

Jackson v Stellita Realty LLC
2015 NY Slip Op 32020(U)
July 8, 2015
Supreme Court, New York County
Docket Number: 101885/2010
Judge: Eileen A. Rakower
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

EA
7/9/15
E

PRESENT: HON. EILEEN A. RAKOWER
Justice

PART 15

JACKSON, LARRY
-v-
STELLURA REALTY, LLC

INDEX NO. 101885/10

MOTION DATE _____

MOTION SEQ. NO. 01

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s) _____

Answering Affidavits — Exhibits _____ No(s) _____

Replying Affidavits _____ No(s) _____

Upon the foregoing papers, it is ordered that this motion is

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

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

FILED

JUL 10 2015

NEW YORK
COUNTY CLERK'S OFFICE

RECEIVED
JUL 9 2015
GENERAL CLERK'S OFFICE
NYS SUPREME COURT - CIVIL

Dated: 7/8/15
JUL 08 2015

[Signature], J.S.C.

HON. EILEEN A. RAKOWER

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 15

-----X
LARRY JACKSON,

Plaintiff,

Index No.
101885/2010

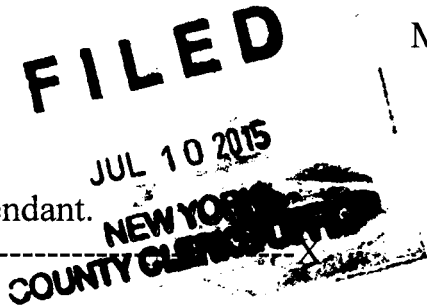
**DECISION and
ORDER**

- against -

STELLITA REALTY LLC,

Defendant.

Mot. Seq. #001



HON. EILEEN A. RAKOWER, J.S.C.

This is an action to recover damages for personal injuries sustained by plaintiff, Larry Jackson (“Plaintiff”). The law firm of Subin Associates LLP (“Movant”), as attorneys for Plaintiff, moves, by way of Order to Show Cause, to withdraw as counsel for Plaintiff, based upon Plaintiff’s failure to cooperate and respond to Movant’s repeated requests for him to contact their office. Movant also seeks an attorney lien for work, services and labor performed and expenses in this action. Movant law office submits the attorney affirmation of Robert J. Eisen, Esq. (“Eisen”), dated May 15, 2015, in support of its application.

No opposition is submitted.

New York Judiciary Law § 475, which is a “codification and extension” of the common-law charging lien, grants a statutory charging lien to the “attorney of record” in a case. (*Rodriguez v. New York*, 66 N.Y.2d 825, 827 [1985]). Judiciary Law § 475 provides:

From the commencement of an action, special or other proceeding in any court . . . the attorney who appears for a party has a lien upon his client’s cause of action . . . which attaches to a verdict, report, determination, decision,

judgment or final order in his client's favor, and the proceeds thereof in whatever hands they may come; and the lien cannot be affected by any settlement between the parties before or after judgment, final order or determination. The court upon the petition of the client or attorney may determine and enforce the lien.

(N.Y. Jud. § 475).

An attorney need not be counsel of record at the time the judgment or settlement fund is created in order to be entitled to the lien afforded by Judiciary Law § 475. (*Klein v. Eubank*, 87 N.Y.2d 459, 462 [1996]). Rather, "an attorney's participation in the proceeding *at one point* as counsel of record is a sufficient predicate for invoking the statute's protection." (*Klein v. Eubank*, 87 N.Y.2d 459, 462 [1996] [emphasis in the original]). Thus, as a general matter, an attorney who voluntarily withdraws from a case does not necessarily forfeit his or her statutory charging lien. (*Klein v. Eubank*, 87 N.Y.2d 459, 462 [1996]).

Here, however, Movant's name does not appear on Plaintiff's summons and complaint. Rather, the law firm of Hochheiser Hochheiser & Inwood LLP ("HHL") is listed as attorneys for Plaintiff on Plaintiff's summons and complaint. Although Movant submits a printout from "elaw.com", which indicates that there have been multiple conferences in this action, Movant does not make any showing that Movant appeared as Plaintiff's counsel of record at any point in this action. Furthermore, as the instant Order to Show Cause is Motion Sequence #001 in this action, Movant fails to demonstrate that HHL moved to withdraw as Plaintiff's attorney of record in this case. Nor does Movant submit any proof of a substitution of counsel in this case¹. In the affirmation of Eisen, Eisen merely affirms that Movant "has expended a great deal of time, effort, and financial resources on the plaintiff who has put our office in the position to seek this relief." (Eisen Affirm. p. 2).

Accordingly, insofar as Movant fails to make a sufficient showing that Movant participated in this proceeding at any point as Plaintiff's counsel of record, Movant's application for a statutory charging lien pursuant to N.Y. Jud. § 475 fails.

Based upon the foregoing, it is hereby

¹ Additionally, HHL is not noticed on Movant's application.

ORDERED that the application of the law firm of Subin Associates LLP is denied without prejudice to a new application on notice to all parties, including HHL.

This constitutes the Decision and Order of the Court. All other relief requested is denied.

Dated: July 8, 2015

JUL 08 2015



Eileen A. Rakover, J.S.C.

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