

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COURT

J. C. Nicholson, Circuit Court Judge

Appellate Case No. 2016-002130

RECEIVED

FEB 13 2019

SC Court of Appeals

ROBIN S. FORMAN, AS PERSONAL REPRESENTATIVE
OF THE ESTATE OF BURTON J. APAT, Respondent,

v.

NATIONAL DENTAL SYSTEMS, LLC, D/B/A DENTALSMART Appellant.

MOTION TO BE RELIEVED AS COUNSEL

Paul A. Dominick, Esquire
S.C. Bar No.: 001718
Stephen P. Groves, Sr., Esquire
S.C. Bar No.: 007854
Alexandra H. Austin, Esquire
S.C. Bar No.: 102646
NEXSEN PRUET, LLC
205 King Street, Suite 400
Charleston, South Carolina 29401
Telephone: 843.720.1734
Telecopier: 843.414.8203
Email: PDominick@nexsenpruet.com
SGroves@nexsenpruet.com
AAustin@nexsenpruet.com

Attorneys for the Appellant

TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS:

COMES NOW Paul A. Dominick, Esquire, Stephen P. Groves, Sr., Esquire, and Alexandra H. Austin, Esquire of NEXSEN PRUET, LLC (hereinafter referred to as the "Firm"), pursuant to Rule 240 of the South Carolina Appellate Court Rules, and respectfully request this Court of Appeals to grant them leave to withdraw as appellate counsel for the Appellant, National Dental Systems, LLC d/b/a DentalSmart (hereinafter referred to as "NDS"). In support of this Motion, movants offer the supporting Affidavit of Paul A. Dominick, and allege and say as follows:

1. Due to disagreements among NDS' officers, members and/or managers, the Firm is unable to secure the necessary assistance and cooperation from NDS in preparing NDS' appeal and defense of this and other matters.

2. Upon information and belief, NDS is no longer an operating business.

3. The President of NDS has resigned and the other putative members of NDS are deadlocked in how to manage NDS and this litigation. Thus, the Firm has no guidance from NDS or approval to take any action other than prior approval from the President of NDS to withdraw as counsel.

4. In addition to having no assistance or cooperation from the client, NDS has failed to adhere to an agreement to pay the Firm for its legal services. NDS was given reasonable warning that the Firm will move to withdraw unless NDS fulfills this obligation.

5. Before his resignation, the President of NDS conceded that NDS did not have the ability to pay the Firm for its services and did not object to the withdrawal by the Firm from all litigation matters including the case before this court.

6. The Firm's agreement with NDS allows it to terminate representation at any

time.

7. The Firm, with court approval, has withdrawn in all other litigation involving NDS.

8. Briefing is complete and this matter is scheduled for a hearing on March 13, 2019. The record in the case is not voluminous, and the issue before the Court is narrow. Accordingly, if they choose to do so, the putative members of NDS have sufficient time to retain substitute counsel and, upon information and belief, this withdrawal can be accomplished without material adverse effect on the interests of NDS.

9. Good cause exists for withdrawal, and withdrawal is appropriate pursuant to Rule 1.16 of the South Carolina Rules of Professional Conduct.

10. The Firm has served this motion and supporting affidavit on the members of NDS at their last known physical addresses and has sent the same to them via email.

11. The Firm stands prepared to turn over to the putative members of NDS, or its new counsel, all materials in this case, and to assist in any necessary transition.

12. Alternatively, the Firm requests that the Court rule on this matter, based on the record in this case, without oral argument. The Firm would then move to withdraw once the case is remanded to the lower court for further proceedings on the unresolved claims.

13. The Firm has consulted with counsel for Respondent, who does not object to this Motion. The Firm has provided the putative members of NDS with a copy of this Motion.

WHEREFORE, the Firm requests that the Court enter an Order allowing it to withdraw as counsel for Appellant NDS in this matter.

Respectfully submitted:

NEXSEN PRUET, LLC

By:  _____

Paul A. Dominick, Esquire

S.C. Bar No.: 001718

Stephen P. Groves, Sr., Esquire

S.C. Bar No.: 007854

Alexandra H. Austin, Esquire

S.C. Bar No.: 102646

NEXSEN PRUET, LLC

205 King Street, Suite 400

Charleston, South Carolina 29401

Telephone: 843.720.1734

Telecopier: 843.414.8203

Email: PDominick@nexsenpruet.com

SGroves@nexsenpruet.com

AAustin@nexsenpruet.com

Attorneys for the Appellant

Charleston, South Carolina

February 11, 2019

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

J. C. Nicholson, Circuit Court Judge

Appellate Case No. 2016-002130

RECEIVED
FEB 13 2019
SC Court of Appeals

ROBIN S. FORMAN, AS PERSONAL REPRESENTATIVE
OF THE ESTATE OF BURTON J. APAT,..... Respondent,

v.

