

Quadriad Realty Partners, LLC v Wilbee Corp.
2019 NY Slip Op 31126(U)
April 25, 2019
Supreme Court, New York County
Docket Number: 153621/2018
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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QUADRIAD REALTY PARTNERS, LLC, 45 WEST 36TH STREET, NEW YORK, NY 10018, DEVELOPMENT PLANNING & DESIGN INC., 45 WEST 36TH STREET, NEW YORK, NY 10018,

Plaintiff,

- v -

WILBEE CORPORATION, 31-31 48TH AVENUE, LONG ISLAND CITY, NY 11101, KING KULLEN GROCERY CO., INC., 185 CENTRAL AVENUE, BETHPAGE, NY 11714, QUEENSBORO FARM PRODUCTS, INC., 156-02 LIBERTY AVENUE, JAMAICA, NY 11433, KAUFMAN BEDROCK ASTORIA I LLC, 34-12 36TH STREET, ASTORIA, NY 11106, SILVERSTEIN PROPERTIES, INC., 7 WORLD TRADE CENTER, 250 GREENWICH STREET, 38TH FLOOR, NEW YORK, NY 10007, BEDROCK REAL ESTATE PARTNERS, LLC, 215 PARK AVENUE SOUTH, SUITE 2016, NEW YORK, NY 10003,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 008) 325, 326, 327, 328, 329, 331

were read on this motion for RELIEF OF COUNSEL AND STAY

DECISION AND ORDER

This action was commenced by Quadriad Realty Partners, LLC and Development Planning & Design Inc., against Wilbee Corporation, King Kullen Grocery Co., Inc., Queensboro Farm Products, Inc., Kaufman Bedrock Astoria I LLC, Silverstein Properties, Inc., and Bedrock Real Estate Partners, LLC on April 19, 2018 alleging tortious interference with prospective business relations, unjust enrichment and breach of implied contract. Defendants Answers were completely filed on February 11, 2019.

Now before the Court is the Law Offices of Robert J. Gumenick's motion, brought by Order to Show Cause, to be relieved as counsel on behalf of Plaintiffs. The Law Office offers the affidavit of Mr. Gumenick who cites his impaired mental and/or physical condition as the

reason for being unable to continue to work with Plaintiffs. *Gumenick Aff.*, ¶2-3 (NYSCEF 326).

The Order to Show Cause was signed on April 3, 2019 and directed opposition, if any, to this requested relief be filed by May 2, 2019 and further provided that a copy of the Order to Show Cause and the supporting papers upon which it is based shall be served upon all parties by overnight and electronic delivery. Counsel filed affidavits of service attesting that copies were served on all parties.

The parties entered into a Stipulation consenting to the relief of Mr. Gumenick as counsel. (NYSCEF 331).

Mr. Gumenick asserts that due to his declining health he can no longer continue to represent Plaintiffs. According to his Affidavit, Mr. Gumenick discussed this matter with his clients who had no objection to this application. Mr. Gumenick has also assured his clients that he will cooperate with successor counsel in accordance with Rule 1.16(e). *Gumenick Aff.*, ¶4

New York Rules of Professional Conduct Rule 1.16(b)(2) permits withdrawal of a lawyer when "... (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client as does New York Rules of Professional Conduct Rule 1.16(c)(9) which explains, "... a lawyer may withdraw from representing a client when...the lawyer's mental or physical condition renders it difficult for the lawyer to carry out the representation effectively."

The Court concludes that Robert J. Gumenick, Esq. has made a sufficient showing of entitlement to withdraw as counsel for Plaintiffs and his motion is Granted.

Plaintiff-Intervenors do not object to Mr. Gumenick's withdrawal but do object to the requested stay of the entire case to permit Plaintiff to obtain new counsel. (NYSCEF 333). Plaintiff-Intervenors acknowledge that the litigation should be stayed as against Plaintiff but contend that discovery should proceed as to all other parties.

The Court previously directed Plaintiffs and Plaintiff-Intervenors to coordinate their discovery efforts. Such coordination necessarily impacts Plaintiffs interests. The request for a stay as to the entire action is Granted. However, to avoid unduly delaying the litigation, the Court orders that Plaintiffs' new counsel be required to appear by May 30, 2019 after which counsel for Plaintiff-Intervenors and incoming counsel for Plaintiffs are directed to meet and confer regarding a proposed schedule (for completing discovery and briefing on Intervenors' cross-claims) to be submitted to the Court by June 6, 2019. As Plaintiffs are corporations, they may not proceed in this action *pro se*. (See CPLR 321(a)).

Accordingly, it is therefore:

ORDERED that the motion of Robert J. Gumenick's, Esq. to be relieved as attorney for Plaintiffs in this action is granted, subject to the following conditions; it is further

ORDERED that Robert J. Gumenick's, Esq. 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 5 days from entry, Mr. Gumenick shall serve a copy of this order with notice of entry upon both Quadriad Realty Partners, LLC and Development Planning & Design Inc 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 Plaintiffs, moving counsel shall forward a notice directing both Plaintiffs to appoint a substitute attorney on or before May 30, 2019; it is further

ORDERED that any new attorney retained by Plaintiffs 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 30 days from the date the notice to retain new counsel is mailed; it is further

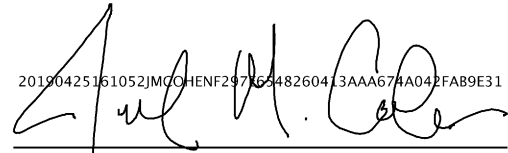
ORDERED that no further proceedings may be taken against either Plaintiff without leave of this court until May 30, 2019; it is further

ORDERED that the departing attorney shall, within 5 days from entry, serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (Room 119); 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 Plaintiffs' counsel shall meet and confer with counsel for Plaintiff-Intervenors regarding a proposed schedule (for completing discovery and briefing on Intervenors' cross-claims) to be submitted to the Court by June 6, 2019; it is further

ORDERED that all parties are to appear for a Compliance Conference in this matter on June 25, 2019 at 11:00 a.m. at which time the parties will enter into a revised discovery schedule to address any remaining discovery.

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JOEL M. COHEN, J.S.C.

4/25/2019
DATE

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