

**Morris v Marriott Intl., Inc.**

2018 NY Slip Op 33822(U)

September 6, 2018

Supreme Court, Nassau County

Docket Number: 602649-17

Judge: Jerome C. Murphy

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT: STATE OF NEW YORK  
COUNTY OF NASSAU**

**PRESENT:**  
**HON. JEROME C. MURPHY,**  
**Justice.**

**MICHELLE MORRIS,**

**Plaintiff,**

**- against -**

**TRIAL/IAS PART 14**  
**Index No.: 602649-17**  
**Motion Date: 6/21/18**  
**Sequence No.: 002**

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**DECISION AND ORDER**

**MARRIOTT INTERNATIONAL, INC.,  
MARRIOTT HOTEL SERVICES, INC. and  
FRENCHMAN'S REEF and MORNING STAR  
MARRIOTT BEACH RESORT,**

**Defendants,**

The following papers have been read on this motion:

Order to Show Cause, Affirmation and Exhibit.....1

**PRELIMINARY STATEMENT**

Plaintiff brings this application for order pursuant to CPLR § 321(b)(2), granting leave to Kitchner & Associates, LLC, to withdraw as attorneys of record for the plaintiff herein; extending the time for plaintiff herein to secure and retain new attorney representation; and granting such other and further relief as this Court may deem just and proper. No opposition has been submitted to this application.

**BACKGROUND**

In this action, plaintiff alleges that between April 2, 2015 and April 8, 2015, while she was on a family vacation in the United States Virgin Islands, staying at the Frenchman's Reef and Morning Star Marriott Beach Resort, she suffered bed bug bites to her body with subsequent skin infections. Plaintiff alleges that this was caused by negligence of the defendants.

Plaintiff commenced this action by filing a summons and complaint on March 28, 2017. Defendants joined issue on June 13, 2017. By Decision and Order dated April 24, 2018, this Court dismissed the action based upon *forum non conveniens*. By Order to Show Cause, counsel for plaintiff seek leave to withdraw as attorneys for plaintiff.

Counsel states that at the time that the firm of Kitchner & Associates was retained, plaintiff was advised that there was a possibility that the defendant would move to transfer the case to the United States Virgin Islands. Counsel asserts that he is seeking to be relieved because he is unable to prosecute this matter in the Virgin Islands in keeping with his obligations and ethical duties to the solo practice. Counsel for defendant submits partial opposition, and requests that plaintiff have a specified extension of time within which to proceed in this matter.

CPLR § 321 deals with the prosecution and defense of actions in person, or by an attorney. With respect to the withdrawal of an attorney, subd. 2 provides as follows:

2. An attorney of record may withdraw or be changed by order of the court in which the action is pending, upon motion on such notice to the client of the withdrawing attorney, to the attorneys of all other parties in the action or, if a party appears without an attorney, to the party, and to any other person, as the court may direct.

The right of an attorney to withdraw is also impacted by the Rules of Professional Conduct. Rule 1.16(c) sets for the bases upon which a lawyer may withdraw from representation of a client:

- 1) withdrawal can be accomplished without material adverse effect on the interests of the client;
- (2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
- (3) the client has used the lawyer's services to perpetrate a crime or fraud;
- (4) the client insists upon taking action with which the lawyer has a fundamental disagreement;
- (5) the client deliberately disregards an agreement or obligation to the lawyer as to expenses or fees;
- (6) the client insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law;

- (7) the client fails to cooperate in the representation or otherwise renders the representation unreasonably difficult for the lawyer to carry out employment effectively;
- (8) the lawyer's inability to work with co-counsel indicates that the best interest of the client likely will be served by withdrawal;
- (9) the lawyer's mental or physical condition renders it difficult for the lawyer to carry out the representation effectively;
- (10) the client knowingly and freely assents to termination of the employment;
- (11) withdrawal is permitted under Rule 1.13(c) or other law;
- (12) the lawyer believes in good faith, in a matter pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal; or
- (13) the client insists that the lawyer pursue a course of conduct which is illegal or prohibited under these Rules.

“As a general rule, an attorney may terminate the attorney-client relationship at any time for a good and sufficient cause and upon reasonable notice.” (*Rivardeneria v. New York City Health and Hospitals Corp.*, 306 A.D.2d 394 [2d Dept. 2003]). The decision whether to grant or deny permission for counsel to withdraw lies within the discretion of the trial court. (*Id.*)

[Subd. 7 specifically provides that an attorney may withdraw from representation of a client when the client “renders it unreasonably difficult for the lawyer to carry out his employment effectively.” The mere fact that a client refuses to accept a settlement in a matter does not constitute the kind of uncooperative behavior which is sufficient to authorize an attorney to withdraw. (*Matter of Busby*, 207 A.D.2d 886 [2d Dept. 1994]).]

The motion by counsel for plaintiff to be relieved is granted. Consistent with this Court’s prior Decision and Order, the plaintiff shall have 45 days from the date of service of this Decision and Order upon her to file an amended complaint with a replacement attorney or on her own behalf in the Virgin Islands.

To the extent that requested relief has not been granted, it is denied.

This constitutes the Decision and Order of the Court.

Dated: Mineola, New York  
September 6, 2018

ENTER:

**ENTERED**

SEP 13 2018

**NASSAU COUNTY  
COUNTY CLERK'S OFFICE**

*Jerome C. Murphy*  
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JEROME C. MURPHY,  
J.S.C.