

Dowell v City of New York
2022 NY Slip Op 32561(U)
July 28, 2022
Supreme Court, New York County
Docket Number: Index No. 158752/2012
Judge: Judy H. Kim
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JUDY H. KIM **PART** **05RCP**

Justice

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COLLEEN DOWELL,

Plaintiff,

- v -

CITY OF NEW YORK, DETECTIVE DOUGLAS STRONG,
PARRILLA GRILL REST. INC., 3920 BWY. REST.
INC., JOSE HERNANDEZ, DETECTIVE JOHN DOES # 1 -
3,

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 006) 167, 168, 169, 170
were read on this motion to WITHDRAW.

**DECISION + ORDER ON
MOTION**

On or about December 10, 2012, plaintiff Colleen Dowell commenced this action for, inter alia, negligence and negligent hiring, based on her alleged sexual assault by defendants Douglas Strong and Jose Hernandez on February 16, 2012 (NYSCEF Doc. No. 160 [Second Am. Compl. at ¶¶1, 39-40]). On August 31, 2016, this action was subsequently removed to the United States District Court for the Southern District of New York by counsel for defendant Strong (NYSCEF Doc. No. 92). It was subsequently remanded to this Court on June 27, 2017 (NYSCEF Doc. No. 97).

On or about May 15, 2018, Hernandez retained McLoughlin, O'Hara, Wagner & Kendall, LLP ("McLoughlin") as counsel for himself and corporate defendants Parilla Grill Rest. Inc., and 3920 Bwy. Rest. Inc.. In a decision and order dated May 1, 2019, this Court (Hon. Alexander M. Tisch) granted the motion by plaintiff's counsel to withdraw and stayed this action

for ninety days for plaintiff to retain new counsel (NYSCEF Doc. No. 148).

On or about January 19, 2021, McLoughlin interposed an Answer on behalf of defendants Hernandez, Parilla Grill Rest. Inc., and 3920 Bwy. Rest. Inc., asserting cross-claims against the City (NYSCEF Doc. No. 162). McLoughlin now moves, by order to show cause, for leave to withdraw as counsel for Hernandez, Parilla Grill Rest. Inc., and 3920 Bwy. Rest. Inc. on grounds of lack of communication and cooperation as well as Hernandez's failure to pay legal fees. In support of this motion, movant submits the affirmation of Daniel M. O'Hara, Esq. attesting that on no fewer than six recent occasions, he has called or emailed Hernandez to confer about the substance of the case and unpaid legal bills in the amount of \$4,413.89 but that the movant has not been paid (NYSCEF Doc. No. 168 [O'Hara Affirm. at ¶¶3, 6-8]). Neither Hernandez, Parilla Grill Rest. Inc., or 3920 Bwy. Rest. Inc. have submitted opposition to the motion.

DISCUSSION

"An attorney may be permitted to withdraw from employment where a client refuses to pay reasonable legal fees. Additionally, an attorney may withdraw from representing a client if the client fails to cooperate in the representation or otherwise renders the representation unreasonably difficult for the lawyer to carry out employment effectively" (Applebaum v Einstein, 163 AD3d 905, 907 [2d Dept 2018] [internal citations and quotations omitted]; see also Dillon v Otis El. Co., 22 AD3d 1, 4 [1st Dept 2005]; Bok v Werner, 9 AD3d 318 [1st Dept 2004]). In this case, there is no dispute that Hernandez is in substantial arrears in the payment of legal fees and has failed to cooperate in his legal representation. Accordingly, the instant motion is granted without opposition.

In light of the foregoing, it is

ORDERED that the motion is granted without opposition to the extent of permitting McLoughlin, O'Hara, Wagner & Kendall, LLP to withdraw as counsel for Jose Hernandez, Parilla Grill Rest. Inc., and 3920 Bwy. Rest. Inc. in this matter; and it is further

ORDERED that within five days of the date of this decision and order, McLoughlin, O'Hara, Wagner & Kendall, LLP shall serve a copy of this order, with notice of entry, upon defendants Jose Hernandez, Parilla Grill Rest. Inc., and 3920 Bwy. Rest. Inc. by e-mail and U.S. first-class mail, and upon all other parties by e-filing via NYSCEF; and it is further

ORDERED that this action is stayed for a period of sixty days from the date of this decision and order, within which time Parilla Grill Rest., Inc. and 3920 Bwy. Rest., Inc. must retain new counsel, and it is further

ORDERED that, should Jose Hernandez fail to retain new counsel for himself within sixty days from the date of this decision and order he shall be deemed to be proceeding pro se; and it is further

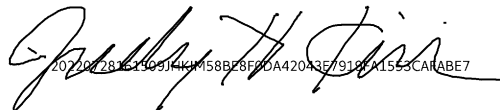
ORDERED that the parties are directed to appear for an in-person settlement conference before the Court at 80 Centre Street, Room 320 on October 12, 2022 at 10:00 a.m.; and it is further

ORDERED that, should Jose Hernandez fail to appear at the October 12, 2022 conference, plaintiff may be granted a default judgment as against him pursuant to 22 NYCRR §202.27; and it is further

ORDERED that, should Parilla Grill Rest., Inc. and 3920 Bwy. Rest., Inc. fail to retain counsel—and serve notice of such retention upon all counsel—prior to the parties' appearance before the Court on October 12, 2022, plaintiff may be granted a default judgment as against them pursuant to 22 NYCRR §202.27; and it is further

ORDERED that the Clerk of the Court is directed to adjourn the upcoming status conference in the DCM Part from August 16, 2022 to October 18, 2022.

This constitutes the decision and order of the Court.



7/28/2022

DATE

JUDY H. KIM, J.S.C.

CHECK ONE:

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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