

Cottage Intl. Dev. Group, LLC v Finneran
2020 NY Slip Op 32788(U)
January 27, 2020
Supreme Court, Westchester County
Docket Number: 52808/2015
Judge: Joan B. Lefkowitz
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To commence the statutory time period for appeals as of right [CPLR 5513(a)], you are advised to serve a copy of this order, with notice of entry upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER - COMPLIANCE PART

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COTTAGE INTERNATIONAL DEVELOPMENT
GROUP, LLC, BLUE REAL ESTATE HOLDING LLC
and THOMAS CONNEALLY,

Plaintiffs,

-against-

TIMOTHY FINNERAN, SHANNON & HUDSON, LLC,
KIMBALL I LTD and KIMBALL II LTD,

Defendants.

-----X
TIMOTHY FINNERAN, KIMBALL I LTD., KIMBALL II
LTD., and SHANNON & HUDSON LLC,

Plaintiffs,

-against-

THOMAS J. CONNEALLY, COTTAGE INTERNATIONAL
DEVELOPMENT GROUP LLC, COTTAGE FUND I, L.P.,
BLUE REAL ESTATE HOLDING, LLC, CIDG LLC,
COTTAGE DEVELOPMENT SERVICES LLC,
COTTAGE EQUITIES LLC, COTTAGE FUND I ADVISORS,
LLC, COTTAGE FUND I MANAGEMENT, LLC, COTTAGE
LAND & ACQUISITION, LLC, COTTAGE LIVING, LLC,
COTTAGE MANAGEMENT SERVICES LLC, COTTAGE
REALTY SERVICES LLC, 185 RIVERDALE AVENUE LLC,
185 RIVERDALE CIDG LLC, 185 RIVERDALE
MANAGERS LLC, 25 NORTH BROADWAY LLC,
HIGHLAND CLIFFS LLC, COTTAGE CONSTRUCTION
LTD., GLENMAN CONSTRUCTION CORPORATION and
GLENMAN INDUSTRIAL & COMMERCIAL CONTRACTOR
CORP.

Defendants.

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LEFKOWITZ, J.

DECISION & ORDER

Index No. 52808/2015
Motion Date: 1/27/20

Seq No. 5

Index No. 68299/2017

The following papers were read on this motion by the law firm of Eckert Seamans Cherin & Mellot, LLC (hereinafter "movant") for an order pursuant to CPLR §321 and Rules of Professional Conduct Rule 1.16(c)(5), permitting movant to withdraw as counsel for Plaintiffs/Defendants Cottage International Development Group, LLC, Blue Real Estate Holding, LLC and Thomas Conneally, staying this matter for sixty (60) days after the court issues its decision to enable Plaintiffs/Defendants Cottage International Development Group, LLC, Blue Real Estate Holding, LLC and Thomas Conneally to retain new counsel, and for such other and further relief as to this court may seem just and proper:

Order to Show Cause - Affirmation in Support - Exhibits
Letter in Opposition
Affidavit of Service

Upon the foregoing papers and proceedings held on January 27, 2020 this motion is determined as follows:

In support of the motion, movant asserts it was retained by plaintiffs Cottage International Development Group, LLC, Blue Real Estate Holding, LLC and Thomas Conneally, and defendants Thomas J. Conneally, Cottage International Development Group LLC, Cottage Fund I, L.P., Blue Real Estate Holding, LLC, CIDG LLC, Cottage Development Services LLC, Cottage Equities LLC, Cottage Fund I Advisors, LLC, Cottage Fund I Management, LLC, Cottage Land & Acquisition, LLC, Cottage Living, LLC, Cottage Management Services LLC, Cottage Realty Services LLC, 185 Riverside Avenue LLC, 185 Riverdale CIDG LLC, 185 Riverdale Managers LLC, 25 North Broadway LLC, Highland Cliffs LLC, Cottage Construction LTD., Glenman Construction Corporation and Glenman Industrial & Commercial Contractor Corp. (hereinafter collectively, "Conneally"). Thomas Conneally is the managing member of Cottage International Development Group, LLC. On August 9, 2019, this court entered a Decision and Order after a non-jury trial. Movant submitted its proposed judgment on September 20, 2019.

Movant claims that despite numerous requests and invoices, Conneally repeatedly has failed to pay fees for services rendered, or else proposed unacceptable alternatives to making proper payments. As a result, on November 14, 2019 movant sent to Conneally, by certified mail, a letter advising him that movant would be making a motion to withdraw as counsel (NYSCEF Doc. 129). Due to unpaid fees, movant also asserts a lien against Conneally's files. Movant asserts the lien is case-specific and applies to only those papers or other items which came into movant's possession as a result of the representation for which it has not been paid.

An unsworn letter was submitted in purported opposition to the motion by Mr. Conneally. In the letter, he states he objects to movant's request for withdrawal and that movant has represented his interests for five years and has all pertinent information on the case. Mr. Conneally acknowledges a significant outstanding balance on the fees owed to movant but does not indicate in what manner and when such fees will be paid.

An attorney may only withdraw as counsel upon a showing of good and sufficient cause and reasonable notice (CPLR 321[b][2]; *Green v Gasparini*, 24 AD3d 505 [2d Dept 2005]). The question of whether such cause exists is a matter addressed to the Court's discretion (*Alvarado-Vargas v 6422 Holding Corp.*, 85 AD3d 829 [2d Dept 2011]; *Tartaglione v Tiffany*, 280 AD2d 543 [2d Dept 2001]). An attorney may withdraw from representing a client, if the client renders the representation unreasonably difficult for the lawyer to carry out employment effectively (Rules of Professional Conduct [22 NYCRR 1200.0] rule 1.16 [c][7]). Accordingly, the failure to respond to counsel's communications justifies withdrawal (*Bok v Werner*, 9 AD3d 318 [1st Dept 2004]; *Tartaglione*, 280 AD2d at 543).

Here, movant has demonstrated good cause for withdrawal as counsel for the aforementioned parties. Movant has been unable to negotiate an arrangement for the payment of the significant outstanding fees owed to movant with Mr. Conneally. Accordingly, there is a breakdown in the attorney client relationship making withdrawal appropriate. Movant also has established entitlement to a retaining lien on the file for movant's unpaid work.

While Mr. Conneally opposes the motion, he did so in an unsworn letter and did not sufficiently address the central issue of the payment of the significant fees owed to movant.

In light of the withdrawal of counsel, and pursuant to CPLR 321[c], the action is stayed for thirty (30) days from entry of this Decision and Order.

Accordingly, it is

ORDERED that the motion is granted and that the law firm of Eckert Seamans Cherin & Mellot, LLC is granted leave to withdraw as counsel for plaintiffs Cottage International Development Group, LLC, Blue Real Estate Holding, LLC and Thomas Conneally, and defendants Thomas J. Conneally, Cottage International Development Group LLC, Cottage Fund I, L.P., Blue Real Estate Holding, LLC, CIDG LLC, Cottage Development Services LLC, Cottage Equities LLC, Cottage Fund I Advisors, LLC, Cottage Fund I Management, LLC, Cottage Land & Acquisition, LLC, Cottage Living, LLC, Cottage Management Services LLC, Cottage Realty Services LLC, 185 Riverside Avenue LLC, 185 Riverdale CIDG LLC, 185 Riverdale Managers LLC, 25 North Broadway LLC, Highland Cliffs LLC, Cottage Construction LTD., Glenman Construction Corporation and Glenman Industrial & Commercial Contractor Corp.; and it is further

ORDERED that this action is hereby stayed for a period of thirty (30) days to allow the parties time to retain new counsel or proceed *pro se* as appropriate. The parties affected by this order are directed to notify the court and counsel for all parties in writing within the 30 day period as to new counsel's name and address, if applicable; and it is further

ORDERED that insofar as this action is subject to mandatory e-filing, new counsel for parties affected by this order, or any party who may elect to proceed *pro se* if appropriate, are directed to consent to e-filing on the NYSCEF website or file a Notice of Opt-Out from

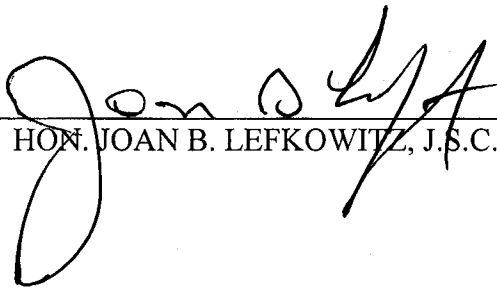
Participation in Action Subject to Mandatory E-Filing form (EFM-2) with the Westchester County Clerk's Office (3rd Floor) prior to March 3, 2020; and it is further

ORDERED that if new counsel is retained, new counsel is directed to file a Notice of Appearance prior to March 3, 2020 on the NYSCEF website, if consenting to e-filing, or with the Westchester County Clerk's Office, if filing an Opt-Out form; and it is further

ORDERED that movant shall serve a copy of this decision and order upon all parties with notice of entry within 10 days of entry.

The foregoing shall constitute the decision and order of the court.

Dated: White Plains, New York
January 27, 2020


HON. JOAN B. LEFKOWITZ, J.S.C.

TO:

All Counsel by NYSCEF

cc: Compliance Part

Hon. Mary Smith

Thomas Conneally
Managing Partner
185 Riverdale Ave., Suite101
Yonkers, NY10705