NATIONAL DENTAL SYSTEMS, LLC, D/B/A DENTALSMART Appellant.

AFFIDAVIT OF PAUL A. DOMINICK

Paul A. Dominick, Esquire
S.C. Bar No.: 001718
Stephen P. Groves, Sr., Esquire
S.C. Bar No.: 007854
Alexandra H. Austin, Esquire
S.C. Bar No.: 102646
NEXSEN PRUET, LLC
205 King Street, Suite 400
Charleston, South Carolina 29401
Telephone: 843.720.1734
Telecopier: 843.414.8203
Email: PDominick@nexsenpruet.com
SGroves@nexsenpruet.com
AAustin@nexsenpruet.com

Attorneys for the Appellant

PERSONALLY APPEARED before me, Paul A. Dominick, who first being duly sworn, deposes and says that:

1. I am a member of Nexsen Pruet, LLC (the "Firm") and have primary responsibility with regard to the Firm's representation of National Dental Systems, LLC d/b/a DentalSmart ("NDS") in the above-captioned matter.

2. NDS has failed to provide the necessary assistance and cooperation in preparing NDS' appeal and defense of this and other matters due to disagreements among NDS' officers, members and/or managers.

3. I am informed and believe that NDS is no longer an operating business.

4. I am informed and believe that the President and CEO of NDS has resigned and that the other putative members of NDS are deadlocked in how to manage NDS and this litigation. Thus, the Firm has no guidance from NDS or approval to take any action other than to withdraw as counsel.

5. The Firm is representing NDS pursuant to an engagement letter executed by Brian Schleifer, as the then-President and CEO of NDS, on February 29, 2016 (the "Agreement"). This Agreement, in relevant part, provides that the Firm will provide legal services in this and other matters and will bill NDS by the hour, at certain specified hourly rates. Further, the Firm will have the right to withdraw from representation at any time, subject to the obligations imposed by the applicable Court rules.

6. NDS has failed to make payment as required by its Agreement with the Firm.

7. I offered various terms and conditions to NDS which would allow my continued representation in this matter. NDS failed to comply with these terms or

conditions.

8. Before his resignation, I was advised by the President and CEO of NDS that NDS does not have the financial resources to continue the Firm's representation of NDS in this matter.

9. The Firm, with court approval, has withdrawn in all other litigation involving NDS.

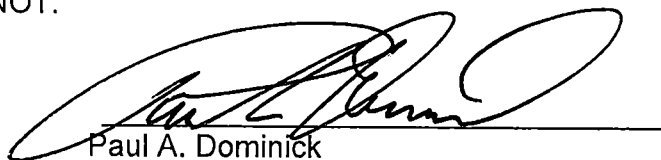
10. Before his resignation, I discussed this matter fully with the President and CEO of NDS, counseled him concerning retaining substitute counsel, and obtained his consent for the Firm to withdraw as counsel in all litigation matters.

11. Based on the foregoing, the Firm requests to be relieved as counsel in this matter, and stands prepared to turn over to the putative members of NDS, or its new counsel, all materials in this case and to assist in any necessary transition.

12. The Firm has consulted with counsel for Respondent, who does not object to this Motion. The Firm has provided the putative members of NDS with a copy of this Motion via certified U.S. mail at their last known addresses and via electronic mail.

13. Briefing is complete and this matter is scheduled for a hearing on March 13, 2019. The record in the case is not voluminous, and the issue before the Court is narrow. Accordingly, if they choose to do so, the putative members of NDS have sufficient time to retain substitute counsel and, upon information and belief, this withdrawal can be accomplished without material adverse effect on the interests of NDS.

FURTHER DEPONENT SAYETH NOT:



Paul A. Dominick
NEXSEN PRUET, LLC
205 King Street, Suite 400 (29401)
P.O. Box 486
Charleston, SC 29402
843.577.9440

SWORN and subscribed to before me
this 11th day of February 2019.

Marilyn J. Lurie (L.S.)
Notary Public for South Carolina
My Commission Expires: June 18, 2024

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

J. C. Nicholson, Circuit Court Judge

Appellate Case No. 2016-002130

RECEIVED

FEB 13 2019

SC Court of Appeals

ROBIN S. FORMAN, AS PERSONAL REPRESENTATIVE
OF THE ESTATE OF BURTON J. APAT, Respondent,

v.

NATIONAL DENTAL SYSTEMS, LLC, D/B/A DENTALSMART Appellant.

PROOF OF SERVICE

Paul A. Dominick, Esquire
S.C. Bar No.:001718
Stephen P. Groves, Sr., Esquire
S.C. Bar No.:007854
Alexandra H. Austin, Esquire
S.C. Bar No.:102646
NEXSEN PRUET, LLC
205 King Street, Suite 400
Charleston, South Carolina 29401
Telephone: 843.720.1734
Telecopier: 843.414.8203
Email: PDominick@nexsenpruet.com
SGroves@nexsenpruet.com
AAustin@nexsenpruet.com

Attorneys for the Appellant

I hereby certify that on February 11, 2019, I served Paul A. Dominick, Stephen P. Groves, Sr., and Alexandra H. Austin's **Motion to be Relieved as Counsel** and accompanying **Affidavit of Paul A. Dominick** on the Respondent and Appellant by depositing copies of those documents in the United States Mail, postage pre-paid, and addressed to the attorneys of record for Respondent and Appellant as follows:

Mark A. Mason, Esquire
Salah H. Hibri, Esquire
THE MASON LAW FIRM, P.A.
Tidewatch Centre on Shem Creek
465 W. Coleman Boulevard, Suite 302
Mount Pleasant, S.C. 29464

Attorneys for the Respondent

National Dental Systems, LLC
c/o Brian J. Schleifer
2020 Savannah Hwy
Charleston, S.C. 29407

Brian J. Schleifer
441 Meeting St Apt 527
Charleston, SC 29403

Lance E. Youngquist
134 Arabella Court
Cary, North Carolina, 27518


Richard J. Adolfi
1412 Bloomingdale Ln
Mount Pleasant, SC 29466

Hank Hofford
PO Box 850
Mount Pleasant, SC 29465

Jeff Byrd
28 Pagett Street
Daniel Island, SC 29492

Connell Radcliff
Post Office Box 2107
Cary, NC 27512-2107

Appellant



Alexandra H. Austin, Esquire

Charleston, South Carolina

February 11, 2019

Alexandra H. Austin
Associate
Admitted in SC

February 11, 2019

The Honorable Jenny A. Kitchings
Clerk of Court
1220 Senate Street
Columbia, South Carolina 29201


**Re: Robin S. Forman, as personal representative of the Estate of
Burton J. Apat vs. National Dental Systems, LLC d/b/a DentalSmart
Appeal from the Charleston County Court of Common Pleas
Case Action No. 2016-CP-10-1022
Appellate Case No. 2016-002130**

Dear Madam Clerk:

Enclosed please find the original and six copies of the Appellant's Motion to be Relieved as Counsel along with the Affidavit of Paul Dominick and Certificate of Service in the above matter. Also, enclosed is our firm check in the amount of Twenty Five and no/100 (\$25.00) Dollars for the filing fee.

If you need anything else or I otherwise may be of any assistance to you or to the Court of Appeals regarding this matter, please feel free to contact me at your convenience.

Very truly yours,


Alexandra H. Austin

AHA/mt

Enclosures

cc: Mark A. Mason, Esquire/Salah Hani Hibri, Esquire
National Dental Systems, LLC c/o Brian J. Schleifer
Brian J. Schleifer
Lance E. Youngquist
Richard J. Adolphi
Hank Hofford
Jeff Byrd
Connell Radcliff

RECEIVED

FEB 13 2019

SC Court of Appeals

Charleston

Charlotte

Columbia

Greensboro

Greenville

Hilton Head

Myrtle Beach

Raleigh

205 King Street
Suite 400 (29401)
PO Box 486
Charleston, SC 29402
www.nexsenpruet.com

T 843.579.7827
F 843.414.8227
E AAustin@nexsenpruet.com
Nexsen Pruet, LLC
Attorneys and Counselors at Law

Hasler

02/11/2019

US POSTAGE

\$005.71⁰



ZIP 29401
011E11677183

22

NEXSEN | PRUET

P. O. Box 486
Charleston SC 29402

The Honorable Jenny A. Kitchings
Clerk of Court
1220 Senate Street
Columbia, SC 29201

RECEIVED

FEB 13 2019

SC Court of Appeals

AHA/mjt 56673-5