

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

SUNLUST PICTURES LLC,

Plaintiff,

Case No. 8:12-CV-01685-MSS-MAP

v.

TUAN NGUYEN,

Defendant.

MOTION OF KYNES, MARKMAN & FELMAN, P.A.:
JAMES E. FELMAN, ESQUIRE; AND KATHERINE EARLE YANES, ESQUIRE,
FOR LEAVE TO WITHDRAW AS COUNSEL FOR NON-PARTIES

Law firm Kynes, Markman, & Felman, P.A., and attorneys James E. Felman, Esquire, and Katherine Earle Yanes, Esquire (collectively, the “Non-Parties’ Counsel”), move to withdraw as counsel for Non-Parties Prenda Law, Inc., Paul Duffy, Brett Gibbs and John Steele (collectively, the “Non-Parties”) in this matter because an actual conflict appears to have arisen among the Non-Parties that precludes their multiple representation. The grounds supporting this Motion are set forth in the following Memorandum.

MEMORANDUM

The Non-Parties’ Counsel made a limited appearance in this matter for the purpose of responding to the Defendant’s sanctions and attorney’s fees motions against the Non-Parties. Doc. 38, 39. At the time the representation commenced, it was not believed by counsel or the Non-Parties that any actual conflict existed that precluded the Non-Parties’ Counsel from representing all of the Non-Parties jointly.

More recently, the Defendant filed a Declaration from Non-Party Mr. Gibbs that the Defendant described as being “against the interests of” Non-Party Mr. Steele. Doc. 49 at 3. Rule 4-1.7 of the Florida Rules of Professional Conduct prohibits counsel from representing clients whose interests actually conflict, that is, are directly adverse to one another. When an attorney represents multiple parties in the same litigation and an actual conflict arises or becomes apparent after the representation begins, counsel is required to withdraw from representing all parties in that matter. *See* Fla. R. Prof. Conduct 4-1.7, 4-1.9, 4-1.16, and commentary. The Non-Parties’ Counsel therefore believe that the Florida professional rules require that they move for leave to withdraw from representing all of the Non-Parties.

While counsel’s experience has been that on the granting of a motion to withdraw, courts generally set a deadline for the hiring of new counsel, here the clients in question are not parties to the litigation, the litigation has concluded, and the Defendant has withdrawn all of the pending motions. Accordingly, the Non-Parties’ Counsel believe that the case may now be closed with no further action needed by the Court or the Non-Parties. Accordingly, it is respectfully requested that the Court: (1) grant the motion to withdraw of the Non-Parties’ Counsel; and (2) should the Court determine that any further action will be taken, provide notice to the Non-Parties at that point that action is contemplated that will require them to retain new counsel, and set a deadline for doing so.

CONCLUSION

For these reasons, it is respectfully requested that the Court grant leave for the Non-Parties’ Counsel to withdraw from representing all of the Non-Parties in this matter.

CERTIFICATE OF COMPLIANCE

Pursuant to Middle District of Florida Local Rule 3.01(g), Middle District of Florida Local Rule 2.03(b), notice was provided to counsel for Defendant, Graham Syfert, Esquire, on April 16, 2013, of the intended motion for leave to withdraw, and counsel conferred with Mr. Syfert regarding the motion. Mr. Syfert has authorized the Non-Parties' counsel to represent that the Defendant does not oppose the motion. Likewise, each of the Non-Parties was also advised between April 16, 2013, and May 7, 2013, that the instant motion would be filed, and each understands that the Florida Rules of Professional Conduct require the making of this motion.

Respectfully submitted,

/s/ Katherine Earle Yanes

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*Counsel for Non-Parties Prenda Law,
Inc., Paul Duffy, Brett Gibbs and John
Steele*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 20, 2013, I electronically filed the foregoing with the Clerk of the Court which will send a notice of electronic filing to:

Graham W. Syfert
graham@syfert.com

Frederick W. Heath
chipperheath@hotmail.com

s/ Katherine Earle Yanes
Katherine Earle Yanes