

<b>JCMC Flatiron, LLC v Princeton Holdings LLC</b>
2019 NY Slip Op 30299(U)
February 5, 2019
Supreme Court, New York County
Docket Number: 653586/2013
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JOEL M. COHEN PART IAS MOTION 3EFM

Justice

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INDEX NO. 653586/2013

JCMC FLATIRON, LLC,

MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. 006

- v -

PRINCETON HOLDINGS LLC, JOSEPH TABAK,

Defendant.

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number (Motion 006) 248, 249, 250, 251, 252, 370

were read on this motion to WITHDRAW COUNSEL

Upon the foregoing documents:

This action was commenced by JCMC Flatiron LLC against Defendants Princeton Holdings LLC and Joseph Tabak on October 16, 2013 alleging breach of contract, breach of fiduciary duty, conversion, accounting and fraud.

Now before the Court is Herrick Feinstein LLP's motion, brought by Order to Show Cause, to be relieved as counsel on behalf of Plaintiff. Herrick Feinstein LLP cites unpaid legal fees (in excess of \$100,000.00) and a breakdown in communication with Plaintiff including difficulties communicating with Plaintiff JCMC in a timely fashion and difference with respect to the course to be pursued in the litigation. According to Herrick Feinstein, this breakdown in the attorney-client relationship has made it unreasonably difficult for Herrick to continue to represent Plaintiff effectively. Fried Aff., ¶11-14 (NYSCEF 250).

For the following reasons, the Court grants counsel's motion to withdraw as attorney of record for Plaintiff.

Mr. Fried, on behalf of Herrick Feinstein, asserts that Plaintiff has failed to remit payment for legal services rendered despite due demand. Mr. Fried also complains of a breakdown in the attorney-client relationship, rendering continued and effective representation of Plaintiff unreasonably difficult. *Id.* Supporting his motion, Mr. Fried claims Herrick Feinstein has attempted to work out these issues with Plaintiff to no avail. *Id.* ¶18. Mr. Fried and Herrick Feinstein have discussed their request to withdraw with Plaintiff prior to filing this motion, suggested Plaintiff retain new counsel and offered to assist in an orderly transition to new counsel. *Id.* ¶17.

An appearance was held on February 5, 2019 to address this motion. Plaintiff did not appear and no opposition to the motion was filed.

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 A.D. 3d 436, 437 (1<sup>st</sup> Dep't 2008); *see also Bok v Werner*, 9 A.D.3d 318 (1<sup>st</sup> Dep't 2004) (reversing denial of motion to withdraw as counsel in view of counsel's claimed breakdown in relationship with client); *see also* Rule 1.16(c)(5) of the Rules of Professional Conduct (a lawyer may withdraw from representing a client when: the client deliberately disregards an agreement or obligation to the lawyer as to expenses or fees). Movant has done so. Given that trial has not yet been scheduled, Plaintiff should not be prejudiced by a change in counsel.

The Court concludes that Herrick Feinstein has made a sufficient showing of entitlement to withdraw as counsel for Plaintiff and its motion is Granted. Herrick Feinstein is directed to advise Plaintiff that, as a corporate defendant, it must retain counsel to continue this litigation.

*See*, CPLR §321(a). Herrick Feinstein is directed, however, to comply with its obligation under Rule 1.16(e) of the Rules of Professional Conduct as stated below.

It is therefore:

**ORDERED** that the motion of Herrick Feinstein to be relieved as attorney for Plaintiff in this action is granted, subject to the following conditions:

**ORDERED** that Herrick Feinstein 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, 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, Herrick Feinstein serve a copy of this order with notice of entry upon Plaintiff by email and by hard copy at their 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 Plaintiff, moving counsel shall forward a notice directing Plaintiff to appoint a substitute attorney within 30 days from the date of the mailing of the notice and the client shall comply therewith; it is further

**ORDERED** that any new attorney retained by Plaintiff 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 Plaintiff without leave of this court for a period of 40 days after service on Plaintiff of the aforesaid notice to appoint a substitute attorney; it is further

**ORDERED** that the departing attorney/firm 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

**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](http://www.nycourts.gov/supctmanh)); and it is further

**ORDERED** that all parties are to file a joint letter to the Court, on NYSCEF, advising whether the parties have complied with this Order and are ready to proceed with the remainder of the litigation.

2/5/2019  
DATE

  
JOEL M. COHEN, J.S.C.

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