

DiLazary v DeNiro

2018 NY Slip Op 32241(U)

September 12, 2018

Supreme Court, New York County

Docket Number: 153583/2017

Judge: Joel M. Cohen

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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: HON. JOEL M. COHEN PART IAS MOTION 45

Justice

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INDEX NO. 153583/2017

THAIS DILAZARY, LINDA WILLIAMS

MOTION DATE 09/12/2018

Plaintiff,

MOTION SEQ. NO. 002

- v -

CLAUDINE DENIRO,

Defendant.

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 13, 14, 16, 17, 18
were read on this motion to/for ATTORNEY -
DISQUALIFY/RELIEVE/SUBSTITUTE/WITHDRAW

Upon the foregoing documents:

This action was commenced by Plaintiff DiLazary, on behalf of herself and a putative class, against Defendant Claudine DeNiro seeking compensation for wage and hour related claims. The complaint was amended to add Plaintiff Williams, who had a pending action against Defendant in Suffolk County, as a class representative with respect to wage and hour related claims. The amended complaint also included individual claims on behalf of Ms. Williams (that is, not on behalf of the putative class) asserting various discrimination and other employment claims distinct from the wage and hour claims. The case was removed to federal court, whereupon Ms. Williams entered into a settlement resolving her individual wage and hour claims against the Defendant, leaving (as to Ms. Williams) only her individual claims asserting discrimination, etc.

After remand from federal court, Leeds Brown Law, P.C. ("Leeds Brown"), counsel for Plaintiffs DiLazary and Williams, brings this motion, by order to show cause, for an order permitting counsel to withdraw as attorney of record for Plaintiff Williams and to sever Plaintiff

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Williams's claims from those of Plaintiff DiLazary and the putative class. A hearing was conducted to address this motion on September 12, 2018 at which all counsel and Ms. Williams participated. For the following reasons, the Court grants counsel's motion to withdraw as attorney of record for Ms. Williams but denies (without prejudice) its motion to sever.

Leeds Brown asserts that there has been a breakdown in its relationship and communications with Ms. Williams, rendering continued and effective representation of Ms. Williams in this action impossible. It further asserts that, despite numerous attempts, it has not been able to repair the relationship to allow for "the necessary advocacy of Plaintiff Williams' remaining claims." *Tompkins Affirm.*, ¶20. Moreover, Leeds Brown notes that no discovery schedule has been set in the case and only informal exchanges of documents has occurred during the settlement processes associated with resolution of Ms. Williams' wage and hour claims, suggesting that Ms. Williams will not suffer prejudice because of the withdrawal.

Relieving counsel from its representation of a party is appropriate where, *inter alia*, there is adequate evidence showing a breakdown in the attorney-client relationship. *Robinson v Friedman Mgt. Corp.*, 49 AD3d 436, 437 (1st Dep't 2008). See also, *Bok v Werner*, 9 A.D.3d 318 (1st Dept 2004) (court's denial motion to withdraw due to counsel's claimed breakdown in relationship with client amounted to improvident exercise of discretion and was reversed). Movant has done so. The motion is further supported by the fact that Ms. Williams, by virtue of her settlement of wage and hour claims, is no longer a member of the putative class, which was the basis for her claims having been joined in the instant action in the first place. Given that the case is at an early stage, Ms. Williams should not be prejudiced by a change in counsel.

This Court conducted a conference call with all parties on August 1, 2018. During that call, it was explained to Plaintiff Williams that her attorneys sought withdrawal and that she

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would be afforded an opportunity to oppose such a request if she wanted. Although Ms. Williams indicated that she would be willing to have Leeds Brown continue as her counsel, she did not object to their withdrawal. Pursuant to Rule 1.16(e) of the Rules of Professional Conduct, Ms. Williams was given notice of the instant application and her consent was sought. At the September 12, 2018 hearing no opposition or objections were made.

The Court concludes that Leeds Brown has made a sufficient showing of entitlement to withdraw as counsel for Ms. Williams.

However, Leeds Brown's motion to sever Ms. Williams's claims is denied, without prejudice. First, the motion to sever should be brought in the name of a party, not in the name of counsel. Second, Leeds Brown was still Ms. Williams's counsel at the time it filed its motion to sever her claims. Based on the circumstances, it is unclear whose interests Leeds Brown was purporting to represent in seeking severance. At a minimum, Ms. Williams should have an opportunity to seek counsel to provide advice with respect to whether severance is appropriate and in her interests. As noted below, no motion affecting Ms. Williams's interests may be made without leave of this court for a period of 40 days after service on Ms. Williams of a notice to appoint a substitute attorney.

Accordingly, it is;

ORDERED that the motion of Leeds Brown Law, P.C., to be relieved as attorney for Ms. Williams in this action, and to continue representing Plaintiff DiLazary, is granted without opposition, subject to the following conditions; it is further

ORDERED that Leeds Brown Law, P.C. is to comply with its obligation under Rule 1.16(e) of the Rules of Professional Conduct, as applicable to the facts presented, to "take steps, to the extent reasonably practicable, to avoid foreseeable prejudice to the rights of the client,

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including giving reasonable notice to the client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, promptly refunding any part of a fee paid in advance that has not been earned and complying with applicable laws and rules.”; it is further

ORDERED that, within 10 days from entry, said attorney shall serve a copy of this order with notice of entry upon Ms. Williams by email and by hard copy at her last known address by certified mail, return receipt requested, and upon the attorneys for all other parties appearing herein by posting to the New York State Courts Electronic Filing System; it is further

ORDERED that, together with the copy of this order with notice of entry served upon Ms. Williams, moving counsel shall forward a notice directing Ms. Williams to appoint a substitute attorney within 30 days from the date of the mailing of the notice and the client shall comply therewith, except that, in the event plaintiff Williams intends instead to represent herself, she shall notify the Clerk of the Part of this decision in writing within said 30-day period; it is further

ORDERED that any new attorney retained by Ms. Williams shall file a notice of appearance with the Clerk of the General Clerk’s Office (60 Centre Street, Room 119) and the Clerk of the Part within 40 days from the date the notice to retain new counsel is mailed; it is further

ORDERED that no further proceedings may be taken against Ms. Williams without leave of this court for a period of 40 days after service on Ms. Williams of the aforesaid notice to appoint a substitute attorney; it is further

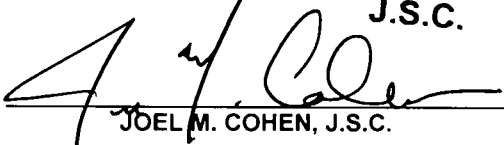
ORDERED that the departing attorney shall, within 10 days from entry, serve a copy of this order with notice of entry on the Clerk of the General Clerk’s Office (Room 119); and it is further

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ORDERED that such service upon the Clerk of the General Clerk’s Office, the filing of a notice of appearance as provided herein, and the filing of papers as aforesaid shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that the motion of Leed Brown Law, P.C. to sever Ms. Williams’ claims from those of Ms. DiLazary and the putative class is denied without prejudice.

HON. JOEL M. COHEN
J.S.C.


JOEL M. COHEN, J.S.C.

9/12/2018
DATE

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN				