

<b>Alef Judaica, Inc. v Best Religious Arts. Embroidery Inc.</b>
2021 NY Slip Op 30507(U)
February 11, 2021
Supreme Court, Kings County
Docket Number: 525592/2019
Judge: Reginald A. Boddie
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At an IAS Commercial Term Part 12 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Borough of Brooklyn, City and State of New York, on the 11th day of February 2021.

PRESENT:

Honorable Reginald A. Boddie, JSC

-----X  
ALEF JUDAICA, INC.,

Plaintiff(s),

Index No. 525592/2019  
Cal. No. 2, 3 MS 1, 2

-against-

BEST RELIGIOUS ARTICLES EMBROIDERY INC., LEAH MILLER, ABRAHAM NEIMAN, 4019 14 LLC, SAMUEL GOLDSTEIN and ABRAHAM WEISEL,

Defendant(s).  
-----X

**DECISION AND ORDER**

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KINGS COUNTY CLERK

<u>Papers</u>	<u>Numbered</u>
MS 1	Docs. # 8-17
MS 2	Docs. # 19-35

Upon the foregoing cited papers, the decision and order on defendants Abraham Neiman (Neiman) and 4019 14 LLC's (4019 14) motion to vacate their default and for an extension of time to answer, pursuant to CPLR 3012 and 2004, and plaintiff's cross-motion to disqualify Rosenberg & Steimetz, P.C. from representing defendants Neiman and 4019 14, pursuant to 22 NYCRR § 1200.0, Rule 1.18, and for default judgment against Neiman and 4019 14, pursuant to CPLR 3215, is as follows:

Plaintiff filed its complaint on November 22, 2019, a Notice of Pendency on November 27, 2019, and served the summons and complaint on defendants on December 11, 2019. Defendants moved herein to compel plaintiffs to accept their untimely answer on the grounds that negotiations to resolve plaintiff's fifth and sixth causes of action related to a mortgage on the subject premises were ongoing from January 30 through February 12, 2020. Defense counsel admitted defendants were served and averred he contacted Jonathan Stein, plaintiff's counsel prior to and during the negotiation to request a stipulation to an extension of defendants' time to answer.

Defense counsel alleged Mr. Stein asked him not to move to extend defendants' time to answer until the mortgage had been paid, and refused to stipulate to such extension. On February 13, 2020, Mr. Stein filed a Cancellation of Notice of Pendency when the issue of the mortgage was resolved by the parties' stipulation.

Defendants argued, pursuant to public policy in favor of resolving cases on their merits, plaintiff should be compelled to accept their late answer, there will be no prejudice to plaintiff, and they have meritorious defenses to the action including "lack of standing, failure to state a cause of action, and dismissal based upon the documentary evidence." Plaintiff opposed arguing it did not receive contact until after defendant was in default and defendants do not have a meritorious defense.

Plaintiff Alef Judaica, Inc. (Alef) also cross-moved to disqualify defense counsel based on an alleged conflict of interest. Plaintiff alleged Elan Oved, Alef's principal met with defense counsel and her colleague Steven Cohn, Esq. on multiple occasions in relation to other litigation over a fifteen-month period beginning on July 23, 2017. Plaintiff alleged that Oved shared hundreds of documents marked "Privileged and Confidential," reviewed with counsel the entire operations of Alef including matters involving defendant Neiman, which are the crux of the instant suit. Mr. Oved averred he provided documents related to the mortgage and note that were at issue in this case. Defense counsel opposed the disqualification.

Defense counsel argued Mr. Oved made misrepresentations of his consultation with her firm on an unrelated matter. Counsel averred Mr. Oved was a prospective client when he met with her on August 21, 2017, and again with her and Mr. Cohen on August 28, 2017. She averred he produced binders of documents which he retained and no copies were made of the documents Mr. Oved shared. Counsel further averred she had very little recollection as to the contents, but recalled they were related to an unrelated matter. She averred she had "zero recollection of any mention"

of the parties named herein. Counsel indicated she exchanged three emails with Mr. Oved during the period between September 2017 through October 2018, but neither she nor Mr. Cohen were retained or provided any documents that were confidential or related to the subject dispute. Counsel also disavowed plaintiff's allegation that Mr. Oved discussed with her his specific relationship to Neiman which is the crux of this lawsuit. As to the mortgage at issue here, Counsel argued there was no dispute concerning it and it has since been paid off. Counsel contended plaintiff filed the instant motion as a litigation tactic to deprive defendants of their choice of counsel.

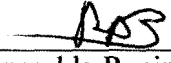
“A party's entitlement to be represented in ongoing litigation by counsel of his or her own choosing is a valued right which should not be abridged absent a clear showing that disqualification is warranted” (*Gulino v Gulino*, 35 AD3d 812 [2d Dept 2006], citing *see Aryeh v Aryeh*, 14 AD3d 634 [2005]; *Dominguez v Community Health Plan of Suffolk*, 284 AD2d 294 [2001]; *Olmoz v Town of Fishkill*, 258 AD2d 447 [1999]). Restrictions on the right to choose counsel are subject to careful scrutiny and the decision to disqualify rests with the sound discretion of the court (*Gulino*, 35 AD3d 812, citing *see S & S Hotel Ventures Ltd. Partnership v 777 S. H. Corp.*, 69 NY2d 437, 443 [1987]; *see Olmoz v Town of Fishkill*, 258 AD2d 447 [1999]). “The party seeking to disqualify a law firm or an attorney bears the burden to show sufficient proof to warrant such a determination” (*Gulino*, 35 AD3d 812, citing *see Aryeh v Aryeh*, 14 AD3d 634 [2d Dept 2005]; *Petrossian v Grossman*, 219 AD2d 587, 588 [1995]).

Here, the plaintiff failed to sustain his burden of demonstrating that disqualification is warranted (*see Gulino*, 35 AD3d 812, citing *Olmoz*, 258 AD2d at 448; *see Petrossian*, 219 AD2d 587; *Matter of Reichenbaum v Reichenbaum & Silberstein*, 162 AD2d 599, 600 [1990]; *Bison Plumbing City v Benderson*, 281 AD2d 955 [2001]). The subject mortgage, which was resolved

by stipulation of the parties, was central to plaintiff's argument for disqualification. Accordingly, plaintiff's motion to disqualify defense counsel is denied.

As to the remainder of the relief sought, defendants' motion is granted to the extent defendant's answer, dated February 27, 2020, is deemed timely nunc pro tunc and plaintiff is compelled to accept it. The remainder of plaintiff's motion seeking a default judgment against defendants is denied.

ENTER:



Honorable Reginald A. Boddie  
Justice, Supreme Court

HON. REGINALD A. BODDIE  
J.S.C.

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FILED  
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