

O'Brien v Trooper Fitness LLC
2017 NY Slip Op 32542(U)
December 1, 2017
Supreme Court, New York County
Docket Number: 157090/2017
Judge: Kathryn E. Freed
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED

PART 2

Justice

-----X

KRISTEN O'BRIEN,

INDEX NO. 157090/2017

Plaintiff,

MOTION DATE _____

- v -

TROOPER FITNESS LLC and CLASSPASS INC.,

MOTION SEQ. NO. 002

Defendants.

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number 17, 18, 19, 20, 21
were read on this motion to/for PRO HAC VICE

Upon the foregoing documents, it is ordered that the motion is **denied with leave to renew upon proper papers.**

Defendant Class Pass, Inc. ("Class Pass"), through its attorney, Adam G. Possidente, Esq. of the law firm of Venable LLP, moves for an order, pursuant to 22 NYCRR § 520.11 and and 22 NYCRR §602.2, for leave to admit Caroline P. Gately, Esq., an attorney at the same firm, as counsel for Class Pass. The motion is unopposed. Based on a review of the papers submitted and the relevant statutes and case law, the motion is **denied with leave to renew upon proper papers.**

Factual and Procedural Background:

In the captioned action, commenced August 8, 2017, plaintiff Kristen O'Brien alleges that she was injured during a workout at a gym due to the negligence of defendants.¹ ClassPass moves for an order, pursuant to 22 NYCRR §520.11(a)(1)(c) and 22 NYCRR §602.2, seeking to have Caroline P. Gately, Esq., a member of the firm of Venable, LLP and an attorney admitted to the bar in Maryland, Virginia, and the District of Columbia, admitted pro hac vice to represent it this action.

In support of the motion, current counsel for ClassPass, Adam G. Possidente, Esq., an associate of the firm of Venable, LLP, submits a notice of motion with the following attachments:

1) an affidavit by Gately in which she attests that she is a member in good standing of the Maryland, Virginia, and District of Columbia bars, that she has no disciplinary proceedings pending against her in any state or federal court, that she is a member of the firm of Venable, LLP, that she has never been convicted of a felony or misdemeanor or held in contempt by any court, that she is familiar with the standards of professional conduct imposed upon members of the New York Bar, including the Rules of Professional Conduct, and that she is subject to the jurisdiction of the New York State courts for any acts occurring during her representation of plaintiffs;

2) an affirmation by Possidente in which he avers, inter alia, that he is an associate with Venable, LLP, that he is a member in good standing of the New York bar, that he requests Gately's admission to the New York bar pro hac vice, that Gately is a member in good standing of the Maryland, Virginia, and District of Columbia bars, that Gately has no disciplinary proceedings pending against her in any state or federal court, that Gately is a member of the firm of Venable, LLP, and that Gately has never been convicted of a felony or misdemeanor or held in contempt in any court;

3) Gately's certificates of good standing from the Maryland, Virginia, and District of Columbia bars; and

¹ Although Class Pass does not annex the summons and complaint to its motion, this Court takes judicial notice of the complaint filed with this Court (Doc. 1). See *Kinberg Kinberg*, 85 AD3d 673, 674 (1st Dept 2011). All references herein are to the documents filed with NYSCEF in connection with this matter.

4) a proposed order admitting her to practice pro hac vice in New York.

Docs. 18-21.

Plaintiffs' Position:

The sole reason proffered by Possidente for seeking Gately's admission pro hac vice is that ClassPass has requested that she represent it in this action.

Legal Conclusions:

"Pursuant to 22 NYCRR §520.11(a)(1), whether an out-of-[s]tate attorney should be admitted pro hac vice to participate in a particular matter is a determination best left to [the] Supreme Court's discretion." *Neal v Ecolab, Inc.*, 252 AD2d 716 (3d Dept 1998); *see Perkins v Elbilialia*, 90 AD3d 543 (1st Dept 2011). In the exercise of its discretion, this Court finds that ClassPass has failed to set forth sufficient reasons why Gately should be admitted pro hac vice in this matter.

Although Possidente represents that ClassPass would like Gately to serve as its counsel in this matter, he fails to apprise the Court of the specific facts of the instant case and why they warrant Gately's intervention; whether he intends to be replaced by Gately in this action or if he is to be merely assisted by her; and how Gately's expertise will benefit ClassPass.

Additionally, in her affidavit, Gately's provides no detail whatsoever regarding any special skill or experience she has which would warrant her admission pro hac vice in this particular matter. *Cf., Perkins v Elbilialia, supra* at 544. Further, she fails "to clarify the role that she would assume in the litigation. *Neal v Ecolab, Inc., supra* at 716.

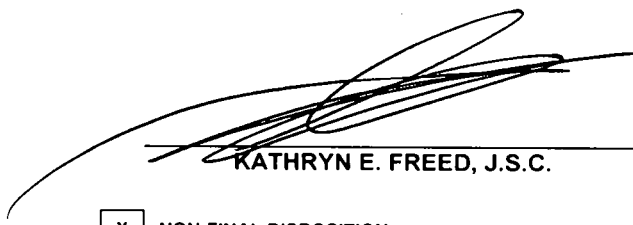
Finally, Gately's affidavit, executed in the District of Columbia, does not bear a certificate of conformity and thus fails to meet the requirements of CPLR 2309(c).

Therefore, in accordance with the foregoing, it is hereby:

ORDERED that the motion by defendant ClassPass Inc. seeking to have Caroline P. Gately, Esq. admitted pro hac vice is denied, with leave to renew upon proper papers; and it is further,

ORDERED that this constitutes the decision and order of the Court.

12/11/2017
DATE


KATHRYN E. FREED, J.S.C.

CHECK ONE:

- CASE DISPOSED
- GRANTED
- SETTLE ORDER
- DO NOT POST

DENIED

- NON-FINAL DISPOSITION
- GRANTED IN PART
- SUBMIT ORDER
- FIDUCIARY APPOINTMENT

OTHER

APPLICATION:

CHECK IF APPROPRIATE:

REFERENCE