

**Garcia v City of New York**

2007 NY Slip Op 32831(U)

July 31, 2007

Supreme Court, Queens County

Docket Number: 0027726/2005

Judge: Kevin Kerrigan

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE KEVIN J. KERRIGAN Part 10  
Justice

-----X

LUIS GARCIA,

Plaintiff,

- against -

Index  
Number: 27726/05

Motion  
Date: 07/03/07

Motion  
Cal. Number: 6

THE CITY OF NEW YORK, SAM ASH MUSIC  
REALTY CORP. and JOSEPH T. MACARI,

Defendants.

Motion Seq. No. 2

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The following papers numbered 1 to 11 read on this motion by Roura & Melamed, the outgoing attorneys for plaintiff, for an order substituting Ioannou & Associates as attorneys for plaintiff in place and stead of Roura & Melamed and for costs and sanctions.

	<u>Papers Numbered</u>
Order to Show Cause-Affirmation-Exhibits.....	1-4
Affirmation in Partial Opposition-Exhibit.....	5-7
Reply-Exhibit.....	8-10
Letter.....	11

Upon the foregoing papers it is ordered that the motion is decided as follows:

The cross-motion by defendant Joseph T. Macari to vacate the Note of Issue and Certificate of Readiness was resolved by stipulation, so-ordered by this Court, dated June 19, 2007.

Motion by Roura & Melamed, the outgoing attorneys for plaintiff, for an order substituting Ioannou & Associates as attorneys for plaintiff in place and stead of Roura & Melamed, pursuant to CPLR 321(2), and for costs and sanctions against Ioannou & Associates is granted.

Ioannou & Associates is hereby substituted in place and stead of Roura & Melamed as attorneys of record for plaintiff.

On September 21, 2006, plaintiff discharged Roura & Melamed as his attorneys and on September 22, 2006 executed a consent to change attorney form prepared by Ioannou & Associates.

On October 11, 2006, October 17, 2006 and January 10, 2007, Roura & Melamed requested reimbursement from Ioannou & Associates in the sum of \$2,793.98 as and for disbursements incurred and acknowledgment of both work performed and of plaintiff's claim investments with Bainbridge Investment Company, Inc. prior to transfer of the file.

Ioannou & Associates failed to reimburse Roura & Melamed for its disbursements incurred in the action and failed to furnish the requested acknowledgments. Pursuant to the compliance conference order issued by Justice Martin E. Ritholtz on January 22, 2007, the incoming attorneys were ordered to acknowledge plaintiff's claim investments with Bainbridge Investment and further ordered them to tender to Roura & Melamed within 14 days the sum of \$2,793.98 as reimbursement of disbursements.

Thereafter, that same day, Roura & Melamed executed the consent to change attorney form and forwarded it to Ioannou & Associates.

Ioannou & Associates failed to comply with the order of Justice Ritholtz and failed to comply with Roura & Melamed's request in their letter to Ioannou & Associates dated February 6, 2007 that the latter comply with the compliance conference order. At a conference before Justice Ritholtz on April 13, 2007, John Ioannou, Esq. executed an affirmation that he will pay the amount of \$2,793.98 by April 16, 2007. Ioannou failed to make payment in accordance with his affirmation. Ioannou & Associates was thereafter ordered to appear before Justice Ritholtz on May 4, 2007 for payment of the disbursements. Ioannou failed to appear.

In addition, Ioannou & Associates has failed to file the consent to change attorney with the Court, as a consequence of which failure, Roura & Melamed continues to be listed as the attorneys of record for plaintiff.

The instant motion was thereafter brought by order to show cause.

Ioannou, in his affirmation in partial opposition, does not deny any of the above facts and concurs with movant that this Court should, indeed, issue an order substituting Ioannou & Associates as

plaintiff's counsel in place of Roura & Melamed.

He contends, however, that payment of the disbursements was not made because plaintiff had instructed him not to make payment until an accounting had been conducted as to the alleged disbursements. For this reason, he contends, costs and sanctions should not be imposed upon him.

Ioannou's excuse appears entirely disingenuous. Ioannou neither alleges nor shows that this excuse for failure to make payment was ever disclosed either to Roura & Melamed or to the Court in the course of the numerous correspondences from Roura & Melamed requesting payment and the Court-ordered conferences. In addition, no excuse is given for his failure to comply with the order of Justice Ritholtz and no explanation is provided why, if his client had instructed him not to make payment until the disbursements had been verified, he affirmed as an officer of the Court that he would pay said disbursements.

Ioannou simply disregarded all the letters from Roura & Melamed, the compliance conference order of Justice Ritholtz, the order of Justice Ritholtz to appear on May 4, 2007 to make payment and his own affirmation as an attorney and officer of the Court asserting that he would make payment.

To compound the egregiousness of Ioannou's conduct, he mailed a letter to chambers dated July 2, 2007, with a conformed copy to Roura & Melamed, representing that Ioannou & Associates has paid the disbursements to Roura & Melamed and, therefore, the motion is now moot. He annexes to his letter a copy of a cover letter to Roura & Melamed dated June 28, 2007 purportedly enclosing a draft in the sum of \$2,793.98. At the call of the motion calendar in this part on July 3, 2007, counsel for Roura & Melamed represented that no such payment had been received. No one from Ioannou & Associates appeared on said date. Since June 28 was a Thursday, it is quite possible that if payment were mailed on said date that it might not have been delivered by the end of business on Monday July 2 or in the morning of Tuesday July 3 early enough for it to have been received by Roura & Melamed prior to their appearance at 9:30 A.M. on July 3.

Assuming that Ioannou forwarded payment on June 28, as he represents, he fails to explain why, when he knew that he had to appear for this motion on July 3, he did not simply bring the payment with him to Court to tender to Roura & Melamed but, instead, chose to mail the payment at the last possible moment when it might not be received prior to the adjourned date of the motion. There is no indication or representation that the payment was mailed by overnight delivery rather than ordinary mail. Moreover, Ioannou

neither annexed to his letter nor brought with him to Court a copy of the draft he purportedly mailed to Roura & Melamed.

Ioannou ignored all the requests of incoming counsel for payment of disbursements, flouted the compliance conference order of January 22, 2007, violated his own affirmation dated April 13, 2007 and failed to appear on May 4, 2007 before Justice Ritholtz as directed. Ioannou waited until the instant motion was brought by order to show cause on June 5, 2007, adjourned to June 19, 2007 and adjourned again to July 3, 2007 and marked final before he decided to make payment as originally requested and thereafter ordered. On July 2, 2007, the day before the return date of the motion, Ioannou faxed the aforementioned letter to chambers informing the Court that he has paid the outgoing attorney and, therefore, sanctions and costs should not be imposed. Of course, he failed to appear on July 3, the date the motion was submitted.

In addition, at no point in these proceedings did Ioannou explain why he neglected to file the consent to change attorney with the Court. Instead, he nonchalantly concurs with Roura & Melamed that their motion pursuant to CPLR 321 should be granted, completely obtuse to the fact that if he had filed the consent to change attorney, the instant motion would not have been necessary and he would not have caused the needless expenditure of time and resources of both the outgoing attorneys and this Court.

In consequence of the foregoing, John M. Ioannou, Esq. of Ioannou & Associates, shall pay to Roura & Melamed \$100.00 representing the costs of this motion, pursuant to CPLR 8106 and 8202, within 10 days of service of a copy of this order with notice of entry. The Trial Term Clerk shall not accept the filing of the note of issue and certificate of readiness unless proof of payment of said costs is demonstrated. John Ioannou, Esq. shall also demonstrate proof of payment of said costs to the Trial Court at the time of trial.

In addition, this matter is set down for a hearing to determine the possible imposition of sanctions against John M. Ioannou, Esq. and/or plaintiff, Luis Garcia, pursuant to Section 130-1 of the Rules of the Chief Administrator of the Courts (22 NYCRR 130-1), on August 22, 2007 at 9:30 A.M. in Part 10, Room 505 of this Courthouse located at 88-11 Sutphin Boulevard, Jamaica, New York 11435. Neither the date nor the time of the hearing shall be changed without the express permission of the Court. Inasmuch as Ioannou contends in his affirmation in opposition that he did not pay the disbursements, as ordered pursuant to the compliance conference order of Justice Ritholtz, because Garcia had instructed him not to do so, both John Ioannou, Esq. and Luis Garcia are hereby ordered to appear on the aforesaid date for the sanctions hearing to offer an explanation as

to why or whether they deliberately violated the order of the Court.

Serve a copy of this order with notice of entry upon the attorney for plaintiff, upon plaintiff and upon the Clerk of the Court without undue delay. Proof of service upon all of the above shall be provided to the Court on the aforementioned hearing date.

Dated: July 31, 2007

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KEVIN J. KERRIGAN, J.S.C