

**Turner v City of New York**

2024 NY Slip Op 30215(U)

January 3, 2024

Supreme Court, New York County

Docket Number: Index No. 157062/2022

Judge: Denise M. Dominguez

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. DENISE M DOMINGUEZ PART 21**

*Justice*

-----X INDEX NO. 157062/2022

SHANTA TURNER,

MOTION SEQ. NO. 001

Plaintiff,

- v -

THE CITY OF NEW YORK, NEW YORK CITY TRANSIT  
AUTHORITY, METROPOLITAN TRANSPORTATION  
AUTHORITY

**DECISION + ORDER ON  
MOTION**

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 19, 20, 21, 22, 23  
were read on this motion to/for RETENTION/RELEASE

Upon reading the above listed documents and following oral argument, the unopposed motion by Order to Show Cause by Rosenbaum & Rosenbaum, P.C., counsel for Plaintiff SHANTA TURNER, is granted.

This personal injury matter arises out of a February 6, 2018 trip and fall incident involving sidewalk grates at or near 23 Malcolm X Boulevard in Manhattan.

This action was commenced on behalf of the Plaintiff by Rosenbaum & Rosenbaum, P.C. on August 18, 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.

Rosenbaum & Rosenbaum, 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 and retaining lien concerning lien; and 3) for a stay to allow the Plaintiff to retain new counsel. Rosenbaum & Rosenbaum, P.C. timely served the Plaintiff with the motion by Order to Show Cause via overnight mail (NYSCEF Doc. 23).

At oral argument, Rosenbaum & Rosenbaum, P.C. provided this Court with details to support their withdrawal as counsel as same were not specifically included in the motion papers

due to confidentiality/privacy concerns. Plaintiff did not appear for oral argument, and did not submit any opposition to the motion.

“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]). Upon review, and following oral argument, it is clear that there are irreconcilable differences and that the attorney-client relationship cannot continue. Rosenbaum & Rosenbaum, 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 Rosenbaum & Rosenbaum, P.C. as counsel for Plaintiff, this matter shall be stayed for 60 days in order for the Plaintiff to formally retain new counsel, or to advise this Court that Plaintiff will appear in this matter *pro se* and register with the New York State Courts Electronic Filing system.

Rosenbaum & Rosenbaum, P.C.’s request to assert a charging lien for disbursements and attorneys’ fees 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, Rosenbaum & Rosenbaum, P.C. is entitled to reimbursement for reasonable value of its attorneys’ services, to be determined at the conclusion of this matter.

Rosenbaum & Rosenbaum, P.C.’s request to assert a retaining lien is also granted. (*See Tuff & Rumble Mgmt., Inc. v. Landmark Distributors, Inc.*, 254 A.D.2d 15, 677 N.Y.S.2d 788 [1st

Dept 1998]; *Gonzalez v. City of New York*, 45 A.D.3d 347, 846 N.Y.S.2d 92 [1st Dept 2007]). However, as Rosenbaum & Rosenbaum, P.C. does not set forth the amount it is alleging, at this time, no determination is made as to the reasonableness or extent of any claimed disbursements constituting the lien.

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 April 12, 2024.

Accordingly, it is hereby

ORDERED that the motion of Rosenbaum & Rosenbaum, P.C. to be relieved as attorney for Plaintiff, SHANTA TURNER, is granted upon filing of proof of compliance with the following conditions; and it is further

ORDERED that, within 20 days from entry, Rosenbaum & Rosenbaum, P.C. shall serve a copy of this order with notice of entry upon the former client, Plaintiff SHANTA TURNER, 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 SHANTA TURNER, Rosenbaum & Rosenbaum, P.C. shall also forward a notice directing the Plaintiff to appoint a substitute attorney within 60 days from the date of the mailing of the notice and the Plaintiff shall comply therewith, except that, in the event the Plaintiff intends instead to represent themselves, they shall notify the Clerk of this Part of this decision in writing within said 60-day period and shall register with the New York State Courts Electronic Filing system; and it is further

ORDERED that any new attorney retained by Plaintiff SHANTA TURNER 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 Rosenbaum & Rosenbaum, 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 Rosenbaum & Rosenbaum, P.C.'s retaining lien concerning any disbursements is preserved; 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 SHANTA TURNER 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 April 12, 2024; and it is further

ORDERED that Rosenbaum & Rosenbaum, 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).

1/3/2024

DATE

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

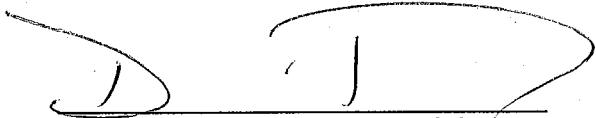
GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

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