

**Empire State Hospitality Workers' Compensation  
Trust v 201 W. 79th St. Realty Corp.**

2018 NY Slip Op 33736(U)

August 10, 2018

Supreme Court, Albany County

Docket Number: 906384-17

Judge: Richard M. Platkin

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This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK  
SUPREME COURT  
COMMERCIAL DIVISION

COUNTY OF ALBANY

EMPIRE STATE HOSPITALITY WORKERS'  
COMPENSATION TRUST,

Plaintiff,

**DECISION & ORDER**

-against-

201 WEST 79TH STREET REALTY CORP. D/B/A  
HOTEL LUCERNE, et al.,

Defendants.

Index No.: 906384-17

(Judge Richard M. Platkin, Presiding)

APPEARANCES:

E. STEWART JONES HACKER MURPHY, LLP  
*Attorneys for Plaintiff*  
(Thomas J. Higgs, of counsel)  
28 Second Street  
Troy, New York 12180

POPE, SCHRADER & POPE, LLP  
*Attorneys for Defendant Sarbro Realty Corporation*  
*a/k/a Sarbro VII d/b/a Parcel 5A Associates*  
(Alan J. Pope, of counsel)  
2 Court Street, 4<sup>th</sup> Floor  
P.O. Box 510  
Binghamton, New York 13902

Hon. Richard M. Platkin, A.J.S.C.

This is a collection action brought by plaintiff Empire State Hospitality Workers' Compensation Trust ("Trust") against a number of its former members. The action was commenced on September 29, 2017 by the filing of a summons and verified complaint. As is relevant here, defendant Sarbro Realty Corporation a/k/a Sarbro VII d/b/a Parcel 5A Associates ("Sarbro") joined issue through the filing of an answer on December 4, 2017.

By court notice dated June 1, 2018, the parties were directed to appear for a preliminary conference on June 13, 2018. On June 12, 2018, Sarbro's counsel advised this Court that his client had "terminated [the] firm on the basis that it has no monies to pay [the] firm" (Higgs Aff., Ex. D). Counsel's letter also stated that Sarbro had advised that it "will not be retaining any other attorney to represent it and that [it] underst[ood] this could result in a default judgment" (*id.*). Consequently, the Court noted Sarbro's default in appearance at the conference and authorized the Trust to seek entry of a default judgment pursuant to Uniform Rules for Trial Courts (22 NYCRR) § 202.27 (a).

The Trust filed its motion on June 15, 2018 and made the motion returnable on July 19, 2018. Two days prior to the Trust's motion, however, Sarbro's counsel had moved pursuant to CPLR 321 for permission to withdraw, citing Sarbro's nonpayment of legal bills and its termination of counsel (*see* Pope Aff., ¶ 5). The withdrawal application was made returnable on July 3, 2018.

After due consideration and in the absence of any objection, it is appropriate to relieve counsel from further representation of Sarbro in this action. Further, the Court will afford Sarbro, a corporate entity, at least 30 days to retain new counsel before acting on the Trust's

motion for entry of a default judgment (*see* CPLR 321 [a], [c]). Sarbro shall be on notice that the Court intends to enter a default judgment against it if successor counsel does not file a notice of appearance on its behalf prior to the expiration of such period (*see Mail Boxes Etc. USA v Higgins*, 281 AD2d 176, 176 [1st Dept 2001], *appeal dismissed* 96 NY2d 895 [2001]; *see also World on Columbus v L.C.K. Rest. Group*, 260 AD2d 323, 324 [1st Dept 1999]; *cf. Pisciotta v Lifestyle Designs, Inc.*, 62 AD3d 850, 853 [2d Dept 2009]).

Based on the foregoing, it is

**ORDERED** that the motion of Pope, Schrader & Pope, LLP to withdraw as counsel for defendant Sarbro is granted; and it is further

**ORDERED** that Pope, Schrader & Pope, LLP is deemed to have withdrawn as counsel of record for Sarbro in this matter; and it is further

**ORDERED** that all proceedings in the above-captioned action, including plaintiff's motion for a default judgment, shall be stayed as against Sarbro pursuant to CPLR 321 for **thirty (30) days** from the date of service of this Decision & Order upon Sarbro with notice of entry, to afford Sarbro the opportunity to retain new counsel; and it is further

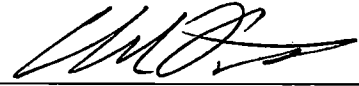
**ORDERED** that Pope, Schrader & Pope, LLP shall promptly serve this Decision & Order with notice of entry on Sarbro and all other parties to this action entitled to service, and it shall file an affidavit evidencing such service; and it is further

**ORDERED** that upon such service, Pope, Schrader & Pope, LLP shall no longer be deemed to represent Sarbro in this action; and finally it is

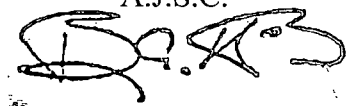
**ORDERED** that, if Sarbro fails to appear in this action through counsel prior to the expiration of the stay, it shall be deemed to be in default.

This constitutes the Decision & Order of the Court, the original of which is being transmitted to the Albany County Clerk for electronic filing and entry. Upon such entry, counsel for Sarbro shall promptly serve notice of entry on all other parties to this action (*see* Uniform Rules for Trial Cts [22 NYCRR] § 202.5-b [h] [1], [2]).

Dated: Albany, New York  
August 10, 2018



RICHARD M. PLATKIN  
A.J.S.C.



Papers considered:

NYSCEF Doc Nos: 103-116.

8-13-18 CB