

Sprecase v Tenreiro

2022 NY Slip Op 30547(U)

February 17, 2022

Supreme Court, New York County

Docket Number: Index No. 652830/2018

Judge: Sabrina B. Kraus

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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. SABRINA KRAUS PART 57TR

Justice

-----X

WALTER STIPA SPRECASE,
Plaintiff,

- v -

DANIEL TENREIRO, CARLA M BRASCHI-KARAM DE
TENREIRO,

Defendant.

-----X

INDEX NO. 652830/2018
MOTION DATE 2/17/2022
MOTION SEQ. NO. 018

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 018) 311, 312, 313, 314, 315, 316 as well as an in camera submission by defendant and defendant's counsel dated January 24, 2022.1

were read on this motion for Counsel for defendant to withdraw

This case involves a pledge of personal funds by plaintiff as collateral for a loan from JPMorgan Chase Bank, N.A. (JP Morgan) to defendants, which they used to purchase an apartment at 470 Park Avenue, Unit 8E, in New York City (Unit 8E). When defendants defaulted on the loan, JP Morgan liquidated plaintiff's collateral, and plaintiff commenced this action to recover the funds.

THE PENDING MOTION

Presently before the court is the motion of counsel for defendants to withdraw. This is the third law firm that is seeking to withdraw as defendant's counsel in this action. The motion is opposed by defendant and by plaintiff.

1 The in camera submissions consist of communications between defendant and his attorney, as well as copies of the retainer agreement, bills and payments.

The motion is granted to the extent set forth below and conditioned on counsel continuing representation to finish the pending sanctions hearing and submit opposition as she had previously agreed with plaintiff's counsel on a pending motion to compel (Seq No 17).

ALLEGED FACTS

This action was commenced on June 6, 2018. Since then, defendant has had three separate law firms representing him:

Martin S. Rappaport, P.C. from July 1, 2018 through May 7, 2019;

Akabas & Sproule from May 7, 2019 through June 23, 2021; and

Law Offices of Stephanie E. Emanuel from August 1, 2021 to Present.

Further, defendant has been sanctioned by the court for fabricating, producing and relying upon a fraudulent document. The parties are in the middle of a hearing to determine the amount of sanctions due, which was held open at defendant's request.

On November 22 and December 6, 2021, an Inquest was held before Special Referee Helen Z. Galette to determine the amount of attorney's fees that defendant was responsible for based upon the Court's January 24, 2020 Decision and Order. See NYSCEF 118 and 215. Plaintiff asserts that for all practical purposes, the hearing was concluded on December 6, 2021, and Special Referee Helen Z. Galette was prepared to issue her Report and Determination. However, defendant insisted on continuing the hearing to call David Bamberger, his former attorney, as a witness. Plaintiff objected, but Special Referee Galette did not close the hearing, but ordered defendant to provide a detailed, written offer of proof regarding Bamberger's proposed testimony by January 21, 2022. On January 21, 2022, defendant submitted its offer of proof. Before Special Referee could rule, however, on Monday, January 24, 2022, this Court signed the Order to Show Cause to be relieved, including a stay of all proceedings.

Additionally, On December 22, 2021, plaintiff filed a motion to compel discovery seeking, among other things, a limited forensic inspection of defendant's 2013 Apple iMac Computer, the production of outstanding bank statements and other related financial records, and the continued examination of defendants. See NYSCEF 298 - 309. The original return date on plaintiff's motion was January 18, 2022 and defendants' opposition papers were due on January 5, 2022. See NYSCEF 298. However, on January 10, 2022, after defendant had defaulted by failing to file any opposition papers, Douglas Emanuel requested an adjournment of the return date. As a matter of professional courtesy, plaintiff's counsel consented, and the parties filed a stipulation adjourning the return date to February 7, 2022 with opposition papers due on January 24, 2022. Notably, at that time, Douglas Emanuel never disclosed that the firm intended to file a motion to withdraw, although it is clear to this court based on the *in camera* submission that they had already planned to do so.

On January 20, 2022, defendant's counsel filed the pending motion to withdraw. As a result, plaintiff alleges prejudice as the motion to compel and the sanctions hearing have been stayed and remains in limbo pending this court's determination of the motion to withdraw.

DISCUSSION

Counsel for defendants has shown good cause to be relieved, in that counsel has asserted the nonpayment of fees, interference with her ability to represent her client and an acrimonious relationship between her and her client.

However, to permit withdrawal at this point, specifically before the close of the sanctions hearing which is nearly completed would impose undue prejudice on both her client and plaintiff as both those parties have alleged in their submissions to the court. Thus, counsel must remain on through the completion of said hearing.

Additionally, plaintiff's counsel's statement in his affirmation that counsel asked for a professional courtesy and an extension on the motion to compel, without disclosing that she intended to move to withdraw also requires in fairness that she submit the papers as agreed so that plaintiff may have a determination on that motion. That motion (Seq No 17) is currently scheduled for March 18th before this court. Counsel shall submit any desired opposition papers on or before March 7, 2022. The court will mark that motion as submitted on March 18th without the need for oral argument.

Once the sanctions hearing is complete and the motion papers submitted, this court will sign an order relieving counsel. Said order must be submitted on notice to defendant and plaintiff's counsel. Said order should not provide for any additional stay. Defendant has between now and April 18, 2022 to obtain new counsel, if desired.

All matters in this action except the sanctions hearing and the pending motion to compel shall be stayed through and including April 18th, 2022. Defendant shall use this time to retain new counsel if any.

Movant's request for a charging lien and a retaining lien on the file is denied. The relief is not addressed in the supporting papers for the motion in anyway.

CONCLUSION

Wherefore, it is hereby:

ORDERED that the motion of The Law Offices of Stephanie E Emanuel, Stephanie E. Emanuel, Esq., Douglas A. Emanuel, Esq. and Joseph Maira, Esq to withdraw is conditionally granted as provided above; and it is further

ORDERED that upon completion of the sanctions hearing and submission of opposition papers to the pending motion, counsel may submit an order confirming said withdrawal as counsel, on notice to defendants and plaintiff's counsel; and it is further

ORDERED that other than the motion to compel and the sanctions hearing this action be stayed through and including April 18, 2022 for defendants to obtain new counsel; and it is further

ORDERED that opposition papers, regarding Motion Seq No 17 be filed by defendants' counsel on or before March 7, 2022, and the court will mark the motion submitted without oral argument on March 18, 2022; and it is further

ORDERED that defendants have 60 days from the date of this decision to obtain new counsel or elect to proceed *pro se*; and it is further

ORDERED that the balance of relief requested is denied; and it is further

ORDERED that, within 10 days from entry, movants shall serve a copy of this order with notice of entry upon the defendants at their last known address by certified mail, return receipt requested, and upon the attorneys for all other parties appearing herein by posting to the New York State Courts Electronic Filing System; and 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 defendants to appoint a substitute attorney within 60 days from the date of this decision except that, in the event defendants intend instead to represent themselves, they shall notify the Clerk of the Part of this decision in writing within said 60-day period; and it is further

ORDERED that any new attorney retained by defendants shall 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; and it is further

ORDERED that the departing attorney shall, within 10 days from entry, serve a copy of this order with notice of entry on 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).

2/17/2022

DATE

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SABRINA KRAUS, 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