

STATE OF NORTH CAROLINA  
HENDERSON COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
21 CVS 2180

INNOVARE, LTD.,  
Plaintiff,

v.

SCITECK DIAGNOSTICS, INC.,  
Defendant.

**ORDER ON MOTION TO WITHDRAW  
NOTICES OF APPEARANCE AND TO  
CEASE SERVING AS COUNSEL**

**THIS MATTER** is before the Court on Joseph S. Dowdy, Elizabeth Winters, Benjamin Smith, and the law firm of Kilpatrick Townsend & Stockton LLP's (collectively, "Kilpatrick") Motion to Withdraw Notices of Appearance and to Cease Serving as Counsel ("Motion to Withdraw," ECF No. 86).

1. The parties filed cross-Motions for Partial Summary Judgment in this matter on 30 June 2023. (ECF Nos. 66, 70.)

2. On 26 July 2023, Kilpatrick filed a Motion to Extend Briefing Deadlines (ECF No. 76) due to an issue that had arisen between Kilpatrick and Plaintiff Innovare, LTD ("Innovare") that potentially implicated N.C. Rules of Professional Conduct 1.16(b)(6) and (7). (ECF No. 76.) The Court granted Kilpatrick's motion the following day, issuing an Order extending by 45 days the remaining briefing deadlines in connection with the parties' pending summary judgment motions. (ECF No. 78.)

3. On 8 September 2023, Kilpatrick filed a second Motion to Extend Briefing Deadlines, requesting an additional 45-day extension of the parties' briefing

deadlines based on the same grounds. (ECF No. 81.) That same day, the Court entered an Order granting Kilpatrick's motion. (ECF No. 83.)

4. On 30 October 2023, Kilpatrick filed the present Motion to Withdraw seeking permission to withdraw as Innovare's counsel of record pursuant to Rules 1.16(b)(6) and (7) of the North Carolina Rules of Professional Conduct. In the Motion to Withdraw, Kilpatrick represents that Innovare "has a substantially unfulfilled obligation to Kilpatrick regarding legal services and has been notified that Kilpatrick will withdraw unless the obligation is fulfilled." (ECF No. 86.) Kilpatrick further asserts that despite diligently seeking to find a solution, it has concluded that its further representation of Innovare in this matter "will result (and already is resulting) in an unreasonable financial burden on Kilpatrick and has become unreasonably difficult." (ECF No. 86.)

5. Kilpatrick represents that it has sought Innovare's consent to the present Motion to Withdraw but that "Innovare has declined to indicate whether it consents to the withdrawal requested herein." (ECF No. 86.) Kilpatrick has served Innovare with a copy of the present Motion to Withdraw.

6. **THE COURT**, having considered the Motion to Withdraw and all appropriate matters of record, **CONCLUDES**, in its discretion, that the Motion to Withdraw should be **GRANTED**, subject to the terms set forth below:

- a. Kilpatrick shall be released and discharged from all further representation of Innovare in this action upon the filing of a notice of appearance by new counsel for Innovare.

- b. Innovare shall have **thirty (30) days** in which to retain new counsel, and its new counsel shall file a notice of appearance on behalf of Innovare **by 1 December 2023**.
- c. In the event that a notice of appearance from Innovare's new counsel is not filed by 1 December 2023, the Court may dismiss Innovare's Complaint and enter summary judgment in favor of Defendant on its counterclaims, release Kilpatrick from any further duties and obligations as Innovare's counsel, and take any additional actions authorized under North Carolina law.
- d. Kilpatrick is **DIRECTED** to immediately serve a copy of this Order upon Innovare and to file a certificate of service with the Court upon doing so.
- e. All remaining deadlines in connection with briefing on the parties' summary judgment motions are hereby stayed until further order of the Court.

**SO ORDERED**, this the 1st day of November, 2023.

/s/ Mark A. Davis  
Mark A. Davis  
Special Superior Court Judge for  
Complex Business Cases