

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D17244
C/hu

_____AD3d_____

Argued - November 28, 2007

ROBERT W. SCHMIDT, J.P.
FRED T. SANTUCCI
ANITA R. FLORIO
MARK C. DILLON, JJ.

2006-11237

DECISION & ORDER

Joshua Weiss, et al., appellants, v Mark Spitzer,
et al., defendants; Robert P. Baron,
nonparty-respondent.

(Index No. 23490/04)

Tobias Weiss, Flushing, N.Y., for appellants.

Robert P. Baron, Palm Beach Gardens, Florida, nonparty-respondent pro se.

In an action pursuant to RPAPL article 15 to compel the determination of claims to real property, the plaintiffs appeal from an order of the Supreme Court, Kings County (Jacobson, J.), dated September 25, 2006, which granted the motion of their attorney, inter alia, for leave to withdraw as counsel.

ORDERED that the order is affirmed, with costs.

An attorney may be permitted to withdraw from employment where a client refuses to pay reasonable legal fees (*see Winters v Winters*, 25 AD3d 601, 602; *Kay v Kay*, 245 AD2d 549, 550; *Stephen Eldridge Realty Corp. v Green*, 174 AD2d 564, 565). Here, the record establishes that the plaintiffs were almost \$3,000 in arrears in payment of their legal fees, which they had promised to pay within 10 days of billing pursuant to a retainer agreement. Moreover, the plaintiffs accused their attorney of incompetence and did not dispute that he no longer maintains an office in New York. Under these circumstances, the Supreme Court providently exercised its discretion in granting the motion, inter alia, for leave to withdraw as the plaintiffs' counsel (*see Code of Professional Responsibility*, DR 2-110[C][1][d], [f] [22 NYCRR 1200.15(c)(1)(iv) and (vi)]; *Code of Professional*

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Responsibility DR 2-110[C][6] [22 NYCRR 1200.15(c)(6)]; *Galvano v Galvano*, 193 AD2d 779, 780).

The plaintiffs' remaining contentions either are without merit or have been rendered academic by our determination.

SCHMIDT, J.P., SANTUCCI, FLORIO and DILLON, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, sweeping initial "J".

James Edward Pelzer
Clerk of the Court