

IN THE CIRCUIT COURT OF CLINTON COUNTY, MISSOURI

BEVERLY LONG, et al., )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 PRIME TANNING CORP., et al., )  
 )  
 Defendants. )

Case No. 09CN-CV00422

**F I L E D**  
 NOV 29 2010  
 MOLLY LIVINGSTON  
 Clerk of Clinton Co. Circuit Court

**DEFENDANT ELEMENTIS LTP INC.'S SUGGESTIONS IN OPPOSITION  
 TO DRUMMOND WOODSON AND MACMAHON'S  
 MOTION TO WITHDRAW AS COUNSEL OF RECORD FOR DEFENDANTS  
 PRIME TANNING CORP., PRIME TANNING CO., INC.  
 AND WISMO CHEMICAL CORP.**

Defendant Elementis LTP Inc. ("Elementis"), for its suggestions in opposition to Drummond Woodsum MacMahon's ("DWM") Motion to Withdraw states as follows:

DWM has served as legal counsel to Prime Tanning Corp. ("Missouri Prime"), Prime Tanning Co., Inc. ("Maine Prime") and Wismo Chemical Corp. ("Wismo") in approximately 20 lawsuits that have been brought in both the federal and state court systems in Missouri during the last eighteen to twenty months.

Recently, the local counsel utilized by Maine Prime, Missouri Prime and Wismo, the Polsinelli Shughart Law Firm, moved for leave to withdraw as counsel. This Court granted that motion.

DWM now asks this Court to allow its withdrawal from this lawsuit as Maine Prime, Missouri Prime and Wismo's *sole remaining counsel*. However, the bases DWM provides are not sufficient under Rule 4-1.16 of the Missouri Rules of Professional Conduct.

Before a law firm withdraws as counsel for its client, it must demonstrate the proper basis under Rule 4-1.16 of the Missouri Rules of Professional Conduct. The relevant part of that rule states as follows:

**Rule 4-1.16. Declining or terminating representation.**

\* \* \*

- (b) Except as stated in Rule 4-1.16(c), a lawyer may withdraw from representing a client if:
- (1) Withdrawal can be accomplished without material adverse effect on the interests of the client;
  - (2) The client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
  - (3) The client has used the lawyer's services to perpetrate a crime or fraud;
  - (4) The client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;
  - (5) The client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
  - (6) The representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
  - (7) Other good cause for withdrawal exists.

Missouri Rule of Professional Conduct 4-1.16.

DWM's Motion to Withdraw should be denied. The current litigation, which has been pending for approximately 18 months, is one of approximately 20 other cases where DWM represents Maine Prime, Missouri Prime and Wismo. DWM is the only remaining firm that represents these defendants in this case. Rule 4-1.16 allows withdrawal on y

under certain specific conditions. DWM has not provided any reason or explanation that would allow it to withdraw under the rule. Instead, DWM gives only two reasons that can be summed up as follows:

- (1) Missouri Prime and Maine Prime have sought protection under the bankruptcy code and DWM is "no longer authorized" to represent Maine Prime and Missouri Prime; and
- (2) Following the withdrawal of the Polsinelli firm, DWM is no longer associated with Missouri counsel.

DWM's Motion to Withdraw should be denied. First, DWM has provided no information to support a grounds for withdrawal under subpart (b)(1) of the rule. DWM has provided no information to confirm that Missouri Prime, Maine Prime and/or Wismo will not suffer a material adverse affect as a result of DWM's withdrawal. In fact, the opposite seems true. The current litigation, which has now been on file for approximately 18 months has been defended by DWM and the Polsinelli firm. Polsinelli Shughart is no longer in the case and DWM is the sole law firm representing these defendants. DWM is in the best position to defend the case or to supervise other local attorneys who will defend the case. It is inconceivable that the withdrawal of DWM will not disadvantage the Prime entities and, especially, Wismo.

Notably, DWM states that it is no longer authorized to represent Maine Prime and Missouri Prime since they have sought bankruptcy protection. *However, DWM has made no such statement about Wismo.* Wismo has not sought protection under the U.S. Bankruptcy Code and, at the very least, DWM should be required to continue to represent Wismo even if it is not required to represent the Prime entities. It is clear that no at empt

to directly contact its client, Wismo, has been undertaken by DWM. In paragraph 4 of its motion, DWM indicates that Wismo's "last known address" was 546 South Water Street in Milwaukee, Wisconsin. DWM, a Maine law firm, makes this representation even though it knows full well that Wismo is now a wholly-owned subsidiary of its client Prime Tanning, and that Wismo has had no contact with the Milwaukee, Wisconsin address since, at least, March 2009. Clearly, DWM has made no real effort to contact Wismo regarding its Motion to Withdraw since it cannot provide a current business address.

Second, DWM has made no showing that Maine Prime, Missouri Prime and Wismo (1) have persisted in a course of action that it believes to be criminal or fraudulent; (2) have used DWM's services to perpetrate a crime or fraud; (3) or have insisted upon taking action that DWM considers to be repugnant. As a result, DWM has made no attempt to show a basis for its motion under Rule 4-1.16(b)(2)-(4).

Similarly, no effort has been made by DWM to articulate that any of its clients have failed to substantially fulfill an obligation to it or that continued representation will result in an unreasonable financial burden under Rule 4-1.16(b)(5) and (6). DWM has simply made no such representation in its motion.

Finally, there is no other "good cause" for withdrawal as provided under subpart (b)(7) of Rule 4-1.16(b). DWM states, without further support, that it is "no longer authorized to act as counsel" for Missouri Prime and Maine Prime. As noted above, DWM makes no such statement as to Wismo and, therefore, should not be allowed to withdraw for Wismo under any circumstance. However, even as to the Prime entities, no support is provided for this statement. Due to the fact that DWM only provides the "last

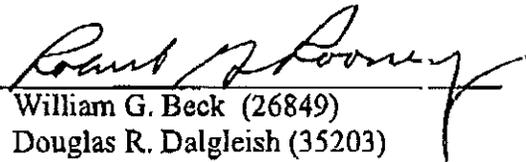
known address[es]" for its clients, there is, at least, some question as to whether it has actually undertaken an attempt to contact them. Moreover, the fact that the "last known address" for Wismo is an incorrect address gives further reason to question this otherwise unsupported statement. Additionally, there is no basis available for withdrawal as counsel simply because DWM is not currently associated with Missouri counsel. This problem is easily solved by DWM or its clients contacting a Missouri lawyer to enter an appearance on its clients' behalf. Under any circumstance, DWM should be required to remain in the case and find local counsel for Wismo since that entity has not sought bankruptcy protection.

WHEREFORE, Defendant Elementis LTP Inc. seeks an Order from this Court denying DWM's Motion to Withdraw and for such other and further relief as may be just and equitable.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing was served by First Class United States Mail, Postage Prepaid, to the following counsel of record this ~~29th~~ 29th day of November, 2010:

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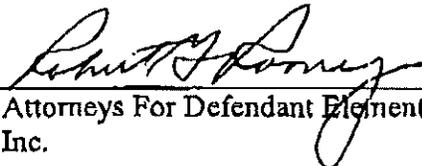
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