

Komomolov v Popik

2023 NY Slip Op 34132(U)

November 27, 2023

Supreme Court, New York County

Docket Number: Index No. 155100/2017

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 12

Justice

-----X

ALEXANDER KOMOMOLOV, ALSKOM REALTY,
LLC, HIGH VALUE TRADING, LLC,

Plaintiff,

- v -

ROMAN POPIK, LAW OFFICE OF ROMAN POPIK, P.C.,

Defendant.

-----X

ROMAN POPIK

Plaintiff,

-against-

PHILIP C. CHRONAKIS, ESQ., BUDD LARNER, P.C.

Defendant.

-----X

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595654/2017

The following e-filed documents, listed by NYSCEF document number (Motion 006) 197, 198, 199, 200, 201, 202, 213, 214, 215

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

Plaintiffs' counsel, Kranjac, Tripodi & Partners LLP., moves for an order pursuant to CPLR 321 to be relieved as counsel for plaintiffs based on an irrevocable breakdown between plaintiffs Alexander Komomolov, Alskom Realty, LLC and High Value Trading, LLC (plaintiffs) and their counsel and staying all proceedings for a period of 60 days to allow plaintiffs to retain new counsel.¹ The underlying matter involves alleged legal malpractice.

¹ This is plaintiffs' counsel's second application for such relief. The Court declined to sign counsel's first order to show cause seeking to be relieved (motion sequence 005), as it did not include supporting documentation. The instant renewed application contains more specific facts and includes the relevant communications.

I. Motion to Be Relieved as 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 Joseph Tribodi affirms that due to the irrevocable breakdown between attorney and client in this matter, firm cannot continue to prosecute this matter. Specifically, plaintiff's counsel has contacted plaintiff on numerous occasions regarding outstanding legal fees. A meeting was scheduled with plaintiffs for Thursday, September 28, 2023, to discuss continued prosecution of the matter. Plaintiffs cancelled on the eve of the meeting. On October 2, 2023, plaintiffs' counsel e-mailed plaintiffs to discuss continued prosecution of the matter and payment of outstanding fees. Plaintiffs' counsel clearly wrote that if they did not receive communication from plaintiffs regarding this action, a motion to be relieved as counsel would be forthcoming. Plaintiffs' counsel received no response, and the instant order to show cause ensued. No opposition has been filed by plaintiff or opposing counsel.

The matter was heard by the Court on November 21, 2023, at which time plaintiffs' counsel appeared and further explained the reasons for his motion. The Court now finds that the Kranjac, Tripodi & Partners LLP. demonstrates good and sufficient cause to be relieved as counsel, especially given plaintiffs' lack of response to their counsel's numerous communications.

Further, all proceedings are stayed for a period of 60 days to allow plaintiff to retain new counsel. As plaintiffs Alskom Realty, LLC and High Value Trading, LLC are limited liability entities that must be represented by counsel pursuant to CPLR 321, their failure to appoint new counsel during the 60-day stay will result in dismissal of their claims, as directed below.

II. Motion to Dismiss Third Party Complaint

Plaintiffs' counsel's order to show cause was signed by the Court on October 18, 2023 and directed that "pending the hearing of this application all further proceedings in this matter be stayed." NYSCEF doc. no. 202. In contravention of the stay, third-party defendants Philip C. Chonakis, Esq. and Budd Lerner, P.C. filed a notice of motion to dismiss the third-party complaint against them on November 6, 2023 (motion sequence 007). *See* NYSCEF doc. no. 203. As the motion was filed in the duration of the stay that was in place during the pendency of the order to show cause, the motion is denied, with leave to re-file upon the expiration of the 60-day stay detailed herein.

Therefore, it is

ORDERED that the motion of Kranjac, Tripodi & Partners LLP to be relieved as attorneys for plaintiffs Alexander Komomolov, Alskom Realty, LLC and High Value Trading, LLC 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 clients at their 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 clients, moving counsel shall forward a notice directing the former clients 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 individual defendant Alexander Komomolov intends instead to represent himself, they 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 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 70 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 60 days after service on the former client of the aforesaid notice to appoint a substitute attorney; and it is further

ORDERED that if a notice of appearance is not timely filed by a new attorney on behalf of limited liability defendants Alskom Realty, LLC and High Value Trading, LLC., then their claims shall be dismissed; 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); and it is further

ORDERED third-party defendants Philip C. Chonakis, Esq. and Budd Lerner, P.C. may re-file their motion to dismiss the third-party upon the expiration of the 60-day stay; and it is further

ORDERED that the Part Clerk shall schedule the matter for a discovery conference with the Court on the next available date, following the expiration of the 60-day stay.

The foregoing constitutes the decision and order of the Court.

11/27/2023
DATE


LESLIE STROTH, J.S.C.

CHECK ONE:

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