

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
25CV021103-590

DURAMAX HOLDINGS LLC d/b/a
OTTO ENVIRONMENTAL
SYSTEMS,

Plaintiff,

v.

MARK BRACE and SCHAEFER
PLASTICS NORTH AMERICA, LLC,

Defendants.

**ORDER ON MOTION TO WITHDRAW
AS COUNSEL AND APPEARANCE OF
“FORTHCOMING” *PRO HAC VICE*
COUNSEL**

1. This matter is before the Court on the joint motion of attorney Benjamin S. Morrell of Taft, Stettinius & Hollister LLP and attorney Nicholas Hulse of Fisher & Phillips LLP to withdraw as counsel for Plaintiff in this action. (ECF No. 33).

2. Movants represent that they have conferred with Plaintiff, that Plaintiff affirmatively seeks counsel’s withdrawal, and that Plaintiff therefore consents to their withdrawal. Movants further represent that counsel for Defendants do not object to the withdrawal. (ECF No. 33 ¶¶ 2, 5).

3. While Movants indicate that Plaintiff has retained Ohio-based attorney Michael R. Stavnický as “its new counsel,” (ECF No. 33, ¶ 3), it appears that attorney Stavnický is not licensed to practice law in North Carolina, and there is no indication that attorney Stavnický has associated with licensed North Carolina local counsel to seek admission *pro hac vice* in this action.

4. No replacement counsel licensed to practice law in North Carolina has made an appearance on behalf of Plaintiff, and there is no apparent basis for Plaintiff to proceed pro se in this action. *See Lexis-Nexis, Div. of Reed Elsevier, Inc. v. Travishan Corp.*, 155 N.C. App. 205, 209 (2002); *Bodie Island Beach Club Ass'n, Inc. v. Wray*, 215 N.C. App. 283, 290 (2011).

5. At the request of counsel in anticipation of the motion to withdraw, the Court has previously deferred an already long-delayed hearing on Defendants' motion to dismiss and has therefore delayed resolution of the motion at the request of the parties. (ECF No. 32).

6. The Court does not intend to further delay resolution of the motion. However, as the motion has been fully briefed and as the Court has the discretion to resolve the motion without a hearing, *see* BCR 7.4, Plaintiff will not be prejudiced by the withdrawal of its current counsel or the Court's resolution of the motion, regardless of whether Plaintiff is or is not at that time represented by counsel.

7. Accordingly, having considered the motion, the record proper, applicable law, and Plaintiff's consent and request, the Court determines in its discretion that permission for counsel to withdraw is appropriate and that the motion should be granted as to Movants.

8. In their motion, Movants also note that attorneys Sarah M. Benoit, David A. Ferris, and Jeffrey J. Patter of Taft Stettinius & Hollister LLP "included their names in signature blocks of certain of Plaintiff's filings, but (as noted in those

signature blocks) they are not licensed in North Carolina and did not complete the *pro hac vice* admission process.” (ECF No. 33 at 1 n.1).

9. The Court observes that the listed individuals were, in fact, listed with Movants as “*Counsel for Plaintiff Duramax Holdings LLC dba Otto Environmental Systems*” in the signature block of the original complaint filed in this action on 25 April 2025 and that the signature block indicates that they are also based in Ohio. (ECF No. 2 at 12).

10. Though that signature block suggested nearly six months ago that a *pro hac vice* motion would be forthcoming and that the listed attorneys would comply with applicable *pro hac vice* processes, (ECF No. 2 at 12 (listing “*pro hac vice forthcoming*” for each attorney)), the referenced attorneys have failed to do so, all the while continuing to permit themselves to be listed on Plaintiffs’ filings with the same “*pro hac vice forthcoming*” language. (*E.g.*, ECF Nos. 21, 24, 30). The filings have not, however, been signed by the referenced attorneys.

11. Under sections 84–4 and 84–4.1 of the North Carolina General Statutes, it is generally unlawful for individuals not licensed as attorneys by the North Carolina State Bar, or properly admitted *pro hac vice* to practice on a limited basis,

to appear as attorney or counselor at law in any action or proceeding before any judicial body . . . ; to maintain, conduct, or defend the same, except in his own behalf as a party thereto; or, by word, sign, letter, or advertisement, to hold out himself, or themselves, as competent or qualified to give legal advice or counsel, or to prepare legal documents, or as being engaged in advising or counseling in law or acting as attorney or counselor-at-law, or in furnishing the services of a lawyer or lawyers; and it shall be unlawful for any person or association of persons except active members of the Bar, for or without a fee or consideration,

to give legal advice or counsel, perform for or furnish to another legal services, or to prepare directly or through another for another person, firm or corporation, any will or testamentary disposition, or instrument of trust, or to organize corporations or prepare for another person, firm or corporation, any other legal document.

N.C. Gen. Stat. §§ 84–4, 84–4.1.

12. Under the Business Court Rules, “[c]ounsel whose names appear on a signature block in a court filing need not file a separate notice of appearance for the action.” BCR 3.12. This is because an attorney’s designation on a signature block filed with the Court with his or her approval constitutes an appearance before the Court, such that no further formal appearance is necessary.

13. Accordingly, the Court cautions all counsel that voluntarily designating themselves, or allowing other attorneys to designate them, in filings before the Court as counsel of record for a party before having complied with provisions governing the limited admission of counsel for *pro hac vice* purposes is inappropriate and not in compliance with applicable statutes and rules.

14. Any attorney wishing to appear on a *pro hac vice* basis before the Court is required to comply **promptly** with N.C. Gen. Stat. § 84–4.1.

15. Failure to do so may result in sanctions and denial of any eventual *pro hac vice* application, in the Court’s discretion, as well as lead to criminal penalties. *E.g.*, N.C. Gen. Stat. § 84–8.

16. Here, with this caution and without further addressing the issue, to the extent that attorneys Benoit, Ferris, and Patter permitted the filing of documents

designating them in the signature block as counsel of record for Plaintiff, the Court determines that good cause exists to permit withdrawal of any such appearance.

17. Therefore, in the exercise of its discretion and at Plaintiff's request, the Court **GRANTS** the motion, and attorneys Benjamin S. Morrell of Taft, Stettinius & Hollister LLP and Nicholas Hulse of Fisher & Phillips LLP, and their respective firms and all attorneys associated with those firms, are **WITHDRAWN** as counsel of record for Plaintiff and **DISCHARGED** of any further obligation to represent Plaintiff in this action.

SO ORDERED, this 16th day of October 2025.

/s/ Matthew T. Houston

Matthew T. Houston
Special Superior Court Judge
for Complex Business Cases