



**I. ARGUMENT**

**A. Withdrawal is Proper in this Case Due to Homebridge's Failure to Pay Legal Bills**

Local Civil Rule 1.4, "Withdrawal or Displacement of Attorney of Record," provides as follows:

An attorney who has appeared as attorney of record for a party may be relieved or displaced only by order of the court and may not withdraw from a case without leave of court granted by order. Such an order may be granted only upon a showing by affidavit or otherwise of satisfactory reasons for withdrawal or displacement and the posture of the case, including its position, if any, on the calendar.

It is well settled under Local Civil Rule 1.4 that a client's failures to pay legal fees constitute "satisfactory reasons" for withdrawal as counsel. *Team Obsolete, Ltd. v. A.H.R.M.A., Ltd.*, 464 F. Supp. 164, 165-66 (E.D.N.Y. 2006) and cases cited therein. The proposed Affidavit sets forth in detail Homebridge's failure to pay outstanding legal fees owed to K&L and K&L's efforts to address the legal fee matter to avoid the need to file this Motion. In order not to potentially prejudice Homebridge, K&L refrains in the instant filing from setting forth those details and relies on the Court to order that the proposed Affidavit be filed under seal, with a copy to be served on Homebridge's Chairman and Chief Executive Officer, for the Court's review *in camera* so that the Court can satisfy itself that such failures constitute "satisfactory reasons" in the instant context.

Local Civil Rule 1.4 also directs the Court to consider "the posture of the case, including the position, if any, on the calendar." At the present time, K&L is not aware of any schedule of calendared future events in this case. All discovery has been completed, and a Consent Pre-Trial Order with proposed exhibits has been filed. On December 4, 2008, the Court issued a Memorandum and Order granting defendants' summary judgment motion related to attorneys

fees and denying Homebridge's summary judgment motion on the breach of contract claims. The matter now is ready to be set for a non-jury trial, with trial briefs and proposed findings of fact and conclusions of law likely to be filed in advance of trial per this Court's rules. Accordingly, Homebridge would not be unduly prejudiced by retaining new counsel to complete the next phase of the subject litigation.

If K&L is permitted to withdraw, K&L respectfully requests that the Court allow Homebridge 30 days to enter the appearance of successor counsel. *See HCC, Inc. v. R H & M Machine Co.*, 1998 U.S. Dist. LEXIS 10977 (S.D.N.Y. 1998)(withdrawal granted and defendant was granted 30 days to select successor counsel). Once Homebridge has selected such counsel, K&L will work with successor counsel, without cost to Homebridge, to transfer all files to successor counsel and to assist successor counsel to become knowledgeable about the case. Given that the Consent Pre-Trial Order has been filed, detailing factual claims and defenses and proposed exhibits, K&L respectfully submits that it should not be difficult for successor counsel to become ready for a trial in this matter.

**B. The Supporting Affidavit Should be Filed Under Seal**

Because the proposed Affidavit pertains exclusively to the legal fee matter, case law supports it being filed under seal and not being provided to defendants in order to avoid potential prejudice to Homebridge. *E.g., Team Obsolete Ltd., supra*, 464 F. Supp. at 164-65. The *Team Obsolete* court stated that "a review of the relevant case law demonstrates that documents in support of motions to withdraw as counsel are routinely filed under seal where necessary to preserve the confidentiality of the attorney-client relationship between a party and its counsel, and that this method is viewed favorably by the courts." *Id.* (citing *Weinberger v. Provident Life & Cas. Ins. Co.*, No. 97-cv-9262, 1998 U.S. Dist. LEXIS 19859 (S.D.N.Y. 1998)).

When the Court reviews the proposed Affidavit *in camera*, it will see that the Affidavit contains only confidential information about the fee matter and thus “does not implicate the [defendants’] interests in this litigation. *Team Obsolete, supra*, 464 F. Supp. at 164; *see also Harrison Conference Services, Inc. v. Dolce Conference Services, Inc.*, 806 F. Supp. 23, 25-26 (E.D.N.Y. 1992) (fee dispute documents were properly submitted *in camera* and defendants had no interest in the outcome of the dispute and thus were “not entitled to a more complete description of this dispute, or a briefing schedule which will permit them to respond further.”). Thus, the Court should allow the filing of the proposed Affidavit under seal, with a copy to be served on Homebridge’s Chairman and Chief Executive Officer, Nicholas Bratsafolis.

For all the foregoing reasons, including the matters set forth in the proposed Affidavit, K&L respectfully urges that it be permitted to file the proposed Affidavit under seal and that upon review of the Affidavit, the Court grant the Motion of K&L to withdraw as counsel for the Plaintiff in this matter.

Dated: Washington, D.C.  
December 31, 2008

Respectfully submitted,

By: /s/ Brian W. Stolarz  
Lawrence Coe Lanpher (LL9267)  
Brian W. Stolarz (BS4898)  
KIRKPATRICK & LOCKHART PRESTON  
GATES ELLIS LLP  
1601 K Street, N.W.  
Washington, D.C. 20006  
Telephone: 202.778.9000  
Facsimile: 202.778.9100  
lawrence.lanpher@klgates.com  
brian.stolarz@klgates.com

Counsel for Plaintiff, Homebridge Mortgage  
Bankers Corp.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing **MOTION OF K&L GATES LLP TO WITHDRAW AS COUNSEL AND TO FILE SUPPORTING AFFIDAVIT UNDER SEAL** was originally filed on December 30, 2008 and re-filed on December 31, 2008 per Court Notice via the electronic case filing system of the United States District Court for the Southern District of New York and, accordingly, that the Court will send notice of this filing electronically to:

Kenneth J. Rubinstein, Esq.  
Haynes & Boone, LLP  
153 E. 53<sup>rd</sup> Street, Suite 4900  
New York, NY 10022  
ken.rubinstein@haynesboone.com

The undersigned further certifies that he has sent a copy of these papers via Federal Express to:

Nicholas Bratsafolis  
Chairman and CEO  
Homebridge Mortgage Banking Corp.,  
dba Refinance.com  
55 East 59<sup>th</sup> Street, Floor 4  
New York, NY 10022  
n.bratsafolis@refinance.com

/s/ Brian W. Stolarz \_\_\_\_\_  
Brian W. Stolarz