

Doe v City of New York
2014 NY Slip Op 31015(U)
April 16, 2014
Supreme Court, New York County
Docket Number: 150901/2013
Judge: Kathryn E. Freed
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 5

-----X
JANE DOE, as mother and natural guardian of
JOHN DOE, an infant, and JANE DOE, individually

Plaintiffs,

-against-

THE CITY OF NEW YORK, THE DEPARTMENT
OF EDUCATION OF THE CITY OF NEW YORK,
and THE CITY UNIVERSITY OF NEW YORK
(CUNY), and MARGARET ANN RIORDAN,

Defendants.
-----X

HON. KATHRYN E. FREED:

DECISION/ORDER
Index No. 150901/2013
Seq. No. 002

PRESENT:
Hon. Kathryn E. Freed
J.S.C.

RECITATION, AS REQUIRED BY CPLR 2219 (a), OF THE PAPERS CONSIDERED IN THE REVIEW OF
THIS MOTION.

PAPERS	NUMBERED
NOTICE OF MOTION AND AFFIDAVITS ANNEXED.....
ORDER TO SHOW CAUSE AND AFFIDAVITS ANNEXED.....1,2.....
ANSWERING AFFIDAVIT/CROSS MOTION.....3.(Ex. 1-4)....
REPLYING AFFIDAVITS.....
EXHIBITS.....
OTHER.....

UPON THE FOREGOING CITED PAPERS, THIS DECISION/ORDER ON THE MOTION IS AS FOLLOWS:

Plaintiff's attorneys, the Law Office of Ronemus & Vilensky, LLP ("Ronemus & Vilensky")
move by Order to Show Cause, pursuant to CPLR 321(b)(2), for permission to withdraw as attorneys
of record. They also request, pursuant to Judiciary Law §475, that they be granted a charging lien

representing the reasonable value of work, labor and services performed by them on behalf of the plaintiffs.

Plaintiff, appearing *pro se*, does not oppose that branch of the motion by which Ronemus & Vilensky seek to be relieved as counsel. However, plaintiff opposes the granting of a charging lien and cross moves for an Order deeming the discharge of counsel as having been for cause.¹

Factual and Procedural Background:

This is an action wherein plaintiff Jane Doe, alleges that her son, John Doe, was sexually assaulted by defendant Margaret Ann Riordan, a teacher at Manhattan/Hunter Science High School, located at 122 Amsterdam Avenue, New York County, during 2010 and 2011.

In a previous motion, Defendant City University of New York (“CUNY”), moved for an Order, pursuant to CPLR 3211, dismissing the Complaint on the ground that this Court lacked subject matter jurisdiction over it. No opposition was filed by plaintiff to that motion. By Order dated July 19, 2013, this Court granted that motion, noting that it did indeed lack subject matter jurisdiction, holding that “It is well settled that tort suits against CUNY, regarding its senior colleges, must be brought against CUNY in the Court of Claims, pursuant to Education Law § 6224(4). Indeed, as Hunter College is deemed one of those senior colleges, the instant action must be brought against CUNY in the Court of Claims.”

Ronemus & Vilensky brought the within Order to Show Cause on August 8, 2013. At oral

¹ The original caption of this action contained the actual name of the plaintiff mother, as natural guardian of her infant son and in her personal capacity, as well as the name of the infant. However, given the sensitive nature of this matter, this Court has changed the caption to preserve plaintiff’s anonymity.

argument on September 9, 2013, this Court granted an Interim Order allowing Ronemus & Vilensky to be relieved as counsel, but reserved decision on the issue of the charging lien and allowed plaintiff additional time to file papers opposing that lien. The Court also granted plaintiff a 60 day stay in order to hire new counsel or to notify the Court that she intended to proceed pro se.

Initially, the plaintiffs opposition papers were to be returnable on November 19, 2013. However in a stipulation that day, the parties agreed that plaintiff would serve her opposition papers by December 13, 2013 and oral arguments were adjourned until January 21, 2014 before this Court.

Plaintiff filed her opposition with the Court on December 3, 2013, and presented proof of service on her former counsel, by first class and certified mail, dated December 3, 2013. Ronemus & Vilensky failed to file opposition to plaintiff's cross motion.

Positions of the Parties:

In their order to show cause, Ronemus & Vilensky state that irreconcilable differences had arisen between them and plaintiff which led to a "complete breakdown of the attorney-client relationship." They offered to provide the Court with an account of these differences in camera, however failed to do so at oral argument of their motion. Additionally, they urged that they were entitled to have a charging lien against plaintiff for their "numerous hours of work, labor and services." They further asked that the amount of the lien be determined "on a contingency basis at the conclusion of the underlying matter." The Court notes that no evidence of a contingency or any other retainer agreement was ever presented in this matter.

