

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 01C-07-182 RRC
)	
M/S MANGALORE GANESH BEEDI)	
WORKS (IMPORT),)	
)	
Defendant.)	

Submitted: November 18, 2002
Decided: January 8, 2003

**On Defendant’s “Application to Set Aside Default Judgment.”
DENIED.**

ORDER

This 8th day of January, 2003, upon consideration of an “Application to Set Aside Default Judgment” (the “Application”) filed by M/s Mangalore Ganesh Beedi Works (Import) (the “Defendant”), it appears to the Court that:

1. The Defendant, a manufacturer of cigarettes located in Karnataka State, India, moves this Court “to set aside the *ex parte* default judgment” in the amount of \$254.13 that this Court entered against it when Defendant failed to timely appear, plead or otherwise defend against a civil

complaint filed by the State of Delaware.¹ Because the Application is apparently brought by an attorney not licensed to practice law within the State of Delaware on behalf of an artificial entity that cannot itself act *pro se*,² and because no Delaware lawyer has been retained to act on that entity's behalf, Defendant's Application is **DENIED**.

2. The State filed the underlying Complaint after determining that between July 20, 1999 and December 31, 1999, Defendant sold "8,727 total units of individual cigarettes [in Delaware] as measured by excise taxes collected...[by the State]."³ Pursuant to the Delaware Tobacco Settlement Act of 1999,⁴ all manufacturers selling cigarettes within Delaware after July 20, 1999 must either "[b]ecome a participating manufacturer...under...[Delaware's] Master Settlement Agreement"⁵ or "[p]lace into a qualified escrow fund by April 15 of the year following the

¹ State of Delaware v. M/s Mangalore Ganesh Beedi Works (Import), Del. Super., C.A. No. 01C-07-182, Cooch, J. (Mar. 21, 2002) (ORDER).

² The Court assumes without deciding that Defendant is a corporation; even if it is not a corporation, Defendant is not a natural person and thus the Superior Court bar against *pro se* representation by artificial entities applies.

³ Compl. ¶ 10.

⁴ DEL. CODE ANN. tit. 29, § 6080-6082 (Supp. 2000).

⁵ DEL. CODE ANN. tit. 29, § 6082(1) (Supp. 2000).

year in question...[certain statutorily proscribed amounts of money].”⁶

Although it later denied by letter to the State ever having sold cigarettes within Delaware, Defendant has indicated through (apparent) Indian counsel that it is not a signatory to Delaware’s Master Settlement Agreement and has not placed any money into a “qualified escrow fund” as is otherwise required by statute.⁷

The State moved for entry of a default judgment after having sent an initial⁸ and second⁹ notice of statutory noncompliance to Defendant via registered international mail and after having received a letter in response from Defendant’s foreign counsel in which liability was denied.¹⁰ After receiving notice that the Court entered the requested default judgment, Defendant, through its foreign counsel, filed the Application currently under consideration with an affidavit of its Assistant General Manager attached thereto, as well as a related “Application for Stay” (also filed with a similar affidavit attached).

⁶ DEL. CODE ANN. tit. 29, § 6082(2) (Supp. 2000).

⁷ Other than the Application currently under consideration and a related “Application for Stay,” Defendant has not filed with the Court any response to the Complaint.

⁸ Ex. “A” to State’s Resp.

⁹ Ex. “B” to State’s Resp.

¹⁰ Ex. “C” to State’s Resp.

3. The State urges this Court not to consider Defendant's Application because Defendant's counsel is "not an attorney duly licensed to practice law in this jurisdiction as [is] required in order [to] obtain legal representation for his client..."¹¹ In further support of its argument, the State avers that Defendant's counsel "has failed to properly make application for *[p]ro hac vice* status with this Court..."¹² The State therefore requests that Defendant's Application be denied.

4. "A corporation, though a legally recognized entity, is regarded as an artificial or fictional entity, and not a natural person."¹³ "While a natural person may represent himself or herself in a court even though he or she may not be an attorney licensed to practice [before that court], a corporation, being an artificial entity, can only act through its agents and, before a court only through an agent duly licensed to practice law."¹⁴ This rule of law "prohibit[s] the appearance of a corporation [before any Delaware Court other than a Justice of the Peace Court] by anyone other

¹¹ Resp.at 1.

¹² Id. at 2.

¹³ Transpolymer Industries, Inc. v. Chapel Main Corp., 1990 WL 168276 (Del. Supr.), at *1 (citation omitted)

¹⁴ Id.

than a member of the [Delaware] Bar....”¹⁵ However, “[a]ttorneys who are not members of the Delaware Bar may be admitted [to practice before the Superior Court] *pro hac vice* in the discretion of the Court, and such admissions shall be made only upon written motion by a member of the Delaware Bar who maintains an office in...[Delaware]....”¹⁶

5. Applying the above principles, the Court finds that it cannot entertain Defendant’s “Application to Set Aside Default Judgment.”¹⁷ Neither Defendant’s foreign counsel nor its Assistant General Manager (who filed affidavits on Defendant’s behalf) are licensed to practice law before this Court. As noted, an artificial entity such as Defendant can only argue matters through licensed counsel. Furthermore, Defendant has not moved for the admission of *pro hac vice* counsel. Accordingly, Defendant’s Application will not be considered and is therefore **DENIED**.

IT IS SO ORDERED.

Richard R. Cooch, J.

oc: Prothonotary
xc: C. Drue Chichi, Esquire, Deputy Attorney General
M.P. Shenoy, LL.B., Attorney for Defendant
Mr. Krishnaraya Prabhu

¹⁵ Id.

¹⁶ Super. Ct. Civ. R. 90.1(a).

¹⁷ The Court does not reach the State’s other arguments, *i.e.*, Defendant’s Application does not satisfy the requirements of Superior Court Rules 7, 8, 12, and 60.