

**Velez v New York City Tr. Auth.**

2023 NY Slip Op 33913(U)

November 2, 2023

Supreme Court, New York County

Docket Number: Index No. 150732/2022

Judge: Denise M. Dominguez

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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. DENISE M DOMINGUEZ PART 21**

*Justice*

-----X INDEX NO. 150732/2022

DANIEL VELEZ, MOTION SEQ. NO. 002

Plaintiff,

- v -

NEW YORK CITY TRANSIT AUTHORITY, MANHATTAN &  
BRONX SURFACE TRANSIT OPERATING AUTHORITY,  
JOSE ADORNO, RAJENDRA KANKATI, SREETEJA  
KANKATI

**DECISION + ORDER ON  
MOTION**

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 31, 32, 33, 34, 35, 36

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

Upon reading the above listed documents and following oral argument, the unopposed motion by Order to Show Cause by Mirman Markovits & Landau, P.C., counsel for Plaintiff DANIEL VELEZ, is granted.

This personal injury matter arises out of a May 14, 2021 motor vehicle accident that occurred at or near 16 34<sup>th</sup> Street in Manhattan, between a public bus and a vehicle operated by Defendant SREETEJA KANKATI.

This action was commenced on behalf of Plaintiff DANIEL VELEZ by Mirman Markovits & Landau, P.C. on January 26, 2022 by the filing of the summons and complaint (NYSCEF Doc. #1). Upon a review of the record, a Preliminary Conference has not yet been held in this matter.

Mirman Markovits & Landau, P.C. now moves by Order to Show Cause: 1) to be relieved as counsel for Plaintiff pursuant to CPLR 321(b)(2); 2) for a charging lien concerning its services and expenses; and 3) for a stay to allow the Plaintiff to retain new counsel. Mirman Markovits & Landau, P.C. personally served the Plaintiff with the motion by Order to Show Cause (NYSCEF Doc. 35) and the Plaintiff appeared for before the Court for oral argument.

Although the Plaintiff DANIEL VELEZ did not submit an affirmation in opposition to the motion, at oral argument the Plaintiff advised this Court that he did not agree with Mirman

Markovits & Landau, P.C.'s request to be relieved. To supplement their application, Mirman Markovits & Landau, P.C. then provided this Court with further details to support their withdrawal as counsel *in camera*, without the participation of the appearing Defendants, due to privacy and confidentiality concerns.

“An attorney of record may withdraw or be changed by order of the court in which the action is pending, upon motion on such notice to the client of the withdrawing attorney, to the attorneys of all other parties in the action or, if a party appears without an attorney, to the party, and to any other person, as the court may direct.” (CPLR 321(2)). “[A]n attorney may withdraw as counsel of record upon a showing of good and sufficient cause, and reasonable notice to the client. (*Mason v. MTA New York City Transit*, 38 A.D.3d 258, 832 N.Y.S.2d 153, 154 [1<sup>st</sup> Dept 2007]). Pursuant to Mirman Markovits & Landau, P.C.'s representation at oral argument, Mirman Markovits & Landau, P.C. has demonstrated good and sufficient cause to be relieved and has shown due notice to Plaintiff of the within application. Accordingly, the motion is granted.

In light of the withdraw of Mirman Markovits & Landau, P.C. as counsel for Plaintiff, this matter shall be stayed for 60 days in order for the Plaintiff to retain new counsel, or to advise this Court that Plaintiff will appear in this matter *pro se*. As discovery remains outstanding, and as a Preliminary Conference has not yet been held, following the stay, the parties are directed to submit a Preliminary Conference Order on consent as per Part 21 rules on or by February 2, 2024.

Mirman Markovits & Landau, P.C.'s request to assert a charging lien for disbursements and attorneys' fees, to be assessed at the conclusion of this matter, is also granted. “Under Judiciary Law § 475, a charging lien automatically comes into existence, without notice or filing, upon commencement of the action, and is measured by the reasonable value of the attorney's services in the action, unless fixed by agreement. *Resnick v. Resnick*, 24 A.D.3d 238, 239, 806 N.Y.S.2d 200, 201 [1<sup>st</sup> Dept 2005]). “[W]here an attorney's representation terminates and there has been no misconduct, no discharge for just cause and no unjustified abandonment by the attorney, the attorney's right to enforce the statutory charging lien is preserved....” (*Klein v. Eubank*, 87 N.Y.2d 459, 464, 663 N.E.2d 599, 601 [1996]). “Generally, however, if an attorney is discharged without cause he will be allowed a charging lien upon the proceeds of the lawsuit, the amount to be determined on a quantum meruit basis at the conclusion of the case.” (*People v. Keefe*, 50 N.Y.2d 149, 156, 405 N.E.2d 1012, 1015 [1980]). Upon review, Mirman Markovits & Landau, P.C. is

entitled to reimbursement for reasonable value of its attorneys' services, to be determined at the conclusion of this matter.

Accordingly, it is hereby

ORDERED that the motion of Mirman Markovits & Landau, P.C. to be relieved as attorney for Plaintiff, DANIEL VELEZ, is granted without opposition, upon filing of proof of compliance with the following conditions; and it is further

ORDERED that, within 20 days from entry, Mirman Markovits & Landau, P.C. shall serve a copy of this order with notice of entry upon the former client, Plaintiff DANIEL VELEZ, at their last known address by regular and certified mail, return receipt requested, and upon the attorneys for all other parties appearing herein via 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 Plaintiff DANIEL VELEZ, Mirman Markovits & Landau, P.C. shall also forward a notice directing Plaintiff DANIEL VELEZ to appoint a substitute attorney within 60 days from the date of the mailing of the notice and Plaintiff BA DANIEL VELEZ shall comply therewith, except that, in the event the Plaintiff intends instead to represent himself, he shall notify the Clerk of this Part of this decision in writing within said 60-day period; and it is further

ORDERED that any new attorney retained by Plaintiff DANIEL VELEZ shall file a notice of appearance with the Clerk of the General Clerk's Office and the Clerk of the Part within 60 days from the date the notice to retain new counsel is mailed; and it is further

ORDERED that Mirman Markovits & Landau, P.C.'s charging lien is preserved until such time as a Court, upon settlement or judgment, may hear and determine the reasonable value of attorney's services provided; and it is further


ORDERED that no further proceedings may be taken in this matter without leave of this court for a period of 60 days after service on Plaintiff DANIEL VELEZ of the aforesaid notice to appoint a substitute attorney; and it is further

ORDERED that the parties shall submit a joint proposed Preliminary Conference Order as per Part 21 Rules on February 2, 2024; and it is further

ORDERED that Mirman Markovits & Landau, P.C. shall serve a copy of this order with notice of entry upon the Clerk of the Court and the Clerk of the General Clerk's Office; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office 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).

11/2/2023  
DATE

  
**HON. DENISE M. DOMINGUEZ**  
J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: