

Uss v City of New York

2024 NY Slip Op 30280(U)

January 19, 2024

Supreme Court, New York County

Docket Number: Index No. 150049/2023

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

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INDEX NO. 150049/2023

KATARZYNA SYLWIA USS,

MOTION SEQ. NO. 002

Plaintiff,

- v -

THE CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF TRANSPORTATION, MTA BRIDGES
AND TUNNELS C/O METROPOLITAN TRANSPORTATION
AUTHORITY

DECISION + ORDER ON MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31

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

Upon reading the above listed documents and following oral argument, the unopposed motion by Order to Show Cause by Steven Louros, Esq., counsel for Plaintiff KATARZYNA SYLWIA USS, is granted.

This personal injury matter arises out of an August 18, 2022 incident involving an alleged explosion due to defective and/or exposed electric wiring/ceiling light system in the northbound lanes of the FDR Drive, near the Battery Tunnel underpass in Manhattan.

This action was commenced on behalf of the Plaintiff by Steven Louros, Esq., on January 3, 2023 by the filing of the summons and complaint against Defendants THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF TRANSPORTATION (NYSCEF Doc. 1). By Order of Judge Mabelle Sweeting, dated August 3, 2023, this action was consolidated with the Plaintiff's separate action against Defendants MTA BRIDGES AND TUNNELS C/O METROPOLITAN TRANSPORTATION AUTHORITY (NYSCEF Doc. 16). Upon a review of the record, a preliminary conference has not yet been held in this matter.

Steven Louros, Esq., now moves by Order to Show Cause to be relieved as counsel for Plaintiff pursuant to CPLR §321(b)(2) and for a lien. Steven Louros, Esq., timely served the

Plaintiff with the motion by Order to Show Cause by overnight mail and certified mail, return receipt requested. (NYSCEF Doc. 31).

At oral argument, as set forth in the motion, Steven Louros, Esq., confirmed to this Court that the Plaintiff had advised her counsel that she no longer wished to pursue her action and provided additional details to support the withdrawal as counsel as same were not specifically included in the motion papers due to confidentiality/privacy 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 [1st Dept 2007]).

Upon review, and following oral argument, it is clear that there are irreconcilable differences and that the attorney-client relationship cannot continue. Steven Louros, Esq., 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 Steven Louros, Esq., 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.

Steven Louros, Esq.’s request to assert a 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 [1st 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.*

Keeffe, 50 N.Y.2d 149, 156, 405 N.E.2d 1012, 1015 [1980]). Upon review, Steven Louros, Esq., is entitled to reimbursement for reasonable value of its attorneys' services, to be determined at the conclusion of this matter.

Additionally, as discovery clearly 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 May 17, 2024.

Accordingly, it is hereby

ORDERED that the motion of Steven Louros, Esq., to be relieved as attorney for Plaintiff, KATARZYNA SYLWIA USS, is granted upon filing of proof of compliance with the following conditions; and it is further

ORDERED that, within 20 days from entry, Steven Louros, Esq., shall serve a copy of this order with notice of entry upon the former client, Plaintiff KATARZYNA SYLWIA USS, at her 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 KATARZYNA SYLWIA USS, Steven Louros, Esq., 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 himself, he 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 KATARZYNA SYLWIA USS 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 Steven Louros, Esq.'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 KATARZYNA SYLWIA USS of the aforesaid notice to appoint a substitute attorney; and it is further

ORDERED that Steven Louros, Esq., 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).

1/19/2024

DATE

CHECK ONE:

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CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

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<input type="checkbox"/>
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NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

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