SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

AMERICAN STEVEDORING, INC.,	:	
	:	Index No. 651472-2012
Plaintiff-Respondent,	:	
- against -	:	
	:	
RED HOOK CONTAINER TERMINAL, LLC, SENECA INSURANCE COMPANY, INC., d/b/a THE SENECA COMPANIES, PORT AUTHORITY OF NEW YORK AND NEW JERSEY, DEMON LOGISTICS LLC, NAACO MATERIALS HANDLING GROUP, INC., MTC TRANSPORTATION COMPANY, BEEHIVE BEER, PHOENIX BEVERAGES, WINDMILL BEER,	:	**AFFIRMATION IN SUPPORT OF MOTION FOR AN INTERIM STAY AND A STAY PENDING APPEAL**
Defendants-Respondents,	:	
- and -	:	
	:	
THE ALEX N. SILL COMPANY,	:	
	:	
Nominal Defendant-Respondent.	:	
RED HOOK CONTAINER TERMINAL, LLC	:	
	:	
Third-Party Plaintiff-Respondent,	:	
	:	
- against -	:	
	:	
JBL TRINITY GROUP, LTD,	:	
	:	
Third-Party Defendant-Respondent.	:	

MICHAEL S. HILLER, an attorney admitted to the practice of law before the Courts of the State of New York, and aware of the penalties of perjury, affirms as follows pursuant to Rule 2016 of the CPLR:

1. I am the managing principal of Hiller, PC ("HPC"), the Appellant on this appeal and the *former* attorneys for American Stevedoring, Inc., plaintiff-respondent herein ("Respondent").

I submit this Affirmation in support of HPC's Motion for an Interim Stay and a Stay Pending Appeal of so much of the lower court's order, dated May 28, 2015, and entered May 29, 2015 ("Order") (Exh. 1), as unconditionally vacated and discharged HPC's retaining lien and directed HPC to produce and deliver within 10 days to Respondent's new lawyers in Staten Island, HPC's entire litigation file ("Litigation File").

2. The lower court granted such relief without requiring Respondent (HPC's former client) to pay any of the outstanding fees and disbursements due HPC and without requiring Respondent to post any security in connection therewith. Respondent never filed a motion requesting any of the relief the lower court granted Respondent in the Order; rather, the Order was precipitated entirely by HPC's unopposed motion to be relieved as counsel and to set and fix a charging lien. After granting HPC's unopposed motion in its entirety, the lower court stunningly awarded Respondent the sweeping and unprecedented relief reflected in the Order, discharging the retaining lien.

JURISDICTION

3. This Court has jurisdiction of this motion and the related appeal by virtue of a Notice of Appeal and Pre-Argument Statement, each dated and e-filed June 2, 2015 (Exh. 2).

PRELIMINARY STATEMENT

4. The relief granted to Respondent in the Order constitutes a pure error of law, because in the absence of a discharge for cause or other special circumstances (which do not exist in this case), a retaining lien cannot be vacated unless, at a minimum, the former client pays the outstanding sums due or posts security covering the cost of outstanding legal fees and disbursements. Here, HPC was not discharged at all; we withdrew as counsel after Respondent failed to pay its invoices for

more than six months and accumulated enormous arrears in legal fees and unreimbursed expenses. What makes this circumstance so frustrating is that I have been representing Respondent for approximately 11 years and recently (in January of this year), *I won partial summary judgment on Respondent's behalf in this action*. And yet, Respondent refused to pay any part of its outstanding bills. The lower court exacerbated this unfair situation, by unconditionally vacating HPC's retaining lien.

5. The Order is especially egregious in that it requires HPC to deliver its entire Litigation File, which is absolutely enormous and partially stored offsite, to Respondent's new counsel in Staten Island within 10 days from the date of the Order. Since the Order is silent as to who must bear the cost of such production and delivery, HPC would be constrained to pay (or advance) these additional costs, without security therefor. The underlying action has been pending for more than three years; thirteen (13) motions have been made, and the document productions number in the tens of thousands of pages. Correspondence with the Court was virtually constant. Indeed, the docket sheet for this action includes reference to nearly *500* documents. Ordering this file to be turned over within 10 days subjects HPC to even further harm, and highlights the lower court's error in issuing the (uninformed) Order without any motion or corresponding record having been made concerning the factual and legal merits of granting such drastic, affirmative relief to a non-moving party.

6. To be sure, the lower court committed error by granting such draconian relief without requiring Respondent to file a motion requesting it, and without giving HPC an opportunity to be heard and to make a record in opposition. No affidavit from an officer of Respondent or from anyone else on its behalf was submitted in opposition to HPC's motion to be relieved. No

evidentiary hearing was held, and Respondent made no cross-motion for affirmative relief. There is no record addressing whether Respondent has the wherewithal to post the bond generally required as a condition to the turnover of an aggrieved former attorney's file. The lower court has no record of the size of the file, the inconvenience involved in assembling it, or of the cost of reproducing and delivering it -- again, because the entire matter of the retaining lien and Respondent's desire to vacate it was never litigated. The lower court's issuance of an Order vacating HPC's lawful retaining lien and directing HPC to turnover its Litigation File, in the absence of a requirement that Respondent post bond, and in the absence of a motion requesting such affirmative relief, is reversible error.

7. The reason that a stay is required is obvious. In the absence of a stay, HPC's appeal would be rendered moot, since the Order requires HPC to produce its Litigation File to the new attorney within 10 days. If the Litigation File were to be turned over, the retaining lien would be worthless, as would HPC's appeal from the Order.

BACKGROUND

8. I have been representing Respondent and its interests since November 2004. Over the last 11 years, I have handled countless litigations on Respondent's behalf and occasionally served as general counsel, addressing corporate issues as they have arisen. Respondent benefitted greatly from our representation. *See, e.g., American Stevedoring, Inc. v. Red Hook Container Terminal LLC, et al.*, Index No. 651472-2012 (Sup. Ct. N.Y. Co. Jan. 15, 2015) (Respondent's motion for summary judgment as to liability on its main claim, *granted*); *Blue Wolf Capital Fund II, L.P. v. American Stevedoring, Inc.*, Index No. 651560-2010 (Sup. Ct. N.Y. Co. Aug. 30, 2011) (summary judgment in criminal usury case, *granted*, rendering Respondent's $1.050 Million debt *unenforceable* and allowing Respondent to avoid all of its repayment obligations), *aff'd* 2013 N.Y.

Slip Op. 01483 (1st Dep't. March 7, 2013); *Port Authority of New York and New Jersey v. American Stevedoring, Inc.*, Index No. Index No.: 09K105897 (Civ. Ct. Kings Co. May 3, 2010) (motion to dismiss commercial eviction proceeding, *granted*). Indeed, from in or about 2005 to September 2011, my current and former law firms (HPC and Weiss & Hiller, PC, respectively) were principally responsible for preventing Respondent's ouster from its leased premises. This was achieved, *inter alia*, through strategic use of litigation stays, interposition of claims under the United States Shipping Act, and institution of proceedings before the Federal Maritime Commission.

9. Despite our successes on its behalf, Respondent, over the years, consistently claimed to be struggling financially to pay its bills. We were always assured that we would be paid, and often the invoices were paid in dribs and drabs, but Respondent was a regular slow-payer. The only reasons why we continued the representation were: (i) our incorrect perception that we had a strong, personal relationship with Respondent's principal; and (ii) our sense that Respondent had been unfairly treated.

10. Beginning in September 2014, Respondent discontinued payment of invoices altogether. Respondent, through officers Matthew Yates and Keith Catucci, repeatedly assured me that the bills would be paid, but, by February 2015, the accumulating balances -- in excess of $700,000 -- became overwhelming to us. Accordingly, we informed the client that we could no longer continue unless a payment arrangement was made. Unfortunately, Respondent would not agree to any reasonable arrangement. Accordingly, we had no choice but to move by order to show cause ("Order to Show Cause") to withdraw and to fix and set charging liens (Order to Show Cause, Affirmation in Support, Exh. 3).

11. Months prior to our Order to Show Cause, Respondent hired another law firm (Gabor

& Marotta) to file a notice of appearance in this action ("Notice of Appearance") (Exh. 4). Because the Notice of Appearance did not constitute a substitution, our firm was still responsible for Respondent's representation. Accordingly, we were constrained to proceed by the Order to Show Cause to be relieved.

12. Respondent did not submit any papers in opposition to the Order to Show Cause. Rather, on May 6, 2015, we appeared before the lower court and were granted the relief we sought from the Bench. At the May 6 Hearing, Respondent appeared through its new counsel, Gabor & Marotta ("G&M"), who, as noted above, had filed its Notice of Appearance months earlier (Exh. 4). That G&M had filed its Notice of Appearance months earlier is especially significant, since it cannot be argued (and, indeed, it was not argued below) that Respondent's failure to oppose HPC's Order to Show Cause was by reason of a lack of representation. Respondent had been represented by G&M for months and *chose* not to oppose the Order to Show Cause.

13. On the submission date of our unopposed Order to Show Cause, G&M, for the first time, indicated a desire for a copy of the Litigation File. In response, the lower court justice, prior to receiving a response from us, answered that he anticipated that HPC would likely be uncomfortable releasing the Litigation File -- an implicit recognition of HPC's retaining lien. When it was my time to speak, I invoked HPC's retaining lien on the record, but offered to release the Litigation File as long as Respondent or its wealthy principal provided the required security therefor. The lower court justice suggested that the parties attempt to resolve the issue amicably.

14. Because Respondent persisted in its refusal to pay any portion of the fees and disbursements owed or post bond therefor, the parties were unable to stipulate to the terms of a joint proposed order. Accordingly, each party submitted its own counter-proposed order. Respondent's

version included a provision that, in effect, vacated HPC's retaining lien and directed HPC to turn over its Litigation File unconditionally, *i.e.*, without any payment by Respondent, and without Respondent posting a bond to secure payment (Respondent's Proposed Order, Exh. 5). We submitted a counter-proposed order (Exh. 6) along with a letter to the lower court Justice, explaining and citing case law to the effect that, *inter alia*: (i) a retaining lien is not subject to vacatur absent the posting of security or special circumstances which do not exist here; and (ii) Respondent never moved to vacate the retaining lien and thus could not obtain such relief by merely submitting a proposed order demanding it (May 14, 2015 Letter, Exh. 7). Respondent then submitted a responsive letter (Exh. 8), to which we promptly submitted a letter in reply (Exh. 9). The gist of Respondent's position is that a charging lien may be substituted for a retaining lien (Exh. 8). In our reply, we pointed out that, *inter alia*, Respondent had mis-characterized the case law upon which it relied, and that, in any event, Respondent, by its letter, made clear its intended to dispute the amount of HPC's charging lien. Thus, while the value of HPC's indisputable retaining lien could not be seriously questioned, the worth of the charging lien (which Respondent is disputing) would be in considerable doubt. In other words, the swap of a disputed charging lien for an undisputed and valid retaining lien would not constitute a fair trade (Exh. 9).

15. On May 28, 2015, the lower court issued the Order, which largely consists of HPC's Proposed Order, with the addition of one paragraph from Respondent's Proposed Order, which vacates HPC's retaining lien and directs HPC to deliver its Litigation File to new counsel within 10 days (Order, Exh. 1).

16. As already noted, the Litigation File herein is enormous. There have been 13 motions, including six motions to dismiss (non-jurisdictional), a motion for summary judgment, two motions for reconsideration (one of summary judgment and the other pertaining to dismissal), and

a motion for a temporary restraining order and preliminary injunction (Docket Motion Sheet, Exh. 10). In addition, there have been approximately 30 Court Appearances (Docket Appearance Sheet, Exh. 11), and exhaustive correspondence with the Court. Indeed, the docket has nearly five-hundred (500) document entries (Exh. 12). And the document productions herein number in the tens of thousands of pages. The cost of reproducing our Litigation File likely would be in excess of $5,000 in copying charges alone, and this does not include the lawyer and paralegal time that would be consumed by the process or the cost of delivering from Manhattan to Staten Island, the multiple boxes in which the Litigation File would be transported.

DISCUSSION

Discharge of HPC's Retaining Lien Without Requiring Respondent to Pay Outstanding Fees and Expenses Owed and Without Requiring a Bond Constitutes Reversible Error

17. In New York, it is well settled that, "[w]here a client requests that papers in the possession of his former attorney be returned to him, and the attorney asserts a claim for compensation for services rendered, *the attorney is entitled to a determination fixing the value of his services, and the amount so fixed must be paid or otherwise secured to the attorney before any such turnover may be enforced.*" *Renner v. Chase Manhattan Bank*, 2000 WL 1678043, * 1 (S.D.N.Y. November 8, 2000) (applying New York law) (emphasis added). Moreover, the outgoing and unpaid attorney is entitled to an immediate hearing to determine the amount of the outgoing attorney's lien, and "to condition the turnover of the file upon either the payment of the sum thereby found to be due from the defendant to her former attorney or the posting of security therefor." *Id.* (*quoting Artim v. Artim*, 109 A.D.2d 811, 812 (2d Dep't. 1985)); *see also Science Dev't. Corp. v. Schonberger*, 159 A.D.2d 343 (1st Dep't. 1990) (only after the former client had posted bond sufficient to ensure that his former attorney would be paid for services would such attorney be required to turn over the client

file to substituted counsel).

18. Indeed, as this Court ruled in *Corby v. Citibank, NA.*, "[i]n the absence of a waiver, or the establishment of exigent circumstances, it was improper for the court to direct [a law firm] to release the papers on which they had a retaining lien before determining the value of the attorney's services and assuring that the payment for these services was adequately secured." 143 A.D.2d 587, 588 (1st Dep't. 1988); *see also The Mint Factors v. Cedar Tide Corp.*, 133 A.D.2d 222, 222 (2d Dept. 1987) ("The court erred when it directed the outgoing attorneys to transfer the papers upon which they had a retaining lien before determining the value of the attorneys' services and before assuring that payment for those services was adequately secured") (*citing Pileggi v. Pileggi*, 127 A.D.2d 751 (2d Dep't. 1987) (among others)); *Fields v. Casse*, 182 A.D.2d 738, 738 (2d Dept. 1992) (order granting former client's motion to vacate retaining lien without payment or security, *reversed*: "It is well settled that an attorney who has been discharged without cause by a client is entitled to retain his client's file until he has been paid or until the client has otherwise posted adequate security ensuring the attorney's payment").

19. At the moment this Court granted HPC's Order to Show Cause to be relieved as counsel, HPC possessed a common-law retaining lien on all of Respondent's files in its possession, which such lien secured HPC's right under New York law to payment for services rendered. *Lai Ling Cheng v. Modansky Leasing Co.*, Inc., 73 N.Y.2d 454, 458 (1989). HPC has the right to be paid, or to have sufficient security posted therefor, before it is compelled to relinquish its lien. *Id.* at 459; *see also Science Dev't. Corp. and Corby, supra.*

20. There was no allegation below, let alone a showing, of special circumstances -- waiver, hardship, or exigency -- to justify the drastic relief granted by the lower court, specifically unconditional discharge of HPC's retaining lien and an order directing delivery of HPC's Litigation

File within 10 days at HPC's cost. It bears emphasis that HPC's Order to Show Cause for leave to withdraw and to set and fix charging liens *was not even opposed by Respondent*. While Respondent may complain that enforcement of HPC's retaining lien may render Respondent's continued prosecution of the instant action more difficult, *that is whole point of a retaining lien*.

21. A retaining lien, asserted against papers that otherwise have little intrinsic value, is valuable only because of the "inconvenience" caused to the client from denial of access to papers involved in the lawsuit. *Goldman v. Rafel Estates*, 269 A.D.2d 647, 649 (1st Dep't. 1945) ("[t]he lien is valuable in proportion as denial of access to the papers causes inconvenience to the client")). "A displaced attorney is thus afforded the same advantage as any other workman who is entitled to retain the things upon which he has worked until he is paid for his work." *Id.* Indeed,"[e]ven where an attorney has a charging lien and the amount thereof is summarily fixed pursuant to Section 475 of the Judiciary Law, *his retaining lien is not thereby extinguished but remains in effect until the fee as fixed is paid or security is given*." *Goldman*, 269 A.D.2d at 649 (*citing Leviten v. Sandbank*, 291 N.Y. 352 (1943)) (emphasis added).

22. The lower court herein vacated HPC's retaining lien without *any* security whatsoever. Thus, even though HPC was not discharged at all, let alone for cause -- indeed, HPC had recently won a motion for summary judgment on Respondent's behalf (Exh. 13 at pp. 10 and 14) -- HPC's retaining lien was vacated without any security. As reflected in the clear case law recited herein (and the dozens of other decisions on this subject), the lower court committed a clear error of law.

Respondent's Unsworn and Unsupported Allegation of Exigency Below Should Have Been Rejected as a Matter of Law

23. As a general proposition, to replace a retaining lien with a charging lien would supplant a secured position with a contingent one, and as such, would unfairly prejudice the attorney.

See, e.g., *In re Makames*, 238 App. Div. 534 (4th Dep 't. 1933) (reversing the lower court's swap of the attorney's retaining lien, in favor of a charging lien: "There is no certainty that the petitioner will ever recover a judgment on these policies, or that he will ever get a settlement from the insurance companies. If he is not successful in this litigation, appellants' security is worthless"); *see also Singer v. Four Corner Serv. Station*, 105 N.Y.S.2d 77, 79 (Sup. Ct. Kings Co. 1951) ("It has been argued that the fixation of the amount of the attorney's retaining and charging lien upon the cause of action and proceeds therefrom represents security for the payment of the retiring attorney's fee and that once such security is established, payment is not necessary to require the attorney to turn over his papers. Such an argument can have no foundation because it would obviously destroy the meaning and value of the attorney's retaining lien."). Thus, replacing HPC's retaining lien with a charging lien would be unfairly prejudicial and, in the absence of exigent or other special circumstances, constitutes an error of law.

24. In his unsworn letter, submitted along with its Proposed Order below, Respondent's new attorney argued that a charging lien herein could somehow replace HPC's retaining lien. Leaving aside that Respondent failed to file a motion in support of such relief (discussed *infra*), the lower court should have rejected Respondent's informal request.

25. In those rare instances in which the courts have allowed a charging lien to supplant a retaining lien, there existed special and exigent circumstances that do not exist here. For example, in *S.E.C. v. Ryan*, 747 F. Supp. 2d 355 (N.D.N.Y. 2010), the Court allowed a charging lien to supplant a retaining lien because: (i) the former client needed the file to defend himself in a criminal case; (ii) the former client did not have the funds with which to post bond; and (iii) the former client was <u>not</u> contesting the amount of the charging lien that replaced the retaining lien. By contrast here: (i) the Respondent is not a criminal defendant -- rather, this is a civil litigation in which Respondent

is the plaintiff; (ii) there has been no showing that Respondent and its principal cannot afford to post bond -- to the contrary, the cost of the bond would be only $7,383 (Exh. 9), and Respondent's principal is a millionaire who lives on a vast estate with horses, stables and golf carts to traverse his enormous property (Exh. 9); and (iii) Respondent *is* contesting the amount of the charging lien, by arguing now that *no* sums are due (*Id.*).[1]

26. Furthermore, under circumstances in which a former client *alleges* indigency, it constitutes reversible error to find such indigency in reliance upon an unsworn letter, and thus vacate a retaining lien where: (i) the former client fails to submit an affidavit detailing the alleged indigency; and (ii) the lower court fails to conduct an evidentiary hearing once the former attorney has questioned the allegation of indigency. *Pileggi,* 127 A.D.2d at 751 (order directing outgoing counsel to produce his file, *reversed with costs*). Here, Respondent never submitted any affidavit below, let alone an affidavit of indigency. Indeed, Respondent never even filed a motion below. And, in any event, the issue of alleged indigency was plainly contested. As set forth in correspondence submitted along with our proposed order:

[Respondent's] principal lives on an estate in Yorktown, New York, with stables for

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[1]Similarly, in *Rosen v. Rosen*, 97 A.D.3d 837, 837 (2d Dep't. 1983), it was undisputed that the former client was destitute and, in any event, the Court granted the former attorney a charging lien in the amount of the outstanding invoices on "any proceeds to be received by plaintiff upon resolution of the action." Here, neither Respondent nor its millionaire principal is destitute. And to post bond, Respondent would have been required to pay a premium of just $7,383 (Exh. 9). Furthermore, it is undeniable that Respondent has the resources to pay the premium for the bond. Prior to our filing of the Order to Show Cause, Respondent offered HPC $100,000 to continue prosecuting this action (on the condition that we defer receipt of payment for all future work as well as payment of the $600,000 remaining and outstanding balance until the end of the lawsuit). And, as reflected *supra*, even if Respondent and its millionaire principal lacked the funds to post bond (and they clearly do not), Respondent is still contesting the amount of the charging lien. Thus, the retaining lien has been supplanted with a lien that is inchoate, and has no current value. *See Andreiev v. Keller*, 168 A.D.2d 528, 528 (2d Dep't. 1990) (*distinguishing Rosen* based upon the fact that, in *Rosen*, the uncontested charging lien was awarded in lieu of the retaining lien whereas in *Andreiev*, the trial court made the same error as that appealed from herein).

> his horses, and acres of ranch land that require golf carts to traverse. Further, we can make an additional showing with respect to the holdings of [Respondent] and its principal, but we will reserve it for an *in camera* presentation to avoid disclosures that could potentially and unnecessarily prejudice our former clients. Nevertheless, it is clear that there is no evidence of indigency (Exh. 9).

27. In addition, as referenced *supra*, Respondent offered HPC $100,000 to continue its prosecution of this action – again, subject to restrictions on payment of the remaining outstanding balance and work going forward. Given that the cost of the bond necessary to secure Respondent's outstanding indebtedness would be a paltry $7,383 (Exh. 9), it is plain that, at a minimum, Respondent and its principal should have been required to submit to a hearing to determine the value of our services, even assuming *arguendo* that Respondent had submitted an affidavit (which Respondent never did).

The Lower Court's Order, Directing Production of the Litigation File Within 10 Days Ostensibly at HPC's Cost Constitutes an Error of Law

28. Under circumstances in which a court directs a lawyer to turn over his or her litigation file, it is required that the former client pay the copying, reproduction and delivery costs associated therewith. *Moore v. Ackerman*, 24 Misc.3d 275, 876 N.Y.S.2d 831, 837 (Sup. Ct. Kings Co. 2009) ("The Court of Appeals decision in *Sage Realty Corp. v. Proskauer Rose Goetz & Mendelsohn*, 91 N.Y.2d 30 (1997) is sufficient authority that, upon the termination of representation, at least where the lawyer has not been discharged for cause, or improperly withdrawn, the lawyer may fairly charge the client for the reasonable cost of complying with the client's request for the file").

29. Here, the lower court directed production of the entire Litigation File. Since the Order is silent as to the allocation of cost, HPC would have to pay for or advance these costs in order to timely comply with the Order. As referenced *supra*, the costs of copying the file would be exorbitant, and the task to do so within 10 days would be daunting for our small firm. Ordering HPC, a law firm

of five attorneys plus staff, whose substantial legal bills have not been paid by Respondent, to reproduce at its own expense and deliver to Respondent's new firm in Staten Island, HPC's entire Litigation File (particularly under the circumstances herein, where Respondent and its millionaire principal owe in excess of $700,000 to HPC -- $700,000 which includes disbursements we paid on Respondent's behalf to obtain copies of the very documents Respondent now demands a second time for free) threatens to impose a real hardship on HPC, would be grossly inequitable, and constitutes clear error of law.[2]

The Lower Court's Discharge of the Retaining Lien Without Submission of a Motion for Such Relief Constitutes an Error of Law

30. Respondent made no motion whatsoever for affirmative relief, *i.e.*, to vacate HPC's retaining lien and compel HPC unconditionally to turn over its Litigation File. In the absence of such a motion, there was no basis upon which to grant Respondent such one-sided and draconian relief.

31. While we would be inclined to cite a case in which a court addressed such a circumstance, we have been unable to find one, which is telling. Regardless, the vacatur of HPC's retaining lien, without requiring Respondent to submit evidence in support of its position (whatever it may be) and without affording HPC the opportunity to respond, strikes at the very heart of due process. In essence, the lower court deprived HPC of its retaining lien without notice or an opportunity to be heard, and as such, the ruling warrants prompt reversal.

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[2]Indeed, at a minimum, HPC, to comply with the Order, would be constrained to dedicate a high capacity copier, at least one computer terminal, at least two paralegals, and one attorney, *full time*, to the reproduction of the Litigation File. And while HPC would never consider providing its only copies of the Litigation File to Respondent's new counsel (*i.e.*, not photocopy but merely provide all originals to new counsel), HPC doesn't have the luxury of that choice anyway. Because Respondent is contesting the charging lien, HPC absolutely *must* retain a copy of the Litigation File for use at the charging lien hearing.

In the Absence of a Stay, HPC Would Be Irreparably Harmed and its Appeal Would be Rendered Moot

32. Extended argument is not necessary to resolve the issue of irreparable harm. In the absence of a stay, HPC would be required, within 10 days, to produce its Litigation File. Once in Respondent's possession, HPC's retaining lien would be extinguished with prejudice and this appeal would be rendered moot.

CONCLUSION

33. The likelihood of a reversal here is high. The lower court erred in discharging HPC's retaining lien without requiring Respondent to pay the outstanding fees owed, without requiring any security therefor, without evidence of exigent circumstances, without a hearing, without evidence, without requiring Respondent to pay the very substantial costs associated with reproduction of the file, without notice, and without affording HPC a meaningful opportunity to be heard. Under the circumstances, it is imperative that the Court grant HPC an immediate stay, as well as one pending appeal.

** 34. HPC hereby consents to an expedited briefing schedule on the appeal.

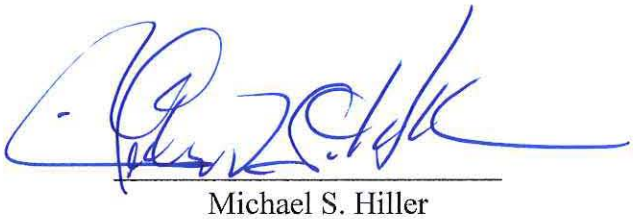
** 35. No prior request for the relief sought herein has been made to this or to any other Court.

** 36. Notice of this application was provided to Respondents' counsel yesterday -- well in advance of this application (Exh. 14).

WHEREFORE, for the reasons stated, Appellant HPC respectfully requests two orders, one on an interim basis and one pending appeal. With respect to relief on an interim basis, HPC respectfully requests an order: (i) staying, pending this Court's consideration of our motion, any obligation by HPC to produce and deliver its Litigation File to Respondent's counsel; (ii) staying the

effect of the Order unconditionally discharging Appellant-HPC's retaining lien; and (iii) such other and further interim relief this Court deems just and proper. As to the order pending appeal, HPC respectfully requests a stay pending appeal of (i) any obligation by HPC to produce and deliver its Litigation File to Respondent's counsel; (ii) the effect of the Order unconditionally discharging Respondent's retaining lien; and (iii) such other and further relief as this Court deems just and proper.

Dated: New York, New York
June 4, 2015



Michael S. Hiller