

Gateway Intl. v Richmond Capital Group, LLC

2020 NY Slip Op 31955(U)

June 22, 2020

Supreme Court, New York County

Docket Number: 654636/2018

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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INDEX NO. 654636/2018

GATEWAY INTERNATIONAL, 360, LLC, HARPER ZARKER,

MOTION DATE N/A

Plaintiffs,

MOTION SEQ. NO. 022

- v -

RICHMOND CAPITAL GROUP, LLC, GTR SOURCE, LLC, MZEED, INC. D/B/A MEGA CAP FUNDING, ORANGE ACH, LLC, MICHELLE GREGG, TSVI DAVIS, JONATHAN BRAUN,

DECISION + ORDER ON MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 022) 598, 599, 600, 601, 602, 603, 604, 605, 606

were read on this motion to WITHDRAW AS COUNSEL

Hodgson Russ LLP ("Hodgson Russ") seeks to withdraw as counsel for Defendants Richmond Capital Group, LLC ("RCG") and Michelle Gregg ("Gregg") (together, "Defendants"). Through attorney Ryan K. Cummings, Hodgson Russ asserts that withdrawal is warranted because Defendants advised on April 22, 2020 that they are "financially unable to pay" fees going forward (NYSCEF 599 [Cummings aff]). In his reply affirmation, Cummings further states that Defendants have not paid certain invoices due to Hodgson Russ and have specifically directed Hodson Russ to withdraw as counsel in this action (NYSCEF 605 [Cummings reply aff]).

The motion to withdraw as counsel is granted subject to the conditions set out below. Generally, a client has an "unqualified right to terminate the attorney-client relationship at any time without any obligation other than to compensate the attorney for "the fair and reasonable value of the completed services" (e.g. Matter of Thelen LLP, 24 NY3d 16, 28 [2014]). While

Hodgson Russ asserts that it has not been paid for its services to date, it does not seek relief for such unpaid invoices in this motion. Further, counsel is required to withdraw its representation upon termination by the client under Rule 1.16 (b) of the Rules of Professional Conduct.

Plaintiffs’ opposition to this motion is largely irrelevant and, under the circumstances, no party will be prejudiced by Hodgson Russ’s withdrawal. Given that Defendants advised counsel that they could not pay their legal fees in April 2020, Hodgson Russ originally filed this motion on May 7, 2020 (apparently at the instruction of the Defendants), and the Defendants have had at least 45 days to seek new counsel, only a brief, 10-day stay of proceedings will be permitted here to allow for RCG to obtain counsel and for Gregg to either obtain substitute counsel or register her appearance *pro se*.

In sum, the Court concludes that Hodgson Russ’s withdrawal is warranted, and its motion is granted. Hodgson Russ is directed to advise Defendants that the entity, RCG, must retain counsel to continue this litigation (*see* CPLR § 321 [a]). Additionally, the individual, Gregg, must either retain new counsel or register her appearance(s) *pro se*. Hodgson Russ is also directed to comply with his obligations under Rule 1.16 (e) of the Rules of Professional Conduct, as stated below.

* * * * *

Accordingly, it is

ORDERED that Hodgson Russ’s motion to be relieved as counsel for Defendants RCG and Gregg is **granted**, subject to the following conditions; it is further

ORDERED that Hodgson Russ shall comply with all obligations under Rule 1.16 (d) 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 clients,

including giving reasonable notice to the clients, . . . delivering to the clients all papers and property to which the clients are 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 2 days from the Court’s entry of this Order on NYSCEF, Hodgson Russ shall serve a copy of this Order with notice of entry upon Defendants RCG and Gregg by email and, if practicable, by hard copy at their last known address by certified mail, return receipt requested, as well as upon the attorneys for all other parties and any *pro se* 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 the Defendants, moving counsel shall forward a notice directing the Defendants to appoint a substitute attorney (mandatory for entity Defendant RCG) within 10 days of such notice (*see* CPLR 321). If Ms. Gregg elects not to obtain new counsel and, instead, proceed in this matter *pro se*, she must advise the Court of such a determination and register her appearance on NYSCEF within 10 days of moving counsel’s notice; it is further

ORDERED that any new attorney retained by Defendants shall file a notice of appearance within 10 days from the date the notice to retain new counsel is sent; it is further

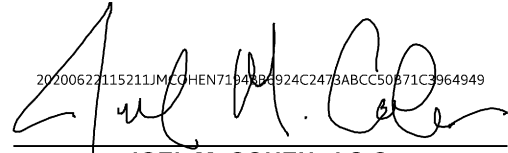
ORDERED that no further proceedings may be taken against the former clients without leave of this Court for a period of 10 days after service on the former clients of notice to substitute new counsel/register appearance *pro se*; it is further

ORDERED that outgoing counsel shall, within 5 days from the Court’s entry of this Order on NYSCEF, serve a copy of this Order with notice of entry upon 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).

This Constitutes the Decision and Order of the Court.

6/22/2020
DATE


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JOEL M. COHEN, 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