

**PB 151 Grand LLC v 9 Crosby, LLC**

2023 NY Slip Op 30540(U)

February 22, 2023

Supreme Court, New York County

Docket Number: Index No. 156225/2017

Judge: Frank P. Nervo

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(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  
NEW YORK COUNTY**

PRESENT: HON. FRANK P. NERVO PART 04

*Justice*

-----X

PB 151 GRAND LLC

Plaintiff,

- v -

9 CROSBY, LLC,

Defendant.

-----X

INDEX NO. 156225/2017

MOTION DATE 01/27/2023

MOTION SEQ. NO. 006

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 006) 190, 191, 192, 195, 196

were read on this motion to/for SUBST/RELIEVE/WITHDRAW COUNSEL.

Petitioner’s counsel moves by order to show cause to be relieved as counsel due to petitioner’s failure to meaningfully communicate with counsel or pay counsel’s outstanding legal bills. The application is chiefly unopposed, respondent seeks only to strictly limit the timeframe for petitioner to retain substitute counsel. In effect, respondent seeks an order conditionally finding petitioner in default on currently pending motions for damages and contempt, should petitioner fail to timely retain substitute counsel.

“The fact that a client fails to pay an attorney for services rendered does not, without more, entitle the attorney to withdraw,” especially where proceedings have been ongoing (*George v. George*, 217 AD2d 913 [4th Dept 1995]);

*see also Haskell v. Haskell*, 185 AD2d 333 [2d Dept 1992]). However, where a client has failed to respond to their attorney's communications in addition to failing to pay their attorney's fee, the Appellate Division has found an attorney is entitled to withdraw on "unreasonably difficult" grounds (*see e.g. Bok v. Werner*, 9 AD3d 318 [1st Dept 2004]; *Aragona v. Shaibani*, 138 AD3d 649 [2d Dept 2016]).

Here, petitioner's counsel avers petitioner has not meaningfully communicated with counsel and counsel is unable to engage in settlement efforts due to this lack of communication. Counsel further avers that its legal bills remain outstanding. Petitioner has not appeared to refute these claims. Consequently, petitioner's counsel has stated sufficient grounds to be relieved. However, the Court is mindful of the dictates of CPLR § 321(a) requiring that corporate entities appear only by counsel and prohibiting pro-se appearances of same.

Accordingly, it is  
ORDERED that Nicholas M. David, Esq. and Troutman Pepper Hamilton Sanders LLP, are relieved as counsel for petitioner upon filing of proof of compliance with the following conditions; and it is further

ORDERED that, within 5 days from entry, moving attorney shall serve a copy of this order with notice of entry upon the former client at its 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 within 5 days, 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 no later than March 31, 2023, and the client shall comply therewith. Petitioner shall be prohibited from appearing pro-se pursuant to CPLR § 321(a); and it is further

ORDERED that the departing attorney shall, within 5 days from entry, serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office; 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; and it is further

ORDERED that, within 5 days from entry, moving attorney shall serve a copy of this order with notice of entry upon the Special Referee, assigned by the Court’s May 20, 2022 Order, by certified mail with return receipt and file proof of service of same to NYSCEF; and it is further

ORDERED that any new attorney retained by petitioner shall file a notice of appearance with the Clerk of the General Clerk’s Office and the Clerk of the Part no later than March 31, 2023; and it is further

ORDERED that no further proceedings may be taken against the former client without leave of this court before March 31, 2023; and it is further

ORDERED that should petitioner fail to substitute counsel by March 31, 2023, respondent may file a motion to strike petitioner’s pleading including for failure to prosecute, find petitioner in default on the pending damages and contempt motions, and/or any other appropriate relief, and such motion shall be


returnable in Part 4 no later than April 28, 2023. Failure to timely file such motion may constitute waiver of such relief; and it is further

ORDERED that by April 14, 2023, all counsel, including any substituted counsel for petitioner, shall contact the Special Referee, assigned by the Court's May 20, 2022 Order, to schedule the damages and contempt hearing at a time and location of the Referee's choosing on or before June 30, 2023; and it is further

ORDERED that failure to timely schedule the pending hearings before the Special Referee, as above, may result in sanctions, including but not limited to waiver, striking pleadings, findings of default, and monetary sanctions, as may be appropriate in the Court's discretion; and it is further

ORDERED that should the conditions herein remain unsatisfied, Troutman Pepper Hamilton Sanders LLP shall remain counsel of record for petitioner.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT

<u>2/22/2023</u> DATE			 HON. FRANK P. NERVO
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	J.S.C.
	<input type="checkbox"/> GRANTED	<input type="checkbox"/> DENIED	<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