

**U.S. Bank N.A. v Daniels**

2009 NY Slip Op 32415(U)

October 15, 2009

Supreme Court, New York County

Docket Number: 112327/07

Judge: Shirley Werner Kornreich

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: KORNREICH  
*Justice*

PART 54

**JUSTICE SHIRLEY WERNER KORNREICH**

U.S. BANK NATIONAL ASSOCIATION

- v -

JASON DANIELS

INDEX NO. 112327/07  
MOTION DATE 6/25/09  
MOTION SEQ. NO. 3  
MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to 1 were read on this motion to/for withdraw counsel

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

PAPERS NUMBERED  
**FILED**  
OCT 20 2009  
COUNTY CLERK'S OFFICE  
NEW YORK

**MOTION IS DECIDED IN ACCORDANCE  
WITH ACCOMPANYING MEMORANDUM  
DECISION AND ORDER.**

Dated: 10/15/09

[Signature]  
*Jsc*

**JUSTICE SHIRLEY WERNER KORNREICH**

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 54

-----X  
U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE OF  
J.P. MORGAN ALTERNATIVE LOAN TRUST 2006-A4,

Plaintiffs,

Index No.: 112327/07

- against -

**DECISION and  
ORDER**

JASON DANIELS, MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC., ACTING SOLELY AS  
NOMINEE FOR COUNTRYWIDE BANK, N.A. ITS  
SUCCESSORS AND ASSIGNS, NEW YORK CITY  
PARKING VIOLATIONS BUREAU, NEW YORK CITY  
ENVIRONMENTAL CONTROL BOARD, BOARD OF  
MANAGERS OF THE CHELSEA 19 CONDOMINIUMS,  
NEW YORK CITY DEPARTMENT OF SOCIAL SERVICES  
AND DIVISION OF LIENS AND RECOVERY, NEW YORK  
CITY TRANSIT ADJUDICATION BUREAU, AND "JOHN  
DOE #1" THROUGH, "JOHN DOE #10", THE LAST TEN  
NAMES BEING FICTITIOUS AND UNKNOWN TO THE  
PLAINTIFF, THE PERSON OR PARTIES INTENDED  
BEING THE PERSONS OR PARTIES, IF ANY, HAVING  
OR CLAIMING AN INTEREST IN OR LIEN UPON THE  
MORTGAGE PREMISES DESCRIBED IN THE  
COMPLAINT,

Defendants.

**FILED**  
OCT 20 2009  
COUNTY CLERK'S OFFICE  
NEW YORK

-----X  
**KORNREICH, SHIRLEY WERNER, J.:**

Ganfer & Shore, LLP (Ganfer & Shore) brings this motion to withdraw as counsel for defendant Jason Daniels based on his failure to pay legal fees. Ganfer & Shore also seeks a hearing to determine the amount of a retaining lien it may assert against Daniels' file and the conditions upon which the file will be released. Mr. Daniels does not oppose.

*I. Background*

The underlying action arises out of a foreclosure on real property acquired by Mr. Daniels in 2006. The real property, a condominium located at 251 West 19th Street, Apartment 1C in Manhattan, is subject to a \$1,000,000 mortgage.

In October 2007, Ganfer & Shore was retained as counsel by Mr. Daniels pursuant to a retainer agreement. Ganfer & Shore also represents Mr. Daniels in a related action before the Civil Court.<sup>1</sup> The retainer agreement provides:

You will be billed monthly for our legal services and disbursements and [you are] expected to make payment within thirty (30) days after receipt of our bills. . . . In the event that the terms and conditions of this Retainer Agreement are not complied with, you agree that we may immediately cease to represent [you] and, if necessary, make application to the appropriate tribunal, which will not be opposed, to be relieved as counsel.

Despite the retainer agreement, Ganfer & Shore alleges that Mr. Daniels owes approximately \$44,847.47 for services rendered through May 31, 2009. It further alleges that, although Daniels has acknowledged that he is in arrears, he has failed to make a substantial payment other than a payment in the amount of \$6,422.03 on May 19, 2009 and did not make a scheduled payment due on June 15, 2009.

By letter dated February 23, 2009, Ganfer & Shore had advised Mr. Daniels that it would move to withdraw as his counsel unless it received an immediate payment of between \$10,000-\$15,000. Ganfer & Shore asserts that Mr. Daniels has failed to make such a payment.

## II. *Conclusions of Law*

“An attorney may be permitted to withdraw from employment where a client refuses to pay reasonable legal fees.” *Weiss v Spitzer*, 46 AD3d 675, 675 (2d Dept 2007); *see also Kay v Kay*, 245 AD2d 549, 549-550 (2d Dept 1997). CPLR 321(b)(2) provides that an attorney may withdraw, upon motion with notice to the client of the withdrawing attorney and to all other parties in the action.

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<sup>1</sup> *Board of Managers of The Chelsea 19 Condominium v Daniels*, Index No. 026978 CVN 2008 (Civil Court, New York County).

Here, Ganfer & Shore has met its burden. The record shows that Mr. Daniels has failed to pay Ganfer & Shore, in violation of the retainer agreement, despite efforts by counsel to afford him additional time to pay pursuant to a payment schedule. In addition, Ganfer & Shore has submitted proof of notice to its client and the remaining parties to this action. As such, Ganfer & Shore shall be relieved of its representation of Mr. Daniels.

Ganfer & Shore additionally asserts a common-law retaining lien against Mr. Daniels' file and requests a hearing to determine the amount of the retaining lien and the conditions upon which the file may be released. "[A] retaining lien permits an attorney to retain all of the client's papers and files until all outstanding fees are paid." *Wankel v. Spodek*, 1 AD3d 260, 261 (1st Dept 2003). The issue of the amount of the retaining lien and the conditions upon which Daniels' file will be released from Ganfer & Shore's possession is referred to a Special Referee to hear and determine. Accordingly it is,

ORDERED that the motion of Ganfer & Shore, LLP to be relieved as attorney for defendant Jason Daniels is granted, without opposition, upon filing of proof of compliance with the following conditions; and it is further

ORDERED that said law firm shall serve a copy of this order with notice of entry upon its former client at his last known address by certified mail, return receipt requested, and upon the attorney for plaintiffs and defendants appearing herein by regular mail; and it is further

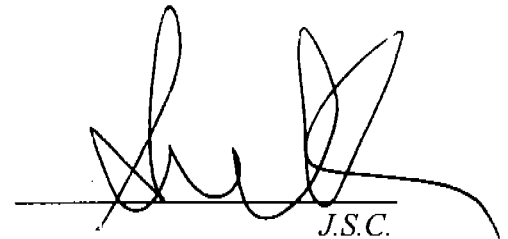
ORDERED that, together with the copy of the order with notice of entry served upon the former client, moving counsel shall forward a notice directing the former client to appoint substitute counsel within thirty (30) days from the date of mailing of notice; and it is further

ORDERED that no further proceedings may be taken against the former client without leave of this court for a period of forty (40) days after service on the former client of the aforesaid notice to appoint a substitute attorney; and it is further

ORDERED that the issue of the amount of Ganfer & Shore's retaining lien and the conditions upon which Mr. Daniels' file may be released is referred to the Clerk of the Judicial Support Office for assignment to a Special Referee to hear and determine and a copy of this order with notice of entry shall be filed with the Judicial Support Office (Room 311) for the purpose of obtaining a calendar date.

ENTER:

Dated: October 15, 2009  
New York, NY



J.S.C.

**JUSTICE SHIRLEY WERNER KORNREICH**

**FILED**  
OCT 20 2009  
COUNTY CLERK'S OFFICE  
NEW YORK