

Campbell v 921 St Marks Realty LLC
2026 NY Slip Op 31090(U)
March 19, 2026
Supreme Court, Kings County
Docket Number: Index No. 525980/2020
Judge: Anne J. Swern
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At an IAS Trial Term, Part 75 of the Supreme Court of the State of New York, Kings County, at the Courthouse located at 360 Adams Street, Brooklyn, New York, on the 19th day of March 2026.

P R E S E N T: HON. ANNE J. SWERN,
J.S.C.

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STEPHEN CAMPBELL, LACEY ERB, KAYCEE GENUALDO,
FIONA LANE, TYLER NELLISON, WYATT TANNUM, and
NATHALIE THOMAS,

Plaintiffs,

-against-

921 ST MARKS REALTY LLC,

Defendant.

**DECISION &
ORDER**

Index No.:
525980/2020

Calendar No.: 9

Mot. Seq. No.: 4

Return Date: 2/26/26

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Recitation of the following papers as required by CPLR 2219(a):

**NYSCEF
Papers Numbered**

Amended Order to Show Cause, Affirmation in Support of
Order to Show Cause to Withdraw as Counsel, Order Granting
Appointment of Receiver in Foreclosure Action, Affidavit of
Service, and Supporting Documentation/Exhibits.....55-64

Upon the foregoing papers, the decision and order of the Court is as follows:

Kucker Marino Winiarsky & Bittens, LLP (“KMWB”), counsel for defendant 921 St Marks Realty LLC (“defendant”), moves this Court via an Amended Order to Show Cause (1) pursuant to CPLR 321 (b), granting KMWB leave to withdraw as counsel for defendant; (2) pursuant to CPLR 321 (c) and CPLR 2201, staying all proceedings in this action by a period of thirty (30) days, and extending all pending deadlines in this action by a period of at least thirty (30) days, following service of Notice of Entry of an order permitting KMWB to withdraw as counsel for defendant, and (3) compelling the Receiver of defendant 921 St Marks Avenue, Brooklyn, New York, to appear and defend this action in place of 921 St Marks Realty LLC pursuant to the Order issued in the matter of *Bates Holdings II LLC v 921 St Marks Realty LLC*,

et al, filed in Supreme Court, County of Kings, under Index Number 522597/2023, on February 20, 2025.¹

The above-captioned relief was initially filed by KWMB via Order to Show Cause, which was signed on 6/9/2025 with a return date of 12/11/2025, but the matter was marked off the calendar due to movant's failure to appear for the second call of the motion calendar on 12/11/2025 at 11:30 AM. As such, movants seek to restore MS #3 by requesting the same relief via an Amended Order to Show Cause (MS #4).

Attorney-Client Relationship

Defendant is the owner and landlord of a building known as and located at 921 St. Marks Avenue, Brooklyn, New York 11216 (the "Building"). On or about December 28, 2020, plaintiffs commenced this proceeding against defendant, alleging that their individual apartments in the building were subject to the Rent Stabilization Law and Rent Stabilization Code; plaintiffs sought monetary and punitive damages, in addition to attorneys' fees. Following a preliminary conference on September 27, 2023, KMWB was substituted as counsel for defendant in lieu of Sidrane, Schwartz-Sidrane, Perinbasekar & Littman, LLP.

It is KWMB's position that their motion should be granted for two reasons: (i) the Retainer Agreement between the parties provides that KMWB may withdraw as counsel at any time upon written notice and that failure to pay bills may result in the termination of KMWB's representation (NYSCEF Doc. No. 31); and (ii) defendant has indicated by its lack of responsiveness to demands, that it has no intention of paying to KMWB the currently

¹ The Amended Order to Show Cause contains language that pending a hearing and determination of this motion, all proceedings in the action are stayed.

outstanding legal fee invoices issued by KMWB to defendant.² Defendant previously filed an Order to Show Cause to withdraw (MS #2, NYSCEF Doc Nos. 29-36), but withdrew same because defendant agreed upon a payment plan which defendant has now breached.

KMWB asserts that they have zealously represented defendant in this action by working with defendant to determine the rent stabilization status of each premises within the building; reviewing leases and related documents to properly defend this matter; and engaging in discovery and motion practice to advance this matter. Nonetheless, the attorney-client relationship between KMWB and defendant has deteriorated to the extent that KMWB cannot effectively represent defendant. KWMB asserts that defendant has failed to remit the retainer sums; never paid monies towards any open invoices for legal services rendered by KMWB on their behalf; and that despite their agreement, defendant has failed to timely or consistently remit payment towards the legal fees incurred, which, as of May 28, 2025, totaled \$13,107.86, despite repeated demand for payment. Thus, KMWB asserts that defendant refuses to pay and has stated in no uncertain terms that it wants to terminate the attorney-client relationship and does not wish for KWMB to represent it any longer. As such, KWMB asserts that the attorney-client relationship is irrevocably broken, and that continued representation of defendant would be improper.

CPLR 321 (b) (2) provides the following:

An 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.

