

**Ling Hue Chiu v UOB Realty (USA) L.P.**

2014 NY Slip Op 33972(U)

September 29, 2014

Supreme Court, Queens County

Docket Number: 19942/2013

Judge: Robert J. McDonald

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This opinion is uncorrected and not selected for official publication.

**FILED**

**OCT 10 2014**

**COUNTY CLERK  
QUEENS COUNTY**

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK  
CIVIL TERM - IAS PART 34 - QUEENS COUNTY  
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101

P R E S E N T : HON. ROBERT J. MCDONALD  
Justice

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LING HUE CHIU,

Index No.: 19942/2013

Plaintiff,

Motion Date: 09/04/14

- against -

Motion No.: 22

UOB REALTY (USA) LIMITED PARTNERSHIP,  
NATIONAL WESTMINSTER BANK USA AND  
THYSSENKRUPP ELEVATOR CORPORATION,

Motion Seq.: 4

Defendants.

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The following papers numbered 1 to 9 were read on this motion by plaintiff's incoming counsel, Philip Monier, III, Esq., for an order compelling plaintiff's outgoing counsel, the law firm of Bader Yakaitis & Nonnenmacher, LLP, to turn over the plaintiff's client file, and ordering that outgoing counsel not be paid for its disbursements until the conclusion of litigation:

Papers Numbered

Order to Show Cause-Affidavits-Exhibits.....1 - 4  
Affirmation in Opposition-Exhibits.....5 - 9

This is an action for damages for personal injuries allegedly sustained by the plaintiff as a result an elevator accident that took place on March 7, 2012, at premises located at 592 Fifth Avenue, New York, New York. The Law Firm of Bader Yakaitis & Nonnenmacher, LLP was initially retained by the plaintiff on March 18, 2013 to commence a negligence action. The action was commenced on October 29, 2013. By letter dated June 18, 2014, Bader Yakaitis & Nonnenmacher, LLP was notified by the plaintiff that she had retained substitute counsel and that she was discharging them.

Ms. Ling Huei Chiu submits an affidavit stating that she discharged the law firm of Bader Yakaitis & Nonnenmacher, LLP

"for failing to professionally, properly, and expeditiously handle her personal injury action, for failing to communicate the details and developments in her personal injury action, for failing to obtain all of her medical records after handling the case for two years, and for failing to promptly conduct pretrial discovery proceedings." She requests that her legal file be transferred to incoming counsel without first paying disbursements to the outgoing attorney. She states that she had good cause for discharging her prior counsel due to the "neglectful manner" in which they handled her case.

Incoming counsel, Philip Monier, III, Esq., states that he agrees to acknowledge and recognize the lien for attorneys fees and disbursements in the amount of \$3,811.00. However, counsel asserts that both attorneys fees and disbursements should be paid from the gross recovery, upon the successful conclusion of the action. Accordingly, the law firm of Philip Monier, III now seeks an order directing Bader Yakaitis & Nonnenmacher, LLP to turn over the plaintiff's client file, and ordering that outgoing counsel not be paid for its disbursements until the conclusion of litigation.

In opposition, outgoing counsel, Darlene S. Miloski, Esq., contends that Bader Yakaitis & Nonnenmacher, LLP is entitled to full reimbursement for disbursements before turning over the file. Ms. Miloski asserts that although the plaintiff states that she was not happy with the way the Bader Yakaitis & Nonnenmacher firm was handling her case, her incoming counsel has not moved to have the firm discharged for cause and in fact states that it acknowledges the lien for disbursements. Ms. Miloski describes the amount of work her firm performed on the case including investigating the appropriate defendants, obtaining extensive medical records and workers compensation files, prepared notices to admit and bills of particulars, hired an elevator expert, attended pre-trial conferences and met with the plaintiff to go over the facts of the accident. Counsel contends that as there is no application to relieve them for cause, they are entitled to a retaining lien on the plaintiff's file pursuant to Judiciary Law § 475. In addition, pursuant to said lien counsel asserts they are entitled to be reimbursed for disbursements before being compelled to deliver the case file (citing Warsop v Novik, 50 AD3d 608 ([1<sup>st</sup> Dept. 2008]) [absent evidence of discharge for cause, a court should not order turnover of an outgoing attorney's file before the client fully pays the attorney's disbursements or provides security therefor]; Lansky v Easow, 304 AD2d 533 [2d Dept. 2003]).

Upon review of all papers enumerated above, this Court finds as follows:

"A client has the absolute right to discharge an attorney at any time, with or without cause" (Byrne v Leblond, 25 AD3d 640 [2d Dept. 2006]; also see Matter of Cohen v Grainger, Tesoriero & Bell, 81 NY2d 655 [1993]; Coccia v Liotti, 70 AD3d 747 [2010]). If the outgoing attorney is discharged for cause, the attorney is not entitled to any fee or lien, notwithstanding a specific retainer agreement (see Doviak v Finkelstein & Partners, LLP, 90 AD3d 696 [2d Dept. 2011]; Campagnola v Mulholland, Minion & Roe, 76 NY2d 38 [1990]; Callaghan v Callaghan, 48 AD3d 500 [2d Dept. 2008]). A discharge for cause refers, generally, to an attorney's impropriety or misconduct, or the attorney's abandonment of the client's case. (Klein v Eubank, 87 NY2d 459 [1996]; Teichner by Teichner v. W&J Holsteins, Inc., 64 NY2d 977 [1985]). "An attorney is discharged for cause when his or her conduct falls below the ordinary and reasonable skill and knowledge commonly possessed by a member of the profession (Batista v KLS-Kachroo Legal Servs., P.C., 2012 NY Slip Op 32016(U) [Sup. Ct. NY Co. 2012]).

However, "where an attorney's representation terminates and there has been no misconduct, no discharge for just cause, and no unjustified abandonment by the attorney, the attorney's right to enforce the statutory charging lien is preserved" (Ramirez v. Willow Ridge Country Club, Inc., 60 AD3d 406 [1<sup>st</sup> Dept. 2009] quoting Klein v Eubank, 87 NY2d 459 [1996]).

Here, although the plaintiff submits an affidavit specifying why she was unhappy with her attorneys representation, none of her reasons rises to the level of attorney misconduct, a significant breach of a legal duty, unjustified abandonment, or violations of disciplinary rules. A "for cause" termination does not include dissatisfaction with strategic choices made in the litigation. Nor does it ensue where the attorney client relationship has ended because of personality conflicts, misunderstandings or differences of opinion having nothing to do with any impropriety by either the client or the lawyer (see Doviak v Finkelstein & Partners, LLP, 90 AD3d 696 [2d Dept. 2011]; Lupo v Pro Foods, LLC, 2012 NY Slip Op 31207(U) [Sup Ct. NY Co. 2012]). Further, in this case, incoming counsel has not moved to discharge Bader Yakaitis & Nonnenmacher for cause, and moreover, counsel has acknowledged outgoing counsel's lien for disbursements and attorneys fees. Thus, there is no need for a hearing on the issue of cause (see Friedman v Park Cake, Inc., 34 AD3d 286 [1st Dept. 2006]).

However, the courts have held that "absent evidence of discharge for cause, a court should not order turnover of an outgoing attorney's file before the client fully pays the attorney's disbursements or provides security therefor" (Warsop v Novik, 50 AD3d 608 [1<sup>st</sup> Dept. 2008]; also see Sterling Corporate Tax Credit Fund XXV, L.P. v Youngblood Senior Housing Associates, LLC, 115 AD3d 932 [2d Dept. 2014]; Law Firm of Ravi Batra, P.C. v Rabinowich, 77 AD3d 532 [1<sup>st</sup> Dept. 2010]; Zito v Fischbein Badillo Wagner Harding, 58 AD3d 532 [1<sup>st</sup> Dept. 2009]; Gonzalez v City of New York, 45 AD3d 347 [1<sup>st</sup> Dept. 2007]).

Accordingly, for all of the above stated reasons it is hereby,

ORDERED, that the motion by for an order directing Bader Yakaitis & Nonnenmacher, LLP to turn over the plaintiff's file before the payment of disbursements is denied, and it is further,

ORDERED, that the law firm of Bader Yakaitis & Nonnenmacher, LLP shall have a retaining lien on the plaintiff's file, and it is further,

ORDERED, that Bader Yakaitis & Nonnenmacher, LLP is directed to transfer the plaintiff's file to incoming counsel at such time as the client fully pays the attorney's disbursements or provides a bond therefore (see Delaj v Jameson, 51 AD3d 450 [1<sup>st</sup> Dept. 2008]; Lelekakis v Kamamis, 8 AD3d 630 [2d Dept. 2004]), and it is further,

ORDERED, that outgoing counsel's attorney's fees for work rendered on the case shall be determined at the conclusion of the action after a hearing at which the court will determine the proportionate share of the contingency fee to which the outgoing attorney is entitled. The fee shall be based upon the proportionate share of the work taking into consideration the relative contributions of the lawyers (see Byrne v Leblond, 25 AD3d 640 [2d Dept. 2006]; Jones v Birnie Bus Serv., 15 AD3d 951 [4<sup>th</sup> Dept. 2005]).

Dated: September 29, 2014  
Long Island City, N.Y.



ROBERT J. MCDONALD  
J.S.C.

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