

Bellflower Funding, LLC v Disanza
2019 NY Slip Op 32006(U)
July 8, 2019
Supreme Court, New York County
Docket Number: 650836/2017
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART IAS MOTION 3EFM

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BELLFLOWER FUNDING, LLC,

Plaintiff,

- v -

FELICE DISANZA, TWELVE BEE CORPORATION,
LLC, 42-21 214TH REALTY LLC, DAVID EBRAHIMZADEH,
RONALD MCINERNEY, DOMUS APPRAISALS, THE LAW
FIRM OF ADAM KALISH, P.C.,

Defendant.

INDEX NO. 650836/2017

MOTION DATE N/A

MOTION SEQ. NO. 006

**DECISION + ORDER ON
MOTION**

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 006) 157, 158, 159, 160, 161, 162, 163, 164, 165, 166

were read on this motion to WITHDRAW AS COUNSEL.

Upon the foregoing documents:

Counsel for Defendant David Ebrahimzadeh, Borah, Goldstein, Altschuler, Nahins & Goidel, P.C. (“Borah Goldstein”) seeks to withdraw as counsel pursuant to CPLR §321(b)(2) and NYSCR §1200.15 (c)(1)(iv) and (c)(1)(vi). This motion is unopposed.

This action was commenced by Bellflower Funding, LLC against Defendants Felice Disanza, Twelve Bee Corporation, LLC, 42-21 214th Realty LLC, David Ebrahimzadeh, Ronald Mcinerney, Domus Appraisals and The Law Firm Of Adam Kalish, P.C on February 16, 2017 alleging breach of contract, unjust enrichment, fraud, breach of fiduciary duty and various negligence.

Now before the Court is Borah Goldstein’s motion, brought by Order to Show Cause, to be relieved as counsel on behalf of Defendant Ebrahimzadeh. Borah Goldstein cites unpaid legal fees as its reason for being unable to continue to work with Defendant. *Marks Aff.*, ¶13-16

(NYSCEF 158). The Order to Show Cause was signed on June 4, 2019 and directed opposition, if any, to this requested relief be filed by July 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 upon the parties.

No opposition having been filed, this motion is unopposed. For the following reasons, the Court grants counsel's motion to withdraw as attorney of record for Defendant Ebrahimzadeh.

Borah Goldstein asserts that there has been a breakdown in its relationship and communications with Defendant, due to Defendant's failure to remit payment for legal services, rendering continued and effective representation of Defendant in this action impossible. *Marks Aff.*, ¶¶13-16. Supporting its motion, Borah Goldstein includes an account summary of the outstanding legal fees due and owing which total \$30,332.49. (NYSCEF 162). Borah Goldstein, through the Affidavit of Darren R. Marks, Esq., affirms it has advised Defendant verbally and in email that ongoing representation is conditioned on payment of outstanding fees. Despite that, Defendant has failed to resolve the balance and has refused to advise if, and when, he intends to do so. *Marks Aff.*, ¶13.

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 the case is at an early stage, and no discovery schedule has yet been entered, Defendant Ebrahimzadeh should not be prejudiced by a change in counsel.

The Court concludes that Borah Goldstein has made a sufficient showing of entitlement to withdraw as counsel for Defendant Ebrahimzadeh and its motion is Granted. Borah Goldstein is directed 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 Borah Goldstein to be relieved as attorney for Defendant Ebrahimzadeh in this action is granted without opposition, subject to the following conditions; it is further

ORDERED that Borah Goldstein 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, Borah Goldstein shall serve a copy of this order with notice of entry upon both David Ebrahimzadeh by email and by hard copy at his 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 Defendant Ebrahimzadeh, moving counsel shall forward a notice directing Defendant Ebrahimzadeh to appoint a substitute attorney within 30 days from the date of the mailing of the notice and the client shall comply therewith, except that, in the event Defendant Ebrahimzadeh intends instead to represent himself, he shall notify the Clerk of the Part of this decision in writing within said 30-day period; it is further

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

ORDERED that the departing attorney 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); 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 appear for a Status Conference in this matter on September 17, 2019 at 11:00 a.m.

7/8/2019
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"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE