

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

<b>LEVICK STRATEGIC COMMUNICATIONS, LLC., Plaintiff</b>	)	
	)	<b>Case No. 2016 CA 007864 B</b>
	)	
<b>v.</b>	)	
	)	<b>Judge Neal E. Kravitz</b>
<b>DYNAMIC INTERNATIONAL AIRWAYS, LLC, Defendant</b>	)	

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**ORDER GRANTING DEFENDANT’S MOTION TO LIFT STAY AND RENEWED  
MOTION FOR RELIEF FROM JUDGMENT**

The defendant has filed a motion asking the court to lift the bankruptcy stay entered by operation of federal law on July 19, 2017 and to vacate the default judgment entered by this court on February 24, 2017 after an ex parte proof of damages hearing. The defendant states that the United States Bankruptcy Court for the Middle District of North Carolina issued an order on March 8, 2018 modifying the automatic bankruptcy stay so as to permit the parties to this case to litigate a motion to vacate the default judgment and, in the event the motion is granted, to proceed to the conclusion of the lawsuit on the merits. The plaintiff has filed an opposition to the motion in which it asserts it may have lost access to several witnesses due to the defendant’s five-month delay in filing its motion following the bankruptcy court’s order lifting the stay. The defendant has filed a reply.

The court has carefully considered the parties’ arguments and the entire record of the case, including the court’s subsequently-vacated order of October 16, 2017 granting the defendant’s first motion to vacate the default judgment. The court accepts the premise of the plaintiff’s position that the loss of access to witnesses and other evidence is the type of prejudice properly considered in determining whether relief from judgment should be granted under Rule

60(b)(6). The problem for the plaintiff's position is that the plaintiff's concern about the possible loss of access to witnesses or other evidence is entirely speculative. The plaintiff worries that certain witnesses may no longer be available, but it has not identified a single witness who has died, moved outside the subpoena power of the court, or otherwise become unavailable. In the circumstances, the court concludes that the reasoning of its order of October 16, 2017 remains persuasive and that the default judgment should be vacated.

Accordingly, it is this 27<sup>th</sup> day of August 2018

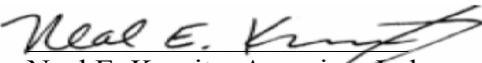
**ORDERED** that the motion is **granted**. It is further

**ORDERED** that the bankruptcy stay entered on July 19, 2017 is **lifted**. It is further

**ORDERED** that the default judgment entered on February 24, 2017 is **vacated** and set aside under Rule 60(b)(6). It is further

**ORDERED** that the defendant has until September 11, 2018 to file an answer to the complaint. It is further

**ORDERED** that the case is set for a scheduling conference on October 5, 2018 at 9:00 a.m. At the conference, the parties shall be prepared to address the fact that the judgment has been satisfied through execution on the defendant's bank account and the question whether the plaintiff has any remedy regarding the costs, including reasonable attorney's fees, it has incurred as a result of the defendant's default.

  
Neal E. Kravitz, Associate Judge  
(Signed in Chambers)

Copies to:

Murray A. Felder, Esq.  
Albert Wilson, Jr., Esq.  
*Via CaseFileXpress*

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<b>LEVICK STRATEGIC</b>	)	
<b>COMMUNICATIONS, LLC.,</b>	)	<b>Case No. 2016 CA 007864 B</b>
<b>Plaintiff</b>	)	
	)	
<b>v.</b>	)	
	)	<b>Judge Neal E. Kravitz</b>
<b>DYNAMIC INTERNATIONAL</b>	)	
<b>AIRWAYS, LLC,</b>	)	
<b>Defendant</b>	)	

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**ORDER DENYING PLAINTIFF’S MOTION FOR ATTORNEY’S FEES**

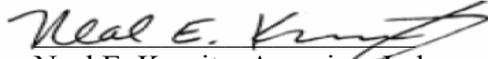
The plaintiff has filed a motion asking the court to require the defendant to provide reimbursement for the reasonable attorney’s fees the plaintiff incurred as a result of the defendant’s default early in the litigation. The plaintiff contends that the defendant’s failures to obtain counsel, appear in court, and file a timely responsive pleading together constitute bad faith sufficient to authorize an award of attorney’s fees. The plaintiff seeks an award of \$5,250.00 in fees and \$322.52 in costs.

The court appreciates the perceived unfairness to the plaintiff in having to pay attorney’s fees for legal work ultimately made moot by the court’s order of August 27, 2018 vacating the default judgment under Rule 60(b)(6). The court is nonetheless constrained by the law, which allows a shifting of attorney’s fees under the bad faith litigation exception to the American Rule only on a finding, by clear and convincing evidence, that the party against which the award is to be entered engaged in bad faith litigation. *See Oliver v. Mustafa*, 929 A.2d 873, 879 (D.C. 2007); *Fischer v. Estate of Flax*, 816 A.2d 1, 12 (D.C. 2003). The court makes no such finding here. Although the defendant’s failures identified by the plaintiff were frustrating to the plaintiff (and to the court), they were not the type of deceitful, unethical, or otherwise abusive actions necessary to implicate the narrow bad faith exception to the American Rule. Indeed, the court

found in its order of October 16, 2017 (the reasoning of which the court adopted in its order of August 27, 2018) that the record contained no evidence “that the defendant’s lack of diligence resulted from bad faith rather than from incompetence or unfamiliarity with the court’s procedures,” and nothing the plaintiff has presented in its motion for attorney’s fees has caused the court to alter its view in this regard.

Accordingly, it is this 18<sup>th</sup> day of October 2018

**ORDERED** that the motion is **denied**.

  
Neal E. Kravitz, Associate Judge  
(Signed in Chambers)

Copies to:

Murray A. Felder, Esq.  
Albert Wilson, Jr., Esq.  
*Via CaseFileXpress*