

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

GOGOCAST, INC.,	:	
Plaintiff,	:	
	:	
v.	:	
	:	
LG ELECTRONICS U.S.A., INC.,	:	
LG ELECTRONICS, INC. and	:	
AVNET, INC.,	:	
Defendants.	:	
	:	C.A. No. 12-524ML
AVNET, INC.,	:	
Counterclaim-Plaintiff,	:	
	:	
v.	:	
	:	
GOGOCAST, INC.,	:	
Counterclaim-Defendant.	:	

MEMORANDUM AND ORDER

This matter came before the Court on the emergency Motion for Leave of Court to Withdraw as Counsel filed by Attorney Sean O’Leary, who seeks to withdraw as legal counsel for Plaintiff/Counterclaim-Defendant GoGoCast, Inc. (“GoGoCast”). ECF No. 36. The Motion poses an emergency because GoGoCast’s opposition to Defendant/Counterclaim-Plaintiff’s Motion for Summary Judgment is due on February 27, 2014; as a result of this deadline, the Motion also seeks additional time for GoGoCast to file its opposition. The Motion has been referred to me for determination. 28 U.S.C. § 636(b)(1)(A); DRI LR Cv 72(a). A telephonic hearing was held on February 27, 2014. For reasons discussed below and subject to the additional provisions set out below, the Motion to Withdraw is provisionally granted and the Motion for additional time to respond to the Motion for Summary Judgment is granted.

As grounds for withdrawal, Attorney O’Leary indicates that GoGoCast has failed to pay him for legal services rendered and costs incurred on its behalf, has failed to respond to recent,

time-sensitive queries with respect to matters of importance related to this case, and has engaged in direct communications with opposing counsel¹ without notice to him. As a result, Attorney O'Leary represents that the attorney client relationship is beyond repair. Based on these representations, I find that Attorney O'Leary's motion to withdraw should be granted, subject to compliance with the requirements of the Rules of Professional Conduct and the Local Rules of this Court. Rivera-Domenech v. Calvesbert Law Offices PSC, 402 F.3d 246, 249 (1st Cir. 2005 (denial of motion to withdraw, forcing attorney to handle trial, amounts to abuse of discretion); Lieberman v. Polytop Corp., 2 F. App'x 37, 40 (1st Cir. 2001) (once notice and warning given, abuse of discretion to deny attorney's motion to withdraw).

The Motion and accompanying Affidavit recite Attorney O'Leary's efforts to comply with the requirements of this Court's Local Rules (LR Gen 206(e)(2)), which mandate that the client be notified of this Motion by both regular and certified mail, as well as the requirements of the applicable Rules of Professional Conduct (R.I. Sup.Ct., Art V, Rule 1.16(b)(5)), which mandate that the client be given reasonable warning that the lawyer will withdraw under these circumstances. However, due to the emergency (and not to any failure on the part of counsel), the notice and warning were neither timely nor reasonable in that the mailed notice was not sent until February 27, 2014, and emails were not sent until February 25 to 27, 2014.

Based on the foregoing, I order as follows:

1. Attorney O'Leary is directed to provide notice to GoGoCast in accordance with DRI LR Gen 206(e)(2) and the warning in accordance with R.I. Sup.Ct., Art V, Rule 1.16(b)(5) by regular mail, certified mail and email to every email address he

¹ All such communications were handled professionally, ethically and appropriately by counsel representing Defendant/Counterclaim-Plaintiff.

customarily used to communicate with GoGoCast by the close of business on February 28, 2014, of the following:

- a. The substance of the Motion for Leave of Court to Withdraw as Counsel (including a copy of the Motion, accompanying Memorandum and Affidavit);
 - b. This Order (including a copy of the Order);
 - c. The pending Motion for Summary Judgment (including a copy of the Motion and related filings), the new deadline for filing an opposition to the Motion and the consequences of failing to object to the Motion;
 - d. The Court's provisional determination that the Motion to Withdraw will be granted effective as of March 31, 2014, that GoGoCast is ordered either to file an objection to the Motion to Withdraw by March 14, 2014, or to arrange for the entry of substitute counsel by March 31, 2014; if it fails to do so, as an entity not permitted to proceed *pro se*, it will be at risk of default. Pardee v. Consumer Portfolio Servs., C.A. 01-594L, 2009 WL 222370 (D.R.I. Jan. 29, 2009).
2. GoGoCast is ordered either to file its Objection to the Motion for Leave of Court to Withdraw by March 14, 2014, or to arrange for the entry of substitute counsel by March 31, 2014; if it fails to do so, as an entity not permitted to proceed *pro se*, it will be at risk of default.
 3. If GoGoCast does not file an Objection to the Motion for Leave of Court to Withdraw on or before March 14, 2014, the Motion is granted effective as of March 31, 2014; if GoGoCast objects, the Motion for Leave to Withdraw will be subject to further Order of the Court.

4. GoGoCast's time to file its opposition to Defendant/Counterclaim-Plaintiff's Motion for Summary Judgment is extended to April 18, 2014. GoGoCast is cautioned that additional extensions will not be lightly granted.

ENTER:

/s/ Patricia A. Sullivan
PATRICIA A. SULLIVAN
United States Magistrate Judge
February 27, 2014