

**Rackman v Ingber**

2020 NY Slip Op 33784(U)

November 12, 2020

Supreme Court, New York County

Docket Number: 654120/2019

Judge: Arlene P. Bluth

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continue to stay this case so that she can attempt to retain new counsel or, if she is unsuccessful, keep Zisholtz & Zisholtz, LLP as her attorneys.

The Court issued an interim order (NYSCEF Doc. No. 77) in which it directed counsel for defendant to submit a reply addressing the issues raised by defendant, including whether defendant stopped paying her bills or whether the firm agreed to take the case for a flat fee.

After reviewing the reply and the associated exhibits, the Court grants the motion. Clearly, there was a retainer that stated that \$2,500 was an initial payment and that after this amount was exhausted, Ingber would be billed monthly (NYSCEF Doc. No. 79). Counsel for defendant also attaches a letter dated July 16, 2020 that it sent to defendant detailing that Mr. Zisholtz had passed away and that they needed to be paid for their services or they could not continue representing her (NYSCEF Doc. No. 81).

The Court observes that Mr. Mastrogiannis is listed as the attorney who filed the initial answer on NYSCEF and this same attorney also filed defendant's answer to the amended complaint (NYSCEF Doc. No. 45), drafted opposition to plaintiff's motion for summary judgment (NYSCEF Doc. No. 17), as well as a notice for discovery in September 2020 (NYSCEF Doc. No. 62). Contrary to defendant's contentions, the docket in this case shows that she remained represented by this *firm*, rather than only Gerald Zisholtz, including Mr. Mastrogiannis throughout this litigation. In reply, Mr. Mastrogiannis swears that he met Ms. Ingber in person (NYSCEF Doc. No. 78 at 2-3). She cannot credibly claim that she is unaware of Mr. Mastrogiannis' involvement in this case or with the firm.

It may be that defendant misunderstood the nature of movant's representation or that her counsel did not effectively communicate that her case was being handled by the firm as a whole.

Under either scenario, there is no basis to deny a motion to withdraw because defendant does not remember a specific attorney who worked at her counsel's firm.

Defendant is correct that the moving papers submitted by her counsel confuses references to "plaintiff" and "defendant" in certain instances. But the Court will overlook that error because there is no question that defendant received the order to show cause and understands the relief that the motion seeks—for her attorneys to withdraw.

The Court questions why defendant wants her current attorneys to continue to represent her; her opposition lists numerous complaints with how her attorneys have handled this case and, specifically, their purported lack of communication about the death of Mr. Zisholtz. The Court will not, as defendant requests, keep movant as her counsel just in case defendant is unable to find new counsel.

Clearly, movant does not want to remain as defendant's counsel and defendant raises many issues with movant's representation. The Court sees no reason to force movant to continue to represent defendant under these circumstances. Moreover, it appears that the opposition filed by defendant was uploaded by an attorney not associated with Zisholtz and Zisholtz, although no notice of appearance for this attorney is on file.

The Court also observes that defendant is correct that the letter submitted by counsel for plaintiff has no bearing on this decision and will not be considered. Plaintiff did not cross-move or submit papers in response to the instant motion; a letter has no significance in this part.

Accordingly, it is hereby

ORDERED that the motion brought by Zisholtz & Zisholtz, LLP, counsel for defendant to withdraw as counsel for defendant is granted conditioned upon outgoing counsel complying with the following:

ORDERED that within 10 days of this order, outgoing attorney shall serve a copy of this order with notice of entry upon defendant by certified mail (not return receipt requested) at 20 Centre Street, Woodmere, New York, 111598 and upon the attorneys for plaintiff by posting to the New York State Courts Electronic Filing System; and it is further

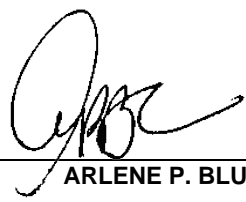
ORDERED that, together with a copy of this order with notice of entry served upon the former client, moving counsel shall forward a notice directing the former client to appoint a substitute attorney within 20 days from the date of the mailing of the notice; and it is further

ORDERED that any new attorney retained by defendant 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 40 days from the date the notice to retain new counsel is mailed; and it is further

ORDERED that no further proceedings may be taken against the former client without leave of this court for a period of 40 days after service on the former client of the aforesaid notice to appoint a substitute attorney; and it is further

ORDERED that a conference is scheduled February 19, 2021. If defendant fails to appear for the upcoming conference, then her answer may be stricken. The pending motions 003 and 004 are adjourned to that date.

11/12/2020  
DATE

  
ARLENE P. BLUTH, J.S.C.

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|-----------------------|-------------------------------------|----------------------------|-------------------------------------|-----------------------|--------------------------|-----------|
| CHECK ONE:            | <input type="checkbox"/>            | CASE DISPOSED              | <input checked="" type="checkbox"/> | NON-FINAL DISPOSITION |                          |           |
|                       | <input checked="" type="checkbox"/> | GRANTED                    | <input type="checkbox"/>            | DENIED                | <input type="checkbox"/> | OTHER     |
| APPLICATION:          | <input type="checkbox"/>            | SETTLE ORDER               |                                     | SUBMIT ORDER          |                          |           |
| CHECK IF APPROPRIATE: | <input type="checkbox"/>            | INCLUDES TRANSFER/REASSIGN |                                     | FIDUCIARY APPOINTMENT | <input type="checkbox"/> | REFERENCE |