

Picken v RN Realty, LLC
2022 NY Slip Op 30700(U)
March 4, 2022
Supreme Court, New York County
Docket Number: Index No. 653313/2014
Judge: Andrea Masley
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

-----X

ALEXANDER PICKEN and PICKEN REAL ESTATE INC.,

INDEX NO. 653313/2014

Plaintiffs,

MOTION DATE N/A

- v -

RN REALTY, LLC,

MOTION SEQ. NO. 012

Defendant.

**DECISION + ORDER ON
MOTION**

-----X

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 012) 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 380, 381

were read on this motion to/for ATTORNEY -
DISQUALIFY/RELIEVE/SUBSTITUTE/WITHDRAW.

Upon the foregoing documents, it is

This 2014 action is scheduled for a jury trial March 21 to 25, 2022. Motions in limine are scheduled for argument on February 28, 2022. For the reasons stated on the record on February 24, 2022, the motion to be relieved as counsel is granted. That plaintiffs have paid the attorney who seeks to withdraw and seek reimbursement is not a reason for this court to deny the motion and is not an issue before this court. Plaintiffs are referred to Small Claims Court, NYC Civil Court, or the New County Lawyers' Association for disputes, if any, concerning attorneys' fees. That the retainer agreement may contain a contingency fee does not lock counsel into continuing to represent plaintiffs under the circumstances. Likewise, the issue of whether the contingency fee is enforceable is not before this court and is premature, in any case since plaintiffs have not been awarded any damages.

ORDERED that the motion of Stuart F. Shaw, Esq. to be relieved as attorney for plaintiffs Alexander Picken and Picken Real Estate, Inc. is granted, over Picken's objection, upon filing of proof of compliance with the following conditions; and it is further

ORDERED that, within 10 days from the date of this decision, the attorney shall serve a copy of this order with notice of entry upon the former clients at their last known addresses 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 former client, moving counsel shall forward a notice directing the former client to appoint a substitute attorney within 30 days from the date of this decision and the client shall comply therewith, except that, in the event the individual plaintiff Picken intends instead to represent himself, he shall notify the Clerk of the Part of this decision in writing to SFC-Part48@nycourts.gov within the 30-day period; and it is further

ORDERED that any new attorney retained by plaintiffs 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 within 40 days from the date of this decision; and it is further

ORDERED that no further proceedings may be taken against the former clients without leave of this court for a period of 40 days after the date of this decision; and it is further

ORDERED on consent of all parties, this action is stayed pending a decision from the First Department which was argued February 23, 2022; and it is further

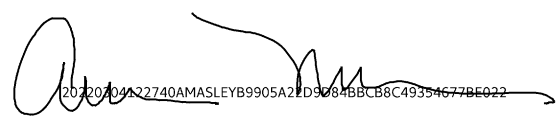
ORDERED that defendant's motions 008, 009, 010, 011 are adjourned to May 3, 2022 in Room 242, 60 Centre Street, at 2:15 PM, and plaintiffs are directed to serve and submit opposition by April 15, 2022 at 5 pm and defendant may serve and file a reply by April 29, 2022 at 5 pm. If there is no decision from the Appellate Division by April 11, 2022, then the argument date will be adjourned again; 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 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); and it is further

ORDERED that attorney Howard M. Rubin, who on February 9, 2022 filed a notice of appearance (NYSCEF 378), purportedly for a limited purpose, shall file a motion by OSC to be relieved as counsel by March 24, 2022. An attorney may limit the scope of its engagement. (NY Rules of Professional Conduct, Rule 1.2. Scope of Representation and Allocation of Authority Between Client and Lawyer.) However, "if the limited representation includes a court appearance, then the lawyer has to "complete" the court appearance even if it takes longer than the lawyer or client anticipated—and if the judge adjourns the matter in the middle, the lawyer has to come back and complete the appearance." (§ 6.5:7 Phrase-by-phrase analysis, Simon's NY

Rules of Prof. Conduct § 6.5:7.) Otherwise, Rubin will be expected to appear for plaintiff Picken Real Estate, Inc.



20220304122740AMASLEYB9905A21D9084BBC8C49354677BE022

3/4/2022
DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
--------------------------	--------------

<input type="checkbox"/>	SUBMIT ORDER
--------------------------	--------------

CHECK IF APPROPRIATE:

<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN
--------------------------	----------------------------

<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE
--------------------------	-----------------------	------------------------------------