

Zhongyi Pei v L&H Resorts Sys., LP

2020 NY Slip Op 30741(U)

March 6, 2020

Supreme Court, New York County

Docket Number: 651909/2014

Judge: Joel M. Cohen

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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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ZHONGYI PEI, YIYAN ZHANG,
Plaintiff,

- v -

L&H RESORT SYSTEMS, LP, LI LI, YIQING HAN,
Defendant.

INDEX NO. 651909/2014
MOTION DATE N/A
MOTION SEQ. NO. 014

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 014) 255, 256, 257
were read on this motion to RELIEVE COUNSEL

Upon the foregoing documents, it is

This action was commenced by Plaintiffs on June 23, 2014 alleging breach of fiduciary
duty, fraud and seek an accounting. Defendants Answers, to Plaintiffs' Amended Complaint,
were completely filed on September 17, 2019.

Now before the Court is the Hodgson & Russ' motion, brought by Order to Show Cause,
to be relieved as counsel on behalf of Defendants. Hodgson & Russ offers the affidavit of
Joseph P. Goldberg, Esq. who cites Defendants failures to comply with their financial obligations
as the reason for being unable to continue to work with Defendants. Gumenick Aff., ¶2-3
(NYSCEF 326). The Order to Show Cause was signed on January 14, 2020 and directed
opposition, if any, to this requested relief be filed by January 24, 2020 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 all parties.

Mr. Goldberg represents that Defendants have consented to Hodgson & Russ' withdrawal. For the following reasons, the Court grants counsel's motion to withdraw as attorney of record for Defendants.

Mr. Goldberg asserts that there has been a breakdown in his relationship and communications with Defendants, due to their failure to remit payment for legal services as well as respond to efforts to communicate made by counsel, rendering continued and effective representation of Defendants in this action impossible. *Goldberg Aff.*, ¶¶5-7.

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 Plaintiffs' counsel was recently substituted and Defendants have consented to counsel's withdrawal, Defendants should not be prejudiced by a change in counsel. Hodgson & Russ' motion to withdraw is Granted.

It is therefore:

ORDERED that the motion of Hodgson & Russ to be relieved as attorneys for Defendants in this action is granted without opposition, subject to the following conditions; it is further

ORDERED that Hodgson & Russ 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, Hodgson & Russ shall 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 both 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 35 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 Defendant without leave of this court for a period of 35 days after service on Defendants of the aforesaid notice to appoint a substitute attorney; 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 within 7 days after the appearance of new counsel for Defendants, Defendants' counsel shall meet and confer with counsel for Plaintiff and enter into a proposed schedule for completing discovery; it is further

ORDERED that all parties are to appear for a Status Conference in this matter on May 26, 2020 at 11:00 a.m at which time the parties will enter into a revised discovery schedule to address any remaining discovery.

3/6/2020
DATE


JOEL M. COHEN, J.S.C.

CHECK ONE:

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

APPLICATION:

CHECK IF APPROPRIATE: