

<b>Capogrosso v Metropolitan Dental Assoc.</b>
2007 NY Slip Op 34534(U)
February 20, 2007
Supreme Court, New York County
Docket Number: 103294/05
Judge: Eileen Bransten
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART SIX

-----X  
ELEANOR CAPOGROSSO, ESQ.,

Plaintiff,

-against-

METROPOLITAN DENTAL ASSOCIATES, D.D.S.,  
225 BROADWAY, P.C., STEVEN I. MITGANG, D.D.S.,  
PASQUALE SCELISO, D.D.S.,

Defendants.

-----X  
PRESENT: EILEEN BRANSTEN, J.

Index No. 103294/05  
Motion Date: 2/13/07  
Motion Seq. No.: 003

**FILED**  
FEB 26 2007  
COUNTY CLERK'S OFFICE  
NEW YORK

Plaintiff Eleanor Capogrosso, Esq. ("Ms. Capogrosso"), appearing *pro se*, moves pursuant to Judiciary Law § 475 to discharge the lien on this action held by the firm that formerly represented her – Lutfy & Santora. Lutfy & Santora opposes the motion.

Background

In this dental malpractice action – commenced March 10, 2005 – Ms. Capogrosso alleges that defendants negligently provided dental treatment to her from 2000 to 2004, causing injuries to her teeth and gums. From the outset, the law firm of Lutfy & Santora represented Ms. Capogrosso.

In early 2006, however, James L. Lutfy ("Mr. Lutfy") of Lutfy & Santora moved to be relieved as counsel because of Ms. Capogrosso's alleged failure to cooperate in prosecution of the action. Opp., at 2. During a lengthy discussion on the record on August 15, 2006, which the Court sealed in case the parties said anything that would prejudice Ms.

Capogrosso's case, Mr. Lutfy detailed his reasons for wishing to withdraw as plaintiff's attorney. In particular, Mr. Lutfy asserted that his office called Ms. Capogrosso on June 26, 2006 to confirm her deposition, scheduled for 10:00 the next morning, but that she refused to confirm whether she would attend. *Opp.*, Ex. C, at 1. Mr. Lutfy also stated that his and Ms. Capogrosso's attorney-client relationship was contentious and strained. *Opp.*, at 2.

Ms. Capogrosso, by contrast, argued that she was cooperative in prosecuting her action and that her relationship with Lutfy & Santora was not contentious. *Aff.*, at 3.

After considering the arguments of both Ms. Capogrosso and counsel and determining that Mr. Lutfy and Ms. Capogrosso were at an impasse – whether because of Ms. Capogrosso's alleged uncooperativeness or because of personality conflicts that were clear to the Court – the Court granted Lutfy & Santora's motion to withdraw as counsel. *Aff.*, at 2.

Ms. Capogrosso now moves to discharge Lutfy & Santora's lien on the action, arguing that the firm has no right to ever recover fees or disbursements because it withdrew as her counsel without just cause. *Aff.*, at 2-3. Lutfy & Santora opposes the motion, detailing its just cause for withdrawal, namely Ms. Capogrosso's alleged refusal to cooperate with discovery and prosecution of her case. *Opp.*, at 2.

Analysis

“In the case of the attorney the general rule is that he may terminate his relationship at any time for a good and sufficient cause and upon reasonable notice.” *Dunn v. Hudson Riv. Elec. Co.*, 205 N.Y. 398, 403 (1912). Indeed, pursuant to the Code of Professional Responsibility, counsel may withdraw from representing a client when the client makes it “unreasonably difficult” for the representation to continue. 22 N.Y.C.R.R. 1200.15(c)(1)(iv); *Dillon v. Otis El. Co.*, 22 A.D.3d 1, 2 (1st Dept. 2005); *Bok v. Werner*, 9 A.D.3d 318 (1st Dept. 2004).

Moreover, Judiciary Law § 475 allows an attorney who appeared for a party in a cause of action to maintain a lien upon that case even, in certain circumstances, when the attorney no longer represents the client. The statute is remedial and is to be construed liberally “in aid of the object sought by the legislature, which was to furnish security to attorneys by giving them a lien upon the subject of the action.” *Itar-Tass Russian News Agency v. Russian Kurier, Inc.*, 140 F.3d 442, 450 (2d Cir. 1998) (applying New York law).

Indeed, provided that the representation terminates for reasons other than attorney misconduct, discharge for cause, or unjustified abandonment of the case, the attorney’s right to maintain a lien for compensation is fully preserved. *Klein v. Eubank*, 87 N.Y.2d 459, 464 (1996), *rearg. denied*, 87 N.Y.2d 1056; *Shalom Toy, Inc. v. Each and Every One of the Members of the New York Prop. Ins. Underwriting Assoc.*, 239 A.D.2d 196, 198 (1st Dept.

1997); *see, e.g., Hae Sook Moon v. City of New York*, 255 A.D.2d 292 (2d Dept. 1998) (attorney permitted to retain lien because client's contention that attorney withdrew for client's failure to accept settlement offer was not supported by the record); *Goldman v. Rafel Estates, Inc.*, 269 A.D., at 649 (finding just cause to withdraw because client hired a separate attorney in closely related matter); *Levitas v. Levitas*, 96 Misc. 2d 929, 931 (Sup. Ct., New York County, 1978) (awarding charging lien to relieved attorney); *Matter of M.E. v. S.G.*, 124 Misc. 2d 851 (Fam. Ct, New York County, 1984) (attorney permitted to retain lien because he withdrew as counsel based on contentious attorney-client relationship).

To be sure, the Court of Appeals articulated that, "Attorney-client relationships frequently end because of personality conflicts, misunderstandings or differences of opinions having nothing to do with any impropriety by either the client or the lawyer. \* \* \* A rule making the charging lien unavailable to attorneys who voluntarily withdraw would introduce a strong economic deterrent to the amicable settlement of attorney-client disputes." *Klein v. Eubank*, 87 N.Y.2d, at 463-64.

Here, Ms. Capogrosso alleges that Lutfy & Santora may not maintain a lien on her case because the firm withdrew without just cause. She is incorrect.

Case law makes plain that when attorney and client cannot get along or a client refuses to cooperate with discovery, the attorney has just cause for withdrawal. *See, Dillon v. Otis Elevator Co.*, 22 A.D.3d, at 2 (allowing withdrawal of counsel for "just cause" based

on client's failure to cooperate with discovery); *Bok v. Werner*, 9 A.D.3d, at 318 (client's failure to communicate with counsel justified counsel's withdrawal).

Mr. Lutfy provided the Court with a detailed explanation of his and Ms. Capogrosso's strained relationship and contended that Ms. Capogrosso would not cooperate in prosecution of her action. This Court, additionally, had an opportunity to observe the parties and had no doubt that relationship was irretrievably broken. Because the Court found that Lutfy & Santora had just cause to withdraw, the firm may maintain a lien on Ms. Capogrosso's action.

Accordingly, it is

ORDERED that Ms. Capogrosso's motion to discharge Lutfy & Santora's lien is denied.

This constitutes the Decision and Order of the Court.

Dated: New York, New York

February 20, 2007

ENTER

  
Hon. Eileen Bransten

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