

**Starr Indem. & Liab. Co. v Petroleum Tank Cleaners
Ltd.**

2019 NY Slip Op 30968(U)

April 3, 2019

Supreme Court, New York County

Docket Number: 653268/2017

Judge: Joel M. Cohen

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

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 3EFM

Justice

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INDEX NO. 653268/2017

STARR INDEMNITY & LIABILITY COMPANY,

MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. 002

- v -

PETROLEUM TANK CLEANERS LTD., 2ND AVENUE
SHOWCASE, LTD., ORMONDE EQUITIES, LLC, CM AND
ASSOCIATES CONSTRUCTION MANAGEMENT LIMITED
LIABILITY COMPANY

DECISION AND ORDER

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 41, 42, 43, 44, 45, 46, 47, 48, 49, 50

were read on this motion for ATTORNEY WITHDRAWAL

Upon the foregoing documents, it is

This action was commenced by Starr Indemnity & Liability Company against Defendants Petroleum Tank Cleaners Ltd., 2nd Avenue Showcase, Ltd., Ormonde Equities, LLC, CM and Associates Construction Management Limited Liability Company ("Defendants") on June 15, 2017 seeking a declaration that Defendant Petroleum Tank Cleaners, Ltd. ("PTC") is not entitled to coverage under the Commercial General Liability, Commercial Professional Liability or Professional Liability coverage part of the policy issued by Plaintiff.

Now before the Court is Gabor & Marotta LLC's motion, brought by Order to Show Cause, to be relieved as counsel on behalf of Defendant PTC. Gabor & Marotta LLP, through its attorney Stephanie S. Comas, Esq., explains in February 2019 it was directed to cease working on this matter at the direction of Defendant PTC and to take no further steps in the course of its representation. Comas Affirmation (NYSCEF 43), at ¶2.

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

Ms. Comas asserts that Defendant directed Gabor & Marotta LLC to cease work on this matter. Despite the direction, PTC has failed to execute a Consent to Change Attorney, necessitating the instant motion. *Id.*, ¶¶2-3.

No parties to this action, including Defendant PTC, 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). Given that PTC directed Gabor & Marotta to cease its representation, movant has ostensibly done so. Trial has not yet been scheduled, and, therefore, Defendant PTC should not be prejudiced by a change in counsel.

The Court concludes that Gabor & Marotta LLC has made a sufficient showing of entitlement to withdraw as counsel for Defendant PTC and its motion is Granted. Gabor & Marotta LLC is directed to advise PTC that, as a corporate defendant, it must retain counsel to continue this litigation. *See*, CPLR §321(a). Gabor & Marotta LLC 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 Gabor & Marotta LLC to be relieved as attorney for Defendant Petroleum Tank Cleaners, Ltd. in this action is granted, subject to the following conditions:

ORDERED that Gabor & Marotta LLC 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, Gabor & Marotta LLC is to serve a copy of this order with notice of entry upon Defendant Petroleum Tank Cleaners, Ltd. by email and by hard copy at its 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 Defendant Petroleum Cleaning Tank, Ltd. 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 Defendant Petroleum Cleaning Tank, Ltd. without leave of this court for a period of 40 days after service on Defendant 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; and it is further

ORDERED that Plaintiff shall have leave to file a motion for default judgment if Defendant Petroleum Cleaning Tank, Ltd. fails to obtain counsel with the proscribed amount of time; and it is further

ORDERED that all parties are to appear for a Preliminary Conference on May 28, 2019 at 10:30 a.m. in Room 222.

This Constitutes the Decision and Order of the Court.


4/3/2019
DATE

CHECK ONE:

APPLICATION:

CHECK IF APPROPRIATE:

<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE
		<input type="checkbox"/>	DENIED



 JOEL M. COHEN, J.S.C.