

Chi v. N. Riverfront Marina & Hotel LLLP; Feng v. N. Riverfront Marina & Hotel LLLP, 2024 NCBC Order 3.

STATE OF NORTH CAROLINA
NEW HANOVER COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 4611
23 CVS 0062

HE CHI; BIAN YIDE; CAO YONGJIE;
CHEN MINZHI; CHENG TAO; HU
KUN; LIANG JINGQUAN; LUO PENG;
MA QIHONG; MA WEIGUO; SONG
YING; WANG JIAN; WANG LING;
WANG XUEHAI; XIE QIN; YE XIAFEN;
and ZHANG YUNLONG,
Plaintiffs,

v.

NORTHERN RIVERFRONT MARINA
AND HOTEL LLLP; NRMH HOLDINGS
LLC; NRMH HOTEL HOLDINGS LLC;
USA INVESTCO LLC; PAC RIM
VENTURE LTD.; RIVERFRONT
HOLDINGS II LLC; WILMINGTON
RIVERFRONT DEVELOPMENT LLC;
GOLDEN MARINA LLC; CIRCLE
MARINA CARWASH, INC.; CHARLES
J. SCHONINGER; JOHN C. WANG;
JIANGKAI WU; CHRISTOPHER
ARDALAN; and GONGZHAN WU,
Defendants.

WANG FENG and ZHANG SHIXIONG,
Plaintiffs,

v.

NORTHERN RIVERFRONT MARINA
AND HOTEL LLLP; NRMH HOLDINGS
LLC; NRMH HOTEL HOLDINGS LLC;
USA INVESTCO LLC; RIVERFRONT
HOLDINGS II LLC; WILMINGTON
RIVERFRONT DEVELOPMENT LLC;
GOLDEN MARINA LLC; CIRCLE
MARINA CARWASH, INC.; CHARLES
J. SCHONINGER; JOHN C. WANG;
JIANGKAI WU; and CHRISTOPHER
ARDALAN,
Defendants.

**ORDER ON MOTIONS FOR LEAVE TO
WITHDRAW**

1. **THIS MATTER** is before the Court on both Plaintiffs' Motion for Leave to Withdraw as Counsel for Certain Plaintiffs, (Chi ECF No. 144), and their subsequent Motion for Leave to Withdraw as Counsel for All Plaintiffs, (Chi ECF No. 159, Feng ECF No. 91), (collectively, the "Motions").

2. Based on the Motion, briefs, affidavit of Mr. Wu, and the statements of counsel, the Court finds and concludes as follows:

I. FINDINGS OF FACT

3. Plaintiffs are Chinese nationals who invested in a riverfront real estate development in downtown Wilmington, North Carolina. Their allegations are recounted at length in the Court's previous orders. *See, e.g., Chi v. N. Riverfront Marina & Hotel LLLP*, 2023 NCBC LEXIS 89, at **2-16 (N.C. Super. Ct. July 27, 2023).

4. Plaintiffs filed the first of these parallel actions on 13 December 2021. (Chi Compl., ECF No. 3.) Since that time, the case has progressed well into discovery. Fact discovery is scheduled to close on 15 January 2024. (*See* Am. Case Mgmt. Order, Chi ECF No. 131, Feng ECF No. 68.) The parties reportedly have engaged in written discovery and completed some depositions. (NRMH Defs.' Resp. Opp. Mot. Leave Withdraw as Counsel for All Pls. ["NRMH Defs.' Br."] ¶ 9, Chi ECF No. 167, Feng ECF No. 97.)

5. On 28 September 2023, counsel for the Plaintiffs filed a motion for leave to withdraw from the representation of six Plaintiffs: Bian Yide, Chen Minzhi, Cheng Tao, Luo Peng, Song Ying, and Zhang Yunlong (the "Six Plaintiffs"). In the motion,

Plaintiffs' counsel maintained that withdrawal was appropriate pursuant to North Carolina Rule of Professional Conduct 1.16 ("Rule 1.16") because the Six Plaintiffs had both failed to communicate with counsel and pay their attorneys' fees. Plaintiffs' counsel contended that continued representation of the Six Plaintiffs would lead to unreasonable financial hardship. (*See generally* Mot. Leave Withdraw as to Certain Pls. 2.)

6. Defendant Jiangkai Wu opposed the motion on the grounds that the proposed withdrawal would render contact with the Six Plaintiffs, who are not fluent in English and live in China, difficult. Because Plaintiffs' counsel would continue to be responsible for prosecuting the identical claims of the remaining Plaintiffs, Wu argued that denying the motion would not lead to undue financial hardship. (Def. Jiangkai Wu's Resp. Opp. Mot. Leave Withdraw as Counsel for Certain Pls., Chi ECF No. 149.)

7. On 3 November 2023, before the Court ruled on their first motion, counsel for the Plaintiffs filed a second motion, this time to withdraw from representing all Plaintiffs. They rely on the same arguments made in the first motion to withdraw. (Mot. Leave Withdraw as Counsel for All Pls., Chi ECF No. 159, Feng ECF No. 91.) This time all Defendants opposed the motion citing Plaintiffs' lack of fluency in the English language, as well as the failure of Plaintiffs' counsel to ensure that substitute counsel had been retained. According to Defendants, allowing Plaintiffs' counsel to withdraw without other counsel in place would lead to severe delays in the litigation. (NRMH Defs.' Br., Chi ECF No. 167, Feng ECF No. 97; Def.

Jiangkai Wu's Resp. Opp. Mot. Leave Withdraw as Counsel for All Pls., Chi ECF No. 168, Feng ECF No. 98.)

8. The Court has also received the affidavit of Rongping (Larry) Wu. Wu testifies that (1) a significant amount is owed his firm in attorneys' fees that Plaintiffs have not paid, (2) counsel has informed Plaintiffs of these outstanding costs via five separate letters and warned them that failure to pay the amount due would lead to withdrawal, and (3) a proposed form consent to counsel's withdrawal was sent to all Plaintiffs. (Decl. of Rongping (Larry) Wu Supp. Mots. Withdraw ["Aff. of Larry Wu"] ¶¶ 8-14, Chi ECF No. 189, Feng ECF No. 103, under seal.)

9. Since 23 October 2023, the Court has received affidavits from five Plaintiffs consenting to the withdrawal of Plaintiffs' counsel: Zhang Yunlong, Luo Peng, Cao Yongjie, Song Ying, and Cheng Tao (the "Consenting Plaintiffs"). Only one of the Consenting Plaintiffs, Cao Yongjie, provided an address that is within the United States. The other four appear to reside in China. The four Consenting Plaintiffs who reside in China have since settled with the NRHM Defendants. (*See* Stipulations of Voluntary Dismissal with Prejudice of Cheng Tao, Chi ECF No. 177, Song Ying, Chi ECF No. 178, Zhang Yunlong, Chi ECF No. 179, and Luo Peng, Chi ECF No. 180.)

10. Upon request of Plaintiffs' counsel, on 21 December 2023, the Court held a status conference on the Motions, during which all parties were heard. (Not. of Conference, Chi ECF No. 184, Feng ECF No. 101.) All counsel report that settlement discussions, at least with the NRMH Defendants, are progressing. However,

Plaintiffs' counsel contends that some of this activity is going on without their knowledge.

II. CONCLUSIONS OF LAW

11. North Carolina Rule of Professional Conduct 1.16 ("Rule 1.16") governs permissive withdrawals of counsel. It is well-established that an attorney cannot withdraw "without (1) justifiable cause, (2) reasonable notice to [the client], and (3) the permission of the court." *Smith v. Bryant*, 264 N.C. 208, 211 (1965).

12. "Whether an attorney is justified in withdrawing from a case will depend upon the particular circumstances, and no all-embracing rule can be formularized." *Id.* However, justifiable cause may exist when (1) "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" or (2) "the representation [of the client] will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client." N.C. R. Pro. Conduct R. 1.16(b)(6)-(7). *See also Gosnell v. Hilliard*, 205 N.C. 297, 301 (1933) (declaring that a client's failure to pay counsel's fees "will justify the attorney in refusing to proceed with the case.")

13. Reasonable notice to the client is also required. *See, e.g., Williams and Michael, P.A. v. Kennamer*, 71 N.C. App. 215, 217 (1984) ("Where an attorney has given his client no prior notice of an intent to withdraw, the trial judge has no discretion."); *In re D.E.G.*, 228 N.C. App. 381, 387 (2013) (emphasizing that courts must "inquire into the efforts made by counsel to contact" their clients to ensure that clients' rights are protected).

14. Even so, “[t]he determination of counsel’s motion to withdraw is within the discretion of the trial court[.]” *Benton v. Mintz*, 97 N.C. App. 583, 587 (1990). Should the Court, in the exercise of its discretion, deny an attorney’s request to withdraw, that attorney must continue to represent the client. *See* N.C. R. Pro. Conduct 1.16(c).

15. Counsel for Plaintiffs claim the existence of justifiable cause on two grounds: (1) Plaintiffs have failed to properly communicate with counsel; and (2) continued representation would pose an unreasonable financial burden on counsel. (Mot. Leave Withdraw Certain Pls. 2, Chi ECF No. 144; Mot. Leave Withdraw All Pls. 2, Chi ECF No. 159, Feng ECF No. 91.) The Court agrees that justifiable cause exists.

16. The Court further concludes that Plaintiffs’ counsel has given reasonable notice of withdrawal through multiple letters to Plaintiffs and by sending them requests for their consent to this motion. (Aff. of Larry Wu ¶¶ 8-14.)

17. However, Defendants emphasize that prejudice will result, both to them and to the Court, if Plaintiffs’ counsel is permitted to withdraw and no other counsel appears. Defendants argue that it would disrupt these proceedings to require them to litigate with multiple *pro se* non-English-speaking Plaintiffs who live outside the United States and have a history of non-responsiveness. They object to counsel’s withdrawal absent procedural protections.¹ (NRMH Defs.’ Br., Chi ECF No. 168, Feng ECF No. 97.)

¹ Specifically, the Defendants request that the Plaintiffs (1) represent to the Court that they understand the consequences of *pro se* representation; (2) attest that they understand the

18. Courts have denied motions to withdraw when (1) the party is not fluent in English; (2) the party has been an intractable litigant due to poor communication or lack of cooperation; and (3) either much litigation remains or litigation has resulted in a final judgment that the prevailing party has not collected.² See, e.g., *Orbit Irrigation Prods. v. Sunhills Int'l*, 2015 U.S. Dist. LEXIS 183389, at *5-6 (D. Utah Sept. 9, 2015) (denying a motion to withdraw because the Chinese party spoke very little English and withdrawal would complicate the plaintiff's ability to collect a final judgment); *Ohntrup v. Firearms Ctr., Inc.*, 802 F.2d 676, 679 (3d Cir. 1986) (denying a motion to withdraw because the Turkish company's officers did not speak English, the Turkish company was not a cooperative litigant, and the Turkish company had yet to satisfy final judgment); *Weintraub Bros. Co. v. Attraction House Co.*, No. 94-6673, 1995 U.S. Dist. LEXIS 5244, at *7-8 (E.D. Pa. Apr. 17, 1995) (denying a motion to withdraw because the foreign corporate defendant's officers were not fluent in English, the corporation was an "intractable litigant," and the case was nearing trial); *Evony, LLC v. Aeria Games & Ent., Inc.*, No. C 11-0141 SBA, 2012 U.S. Dist. LEXIS 191750, at *5-7 (N.D. Cal. Sept. 28, 2012) (denying motion to withdraw because the foreign corporation had not reliably communicated with counsel, making it possible that it had not received notice of counsel's intent to withdraw).

Business Court's Rules; (3) identify a residential address and phone number within the United States for correspondence and service of pleadings; (4) agree to participate in this case without unreasonable delay; and (5) comply with all other rules and orders of the Court. (NRMH Defs.' Br. ¶ 19, Chi ECF No. 168, Feng ECF No. 97.)

² In the absence of North Carolina case law involving substantially similar facts, federal case law provides useful guidance.

19. When a motion to withdraw from the representation of a foreign client has been granted, withdrawal is typically conditioned on providing at least reliable contact information for the foreign parties. *See, e.g., 1st Tech, LLC v. Rational Enters. Ltda*, No. 2:06-cv-01110-RLH-GWF, 2008 U.S. Dist. LEXIS 106101, at *20-21 (D. Nev. July 15, 2008) (allowing counsel to withdraw as long as counsel provided the court and the plaintiff the names and current or last known addresses of the parties); *Sec. & Exch. Comm'n v. CKB168 Holdings, Ltd.*, No. 13-CV-5584, 2015 WL 13943427, at *1 (E.D.N.Y. Mar. 5, 2015) (granting withdrawal on the condition that counsel provide the court with the defendants' email and mailing addresses).

20. Here, the Court recognizes that Plaintiffs' counsel did not sign up for a significant *pro bono* representation, particularly with clients that reportedly do not regularly communicate with them. On the other hand, the Court must also consider the prejudice that withdrawal will create for both Defendants and the Court. *Cf. Orbit Irrigation Prods.*, 2015 U.S. Dist. LEXIS 183389, at *5-6 ("While the Court acknowledges the difficulties of continuing representation without the ability to communicate with clients and the lack of payment for legal services, allowing [counsel] to withdraw at this stage of the litigation would deprive the Court of any effective means of supervising a final judgment[.]"). Because Plaintiffs are Chinese nationals who do not speak fluent English and have reportedly been difficult to contact—even for Mandarin-speaking Plaintiffs' counsel—counsel's withdrawal could exacerbate already difficult communications unless certain conditions are in place.

21. Furthermore, the close of fact discovery is imminent. The Case Management Order gives the parties until 15 January 2024. (Am. Case Mgmt. Order, Chi ECF No. 131, Feng ECF No. 68). Defendants report that multiple depositions remain outstanding and that the parties have other significant fact discovery to complete before this deadline. (NRMH Defs.' Br., Chi ECF No. 168, Feng ECF No. 97.)

22. Under these circumstances, prior to permitting counsel's withdrawal, the Court shall require assurances that each Plaintiff is (1) able to communicate with opposing counsel and the Court (including, if necessary, by having access to a translator at their cost), (2) understand his/her obligations pursuant to the North Carolina Rules of Civil Procedure, the Case Management Order, and this Court's Rules, (3) has an account on this Court's electronic filing system and is able to serve and be served with pleadings and to receive electronic notices from the Court, and (4) understands his/her obligation to provide and maintain with the Court reliable contact information. In addition, given that the deadline to complete fact discovery is near, counsel's withdrawal shall not be permitted until fact discovery has been completed.

23. **WHEREFORE**, the Court, in the exercise of its discretion, hereby **GRANTS** the Motions and **ORDERS** as follows:

- a. Following the completion of fact discovery in this matter and provided that the conditions herein are satisfied, Katie Burghardt Kramer and Rongping "Larry" Wu of DGW Kramer LLP, and Michele

A. Ledo of LedoLaw are hereby released and discharged from further representation of Plaintiffs in these matters.

- b. Withdrawal is conditioned upon the filing of a certification from Plaintiffs' counsel that they have ensured that Plaintiffs (1) have established a method for translating communications that will enable them to communicate with opposing counsel and the Court, (2) understand their obligations pursuant to the North Carolina Rules of Civil Procedure, the Case Management Order, and this Court's Rules, and (3) have established accounts on the Court's electronic filing system, and Plaintiffs' counsel have instructed them on how to serve and be served with pleadings and how to receive electronic notices from the Court, (4) understand their obligation to provide and maintain reliable contact information with the Court, including both email and physical addresses, and (5) have been served with a copy of this Order in both its original form and translated into Mandarin Chinese.
- c. The fact discovery period is hereby extended until 31 January 2024.
- d. Following the completion of fact discovery, these proceedings shall be stayed until 29 February 2024 to allow Plaintiffs to secure other counsel if they so desire.
- e. The Court will reset the balance of the deadlines in the Case Management Order by separate order.

IT IS SO ORDERED, this the 5th day of January, 2024.

/s/ Julianna Theall Earp

Julianna Theall Earp
Special Superior Court Judge
for Complex Business Cases