Plaintiff argues that Ronemus & Vilensky are unjustifiably abandoning her and her son's case and are thus not entitled to the charging lien. She states that, to her knowledge, there had been no

irreconcilable differences with her former counsel. She admits that she had been unhappy with some aspects of their representation and had voiced that to them but stated that this in no way rose to the level of irreconcilable differences. Rather, she posits that the real reason for their wish to withdraw has more to do with the fact that the Court had dismissed her claim against CUNY for lack of jurisdiction. She stated that it was only at oral argument of the order to show cause that she became aware that no jurisdiction existed. She further noted that she also learned at that time that Ronemus & Vilensky had not even opposed the motion. Thus, she believes that this adverse ruling was the real reason for Ronemus & Vilensky's motion to be relieved as counsel.

Plaintiff also cross moves for an order finding that Ronemus & Vilensky must be discharged for cause. She cites several grounds in support of her cross motion: lack of diligence, lack of communication, and acting against the best interests and objectives of her and her son. In support of these claims, plaintiff notes that Ronemus & Vilensky were apparently aware of the jurisdictional problems as early as March 2013 (however the Court notes that the date on the annexed e-mail is March 29, 2012.), but that they never did anything to correct the problem. (See Exhibit #1).² Additionally, plaintiff recounts the problems she had when she appeared for a 50-h hearing by the City. She asserts that her attorneys neither prepared her for the hearing nor advised her that she had to appear with her son. (See Exhibit #2) When she appeared alone, the City refused to go forward with the hearing. She also argues that she was never shown the Complaint, which was verified by Mr. Vilensky, and that Mr. Vilensky represented in his verification that signed instead of plaintiff because she was in a different county than the one in which he maintained his offices. The Court notes that both addresses are within the County of New York (See Exhibit #3).

²All footnotes refer to plaintiff's Affidavit in Opposition and Cross Motion.

Finally, plaintiff asserts that, against her interests and consent, Ronemus & Vilensky communicated with the press about this matter when it was reported on by the New York Post and the Daily News. She avers that, at the time of the press coverage, her son was experiencing “severe depression, suicidal ideations, unexpected bursts of rage and violence,” some of which required hospitalization for psychiatric evaluation. She expressed her unwillingness to speak to the press, however, and noted that her attorneys were quoted in the article annexed as Exhibit # 4. Additionally, the Court notes that, while the article did not mention plaintiff’s son’s name, they did mention hers. This led to classmates of her son being aware of what had happened. As a consequence, his name appeared on Facebook and he was subjected to teasing and other actions which only made a bad situation even worse. Given the sensitive nature of the charges and the fact that they involved a minor, the Court was shocked that both names appeared in the caption of this case. The Court was particularly appalled by the fact that the original papers, as noted above, contained the full names of both the plaintiff and her minor child and thereafter became available to the press. Pursuant to New York Civil Rights Law §50-b, victims of sex offenses are entitled to full confidentiality. Under §50-b, no court file or other document which “identifies such a victim shall be made available for public inspection.” Since that time, the names of plaintiff and her son have been changed to “Jane Doe and John Doe.”

Conclusions of Law:

It has long been established in the State of New York, that, notwithstanding the terms of the agreement between them, a client has an absolute right, at any time, with or without cause, to terminate the attorney-client relationship by discharging the attorney. *Campagnola v. Mulholland*,

Minion & Roe, 76 N.Y. 2d 38, 43 (1990); *Shaw v. Manufacturers Hanover Trust Co.*, 68 N.Y.2d 172, 177 (1986); *Teichner v. W&J Holsteins*, 64 N.Y.2d 977, 979 (1985); *Demov, Morris, Levon & Shein v. Glanz*, 53 N.Y.2d 553, 556 (1981); *Crowley v. Wolf*, 281 N.Y. 59, 64-65 (1939).

When an attorney feels that he or she can no longer represent a client, a motion must be made pursuant to CPLR 321(b)(2) for permission to withdraw. “It is well settled that an attorney may withdraw from representing a client only for good and sufficient cause and upon reasonable notice to the client.” *Vargas v. Go West Entertainment, Inc.*, 28 Misc.3d 1223(A) (Sup Ct New York County 2010); see also *Matter of Dunn*, 205 N.Y. 398 (1912); *Matter of Williams v. Lewis*, 258 A.D.2d 974 (4th Dept 1999); *Bucaro v. Keegan, Keegan, Hecker & Tully, P.C.* 126 Misc.2d 590, 592 (Sup Ct New York County 1984). However, “an attorney does not have an unfettered right to unilaterally withdraw...[G]ood cause is...required, to be determined ultimately by the court. *Benefield v. City of New York*, 14 Misc.3d 603, 606 (Sup Ct New York County 2006).

As was succinctly set forth in *Countryman v. Watertown Hous. Auth.* 13 Misc.3d 623, 633 (Sup Ct Jefferson County 2006), “[g]enerally, there are three primary reasons allowing withdrawal of an attorney from a case: failure of a party to remain in contact with counsel; deterioration of the attorney/client relationship; non-payment of legal fees (see *Tartaglione v. Tiffany*, 280 A.D.2d 543 [2d Dept 2001]; *Lake v. M.P.C. Trucking, Inc.*, 279 A.D.2d 813 [3d Dept 2001]; *Galvano v. Galvano*, 193 A.D.2d 779 [2d Dept 1993])...The intent of the rules requiring permission to withdraw is grounded on some client conduct that substantially interferes with the attorney-client relationship (see *Kiernan v. Kiernan*, 233 A.D.2d 867 [4th Dept 1996]).”

Attorneys who have been permitted to withdraw from a matter are entitled to move for permission of the Court under section 475 of the Judiciary Law for a charging lien for services

rendered. See *Picciolo v. State of New York*, 287 A.D.2d 721 (2d Dept 2001); see also *In re Heinsheimer*, 214 N.Y.361 (1915); *Fischer-Hansen v. Brooklyn Heights R.R. Co.*, 173 N.Y. 492 (1903); *Goodrich v. McDonald*, 112 N.Y. 157 (1889); *Capoccia v. Brognano*, 126 A.D.2d 323 (3d Dept 1987).

When that discharge is “without cause, the attorney is limited to recovering in quantum meruit the reasonable value of the services rendered.” *Teichner v. W&J Holsteins*, *supra* at 979; *Demov. Morris, Levon & Shein v. Glanz*, *supra* at 557; *Campagnola v. Mulholland, Minion & Roe* *supra*, at 44. “Where the discharge is for cause, the attorney has no right to compensation or a retaining lien, notwithstanding a specific retainer agreement.” *Teichner v. W&J Holsteins*, *supra* at 979; *Crowley v. Wolf*, *supra* at 65; *Campagnola v. Mulholland, Minion & Roe*, *supra*, at 44. The reasons for this would seem to be obvious, but were set forth in *Martin v. Camp*, 219 N.Y. 170 at 176 (1916): “Th[is] rule ... is well calculated to promote public confidence in the members of an honorable profession, whose relationship to their clients is personal and confidential.”

In the within matter, although Ronemus & Vilensky stated that they wished to be allowed to withdraw as attorneys of record due to irreconcilable differences that had arisen between them and their client, none of these differences are set forth in their papers. Additionally, since they failed to submit opposition papers to plaintiff’s cross motion, the Court is left unaware of those differences which would have resulted in a “complete breakdown of the attorney-client relationship.”

The plaintiff does, however, set forth numerous problems with the quality of representation by her former attorneys, most of which are set forth above. Based on these facts, the Court finds that there were sufficient reasons advanced by plaintiff for finding that the Law Office of Ronemus & Vilensky, LLP was discharged for cause.

Therefore, in accordance with the foregoing, it is hereby:

ORDERED that motion by the Law Office of Ronemus & Vilensky, LLP for a charging lien pursuant to §475 of the Judiciary Law, is denied; and it is further,

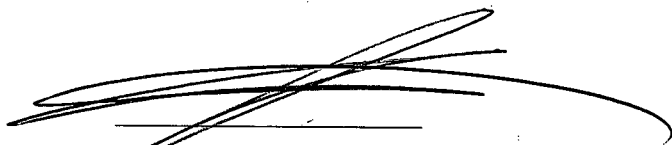
ORDERED that; the cross motion by plaintiff for an order finding that the discharge of the Law Office of Ronemus & Vilensky, LLP was for cause is granted; and it is further,

ORDERED that this constitutes the decision and order of the Court.

DATED: April 16, 2014

ENTER:

APR 16 2014



Hon. Kathryn E. Freed,

HON. KATHRYN FREED
JUSTICE OF SUPREME COURT