

Moore v City of New York

2024 NY Slip Op 30747(U)

March 7, 2024

Supreme Court, New York County

Docket Number: Index No. 400286/2014

Judge: Hasa A. Kingo

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This opinion is uncorrected and not selected for official publication.

DISCUSSION

Pursuant to CPLR § 321, an attorney of record may withdraw upon a showing that good cause exists to end the relationship, and doing so will not extinguish the attorney’s right to enforce a charging lien under Judiciary Law § 475 (CPLR § 321[2]; *Turner v The City of New York*, 2024 NY Slip Op 30215 [U], *1 [Sup Ct, NY County 2024] [*citing Mason v MTA New York City Transit*, 832 NY2d 153, 154 [1st Dept 2007] and *Klein v Eubank*, 87 NY2d 459, 463-64 [1996]]). Under New York Judiciary Law § 475, an attorney who is not discharged for cause, and there has been no misconduct, or unjustified abandonment by the attorney is entitled “to liens in his favor to secure payment of reasonable fees and costs incurred prior to the date of substitution of counsel” (Judiciary Law § 475; *Klein*, 87 NY2d at 464 [1996]); *Cohen v Grainger*, 81 NY2d 655, 658 [1993]; *Lai Ling Cheng v Modansky*, 73 NY2d 454, 458 [1989]. The charging lien automatically comes into existence without notice or filing upon commencement of the action (Judiciary Law § 475; *Resnick v Resnick*, 24 AD3d 238, 239 [2005]).

“Good cause is generally based upon an irretrievable breakdown in the relationship or a failure of cooperation by the client” (*Lashley v City of New York*, 158371/2020 2023 WL 5317512, *1 [Sup Ct, NY County 2023], citing *Farage v Ehrenberg*, 124 AD3d 159, 165 [2d Dept 2014]). “Attorney-client relationships frequently end because of personality conflicts, misunderstandings or differences of opinion having nothing to do with any impropriety by either the client or the lawyer” (*Klein*, 87 NY2d at 463 [1996]). “A rule making the charging lien unavailable to attorneys who voluntarily withdraw would introduce a strong economic deterrent to the amicable settlement of attorney-client disputes” (*id.* at 463-64). Thus, where an attorney can show that there are irreconcilable differences between counsel and client, good and sufficient cause to be relieved has been found and the charging lien preserved (*Turner v The City of New York*, 2024 NY Slip Op 30215 [U], *1 [Sup Ct, NY County 2024]; *Ramirez v New York City Transit Authority*, 2024 NY Slip Op 30211 [U], *2 [Sup Ct, NY County 2024]). A hearing is required to determine if the attorney has been discharged with or without cause or for misconduct (*Teichner by Teichner v W & J Holsteins, Inc.*, 64 NY2d 977, 979 [1985]). Where the attorney’s misconduct relates to the representation for which fees are sought, the lawyer forfeits his entire fee (*Sayles v New York City Housing Authority*, 2023 NY Slip Op 34155 [U], at *2 [Sup Ct, New York County 2023]).

In support of the motion, Mr. Wolf proffers that there is good cause to end the relationship because there are “certain irreconcilable difference between Plaintiff and [himself] such that the attorney client relationship has been irretrievably broken down” (NYSCEF Doc No. 8, Wolf affirmation ¶ 3). Plaintiff agrees with Mr. Wolf’s desire to withdraw, stating she “no longer wish[es] to employ Wolf as [her] attorney,” and it is her “intention to find another attorney to represent my interests in this action” (NYSCEF Doc No. 11, Moore affirmation at 4). Nevertheless, Plaintiff opposes that part of counsel’s motion seeking to impose a charging lien because she believes that she will be “unable to interest another attorney to take [her] case or would be forced to take a dramatically less recovery because of Wolf’s lien” (*id.* at 4). Plaintiff cites to various grievances regarding Mr. Wolf’s representation of her in a letter she wrote to the First and Second Departments of the Appellate Division, including his filing only ten (10) documents in NYSCEF despite this being a ten-year-old action, filing the Note of Issue without knowledge of Plaintiff’s injuries or damages, and wanting to settle the case “on the cheap” (*id.*). Plaintiff includes privileged correspondence between her and counsel to support her position (*id.* at 6-24). In response, Mr.

Wolf attests that he is “limited in what he is able to put down [because it] is accessible to Defendant’s counsel” and despite Plaintiff’s choice to “compromise her case,” he is not able to “counter with accurate facts that may further compromise [Plaintiff’s] case or violate attorney-client privileges.” (NYSCEF Doc No. 12, Wolf reply affirmation ¶¶ 4, 5). Mr. Wolf further states that many of Plaintiff’s grievances are “false” or the result of “misunderstanding” (*id.* ¶ 9). For instance, there are minimal filings in NYSCEF because this case was not originally e-filed but later converted, and counsel successfully filed a late notice of claim on plaintiff’s behalf (*id.* at ¶¶ 8, 9). Additionally, any delay in this action were the result of Plaintiff’s “untimely filing of her claim, the delays in the City producing their witness for a deposition, the pandemic, the nature of City cases and now the inability to discuss settlement with [Plaintiff]” (*id.* ¶ 11).

Upon consideration of the arguments in the motion papers and at oral argument on February 20, 2024, the court finds that Mr. Wolf has demonstrated good cause to be relieved as counsel and to impose a charging lien. It is undisputed that the attorney-client relationship has been irretrievably broken because of irreconcilable differences and cannot continue. Moreover, both parties agree as to Mr. Wolf’s withdrawal as counsel. The charging lien came into existence upon commencement by statute. Although Plaintiff is dissatisfied with Mr. Wolf’s representation, she has made no showing of discharge for cause, misconduct, or unjustified abandonment of the action. Despite various delays in the case, Mr. Wolf nonetheless expended substantial time and resources prosecuting the case on Plaintiff’s behalf, including successfully obtaining leave to file a late notice of claim, attendance at several discovery conferences, engaging in document discovery, depositions, other motion practice, and settlement negotiations. Mere client dissatisfaction is insufficient to overcome the attorney’s statutory right to a charging lien. Therefore, the motion is granted.

Accordingly, it is

ORDERED that the motion of Martin Wolf, Esq. to be relieved as attorney for Plaintiff Civaun Moore is granted upon filing of proof of compliance with the following conditions; and it is further

ORDERED that said attorney serve a copy of this order with notice of entry upon the former client 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 client, moving counsel shall forward a notice directing the former client to appoint a substitute attorney within 30 days from the date of the mailing of the notice and the client shall comply therewith, except that, in the event Plaintiff intends instead to self-represent, they shall notify the Clerk of the Part of this decision in writing within said 30-day period; and it is further

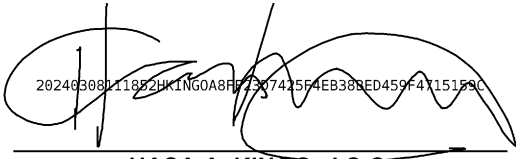
ORDERED that any new attorney retained by Plaintiff file a notice of appearance with the Clerk of the General Clerk’s Office and the Clerk of the Part within 60 days from the date the notice to retain new counsel is mailed; and it is further

ORDERED that 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 Wolf & Associates, PLLC’s charging lien is preserved until such time as the court, upon settlement or judgment, may hear and determine the reasonable value of attorney’s services provided; and it is further

ORDERED that counsel are directed to appear for a conference in the Differentiated Case Management Part, Room 103, at 80 Centre Street, New York, NY 10013 at 2:00 p.m. on May 7, 2024.

This constitutes the decision and order of the court.

<u>3/7/2024</u> DATE	 <small>20240308111852HKINGO A8F7307425F4EB388ED459F4X15159C</small> HASA A. KINGO, J.S.C.	
CHECK ONE: APPLICATION: CHECK IF APPROPRIATE:	<input type="checkbox"/> CASE DISPOSED <input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> DENIED <input type="checkbox"/> SETTLE ORDER <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION <input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER <input type="checkbox"/> SUBMIT ORDER <input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE