

IN THE SUPERIOR COURT OF ROCKDALE COUNTY

STATE OF GEORGIA

NEIL WALLACE,

}

Civil Action File No:

Plaintiff,

}

2007-^C~~8~~V-2625 N

v.

}

GECKOSYSTEMS
INTERNATIONAL, INC., R.
MARTIN SPENCER, individually,
and ELAINE SPENCER,
individually,

}

}

}

}

}

Defendants.

}

FILED IN OFFICE
This 12 day of Jan 2009
Ruth A. Wilson CLERK
Rockdale Superior Court

MUTUAL DISMISSAL WITHOUT PREJUDICE

COMES NOW NEIL WALLACE and dismisses this Complaint against
GECKOSYSTEMS INTERNATIONAL, INC., R. MARTIN SPENCER, and ELAINE
SPENCER, without préjudice; and

COMES NOW GECKOSYSTEMS INTERNATIONAL, INC., R. MARTIN
SPENCER, and ELAINE SPENCER and dismiss their Counterclaims against NEIL
WALLACE without prejudice.

[SIGNATURE(S) APPEAR(S) ON THE FOLLOWING PAGE]

Neil Wallace

Neil Wallace
105 Luffness New
Williamsburg, VA 23188

GECKOSYSTEMS INTERNATIONAL, INC.

BY: *R. M. Spencer*

BY: R. Martin Spencer

Agent for Geckosystems International, Inc.
1640B Highway 212, SW
Conyers, GA 30094-4225

R. M. Spencer

R. Martin Spencer, Individually
1640B Highway 212, SW
Conyers, GA 30094-4225

Elaine Spencer

Elaine Spencer, Individually
1640B Highway 212, SW
Conyers, GA 30094-4225



GeckoSystems International Corporation

www.GeckoSystems.com
Main: 678/413-9236 Fax: 678/413-9247
1640B Highway 212, SW
Conyers, GA 30094-4255

Sent via Certified Mail
7006-2760-0000-9461-5601

January 2, 2009

Mr. Neil T. Wallace
105 Luffness New
Williamsburg, VA 23188

Re: Your Commitment to Terminate Lawsuit Letter of December 15, 2008
Concerning Case #: 2007-CV-2625 at the Superior Court of Rockdale County

Dear Sir:

We accept your offer of "...both parties withdrawing their claims and terminating the above referenced lawsuit without prejudice." (See enclosure.)


The honorable Judge Sidney L. Nation, Sr., of the Superior Court of Rockdale County regarding Case #: 2007-CV-2625 will be informed forthwith of the withdrawal of all claims by all parties.

As is customary, prudent and necessary, please provide us copies of all correspondence either prepared by you, or on your behalf, that may, or does regard this withdrawal of all claims and termination of the above referenced lawsuit without prejudice.

Sincerely,


R. Martin Spencer
President/CEO

Sincerely,


Elaine G. Spencer
Corporate Secretary/Treasurer

Enclosure

cc: Judge Sidney L. Nation, Sr.
Superior Court of Rockdale County

COPY

IN THE SUPERIOR COURT OF ROCKDALE COUNTY
STATE OF GEORGIA

NEIL WALLACE,

Plaintiff

v.

GECKOSYSTEMS
INTERNATIONAL, INC.,
R. MARTIN SPENCER, Individually
And ELAINE SPENCER, Individually
Defendant

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CIVIL ACTION

FILE NO. 2007-CV-2625-N

FILED IN OFFICE
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Clerk
Rockdale Clerk

ORDER

The above and foregoing matter came to the attention of the Court on the Plaintiff's Motion seeking leave of Court to appear pro se and after consideration of the motion and argument of counsel, the Court finds as follows.

On August 1, 2007, Plaintiff, pro se, filed a Complaint in State Court seeking damages arising out of his employment as Vice-President for Legal and Public Affairs for Defendant GeckoSystems. Plaintiff contended at the time of his termination, he was owed money for unpaid wages and a promised car allowance, and that promised stock in GeckoSystem was never transferred into his name. Additionally, Plaintiff sought punitive damages. Defendant answered and filed a counterclaim for seeking damages for breach of contract and breach of fiduciary duties. Defendant's further requested a declaratory judgment issue as to the reasonable value of services provided by Plaintiff and that an injunction issue prohibiting Plaintiff from disclosing any confidential information of GeckoSystems. Because Defendants sought equitable relief, the case was transferred to Superior Court.

On November 6, 2007, this case appeared before this Court on Defendants' Motion for Protective Order. At such time, it was brought to the Court's attention that the Plaintiff is an attorney licensed to practice in the States of New York and Florida. During the hearing, allegations were made by the Defendants that the Plaintiff was receiving Defendants' confidential attorney-client information from an employee at GeckoSystems. It was apparent to the Court during such proceeding that Plaintiff was conducting his discovery aggressively. After the hearing was concluded and the motion denied, the Court instructed Plaintiff that in order to ensure the prompt and orderly progression of the case and to ensure that Plaintiff's discovery tactics were not detrimental to the legitimate interests of the Defendants, the Court would require him to hire counsel who was a member of the State Bar of Georgia. As an attorney, Plaintiff has legal skills and knowledge of a **much** greater magnitude than non-attorney pro se litigant. Thus, he has a greater ability to circumvent the orderly progression of the case and to engage in dilatory discovery tactics. At the time of the hearing, Plaintiff had not made an Application to proceed pro hac vice. Thus, under such circumstances, should Plaintiff engage in any improper conduct, he would not be subject to sanctions by the State Bar of Georgia. Additionally, while he utilized the skills and knowledge he had ascertained through his education and the practice of law, he would not be under any duty to familiarize himself with the Georgia Rules of Professional Conduct, local court rules, and policies and procedures of this Court. See Uniform Superior Court Rule 4.4 (F) (1) & (2).

Thereafter, Plaintiff filed a Motion to Permit Plaintiff's Pro Se Appearance. This Motion did not contain a prayer for admission pro hac vice and it did not meet the requirements of Uniform Rule 4.4 which sets out the procedure an attorney must follow for pro hac vice admission to the State Bar of Georgia. When an attorney not admitted to practice law in this

state but who is admitted in another state or territory of the United States or the District of Columbia, desires to be admitted pro hac vice to the State Bar of Georgia, he or she must file a verified Application in the court where the litigation is filed. The Application shall be served on all parties in the case and the Office of General Counsel of the State Bar of Georgia.

Uniform Superior Court Rule 4.4 (D). Thereafter, the Office of General Counsel, or a party to the proceeding, may file an objection to the Application or seek the Court's imposition of conditions to the Motion being granted. Plaintiff's Motion was not verified and was not served on the Office of General Counsel of the State Bar of Georgia. Additionally, the Motion did not include **any** of the information required by Uniform Superior Court Rule 4.4.¹ In support of his position that he is entitled under the Georgia Constitution to represent himself pro se without applying for pro hac vice admission to the State Bar of Georgia, Plaintiff cited the cases of *Johnston v. Aderhold*, 216 Ga. App. 487 (455 S.E.2d 84) (1995) and *Cherry v. Coast House, Ltd*, 257 Ga. 408 (359 S.E.2d 904) (1987). However, both of these cases are distinguishable from this case in that the attorney who was seeking to represent himself was a member of the State Bar of Georgia and subject to discipline by such organization if he demonstrated unprofessional conduct in his self-representation.

Therefore, for the foregoing reasons, it is hereby

ORDERED and **ADJUDGED** that Plaintiff's Motion to Appear Pro Se is **DENIED**.

Further, it is hereby

¹ Appendix A of Uniform Rule 4.4 requires an attorney to include in his Application to appear pro hac vice the following: (1) the addresses of his residence and business; (2) the courts before which he has been admitted (3) whether, in this State, he had been denied admission pro hac vice or had his admission pro hac vice revoked; (4) whether he had been disciplined or sanctioned by any court of this State; (5) whether in the last five years any formal, written disciplinary proceedings had been brought against him; (6) whether in the last five years he had been formally held in contempt or otherwise sanctioned by any court by written order for disobedience of its rules or orders; (7) whether in the last two years he had made other Application to appear pro hac vice in this State; (8) an averment as to his familiarity with the Georgia Rules of Professional Conduct, local rules and court procedures of this Court; and (9) the name, address, telephone number and bar number of an active member in good standing of the bar of this state who would sponsor his application and appear of record with him.

ORDERED and **ADJUDGED** that Plaintiff's Request for a Certificate of Immediate Review is **DENIED**.

SO ORDERED this 26 day of January, 2008, at Conyers, Georgia.



Sidney L. Nation, Sr.,
Chief Judge, Superior Court,
Rockdale Judicial Circuit

Court of Appeals of the State of Georgia

ATLANTA,

MAR 21 2008

The Court of Appeals hereby passes the following order:

**A08I0169. NEIL WALLACE v. GECKOSYSTEMS INTERNATIONAL, INC.
et al.**

Neil Wallace filed an application for interlocutory review from the trial court's order denying his motion seeking leave to appear pro se. This Court, however, lacks jurisdiction to consider this application. Under OCGA § 5-6-34 (b), for a party to obtain interlocutory review of an order, the trial court must certify within ten days of the entry of the order that immediate review should be had. The Court observes that the superior court denied Wallace's request for a certificate of immediate review. The denial of an application for a certificate of immediate review is not an appealable judgment. *Price v. State*, 237 Ga. 352 (227 SE2d 368) (1976). It is true that the Supreme Court has crafted an exception to the requirement of a certificate applicable under certain limited circumstances. *Waldrip v. Head*, 272 Ga. 572, 575 (532 SE2d 380) (2000). This application, however, fails to show that any of the limited circumstances to which the exception may be applicable are present in this case. Therefore, adherence to the general rule is required. See *Smith & Wesson Corp. v. City of Atlanta*, 273 Ga. 431, 435 (3) (543 SE2d 16) (2001).

Wallace argues, however, that the matter is subject to direct appeal pursuant to the collateral order doctrine, despite the absence of a final judgment terminating the underlying action. Under the collateral order doctrine, a direct appeal is permitted in certain limited situations, "because the issue is substantially separate from the basic issues presented in the complaint, an important right may be lost if review had to await final judgment, and nothing further in the underlying action can affect the issue on appeal." *In re Paul*, 270 Ga. 680, 682-683 (513 SE2d 219) (1999).

However, “[t]o come within the ‘small class’ of decisions excepted from the final-judgment rule . . . , the order must conclusively determine the disputed question, resolve an important issue completely separate from the merits of the action, and be effectively unreviewable on appeal from a final judgment.” *Coopers & Lybrand v. Livesay*, 437 U. S. 463, 468-469 (98 SC 2454, 57 LE2d 351) (1978); see also *Scroggins v. Edmondson*, 250 Ga. 430 (297 SE2d 469) (1982). The order at issue does not meet these criteria, and the collateral order exception has never been extended to the type of order at issue in this case.

Since the circumstances of this case do not fall within the narrow exceptions to the requirement of a certificate of immediate review, Wallace’s failure to comply with the interlocutory appeal procedures of OCGA § 5-6-34 (b) deprives this Court of jurisdiction to consider his application, which is accordingly **DISMISSED**.

2007CV2625



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAR 21 2008

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Willie L. Martin, Clerk.

Court of Appeals of the State of Georgia

ATLANTA, May 7, 2008

The Court of Appeals hereby passes the following order:

**A08A1456. NEIL WALLACE v. GECKOSYSTEMS INTERNATIONAL, INC.
ET AL.**

Neil Wallace filed this direct appeal from the trial court's order denying his motion seeking leave to appear *pro se*. Because the order appealed from is not the final judgment in this case, Wallace was required to follow the interlocutory appeal procedure before filing his notice of appeal. See OCGA § 5-6-34 (b). We note that Wallace did in fact file an application for interlocutory review, docketed in this Court as application A08I0169, which this Court dismissed on March 21, 2008, for Wallace's failure to obtain a certificate of immediate review from the trial court.

Wallace argues, however, that the matter is subject to direct appeal pursuant to the collateral order doctrine, despite the absence of a final judgment terminating the underlying action. Under the collateral order doctrine, a direct appeal is permitted in certain limited situations, "because the issue is substantially separate from the basic issues presented in the complaint, an important right may be lost if review had to await final judgment, and nothing further in the underlying action can affect the issue on appeal." *In re Paul*, 270 Ga. 680, 682-683 (513 SE2d 219) (1999).

However, "[t]o come within the 'small class' of decisions excepted from the final-judgment rule . . . , the order must conclusively determine the disputed question, resolve an important issue completely separate from the merits of the action, and be effectively unreviewable on appeal from a final judgment." *Coopers & Lybrand v. Livesay*, 437 U. S. 463, 468-469 (98 SC 2454, 57 LE2d 351) (1978); see also *Scroggins v. Edmondson*, 250 Ga. 430 (297 SE2d 469) (1982). The order at issue does not meet these criteria, and the collateral order exception has never been

extended to the type of order at issue in this case. Since the circumstances of this case do not fall within the collateral order doctrine, Wallace's failure to comply with the interlocutory appeal procedures of OCGA § 5-6-34 (b) deprives this Court of jurisdiction to consider this appeal, which is accordingly **DISMISSED**.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAY 7 2008

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Willi Z. Mant ;  , Clerk.

SUPREME COURT OF THE STATE OF GEORGIA

CLERK'S OFFICE

ATLANTA

Date: July 07, 2008

Daniel S. Digby
DANIEL S. DIGBY & ASSOCIATES
946 Main Street N.E. Suite 100
P. O. Box 263
Conyers, GA 30012

Case No. S08C1268

NEIL WALLACE v. GECKOSYSTEMS INTERNATIONAL, INC., et al.

COURT OF APPEALS CASE NO. A08I0169

The Supreme Court today denied the petition for certiorari in this case.

All the Justices concur.

Therese S. Barnes, Clerk

COPY

IN THE SUPERIOR COURT OF ROCKDALE COUNTY
STATE OF GEORGIA

NEIL WALLACE,

Plaintiff

v.

GECKOSYSTEMS INTERNATIONAL,
INC., R. MARTIN SPENCER, individually
ELAINE SPENCER, individually,

Defendants.

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CIVIL ACTION

FILE NO. 2007-CV-2625-N

FILED IN OFFICE
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Sharon F. Callahan CLERK

ORDER

The above and foregoing matter came to the attention of the Court on the Plaintiff's Motion to Recuse this Court as the trial judge, and after the consideration of the motion, it is hereby

ORDERED that such motion is **DENIED**.

Upon the filing of a motion to recuse under Uniform Superior Court Rule 25, the trial judge must temporarily cease to act upon the merits of the matter and shall immediately determine (1) the timeliness of the motion, (2) the legal sufficiency of the affidavit, and (3) make a determination, assuming any of the facts alleged in the affidavit to be true, whether recusal would be warranted. See Uniform Superior Court Rule 25.3. "If all three of the conditions precedent set forth in Uniform Superior Court Rule 25.3 are not met, the trial judge shall deny the motion as insufficient, and there is no need for the trial judge to assign the motion to another judge to hear. It is as much the duty of a judge not to grant the motion to recuse when the motion is legally insufficient as it is to recuse when the motion is meritorious."

(Footnote and punctuation omitted.) *Gould v. State*, 273 Ga. App. 155, 159 (614 S.E.2d 252) (2005).

In his motion, Plaintiff alleges that recusal is mandated because (1) the Court refused to allow him to proceed pro se, (2) the Court denied his request for a Certificate of Immediate Review of the Order denying his Motion to Proceed Pro Se, and (3) at the hearing on his Motion to Appear Pro Hac Vice, the Court stated Plaintiff "was not fit to appear" and the Court would acquire the sponsoring attorney to be the attorney of record. Uniform Superior Court Rule 25.1 requires that a motion to recuse be made within five days after first learning of the basis for recusal and not later than ten days prior to trial or hearing, unless good cause is shown for failure to meet such time requirements.

Defendant is an attorney who is licensed to practice law in New York and Florida. He is not licensed to practice in Georgia. In his complaint, Plaintiff is seeking to recover unpaid wages, a car allowance, and stock shares that he alleges were promised to him as compensation in his employment as Vice-President of Legal and Public Affairs for GeckoSystems International, Inc. ("GeckoSystems"). Plaintiff appeared before this Court initially on November 6, 2007, on Defendants' Motion for Protective Order. It became clear to the Court during such hearing that Plaintiff, through his prior employment with Defendant GeckoSystems, was privy to confidential information that would ordinarily not be available to the opposing litigant. Also, it was brought to the Court's attention that an employee of GeckoSystems had supplied Plaintiff with a copy of a proposed answer prepared for Defendants prior to any answer being filed with the court. At such hearing, the Court instructed Plaintiff that it would require Plaintiff to hire counsel who was a member of the State Bar of Georgia to ensure the prompt and orderly progression of the case and to ensure that

Plaintiff's discovery tactics were not detrimental to the legitimate interests of the Defendants because (1) Plaintiff had access to GeckoSystems' confidential information during this past employment with such company, (2) Plaintiff still had ties with current employees of GeckoSystems and since the litigation had commenced had received confidential information from at least one employee, (3) Plaintiff was conducting extremely aggressive discovery, and (4) Plaintiff, as an out-of-state attorney, was not subject to sanctions by the Georgia State Bar if he failed to abide by the rules of professional conduct required of lawyers within this state.¹

Thereafter, on November 24, 2007, Plaintiff filed a Motion to Permit Plaintiff's Pro Se Appearance, which was denied on January 29, 2007. In the January 29, 2007 Order the Court also denied Plaintiff's request for a Certificate of Immediate Review. Plaintiff's attempts to appeal the January 29, 2007 Order was denied by the Georgia Court of Appeals on jurisdictional grounds. On September 24, 2008, Plaintiff filed a Motion to Appear Pro Hac Vice. While Plaintiff's motion set forth the name of a member of the State Bar of Georgia as his sponsor and such attorney appeared in Court with him on October 7, 2008, the day of the hearing on such motion, the sponsoring attorney had not made an appearance as attorney of record in the case as required by Uniform Superior Court Rule 4.4, Appendix A, 9. When the Court instructed Plaintiff that the Uniform Rules required the sponsoring attorney to appear of record with the lawyer seeking admission pro hac vice, Plaintiff informed the Court that he was withdrawing his motion because he could not afford the fee quoted to him by the sponsoring

¹ For example, if Plaintiff used confidential knowledge he obtained during his employment to help him win his case or obtained information about Defendants from current employees of GeckoSystems outside of formal discovery, the State Bar of Georgia would not have the authority to sanction Plaintiff. This Court notes that a letter from Plaintiff to the Court was attached to the copy of Plaintiff's Motion to Recuse that Plaintiff sent directly to the Court. This letter was an ex-parte communication to the Court, which is not allowed under the Georgia Rules of Professional Conduct promulgated by the Georgia Supreme Court governing the behavior of attorneys that are licensed to practice in this State. However, because Plaintiff is not a member of the State Bar of Georgia or appearing pro hac vice, he is not subject to sanctions by the State Bar of Georgia for such conduct.

attorney to appear of record. An Order was entered on October 8, 2008, granting Plaintiff's oral request that the Court allow him to withdraw his Motion to Appear Pro Hac Vice.

Thus, at the time Plaintiff filed his Motion to Recuse on October 20, 2008, more than five days had passed since all of the allegations set out in Plaintiff's Motion to Recuse had occurred, and Plaintiff had the burden under Uniform Superior Court Rule 25.1 to show good cause for his failure to timely file his Motion to Recuse within the five-day time requirement. In his motion, Plaintiff offers no explanation for his failure to file within the five-day requirement.² Plaintiff does state in his motion that he cannot afford to hire an attorney to appear of record as his sponsor or to represent him in this manner. However, if Plaintiff is offering this as an excuse for his failure to file his motion timely, Plaintiff has failed to demonstrate any efforts he has made to obtain other attorneys. As it stands, such allegation fails to show good cause for Plaintiff's failure to file his motion within five days after first learning of each of the basis he alleges mandates recusal.

Further, the affidavit that accompanies the Plaintiff's Motion to Recuse is legally insufficient and does not meet the standards for disqualification. In order to be disqualifying the alleged basis "must stem from an extra-judicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case. Furthermore, any alleged bias must be of such a nature and intensity to prevent the party from obtaining a trial uninfluenced by the [C]ourt's prejudgment." (Citations and punctuation omitted.) *Vaughn v. State*, 247 Ga. App. 368, 370 (2) (543 S.E.2d 429) (2000). In his motion, Plaintiff's affidavit fails to show that any of the Court's rulings or any of the statements Plaintiff alleges were made by the Court came from an extra-judicial source. Further,

² Plaintiff's failure to file a timely Motion to Recuse or to offer an explanation showing good cause for such failure is some evidence of Plaintiff's unfamiliarity with Georgia's Uniform Superior Court Rules.

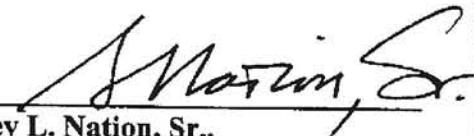
Plaintiff's allegation that he is unable to afford to hire counsel does not demonstrate a bias on the part of the Court.

Moreover, while the Court does not recall stating that Plaintiff "was not fit to appear," under the Uniform Superior Court Rule 4.4 an attorney who is not authorized to practice law in this state but who is admitted in another state is **not eligible** to appear pro hac vice unless he has a sponsor who is a member of the Georgia bar and appears of record as counsel in the case. See Uniform Superior Court Rule 4.4, Appendix A, 9.

Therefore, since all three conditions precedent set forth in Uniform Superior Court Rule 25.3 has not been met by the Plaintiff, it is hereby

ORDERED that Plaintiff's Motion to Recuse is **DENIED** as legally insufficient.

SO ORDERED this 6 day of Nov., 2008, at Conyers, Georgia.



Sidney L. Nation, Sr.,
Chief Judge, Superior Court,
Rockdale Judicial Circuit