

Wu v City of New York
2020 NY Slip Op 31482(U)
May 19, 2020
Supreme Court, New York County
Docket Number: 159462/2018
Judge: Laurence L. Love
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (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. LAURENCE L. LOVE PART IAS MOTION 62

Justice

-----X

RICHARD WU, LI YAN WANG,
Plaintiff,

INDEX NO. 159462/2018

MOTION DATE 02/25/2020

MOTION SEQ. NO. 002

- v -

THE CITY OF NEW YORK, POLICE OFFICER JOHN DOE,
POLICE OFFICER JANE DOE OFFICERS

DECISION + ORDER ON MOTION

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41

were read on this motion to/for DISQUALIFY COUNSEL

Upon the foregoing documents, the motion is decided as follows:

On or about November 21, 2017, Plaintiffs filed a Notice of Claim with the Office of the Comptroller for the City of New York, alleging, inter alia claims of false arrest. On May 9, 2018, Plaintiff Richard Wu appeared for an examination pursuant to General Municipal Laws § 50-h where he testified that at the time of his arrest "My attorney [Aihong You] was doing a deposition against Mr. Lau. I was in her office" and further testified that Ms. You and everyone who worked for Ms. You at the time witnessed the November 10, 2017 arrest. On October 11, 2018 Plaintiffs filed their Complaint. The Complaint includes allegations that Plaintiffs' counsel, Aihong You, witnessed at least some of the events complained of, and alleges that she herself took some of the actions described in the Complaint. On October 31, 2018, the City joined issue by service of its Answer and Combined Demands.

Defendants now move to disqualify plaintiff's attorney, Aihing You. Rule 3.7 of the Rules of Professional Conduct (22 NYCRR 1200.29) prohibits an attorney from acting as an advocate

before a tribunal in a matter when it is likely that the attorney will be called as a witness on a significant issue of fact and the attorney knows he or she is likely to be a witness on a significant issue of fact on his or her client's behalf. A party seeking disqualification of an attorney and/or law firm must make a showing that the testimony of the adverse attorney "will be necessary to establish the claim or be prejudicial to the plaintiff in the event the attorney is called by the other side." *East Forty Fourth St., LLC v. Bildirici*, 58 A.D.3d 542, 542 (1st Dept. 2009) "However, where the attorney's testimony is necessary to support his client's claim, it is not essential to show that the attorney's testimony will have a potentially prejudicial impact on his or her client." *Salomone v. Abramson*, 5 N.Y.S.3d 838, 847 (Sup. Ct. N.Y. Cty. 2008). Further, "where there is little doubt as to the substance of the lawyer's testimony or whether it is necessary to prove a party's claim, then disqualification need not await completion of discovery." *Id.*

It cannot be disputed that Ms. You's testimony as a witness is necessary. She will be called to testify as to the relationship between Lau and Plaintiffs leading up to their arrests, and as an eyewitness to the events taking place on November 10, 2017. Ms. You will further be called to testify as to the cause for Plaintiffs' arrests, the manner in which they occurred, the conversations she had with the arresting police officers prior to Plaintiffs arrests and the conversations she had with police officers at the precinct to which Plaintiffs were taken following their arrest. The Court further notes that Ms. You's clients are not English speakers and as such, Ms. You is the only witness other than the arresting officers that can testify as to conversations which occurred in English at the time of the arrest.

While plaintiff's counsel is correct that it is a basic right of a civil litigant to have the legal counsel of his choice, the law recognizes that the choice of a particular lawyer might put the challenging party at an unfair disadvantage, either because the lawyer has previously been privy

to certain confidences disclosed by the challenging party, or because the lawyer will necessarily be called as a witness by either side, *See, Lightning Park, Inc. v. Wise Lerman & Katz, P.C.*, 197 A.D.2d 52 (1st Dept.1994). Here, plaintiff's counsel's opposition only solidifies the absolute need for disqualification. Plaintiff argues that any disqualification decision should be delayed until after the close of discovery, however based upon the circumstances, defendants will certainly seek discovery from plaintiff's attorney herself. As such, defendant's motion must be granted before this action proceeds any further.

ORDERED that the motion to disqualify counsel for plaintiff is granted and Aihong You, Esq., is hereby disqualified from representing plaintiff in this matter, and it is further

ORDERED that counsel for the movant, within 21 days after the entry of this order, shall serve a copy of this order with notice of entry upon counsel for all other parties and upon plaintiff; and it is further

ORDERED that the action is stayed from this date until 30 days after service of a copy of this order with notice of entry upon counsel for all parties and upon plaintiff, who shall, within said period, retain another attorney in place of the attorney named above; and it is further

ORDERED that the new attorney retained by plaintiff shall serve upon all parties a notice of appearance and file same with the Clerk of the General Clerk's Office (60 Centre Street, Room 119) and the Clerk of the Part within said 30-day period ; and it is further

ORDERED that such filing with the Clerk of the General Clerk's Office and the Clerk of the Part 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 in the event that plaintiffs intend to proceed pro se pursuant to CPLR 321, they are directed to notify the Clerk of the Part in writing within said 30-day period.

5/19/2020

DATE



LAURENCE L. LOVE, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE