

QUAN-EN YANG, *et al.*
On Their Own Behalf and on Behalf
Of 3 All Others Similarly Situated,

Plaintiffs,

vs.

G & C GULF, INC. d/b/a
G&G TOWING, *et al.*

and

BRUCE PATNER t/a
PATNER PROPERTIES,
On His Own Behalf and on Behalf
of All Others Similarly Situated

Defendants.

* IN THE
* CIRCUIT COURT
* FOR
* MONTGOMERY COUNTY, MD.
* Case No. 403885V
* TRACK VI
*
* Hon. Ronald B. Rubin,
* Specially Assigned
*
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RECEIVED

FEB 28 2018
Clerk of the Circuit Court
Montgomery County, Md.

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**PLAINTIFFS' RESPONSE TO MOTION TO WITHDRAW AS
COUNSEL FOR DEFENDANT LITIGATION CLASS
AND AS REPRESENTATIVE OF DEFENDANT LITIGATION CLASS**

The Plaintiff Class, by and through its undersigned counsel, hereby responds to the Motion to Withdraw as Counsel for Defendant Litigation Class and as Representative of Defendant Litigation Class (Dkt. No. 396) filed by Defendant Class Representative Bruce Patner t/a Patner Properties' ("Patner") and Defendant Class Counsel at Kramon & Graham ("KG"). As set forth below, while Plaintiffs are somewhat understanding of and sympathetic to Patner and KG's position, the fact remains that their continued involvement in this case is appropriate and necessary and neither has provided a legal basis to change their status in this case.¹

¹ Indeed, over the past month, Plaintiffs have explored a number of options for both the Representative Defendant and Defendant Class Counsel. While we have determined that there may be other attorneys and Defendant Litigation Class Members that could, if appointed by the Court, serve as adequate Representative Defendants and Defendant Class Counsel – including those that have already intervened in this case – Plaintiffs have nonetheless concluded that it is in the best interests of the Plaintiff Class to oppose Patner and KG's Motion. In short, the delay, duplication of effort and additional cost that will likely result at this advanced stage of the

I. Patner and KG Have Each Served Adequately in their Appointed Roles

On November 14, 2016, this Court granted Class Certification pursuant to Rule 2-231(b)(1)(A) and 2-231(b)(1)(B) of the Maryland Rules of Civil Procedure, of a non-opt out Defendant Class consisting of:

All Parking Lot owners, managers and agents who entered into a written contract with G&G for the provision of trespass towing services which resulted in one or more vehicles being towed from the Parking Lot between April 16, 2012 and January 7, 2016.

Dkt. No. 219 (hereinafter “Defendant Litigation Class”). In that Order, the Court appointed Mr. Patner as Defendant Class Representative and KG as Defendant Class Counsel.² Prior to the Court’s ruling, Patner through his counsel, KG, vigorously opposed appointment as Class Representative and Class Counsel – largely for the same reasons set forth in the current Motion. But, as the Court stressed in its Order, Defendant Class Counsel and a Defendant Class Representative need not be eager to fill the positions, they need only be adequate. Dkt. No. 219 at 10. The Court found that the adequacy requirements for both a Defendant Class

litigation if these representative roles are substituted – especially given the required briefing, argument and potential appeals that will result from the pending cross motions for summary judgment (Dkt. Nos. 395 and 412) – from the Plaintiff Class’ perspective, militates against the pending Motion.

² Throughout the course of the litigation involving the Defendant Class, the lawyers from KG have continually suggested to the Court that they were somehow conscripted into their service as Defendant Class Counsel in this case. This characterization is neither fair nor accurate. In fact, at the time that KG entered its appearance in this case, Mr. Patner was already a Defendant in this case and the Fourth Amended Complaint, which pled facts relating to the Defendant Class, was already on file. In addition, the Scheduling Order for discovery, briefing and argument on a motion to certify the Defendant Class had already been approved by the Court. Dkt. No. 158. We assume that when it took on the representation of Mr. Patner, KG fully understood the status of the litigation and knew – given its credentials and reputation in the legal community – that there was a strong likelihood that they Plaintiffs would request that it be appointed as counsel for the Defendant Class.

Representative and Defendant Class Counsel were “easily met” in this case. See Dkt. No. 219 at 10.³

Patner and KG have each served in their roles for more than a year and a half. In that time, they have vigorously defended the interests of the Defendant Class. They have engaged in active and thorough discovery and motions practice. In defense of the Defendant Class they mounted an aggressive opposition to certification of the Defendant Class, even taking the extraordinary step of filing a Petition for Issuance of Writ of Mandamus in the Court of Appeals. And, they also negotiated a very favorable settlement for the Defendant Class that took a full seven (7) months of intense discussions to achieve. Indeed, over the course of their involvement in this case, the official Court docket has swelled in this case from 144 entries to well over 400.

