

This is the court's ruling on the submitted matter of Ms. Opri's motion to compel petitioner, David Hasselhoff, to pay Ms. Opri's outstanding fees and costs she incurred during her representation of the respondent, Pamela Bach Hasselhoff. This type of motion is often referred to as a "Borson motion" after the case of IRMO Borson (1974) 37 Cal App 3rd 632; in a Borson motion, one party's former attorney seeks to have the court order the opposing party to pay outstanding attorney fees. The law is clear; the right sought to be enforced in the motion belongs to Ms. Hasselhoff, not Ms. Opri (see Meadow vs. Sup. Ct. (1963) 59 Cal 2d 610). The law is equally clear that because the right belongs to the party, the attorney must have the party's continuous express or implied consent at all times before the court can grant the motion.

The facts here are not in dispute. Ms. Opri filed both her Borson motion and the substitution of attorney form on June 19, 2007. On June 18, 2007, Ms. Hasselhoff signed the substitution of attorney, but Ms. Opri was not formally discharged as Ms. Hasselhoff's attorney until the substitution was filed.

In Borson, the client discharged the attorney on November 30, 1971 but the court did not relieve counsel until much later. In Borson, the client did not at any time object to the motion, leading the court to find that the client had at least inferentially supported the motion. Further, it is clear that even if the client does give consent to the motion, such consent can be withdrawn at any time, thus preventing the court from granting the motion. IRMO Read (2002) 97 Cal App. 4th 476.

In the case at bar, there is no evidence that Ms. Hasselhoff ever affirmatively consented to the filing of the motion and both Ms. Opri's and Ms. Hasselhoff's pleadings are silent in this regard. It is clear, however, that after the pleadings were filed, Ms. Hasselhoff, through her attorney on at least two separate occasions indicated that she did not consent to the motion. First, at the court hearing of June 19, 2007 Mr. Kaplan stated: "Well, the Borson motion to the extent that it requires consent of one of the parties, and I believe it does, the respondent has not given consent for the filing of a Borson motion at this time"¹. Again in the opposition to Ms. Opri's motion, filed on August 7, 2007, Ms. Nicole Vafeades (one of Ms. Hasselhoff's current attorneys), declared that prior to signing the substitution on June 18, 2007 Ms. Hasselhoff informed Ms. Opri to take no further action on her behalf and thus, "there is no basis upon which Ms. Opri could believe that respondent has provided her authority to pursue an award of fees on her behalf."² Additionally, and more clearly, Ms. Vafeades stated: "There is absolutely no question Respondent at no (sic) time authorized Ms. Opri to pursue the current fee motion and therefore Ms. Opri's motion for attorney fees is deficient and should be denied".³ To the extent Ms. Hasselhoff may have lead Ms. Opri to believe that she consented to the motion, Ms. Hasselhoff has now clearly withdrawn her consent.

Ms. Opri argues that the terms of her retainer agreement give her the consent needed to file and prosecute the instant motion. Initially, there is no clear language that establishes

¹ Transcript attached to the petitioner's opposition as exhibit A.

² Nicole Vafeades declaration dated August 2, 2007 page 1, lines 20-26

³ Nicole Vafeades declaration dated August 2, 2007 page 2, lines 3-4.

such a right in the retainer agreement. Further, the court does not believe that a retainer agreement, absent clear and unequivocal language, can bind a party litigant to consent to a Borson motion. The court, therefore believes that Ms. Opri cannot rely on her retainer agreement to infer actual or implied consent to file the motion before the court.

In light of the above, the court denies Ms. Opri's motion. The petitioner is ordered to do an attorney order for approval and signature of all parties pursuant to the appropriate codes and court rules. Both the attorney order and this minute order are to be made available to the public.

TMZ.com