

<b>Hernandez v Decastro</b>
2020 NY Slip Op 33688(U)
November 4, 2020
Supreme Court, New York County
Docket Number: 805423/2019
Judge: Eileen A. Rakower
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**SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY**

**PRESENT: Hon. EILEEN A. RAKOWER**

*Justice*

**PART 6**

**JOSEPHINA HERNANDEZ,**  
**Plaintiff,**

**-against-**

**G. JOEL DECASTRO, M.D., and NEW YORK  
PRESBYTERIAN HOSPITAL,**

**Defendants.**

**INDEX NO. 805423/2019**

**MOTION DATE**

**MOTION SEQ. NO. 4**

**MOTION CAL NO.**

The following papers, numbered 1 to \_\_\_\_ were read on this motion for/to

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answer — Affidavits — Exhibits \_\_\_\_\_  
Replying Affidavits

**PAPERS NUMBERED**

**Cross-Motion:    Yes    X No**

Krentsel Guzman Herbert, LLC (“Movant Law Firm”) moves by Order to Show Cause to withdraw as counsel for Plaintiff Josephina Hernandez (“Plaintiff”). Anna Badalian, Esq. submits an affidavit in support of Movant Law Firm’s application. Movant Law Firm requests that the Court should allow Plaintiff 90 days to obtain new counsel. Movant Law Firm argues that if Plaintiff retains new counsel it is entitled to reimbursement for expenses incurred as well as compensation for work performed on behalf of Plaintiff. Plaintiff does not oppose the request to be relieved as counsel. Defendants also do not oppose the request to be relieved as counsel.

**Legal Standards**

CPLR § 321 (2) provides, “An attorney of record may withdraw or be changed by order of the court in which the action is pending, upon motion on such notice to the client of the withdrawing attorney, to the attorneys of all other parties in the action or, if a party appears without an attorney, to the party, and to any other person, as the court may direct.” The First Department has stated, “[A]n attorney may withdraw as counsel of record upon a showing of good and sufficient cause, and reasonable notice to the client.” *Mason v. MTA New York City Transit*, 832 NYS2d 153, 154 (1st Dept 2017).

Judiciary Law § 475 provides in relevant part:

“From the commencement of an action, special or other proceeding in any court . . . or the initiation of any means of alternative dispute resolution including . . . mediation . . . the attorney who appears for a party has a lien upon his client’s cause of action, claim or counterclaim, which attaches to a verdict, report, determination, decision, judgment or final order in his client’s favor, and the proceeds thereof in whatever hands they may come . . .”

“Under Judiciary Law § 475, a charging lien automatically comes into existence, without notice or filing, upon commencement of the action, and is measured by the reasonable value of the attorney’s services in the action, unless fixed by agreement.” *Resnick v. Resnick*, 24 AD3d 238, 239 [1st Dept 2005]. “A charging lien is a security interest in the favorable result of litigation, giving the attorney equitable ownership interest in the client’s cause of action . . .” *Chadbourne & Parke, LLP v. AB Recur Finans*, 18 AD3d 222, 223 [1st Dept 2005] “[A] charging lien is waived by an attorney who without just cause neglects or refuses to proceed with the prosecution of the case.” *Klein v. Eubank*, 87 NY2d 459, 463 [1996]. “[W]here an attorney’s representation terminates and there has been no misconduct, no discharge for just cause and no unjustified abandonment by the attorney, the attorney’s right to enforce the statutory charging lien is preserved . . .” *Id.* at 1996. “Generally, however, if any attorney is discharged without cause he will be allowed a charging lien upon the proceeds of the lawsuit, the amount to be determined on a quantum meruit basis at the conclusion of the case . . . and his fees will be made a charge included within the fees to which the incoming attorney will be entitled.” *People v. Keeffe*, 50 NY2d 149, 157 [1980]. “[A] hearing may be required to determine the amount of compensation due and owing to the discharged attorney.” *Roe v. Roe*, 117 AD3d 1217, 1219 [3d Dept 2014].

### Discussion

Based on Badalian’s affirmation, the Court finds that good and sufficient cause exists in this case for Movant Law Firm to withdraw as counsel for Plaintiff. *See Mason*, 832 NYS2d at 154. Movant Law Firm is entitled to reimbursement for expenses incurred as well as compensation for work performed on behalf of Plaintiff should Plaintiff retain a new attorney. In the event that Plaintiff retains new counsel, a hearing will be held at the end of the case “to determine the amount of compensation due and owing to the discharged attorney.” *Roe*, 117 AD3d at 1219.

Additionally, Defendants filed a motion for summary judgment (Motion Sequence 3) seeking to dismiss the case as against G. Joel Decastro, M.D., and New York Presbyterian Hospital. No opposition was filed. Where Defendant makes a prima facie showing of entitlement to summary judgment, it is incumbent upon Plaintiff, in opposition, to provide the affidavit of a competent expert, which raises issues of fact. Plaintiff pro se or Plaintiff's incoming counsel **must** submit opposition to Motion Sequence 3 on or before February 2, 2021.

Wherefore, it is hereby

ORDERED that the motion of Krentsel Guzman Herbert, LLC, to be relieved as the attorneys for Plaintiff Josephina Hernandez is granted; and it is further

ORDERED that no further proceedings may be taken in this matter without leave of this court for a period of 60 days from the date of this order within which time Plaintiff Josephina Hernandez must appoint a substitute attorney or shall be deemed to be proceeding pro se; and it is further

ORDERED that, WITHIN 3 DAYS OF THE DATE OF THIS DECISION, Krentsel Guzman Herbert, LLC, shall serve a copy of this order with notice of entry upon Plaintiff Josephina Hernandez and upon the attorneys for all other parties appearing herein by overnight mail; and it is further

ORDERED that, WITHIN 6 DAYS OF THE DATE OF THIS DECISION, Krentsel Guzman Herbert, LLC, shall serve the client file upon Plaintiff Josephina Hernandez; and it is further

ORDERED that any new attorney retained by Plaintiff Josephina Hernandez shall file a notice of appearance with the Clerk of the Trial Support Office (Room 158) and the Clerk of the Part; and it is further

ORDERED that Krentsel Guzman Herbert, LLC's charging lien on Plaintiff Josephina Hernandez's causes of action is preserved until such time as a Court, upon settlement or judgment, may hear and determine whether Krentsel Guzman Herbert, LLC's representation terminated for cause; and it is further

ORDERED that Plaintiff Josephina Hernandez must file opposition to Motion Sequence 3 on or before February 2, 2021; and it is further

ORDERED that Defendants may file a reply to Plaintiff's opposition to Motion Sequence 3 on or before February 16, 2021; and it is further

ORDERED that oral argument on Motion Sequence 3 shall be scheduled for February 18, 2021 in Part 6 at 10:00 am via TEAMS.

NO FURTHER ADJOURNMENTS OR EXTENSIONS SHALL BE GRANTED FOR MOTION SEQUENCE 3.

This constitutes the decision and order of the court. All other relief requested is denied.

**Dated: November 4, 2020**

ENTER:   
\_\_\_\_\_ J.S.C.

**HON. EILEEN A. RAKOWER**

**Check one: FINAL DISPOSITION X NON-FINAL DISPOSITION**