

61 E. 72nd St. Corp. v Modell

2024 NY Slip Op 32160(U)

June 25, 2024

Supreme Court, New York County

Docket Number: Index No. 153588/2022

Judge: Robert R. Reed

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 43

-----X
 61 EAST 72ND STREET CORPORATION,

Plaintiff,

- v -

LESLIE MODELL,

Defendant.

INDEX NO. 153588/2022

MOTION DATE 05/07/2024

MOTION SEQ. NO. 005

**DECISION + ORDER ON
 MOTION**

-----X
 HON. ROBERT R. REED:

The following e-filed documents, listed by NYSCEF document number (Motion 005) 73, 74, 75, 81, 82 were read on this motion to WITHDRAW COUNSEL.

In motion sequence 005, law firm Vernon & Ginsburg, LLP (Vernon & Ginsburg), counsel for defendant Leslie Modell, moves pursuant to CPLR §§ 321 and 2201 for an order granting leave to withdraw as counsel and staying all proceedings in this action for thirty days.

Darryl M. Vernon, Esq., a member of Vernon & Ginsburg, submits an affirmation dated May 6, 2024. Counselor Vernon affirms, under penalty of perjury, that Vernon & Ginsburg seeks to withdraw as counsel for defendant Modell due to “fundamental disagreements with the [d]efendant concerning how to proceed in this action” (Vernon affirmation ¶ 3). Mr. Vernon further affirms that, despite “substantial effort to resolve these issues,” Modell has refused “countless” times to communicate with the firm regarding discovery issues, legal matters, and fees (*id.* ¶ 3).

Vernon & Ginsburg requests that this court stay all proceedings in this action for thirty days to allow Modell time to retain new counsel. The motion is unopposed, except that plaintiff

requests that the court also toll plaintiff's time to file a dispositive motion during any stay granted (*see* affirmation of plaintiff's counsel).

CPLR 321 (b) (2) provides:

“[a]n attorney of record may withdraw or be changed by order of the court in which the action is pending, upon motion on such notice to the client of the withdrawing attorney, to the attorneys of all other parties in the action or, if a party appears without an attorney, to the party, and to any other person, as the court may direct.”

If an attorney deems it necessary to end the attorney-client relationship without the consent of the client, the attorney may move on such notice as may be directed by the court, to be relieved as counsel by court order (*Farage v Ehrenberg*, 124 AD3d 159 [2nd Dept 2014]).

“The decision to grant or deny permission for counsel to withdraw lies within the discretion of the trial court, and the court's decision should not be overturned absent a showing of an improvident exercise of discretion” (*Applebaum v Einstein*, 163 AD3d 905, 907 [2nd Dept 2018]).

Here, Vernon & Ginsburg submits sufficient evidence, by way of attorney affirmation, of fundamental disagreements with Modell regarding legal strategy, as well as Modell's failure to pay legal fees or communicate with her counsels (Vernon affirmation). A motion to withdraw as counsel may be granted on the grounds that the attorney-client relationship has irretrievably broken down (*see Forage v Ehrenberg*, 124 AD3d 159, 165 [2d Dept 2014]). A party's failure to pay legal fees also constitutes sufficient grounds (*see Weiss v Spitzer*, 46 AD3d 675 [2d Dept 2007] [an attorney may be permitted to withdraw from employment where a client refuses to pay reasonable legal fees]; *see also Holmes v Y.J.A. Realty Corp.*, 128 AD2d 482 [1st Dept 1987]).

Further, CPLR 321 (c) provides that “[i]f an attorney . . . is removed . . . at any time before judgment, no further proceeding shall be taken in the action against the party for whom he

appeared, without leave of the court, until thirty days after notice to appoint to appoint another attorney has been served upon that party” Therefore, a stay of the proceedings is appropriate to permit Modell to find new counsel.

Plaintiff requests to toll the time to file dispositive motions for a period from the court’s signing of Vernon & Ginsburg’s Order to Show Cause on May 7, 2024 through to thirty-five (35) days after issuance of the instant order. Plaintiff filed the Note of Issue for this action on April 19, 2024. Pursuant to the court’s most recent Status Conference Order, the parties had sixty days after that date to file any dispositive motions (*see* NYSCEF Doc. No. 64). The court’s order to show cause, staying the action pending the resolution of the motion, was dated May 7, 2024, after eighteen days had elapsed. Accordingly, plaintiff is entitled to forty-two additional days to file dispositive motions following the expiration of the stay.

Accordingly, it is hereby

ORDERED that the motion seq. no. 005 of Darryl M. Vernon, Esq. and Vernon & Ginsburg, LLP to be relieved as counsel for defendant Leslie Modell is granted without opposition upon filing of proof of compliance with the following conditions; and it is further

ORDERED that, within 10 days from entry, said attorney shall serve a copy of this order with notice of entry upon the former client at her last known address by certified mail, return receipt requested, and upon plaintiff’s counsel herein by posting to the New York State Courts Electronic Filing System; and it is further

ORDERED that, together with the copy of this order with notice of entry served upon the former client, moving counsel shall forward a notice directing the former client to appoint a substitute attorney within 30 days from the date of the mailing of the notice and the client shall comply therewith; and it is further

ORDERED that any new attorney retained by defendant Modell shall file a notice of appearance with the Clerk of the General Clerk’s Office (60 Centre Street, Room 119) and the Clerk of Part 43 within 40 days from the date the notice to retain new counsel is mailed; and it is further

ORDERED that no further proceedings may be taken against defendant without leave of this court for a period of 30 days after service on the former client of the aforesaid notice to appoint a substitute attorney; and it is further

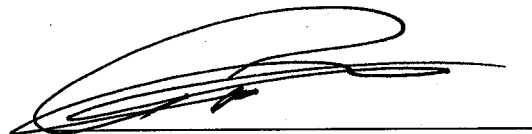
ORDERED that the departing attorney shall, within 10 days from entry, serve a copy of this order with notice of entry on the Clerk of the General Clerk’s Office (Room 119); and it is further

ORDERED that such service upon the Clerk of the General Clerk’s Office, the filing of a notice of appearance as provided herein, and the filing of papers as aforesaid shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that plaintiff shall file any dispositive motions within forty-two (42) days of the lifting of the stay.

This constitutes the decision and order of this court.

6/25/24
DATE


ROBERT R. REED, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input checked="" type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT
	<input type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
		<input type="checkbox"/> REFERENCE