And they have each been amply rewarded for their efforts. Under the recent Settlement, for example, both Mr. Patner and KG were awarded fees for their efforts. Dkt. No. 369 at ¶ 24. For its part, KG was awarded fees and costs of approximately \$428,000, of which more than \$332,000 has already been collected and transferred to KG – more than 77%. Now that this case is plowing towards its conclusion – either by trial or dispositive motion – both Patner and KG tell the Court that they want to withdraw from their respective positions citing, largely, the financial burden that this case imposes.

However, Patner and KG remain adequate and – especially in the absence of adequate substitutes – it is in the best interests of the Parties and the Court that they each remain in their respective roles on behalf of the Defendant Class. In short, the Defendant Class cannot go unrepresented.

³ In finding that Patner and KG met the adequacy requirements of Md. Rule 2-231 the Court noted, “Lead counsel for Patner is an able, experienced federal and state-court trial lawyer, and he is backed by an ample team from his well-regarded firm. Patner testified at his deposition that he will forcefully defend against the plaintiffs’ claims.” Dkt. No. 219 at 11.

II. Patner is Still an Adequate Defendant Litigation Class Representative

Although Patner settled a portion of his liability to the Plaintiff Class, both he and KG remain adequate to represent the Defendant Class. Patner is still a member of the Defendant Litigation Class because he is liable for 56 tows that are not covered by the Settlement Agreement. Patner contests his continued adequacy because he has filed a motion raising a statute of limitations defense (Dkt. No. 395) that is only applicable to some, but not all, of the Defendant Litigation Class members. Patner's suggestion is without merit.

The law is clear that a Defendant Class Representative's defenses do not need to be identical or perfectly coextensive with the defenses of all other class members - "substantially similarity is sufficient." See e.g., *Frankford Hospital v. Blue Cross of Greater Philadelphia*, 67 F.R.D. 643 (E.D.Pa.1975); *Life of the Land v. Land Use Commission*, 623 P.2d 431 (Haw.1981); *Thillens, Inc. v. Cmty. Currency Exch. Ass'n of Illinois, Inc.*, 97 F.R.D. 668, 678 (N.D. Ill. 1983). The fact that Patner and KG filed a motion that applies to some, but not all, Defendant Classes members does not limit their adequacy. Indeed, it shows that they will continue the vigorous defense of this case.

And regardless of how the Defendant Class' Motion for Partial Summary Judgment turns out, the continued involvement of the Defendant Class Representative is critical. If the Court denies the Motion, as Plaintiffs expect, then Patner stands in the exact same position as all other 398 remaining Defendant Class Members. However, even if the Court grants the Motion, his continued involvement is critical while the limitations issue looms until an appeal goes forward.⁴

In the end, it is inescapable that the Court has already found that the Patner's defenses and the circumstances surrounding Patner's liability to the Plaintiff Class are "substantially

⁴ In addition, Plaintiffs have not only opposed the Defendant Class' Motion for Partial Summary Judgment, but filed a Cross Motion seeking entry of judgment against each of the remaining Defendants under the "joint and several" liability provisions of Montgomery County's Tow Ordinances, Montgomery County Code, § 30C-1, *et seq.* Dkt. No. 412.

similar” to all of the other Defendant Litigation Class. *See* Dkt. No. 219 at 7, 9, and 17. The facts supporting the statute of limitations defense existed when the Court originally found Patner adequate to represent the Defendant Class and there is no new circumstance that would affect Patner’s adequacy in representing the Defendant Litigation Class.

III. It Will Cause Undue Delay, Prejudice and Injustice If KG is Permitted to Withdraw

a. KG provides no reason why it is no longer adequate under Md. Rule 2-231

Like Patner, KG also seeks to withdraw as representatives this case. The only basis KG asserts to support its withdrawal as Defendant Class Counsel comes in Paragraph 11 of its motion (Dkt. No. 396). The argument is covered by three short sentences and it all comes down to a suggestion that KG is not being paid to represent the Defendant Class in this case. Considering, however, that KG was just paid over \$332,000 – and more is expected as Defendant Settlement Class payments arrive every day – it is disingenuous for them to argue that this case places an unreasonable financial burden on the firm. If KG withdraws as Defendant Class Counsel it will place an even greater burden on the Parties and the Court given the advanced stage of the case.

b. Even applying the standards set forth in the Md. Rules, KG must remain as counsel

Nor do the Md. Rules provide any basis for KG to withdraw.

Md. Rule 2-132 governs the protocol for withdrawing as counsel, generally. Under Md. Rule 2-132(b), an attorney requesting to withdraw as counsel must file a motion with the Court and provide notice to the client. The decision whether to grant or deny a motion to withdraw as counsel lies within the sound discretion of the trial court. *Serio v. Baystate Properties, LLC*, 209 Md.App. 545, 554 (2013). “The court may deny the motion if withdrawal of the appearance would cause undue delay, prejudice, or injustice.” Md. Rule 2-132(b); *see also In re Franke*, 207

Md. App. 679, 690 (2012). As Defendant Class Counsel, KG represents Patner and the entire Defendant Class, so the factors must be analyzed globally as they apply to all absent Defendant Class members.

