

Washington v New York City Hous. Auth.

2022 NY Slip Op 33731(U)

October 28, 2022

Supreme Court, New York County

Docket Number: Index No. 153009/2022

Judge: Leslie A. Stroth

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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. LESLIE A. STROTH PART 52

Justice

-----X

INDEX NO. 153009/2022

ANTWONE WASHINGTON,

MOTION DATE / 10/26/22

Plaintiff,

MOTION SEQ. NO. 002

- v -

NEW YORK CITY HOUSING AUTHORITY, THE CITY OF NEW YORK

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 15, 16, 17, 18, 19, 21

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

Pending before the Court are two motions: (1) the motion to dismiss of defendant New York City Housing Authority (NYCHA) (motion sequence 001) and (2) plaintiff's counsel's subsequent order to show cause to be relieved as counsel (motion sequence 002). The underlying matter involves personal injuries arising out of plaintiff's alleged trip and fall accident.

NYCHA's motion to dismiss seeks to dismiss plaintiff's complaint for plaintiff's failure to appear for an oral examination, pursuant to General Municipal Law §50-h and Public Housing Law §157. Prior to the return date on NYCHA's motion, plaintiff's counsel, Law Office of Evans D. Prieston, P.C., moved for an order pursuant to CPLR 321 to be relieved as counsel, based on an irrevocable breakdown between of the attorney-client relationship. Plaintiff's counsel also moved for a stay of all proceedings to allow plaintiff to retain new counsel.

An attorney may withdraw as counsel of record upon a showing of good and sufficient cause for withdrawal and where reasonable notice has been provided to plaintiffs. See Genn v Ratnathicam, 187 AD3d 539 (1st Dept 2020). Deterioration of the attorney-client relationship is a commonly recognized

ground for a withdrawal motion. Good and sufficient cause exists where there are "...irreconcilable differences between the attorney and the client with respect to the proper course to be pursued in litigation." *Winters v Rise Steel Erection Corp.*, 231 AD2d 626 (2d Dept 1996).

In support of his motion, attorney Cory P. Strauss affirms that, due to the irrevocable breakdown between attorney and client, Attorney Strauss cannot continue to prosecute this matter. Specifically, Attorney Strauss also affirms that plaintiff has failed to appear for multiple scheduled GML § 50-h hearings, despite agreeing to appear, and that his unwillingness to cooperate has made it impossible to continue to pursue plaintiff's claim. No opposition has been filed by plaintiff or opposing counsel.

The matter was heard on October 26, 2022, at which Attorney Strauss appeared and further explained the reasons for his motion. Counsel for defendants NYCHA and the City of New York also appeared. NYCHA did not take a position on the motion but did argue that its pending motion to dismiss, which is unopposed, should not be stayed and should be decided upon the papers filed. The City of New York took no position on either motion.

The Court now finds that the Law Office of Evans D. Prieston, P.C. has demonstrated good and sufficient cause to be relieved as counsel. Moreover, the Court notes that because this case is in its early stages, discovery is not complete, and no motion practice has yet ensued, the prejudice resulting from allowing the Law Office of Evans D. Prieston, P.C. to withdraw is minimal.

However, given that NYCHA's pending motion involves scheduling issues that are subject to the breakdown of the attorney-client relationship, the Court declines to deem NYCHA's motion to dismiss fully submitted at this point. The Court grants plaintiff's counsel's motion to withdraw, stays the action for plaintiff to retain new counsel or appear self-represented, and sets a short briefing schedule to allow for new counsel to appear and oppose NYCHA's motion, as outlined below. NYCHA need not re-file its

motion to dismiss, and the motion will be considered on submission only. No additional appearance shall be necessary on motion sequence 002.

Accordingly, it is

ORDERED that the motion of the Law Office of Evans D. Prieston, P.C. to be relieved as attorney for Antwone Washington is granted upon filing of proof of compliance with the following conditions; and it is further

ORDERED that, within 10 days from entry, said attorney shall serve a copy of this order with notice of entry upon the former client at his 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 former client, moving counsel shall forward a notice directing the former client to appoint a substitute attorney within 60 days from the date of the mailing of the notice and the client shall comply therewith, except that, in the event plaintiff intends instead to represent himself, he 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 plaintiff 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 65 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 65 days after service on the former client of the aforesaid notice to appoint a substitute attorney; and it is further

ORDERED that any opposition to motion sequence 002 shall be served and filed by January 9, 2023; and it is further

ORDERED that reply papers, if any, to motion sequence 002 shall be served and filed by January 16, 2023; and it is further


ORDERED that motion sequence 002 shall be adjourned to January 17, 2023, for submission only; 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).

The foregoing constitutes the decision and order of the Court.

10/28/2022
DATE


LESLIE A. STROTH, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: