

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

W. LEWIS FRAME n DOOR, INC. : CIVIL ACTION
: :
v. : :
: :
C & C CONSTRUCTION & REHAB. : :
SPECIALIST, INC. : NO. 98-1281

MEMORANDUM ORDER

Presently before the court is defendant's motion for the admission of Joseph S. Caruso, Esquire pro hac vice for the purposes of litigating this action. Plaintiff opposes the motion and makes three arguments as to why it should be denied.

First, plaintiff argues that the motion should be denied because it contains a reference to the wrong local rule. This argument is petty and frivolous. No court would deny an otherwise appropriate motion to admit an attorney pro hac vice because of a failure correctly to cite the Local Rule which authorizes such admission.

Second, plaintiff argues that the motion should be denied because Mr. Caruso is also a principal of defendant "and is expected to testify at trial." Plaintiff offers absolutely no explanation regarding which party is expected to call defendant as a witness or regarding the matters to which he would be expected to testify.

It is true that the courts have held a corporation must be represented in court by an attorney and not a director or officer. See, e.g., Mendenhall v. Goldsmith, 59 F.3d 685, 687

n.1 (7th Cir.), cert. denied, 516 U.S. 1011 (1995); Simbrow, Inc. v. United States, 367 F.2d 373, 374-75 (3d Cir. 1966). These cases presume that the director or officer is not himself an attorney. See, e.g., Reeves v. Queen City Transportation, 10 F. Supp.2d 1181, 1888 (D. Colo. 1998) (reason for rule is to require corporations to be represented by attorneys who are subject to court's general disciplinary power). Corporate counsel who also happen to be directors or officers are not precluded from representing their clients in litigation. See Hertzog, Calamari & Gleason v. Prudential Ins. Co. of America, 850 F. Supp. 255, 255 (S.D.N.Y. 1994) (corporation may appear through retained outside counsel or by in-house counsel on corporate payroll).

If Mr. Caruso were a material witness for defendant in this action, he would almost surely be disqualified as counsel. See Pa. Rules of Professional Conduct 3.7. Thus, it must be presumed, absent any showing whatsoever to the contrary, that Mr. Caruso's willingness to proceed as counsel shows he does not intend to testify. If plaintiff is obliquely implying it intends to call Mr. Caruso as a witness, it has not remotely shown that any factual information he might possess is relevant, non-privileged, critical to the plaintiff's preparation of its case and unavailable from any other source. See Boughton v. Cotter Corp., 65 F.3d 823, 830 n.10 (10th Cir. 1995); Shelton v. American Motors Corp., 805 F.2d 1323, 1327 (8th Cir. 1986);

Dunkin' Donuts, Inc. v. Mandorico, 181 F.R.D. 208, 210 (D.P.R. 1998); Jones v. Bd. of Police Commissioners, 176 F.R.D. 625, 626 (W.D. Mo. 1997); Caterpillar Inc. v. Friedemann, 164 F.R.D. 76, 78 (D. Or. 1995); EEOC v. HBE Corp., 157 F.R.D. 465, 466 (E.D. Mo. 1994).

Third, plaintiff argues the motion should be denied because the attorney who moved Mr. Caruso's admission is not counsel of record in this action. He need not be. See L. R. Civ. P. 83.5.2. Attorneys appearing by leave of court need merely "have as associate counsel of record a member of the bar of this Court upon whom all pleadings, motions, notices and other papers can be served." The Rule does not require that the associate counsel must make the motion for admission pro hac vice. Moreover, it appears that Mr. Caruso works with Charles W. Wigginton, Esq., local associate counsel of record in this case

ACCORDINGLY, this day of February, 1999, upon consideration of defendant's Motion For Admission Pro Hac Vice (Doc. #5) and plaintiff's response thereto, **IT IS HEREBY ORDERED** that said Motion is **GRANTED** and Joseph S. Caruso, Esq. is admitted pro hac vice for the purposes of litigating this action.

BY THE COURT:

JAY C. WALDMAN, J.