² According to the Retainer Agreement, the following is stated concerning terminating representation: You have the right to terminate this engagement, by written notice, at any time. *The Firm has the same right to terminate this engagement, by written notice, at any time, subject to our obligation to give you reasonable notice to permit you to obtain alternative representation and subject to applicable ethical provisions governing the practice of law in New York State.* If you or the Firm decides to terminate this engagement, the Firm will charge for any fees and disbursements already incurred, as well as for any further reasonable fees and expenses incurred in transferring our representation to another counsel of your choice.

“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” (*Cashdan v Cashdan*, 243 AD2d 598 [2d Dept 1997]; and *see, Ben-Yu Zhan v Sun Wing Wo Realty Corp.*, 208 AD2d 668; *Haskell v Haskell*, 185 AD2d 333). Under the Rules of Professional Conduct, withdrawal is appropriate if the client “fails to cooperate in the representation or otherwise renders the representation unreasonably difficult” (22 NYCRR 1200.0, Rule 1.16 [c] [7]). And withdrawal may even be permitted where it “can be accomplished without material adverse effect” on the client’s interests (22 NYCRR 1200.0, Rule 1.16 [c] [1]).

Here, in accordance with the Rules of Professional Conduct (22 NYCRR 1200.0, Rule 1.16 [c] [7]), withdrawal is permitted if the client “fails to cooperate in the representation or otherwise renders the representation unreasonably difficult.” In addition to not submitting payment to KMWB, defendant has not been communicating with KMWB by ignoring demands, making it unreasonably difficult for an attorney-client relationship to remain. Moreover, withdrawal of KMWB will allow the Receiver, Michael Benjamin, to step in and defend this action as directed in the Receiver Order.

The Receiver

On October 10, 2024, defendant, by and through KMWB, moved by notice of motion for retroactive use and occupancy against plaintiff Stephen Campbell, with a return date of October 31, 2024. On December 30, 2024, the parties agreed to an adjournment of defendant’s motion to February 9, 2025, with plaintiff’s opposition/cross-motion thereto due on or before January 9, 2025. On February 20, 2025, in the matter captioned *Bates Holdings II LLC v 921 St Marks Realty LLC, et al*, filed in Supreme Court, County of Kings, under Index Number 522597/2023, the Court appointed Michael Benjamin as Receiver for defendant. The Receiver Order authorized

the Receiver to “institute and carry on all legal proceedings necessary for the protection of the [Building].” The Receiver Order also directed the Receiver to “demand, collect, and receive from the occupants, tenants, and licensees in the possession of the Mortgaged Property...” And the Receiver Order enjoined and restrained defendant from “collecting the Rents, license fees and other charges of said premises and interfering in any manner with the [Building] or its possession.”

Motion to Restore

In accordance with CPLR § 2005, this Court may exercise its discretion in the interests of justice to excuse delay or default resulting from law office failure. In considering applications under CPLR § 2005 for excusable default, CPLR § 5015 (a) (1) requires such applications to be filed within one year after the service of a copy of the judgment or order with written notice of its entry upon the moving party. “While the Supreme Court has the discretion to accept law office failure as a reasonable excuse, the excuse must be supported by detailed allegations of fact explaining the law office failure (*see Cantor v Flores*, 94 AD3d 936, 936-937 [2012])” (*HSBC Bank USA N.A. v Wider*, 101 AD3d 683 [2d Dept 2012]). Here, KWMB asserts that their default was not willful or intentional, and that this occurred because the matter was mistakenly calendared by the firm for December 18, 2025, instead of December 11, 2025, thus providing a detailed allegation of fact explaining the law office failure/calendaring error.

Accordingly, it is hereby

ORDERED that

1) KMWB’s motion via an Amended Order to Show Cause pursuant to CPLR 321 (b), granting KMWB, counsel for defendant, leave to withdraw as counsel for defendant is, GRANTED; and

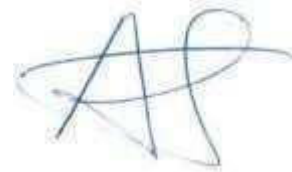
2) KMWB's motion pursuant to CPLR 321 (c) and CPLR 2201, staying all proceedings in this action by a period of thirty (30) days, and extending all pending deadlines in this action by a period of at least thirty (30) days, following service of Notice of Entry of an order permitting KMWB to withdraw as counsel for Defendant, is GRANTED; and

3) KMWB's motion compelling the Receiver of defendant 921 St Marks Avenue, Brooklyn, New York, to appear and defend this action in place of 921 St Marks Realty LLC pursuant to the Order issued in the matter of *Bates Holdings II LLC v 921 St Marks Realty LLC, et al*, filed in Supreme Court, County of Kings, under Index Number 522597/2023, on February 20, 2025, is GRANTED, and

4) KMWB shall serve a copy of this Order with Notice of Entry by Overnight Mail on defendant 921 St Marks Realty, LLC within 15 days of its entry in NYSCEF.

This constitutes the decision and order of the Court.

ENTER:



Hon. Anne J. Swern, J.S.C.

Dated: 3/19/2026