBERBERG & KNUPP'S EXPEDITED MOTION TO INTERVENE

Defendant, Ariel Quiros, files this Response to Leon Cosgrove LLC ("Leon Cosgrove") and Mitchell, Silberberg & Knupp's ("MSK") (together, the "law firms") Expedited Motion to Intervene For The Limited Purpose Of Addressing Use Of Insurance Proceeds At The April 12, 2017, Hearing, filed March 31, 2017 [ECF # 303], and to the Objection to Motion to Withdraw Motion for Expedited Clarification or Modification of Asset Freeze Order, filed April 3, 2017 [ECF# 304], and states:

The Motion and Objection should be denied without hearing.

RELEVANT BACKGROUND

Neither of the Motions in which the Leon Cosgrove and MSK firms seek to intervene or to which they object are presently pending. On March 31, 2017, the Motion for Expedited Clarification or Modification of Asset Freeze Order was withdrawn by Defendant Quiros by way of a Notice of Withdrawal of said Motion (See ECF # 301). (*See Id.*). No hearing, therefore, is necessary or warranted as no Motion is pending.

There is no pending motion in which the law firm can intervene. Even if this Court chooses to treat their Motion as an independent Motion to Intervene, the law firms have asserted no valid basis for intervention in the instant case.

Defendant, Ariel Quiros, recently terminated the law firms, Leon Cosgrove and MSK, for, among other reasons, concerns regarding excessive bills and failing to follow the instructions of the client or to keep the client apprised of developments in litigation in which Mr. Quiros was a party. Mr. Quiros does intend to object to the fees sought by the law firms. Mr. Quiros is also retaining all rights he has to object to the payment of insurance proceeds from a policy under which he is an insured to the law firms until he has resolved all issues between those firms and himself.

Any dispute regarding payment of outstanding fees purportedly owing based on agreements between Ariel Quiros and the law firms is between those parties. Further, the Receiver, Michael Goldberg, who stands in the shoes of Q Resorts, which is the policyholder, and who presently has control of Defendant Quiros' assets, also has an interest in any dispute regarding fees billed to Defendant Quiros by these firms especially if paid form a policy in which he claims an interest. On the other hand, the law firms do not have an interest relating to the property or transaction that is the subject of the instant case, an SEC Enforcement Action. Therefore, these firms have no legal basis to intervene in the instant case or in the cited, non-pending motions.

MEMORANDUM OF LAW

The Leon Cosgrove and MSK law firms seek to intervene in the instant SEC Enforcement action solely to protect their own economic interests in the payment of fees. The firms do not assert any interest in the subject matter of the litigation nor in the outcome of the litigation other than in their own interest in being able to collect fees. Nor do the law firms make any showing that their interests are not adequately protected by current counsel for Defendant Quiros.

Rule 24(a) of the Federal Rules of Civil Procedure governs intervention as a matter of right:

> Upon timely application anyone shall be permitted to intervene in an action…
> (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Fed. R. Civ P. 24(a).

Here, the law firms have not and cannot establish they possess an interest in the action justifying intervention.

Those courts that have addressed the issue presented here, whether the interest of discharged counsel in their attorneys' fees is related to the underlying cause of action, have consistently held that such an interest is not a basis for intervention. *See, e.g., Butler, Fitzgerald & Potter v. Sequa Corp.*, 250 F. 3d 171, 177-78 (2d Cir. 2001) (citing *Crown Fin., Corp. v. Winthrop Lawrence Corp.*, 531 F.2d 76, 77 (2d Cir. 1976)); *Newman v. Mut. Life Ins. Co. of New York*, 206 F.R.D. 410, 411 (D. Md. 2002) (citing policy concerns raised in Crown Fin. Corp. and finding that discharged attorney's interest in litigation does not warrant intervention); *In re Nucoa Margarine Litigation*, 2012 WL 12854896, *20 (C.D. Cal. 2012) (denying motion to intervene by former counsel and citing problematic policy concerns of permitting discharged attorneys to intervene in the disposition of their former client's cases); *Chevron Corp. v. Donzinger*, 2011 WL 2150450, *2 (S.D.N.Y. 2011) (holding that discharged attorney's interest in outcome of litigation, based solely on contingent fee agreement, does not satisfy the interest requirement of Rule 24(a)); *Gov't of Virgin Islands v. Lansdale*, 2010 WL 2991053, *3 (Dist. Ct of Virgin Islands 2010) (discharged attorney's interest in litigation purely economic and does not satisfy Rule 24(a)).

Even if the law firms were able to establish an adequate interest in the subject of the litigation, that interest is adequately protected by current counsel for Defendant Quiros. As each

of the above-cited decisions determined, the party requesting intervention must make a showing that its interests are not adequately protected. The law firms have not made any showing that Defendant Quiros' current counsel have any interest in any outcome other than the most favorable for Defendant Quiros. Instead, Defendant Quiros and discharged counsel share the same objective, that is, in seeing Defendant Quiros reach the most favorable outcome in the pending litigation. Moreover, the law firms have not demonstrated that current counsel do not share that objective or lack the ability to bring it about.[1]

CONCLUSION

Any dispute regarding payment of fees is a matter for separate litigation among those parties directly involved in such a dispute and has no place in the instant SEC enforcement action. The motions in which the law firms seek to intervene are not pending, and the law firms have not and cannot satisfy the requirements for intervention. Therefore, their request to intervene should be denied outright without a hearing.

WHEREFORE, Defendant Ariel Quiros respectfully requests that this Court DENY Leon Cosgrove and Mitchell, Silberberg & Knupp's Expedited Motion to Intervene For The Limited Purpose Of Addressing Use Of Insurance Proceeds At The April 12, 2017, Hearing, and REJECT their Objection to the already withdrawn Motion to Withdraw Motion for Expedited Clarification or Modification of Asset Freeze Order without hearing and grant such other relief as this Court deems appropriate.

1 To the extent the law firms' interest is solely for its own economic interest, such interest is not an appropriate basis for intervention. *Id.*

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via e-mail via CM/ECF, on this 6th day of April, 2017, to all counsel of record.

/s/ Melissa D. Visconti
Melissa Damian Visconti