

**Ferreyr v Soros**

2014 NY Slip Op 30859(U)

April 2, 2014

Sup Ct, New York County

Docket Number: 109256/2011

Judge: Debra A. James

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: DEBRA A. JAMES  
*Justice*

PART 59

ADRIANA FERREYR,

Plaintiff,

- v -

GEORGE SOROS and MASG LLC,

Defendants.

Index No.: 109256/2011

Motion Date: 04/01/2014

Motion Seq. No.: 007

Motion Cal. No.: OSC

The following papers, numbered 1 to 2 were read on this motion to compel plaintiff's former attorney to turn over file.

Notice of Motion/Order to Show Cause -Affidavits -Exhibits  
Answering Affidavits - Exhibits  
Replying Affidavits - Exhibits

**FILED**

APR 07 2014

PAPERS NUMBERED	
1	
2	

Cross-Motion:  Yes  No

COUNTY CLERK'S OFFICE  
NEW YORK

Upon the foregoing papers, it is ordered that the motion of plaintiff to compel her former attorney to turn over her file is granted to the extent that there shall be a hearing to determine the retaining lien.

Plaintiff moves by show cause order for a directive to William Beslow, Esq. to turn over any and all documents relating to her lawsuit in his possession.

On March 4, 2014, the Appellate Division, First Department, having received an affidavit from plaintiff in which she stated that she terminated William Beslow, Esq. as her lawyer, permitted plaintiff pro se to orally argue her position defending against defendants' appeal of this court's order entered on January 25, 2013. Thereafter, the plaintiff pro se and defense counsel

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

Check One:  FINAL DISPOSITION  NON-FINAL DISPOSITION

presented the undersigned with a stipulation that confirmed that plaintiff had discharged her lawyer as of the date of such appellate argument, which this court so-ordered.

Now plaintiff moves by show cause order to compel William Beslow, Esq. to turn over "any and all documents in his possession relating to Plaintiff's lawsuit". She states that without the files that are maintained by attorney Beslow's office, she is "unable to proceed and litigate this case."

William Beslow, Esq. opposes the motion. He argues that the court should decline to hear plaintiff's show cause order as she did not follow the show cause order directive that required plaintiff to submit a certificate of mailing, rather than effectuate service by a process server, in his case, and by mail in the case of the defense counsel, which defense counsel takes no position on this motion. Attorney Beslow is correct that plaintiff pro se may not personally serve papers and that her hiring of a process server to effectuate personal service upon him failed to comply with this court's directive as to service. However, attorney Beslow served responsive papers without demonstrating any prejudice. To the extent that plaintiff personally placed the papers addressed to defense counsel in the mail, this court deems plaintiff's "failure to serve ... interlocutory papers in strict compliance with CPLR 2103(a) a mere correctable irregularity pursuant to CPLR 2001." (Thomas F.

Gleason, Practice Commentaries, McKinney's Cons Laws of NY, CPLR, Book 7B, C:2103:2, p 451). The court disagrees with Attorney Beslow that plaintiff served the papers two days late.

Attorney Beslow is correct that he has a common law retaining lien in the amount equal to the fair share of his services on plaintiff's behalf in the action at bar, which permits him, as prior counsel, to retain all of the client's papers and files until all outstanding fees are paid. Wankel v Spodek, 1 AD3d 260 (1<sup>st</sup> Dept 2003).

Plaintiff cites Moraitis v Moraitis, 181 Misc2d 510 (Supreme Court, Nassau County 1999) to persuade the court to deny William Beslow a retaining lien and to instead direct counsel to turn over her file and proceed to a hearing on the amount of the charging lien on any proceeds to be received by the client upon the resolution of the action instead of a retaining lien. However, Moraitis is entirely distinguishable on its facts from those at bar. In Moraitis, the trial court found that "exigent circumstances" existed for the immediate release of the defendant husband's file because further delay would cause prejudice to plaintiff and the children involved in the acrimonious custody battle that had been pending for two years. The trial judge also held that no retaining lien would be determined because former counsel had failed to notify her client of the availability of

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arbitration in accordance with the Matrimonial Rules and the Code of Professional Responsibility.

Here, plaintiff has not shown "exigent circumstances" warranting an order compelling her attorney to turn over her file. Neither the stress of litigation or unspecified financial worries cited by plaintiff justify the denial of a retaining lien to Attorney Beslow. Though Moraitis, supra, suggests that an unrefuted or uncontroverted showing of indigence may constitute "exigent circumstances", plaintiff comes forward with no evidence that she is poor, although asserting on oral argument that William Beslow knows that she has no funds to pay him. As to litigation obligations, any deadlines with respect to the lawsuit at bar shall be extended to permit a hearing and determination of the retaining lien. Nor do the Matrimonial Rules with respect to fee disputes (22 NYCRR 1400.7) apply to the fees that William Beslow claims, and generalized assertions about lack of professional responsibility raised by plaintiff for the first time on oral argument are unpersuasive.

Therefore, based on the foregoing, it is

ORDERED that the issue of the amount of retaining lien on plaintiff's file to which William Beslow is entitled is hereby referred to a Special Referee to hear and report with recommendations pursuant to §4317, and the Special Referee shall determine the aforesaid issue; and it is further

ORDERED that within thirty (30) days from the date of entry of this order, William Beslow shall cause a copy of this order with notice of entry with proof of service on plaintiff and defense counsel to be served on the Special Referee Clerk in the Motion Support Office (Room 119M, 60 Centre Street), who is directed to place this matter on the calendar of the Special Referee's Part for the earliest convenient date and to notify the parties thereof; and it is further

ORDERED that this proceeding is held in abeyance pending receipt of the report and recommendations of the Special Referee and a motion pursuant to CPLR 4403; and it is further

ORDERED that within thirty (30) days of the rendering of a decision fixing the amount of the retaining lien and the payment or securing of the amount by plaintiff, William Beslow shall turn over the entire file pertaining to this case to plaintiff.

This is the decision and order of the court.

Dated: April 2, 2014

ENTER:

*Debra A. James*

**DEBRA A. JAMES**

J.S.C.

**FILED**

APR 07 2014

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