There are sound and important reasons why KG should continue to represent the Defendant Litigation Class as Class Counsel in this case. It is clear that the Defendant Class will suffer undue delay, prejudice, and injustice if KG is permitted to withdraw from the case at this point in time. In *In re Franke*, 207 Md. App. 679 (2012), the Court of Special Appeals found that the trial court abused its discretion in denying an attorney's motion to withdraw as counsel because there was no risk of undue delay and any prejudice or injustice the client would suffer was self-inflicted because he did not pay his attorney, he did not attempt to seek new counsel, and he was well positioned to proceed *pro se*. This case is clearly quite different.

Unlike in an individual case, in a defendant class action, the defendant class counsel must be approved and appointed by the Court. The process of choosing and appointing *new* defendant class representative and class counsel in and of itself would take some time and cause undue delay. Further, replacing Defendant Class Counsel is not as easy as simply appointing another attorney. KG has been in this case for more than a year and a half. The firm has an institutional knowledge of the history of the case and is intimately familiar with the procedure and legal issues at stake. The learning curve for new class counsel, and thus the burden on anyone else brought in at this time, would be steep.

Moreover, there is no option here for this case to proceed without Defendant Class Counsel (*i.e.*, *pro se*).

In its Motion, despite the fact that KG was awarded more than \$428,000, of which more than 77% – \$332,000 – has been paid, KG claims that it has “hundreds of thousands of dollars of unpaid bills in this matter.” *See* Dkt. No. 396. While the undersigned Plaintiffs’ Counsel are

sympathetic to KG's suggestion, under Maryland Rule of Professional Conduct 19-301.1 an attorney may withdraw from a matter only if "the representation will result in an *unreasonable* financial burden on the attorney or has been rendered unreasonably difficult by the client." Md. Rule 19-301.1 (emphasis added); *In re Franke*, 207 Md. App. 679, 690–93 (finding the attorney would face an "unreasonable financial burden" if denied permission to withdraw from a case where there was "little likelihood" that the attorney would be paid "any portion" of the \$120,000 owed).

Here KG is not saddled with an "unreasonable financial burden." Putting aside that KG is one of the most respected law firms in Maryland with substantial resources, and its financial position will not likely be compromised by its representation here, it is hard to imagine anyone arguing that its financial compensation to date is inadequate. Indeed, in awarding fees and costs to KG in connection with the settlement, the Court awarded 100% of what was requested in Defendants' Fee Petition, *see* Dkt. No. 369; Dkt. No. 340, a substantial portion of which is already collected. Moreover, the fact that Patner does not have insurance is of no consequence, KG has been paid for its services and is not unreasonably burdened by the representation.

IV. Patner and KG Continue to Vigorously Defend the Defendant Class

To their great credit, despite their request to withdraw, Patner and KG continue to litigate and defend the interests of the Defendant Class. On February 8, 2018, KG on behalf of the Defendant Class filed a Motion for Partial Summary Judgment regarding the statute of limitations. Dkt. No. 395. Although KG asserts that the January 16, 2018 Settlement Agreement provides a "logical juncture" for Patner and KG to withdraw from representing the Defendant Class, permitting them to do so, would raise substantial questions and concerns. At a minimum, regardless of which party wins the motion – or for that matter, Plaintiffs' Cross Motion for Summary Judgment (Dkt. No. 412) – there will be an appeal. The question thus arises as to

whether KG will participate in that appeal or expect some future class counsel to do so? The current Defendant Class Representatives are in the best position to do so and it is most efficient and economical.


Accordingly, the certified Plaintiff Class requests that the Court deny Defendant Class Counsel and Defendant Class Representative's Motion to Withdraw as Counsel for Defendant Litigation Class and as Representative of Defendant Litigation Class.

Respectfully submitted,

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By:


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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of February 2018, I served the foregoing Plaintiffs' Response to Defendant Class Counsel and Defendant Class Representative's Motion to Withdraw as Counsel for Defendant Litigation Class and as Representative of Defendant Litigation Class and proposed Order by electronic mail and first-class mail, postage prepaid on:

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ORDER

UPON CONSIDERATION of Defendant Class Counsel and Defendant Class Representative's Motion to Withdraw as Counsel for the Defendant Litigation Class and as Representative of the Defendant Litigation Class, Plaintiffs' Response thereto, and for good cause shown, it is this this _____ day of _____, 2018,

ORDERED that Defendant Class Counsel and Defendant Class Representative's Motion to Withdraw as Counsel for the Defendant Litigation Class and as Representative of the Defendant Litigation Class is DENIED.

Hon. Ronald B. Rubin
Judge, Circuit Court for Montgomery County