

Loeb v Joon Yoon
2019 NY Slip Op 30832(U)
March 18, 2019
Supreme Court, New York County
Docket Number: 650948/2013
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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JUSTIN LOEB,

Plaintiff,

- v -

JOON YOON, MIMI GROOM, JUICY WINE, INC. D/B/A DRINK,
CRANKY, INC., CHICKEN MONKEY, INC., D/B/A WINEOLOGY,
JUNEAU WINE, INC., D/B/A CITY WINE, MUSTVINO, INC., D/B/A
WINE JUNCTION, BENKI, INC., D/B/A FIRST AND VINE,

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 011) 395, 396, 397
were read on this motion for ATTORNEY WITHDRAWAL

Upon the foregoing documents:

This action was commenced by Justin Loeb against Defendants Joon Ho Yoon, Juicy
Wine, Inc. doing business as Drink, Cranky, Inc., Chicken Monkey, Inc., doing business as
Wineology, Juneau Wine, Inc., doing business as City Wine, and Benki, Inc., doing business as
First and Vine ("Defendants") on March 15, 2013 alleging breach of contract, unjust enrichment,
promissory estoppel, fraud, breach of fiduciary duty, conversion, accounting and appointment of
a receiver.

Now before the Court is Charles B. Linn's motion, brought by Notice of Motion, to be
relieved as counsel on behalf of Defendants. Mr. Linn cites to several reasons which he seeks
relief, including unpaid legal fees (receiving no payment for legal services rendered since June
2018), counsel's age and inability to participate in the litigation, and a newly arisen conflict of
interest between he and the parties which makes his continued representation of defendants
"untenable". Linn Affirmation (NYSCEF 396), at 2.

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

Mr. Linn asserts that Defendants have failed to remit payment for legal services rendered despite due demand. Mr. Linn also complains of a newly arisen conflict of interest, rendering continued and effective representation of Defendants untenable. *Id.*

No parties to this action, including defendants, submit opposition to this motion.

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 (1st Dep't 2008); *see also Bok v Werner*, 9 A.D.3d 318 (1st 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, Defendants should not be prejudiced by a change in counsel.

The Court concludes that attorney Linn has made a sufficient showing of entitlement to withdraw as counsel for Defendants and his motion is Granted. Charles Linn, Esq. is directed to advise those Defendants which are corporations that, as corporate defendants, they must retain counsel to continue this litigation. *See*, CPLR §321(a). Mr. Linn is directed, however, to comply with his obligation under Rule 1.16(e) of the Rules of Professional Conduct as stated below.

It is therefore:

ORDERED that the motion of Charles Linn, Esq. to be relieved as attorney for Defendants Joon Ho Yoon, Juicy Wine, Inc. doing business as Drink, Cranky, Inc., Chicken Monkey, Inc., doing business as Wineology, Juneau Wine, Inc., doing business as City Wine, and Benki, Inc., doing business as First and Vine in this action is granted, subject to the following conditions:

ORDERED that Charles Linn, Esq. is to comply with his 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, Charles Linn, Esq. serve a copy of this order with notice of entry upon Defendants 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 Defendants, moving counsel shall forward a notice directing Defendants 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 Defendants 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 Defendants without leave of this court for a period of 40 days after service on Defendants 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); 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.

3/18/2019
DATE


JOEL M. COHEN, J.S.C.

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