

O'Brien v Trooper Fitness LLC
2018 NY Slip Op 30144(U)
January 25, 2018
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
Justice

PART 2

KRISTEN O'BRIEN,

Plaintiff,

- v -

TROOPER FITNESS LLC, and CLASSPASS INC.

Defendant.

INDEX NO. 157090/2017

MOTION DATE

MOTION SEQ. NO. 003

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number 27, 28, 29, 30, 31 were read on this motion to/for RENEWAL

Upon the foregoing documents, it is ordered the motion is granted without opposition.

Defendant Class Pass, Inc. ("Class Pass"), through its attorney, Adam G. Possidente, Esq. of the law firm of Venable LLP, moves for an order granting leave to renew its previous motion, motion sequence 002, and upon granting renewal defendant further moves, pursuant to 22 NYCRR § 520.11 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 granted.

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

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.

for an order, to renew its prior motion, motion sequence 002, which this Court, in its order signed December 1, 2017, denied with leave to renew upon proper papers. See Doc. No. 26. ClassPass further moves, 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 in this action.

“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 Elbilis*, 90 AD3d 543 (1st Dept 2011). In the exercise of its discretion, this Court finds that ClassPass has set forth sufficient reasons why Gately should be admitted pro hac vice in this matter.

In its previous decision, this Court noted that defendant failed: to apprise this Court of the specific facts of the instant case and why they warrant Gately’s intervention; to inform this Court as to whether Possidente intended to be replaced by Gately in this action or if he is to be merely assisted by her; and to explain how Gately’s expertise will benefit ClassPass.

Additionally, this Court held that Gately’s affidavit had provided no detail whatsoever regarding any special skill or experience she had which would warrant her admission pro hac vice in this particular matter. *Cf.*, *Perkins v Elbilis*, *supra* at 544. Further, she failed “to clarify the role that she would assume in the litigation. *Neal v Ecolab, Inc.*, *supra* at 716.

Furthher, this Court noted that Gately's affidavit, executed in the District of Columbia, did not bear a certificate of conformity and thus failed to meet the requirements of CPLR 2309(c).

In this renewed motion, Possidente avers that Gately is ClassPass's national litigation counsel and represents ClassPass in disputes wherever they arise nationally and that, as such, she has a unique understanding of ClassPass's business, including issues involving the terms that govern plaintiff's membership. He additionally avers that ClassPass would be prejudiced should Gately not be able to appear pro hac vice because it would need to retain another attorney to learn its practices and procedures. Further, he explains that Gately would act as lead counsel for ClassPass and that he, as a member in good standing of the Bar of New York would assist her.

In her Affidavit, Gately also notes that the law firm of Venable LLP has operated as outside counsel for ClassPass since 2015, and that she, as national litigation counsel for the company, possesses specific knowledge of the Terms of Use, as they relate to the within matter. She further notes that ClassPass has specifically asked that she be able to act as lead counsel in the instant matter given her expertise in these matters, noting that they would be prejudiced for the reason set forth above were she not to be able to perform this role.

The Court additionally notes that Gately's affidavit contains a Certificate of Conformity in compliance with CPLR 2309 (c).

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

ORDERED that the motion to renew is granted; and it is further

ORDERED that, upon renewal, Caroline P. Gately is hereby permitted to appear and to participate pro hac vice in this action on behalf of defendant ClassPass, Inc.; and it is further

ORDERED that Caroline P. Gately shall at all times be associated herein with counsel who is a member in good standing of the Bar of the State of New York and is an attorney of record for the party in question, and all pleadings, briefs and other papers filed with the Court shall be signed by the attorney of record who shall be held responsible for such papers and for the conduct of this action; and it is further

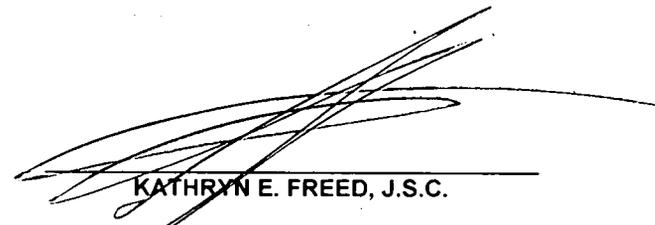
ORDERED that, pursuant to Section 520.11 of the Rules of the Court of Appeals and Section 602.2 of the Rules of the Appellate Division, First Department, Caroline P. Gately, the attorney hereby admitted pro hac vice, shall abide by the standards of professional conduct imposed upon members of the New York Bar, including the Rules of the Court governing the conduct of attorneys and the Disciplinary Rules of the Code of Professional Responsibility; and it is further

ORDERED that Caroline P. Gately shall be subject to the jurisdiction of the courts of the State of New York with respect to any acts occurring during the course of her participation in this matter; and it is further

ORDERED that Caroline P. Gately shall notify the Court immediately of any matter or event in this or any other jurisdiction which affects her standing as a member of the Bar; and it is further

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

1/25/2018
DATE


KATHRYN E. FREED, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input checked="" type="checkbox"/>	GRANTED			<input type="checkbox"/>	GRANTED IN PART		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER			<input type="checkbox"/>	SUBMIT ORDER		
	<input type="checkbox"/>	DO NOT POST			<input type="checkbox"/>	FIDUCIARY APPOINTMENT		<input type="checkbox"/>
								REFERENCE