

Abrams v Abrams

2024 NY Slip Op 32133(U)

June 24, 2024

Supreme Court, New York County

Docket Number: Index No. 654992/2022

Judge: Joel M. Cohen

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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MARCUS ABRAMS, CLEARWATER VENTURES,
INC.,LISA ABRAMS, LISA ABRAMS,

Petitioners,

- v -

RUSSELL ABRAMS, RUSSELLCAR INVERSORA, S.A.,
CROSSTAX, S.A., TAXCORP, S.A., CARCORP, S.A.,
RUSSELLCAR S.R.L., ARACAR GROUP HOLDINGS
CORP., ARACAR FINANCIERA, S.A., ARACAR
SERVICIOS, S.A., ARACAR GROUP SPV I LLC,ARACAR
GROUP SPV II LLC,

Respondents.

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 005) 190, 191, 192, 193,
194, 202, 203, 205, 206, 207, 208

were read on this motion for

ATTORNEY - WITHDRAWAL

This action was filed in connection with arbitration proceedings, by which Petitioners
Marcus Abrams, Lisa Abrams, and Clearwater Ventures, Inc. (the “Petitioners”) obtained an
award of \$1,305,013.70 against Respondent Russell Abrams and \$2,939,976.31 against the
remaining Respondents (the “Entity Respondents”), which are owned by Russell Abrams
(NYSCEF 2, at 20). This Court confirmed the arbitration award (NYSCEF 110).

In the ensuing judgment enforcement litigation, much of the parties’ focus has centered
around the property at 45 West 70th Street (the “Building”), which non-party West 70th Owners
Corp. previously owned and transferred to non-party entity SEPI Realty, LLC (NYSCEF 135, at
2 [requesting an injunction preventing respondents and non-parties from selling or encumbering

the property]). There is a pending contempt motion in a related action (*Abrams v Abrams*, Index No. 658845/2021, Dkt. 221).

The issue before the Court is a withdrawal motion filed by Respondents' counsel, the Law Offices of Daniel A. Singer, PLLC ("DSPLLC"). On May 18, 2024, DSPLLC moved to withdraw as counsel to Respondent Russell Abrams and the Entity Respondents (together, the "Respondents"), supported by the affidavit of counsel of record, Daniel A. Singer (NYSCEF 192). The Court signed the Order to Show Cause on May 30, 2024 (NYSCEF 203). At the time, the Court declined to order an interim stay pending the determination of this motion (*id.*).

DSPLLC alleged an irretrievable breakdown in the attorney-client relationship and that his clients had not paid his fees (NYSCEF 192, ¶ 2). Counsel of record to Petitioners Marcus Abrams and Lisa Abrams, Harold Burke,¹ filed responsive papers asking for the Court to require Respondents designate a Process Agent if the motion were granted (NYSCEF 205, ¶ 11). Respondents themselves filed no opposition (*see* NYSCEF 208).

Mr. Singer's reply affidavit indicated that Mr. Burke's Process Agent request was "moot" because an address has been provided for Respondents to receive service by overnight mail (NYSCEF 206, ¶ 2). He further argued this would be an extraordinary requirement and should not be granted (*id.*, ¶¶ 3-6). Upon submission of the motion, Mr. Singer filed a separate letter asking that the Order specify he would be relieved of any purported representation of non-party SEPI Realty, LLC in connection with this action (NYSCEF 208).

¹ Mr. Burke's firm, Smith Legacy Law, LLC, subsequently filed a motion to withdraw as counsel to petitioners (MS 006). That motion is not yet fully submitted (*see* NYSCEF 220).

On June 24, 2024, Mr. Singer filed a letter indicating that, in a separate action, there was a temporary restraining order (the “TRO”) preventing SEPI Realty from selling the Building (NYSCEF 223). This Court takes notice that the next hearing on that issue is on July 25, 2024 (*see Malecaj v West 70th Owners Corp.*, Index No. 155111/2024, Dkt. 14).

A lawyer may withdraw from representation where there is a “fundamental disagreement” between the lawyer and client; the “client fails to cooperate in the representation or otherwise renders the representation unreasonably difficult”; or the client fails to pay the attorney’s fees (CPLR 321[b][2]; Rules of Professional Conduct, Rule 1.16[c][4]-[5], [7]; *see also Weiss v Spitzer*, 46 AD3d 675 [2d Dept 2007]; *Winters v Winters*, 25 AD3d 601, 601 [2d Dept 2006]).

Here, DSPLLC has made an unrebutted showing that the representation cannot continue due to an irretrievable breakdown in communication between the client and the firm. Furthermore, the Court notes that the TRO granted in the *Malecaj* case restraining the sale of the property means there will be no prejudice to the Respondents during the period that the TRO is in effect. Therefore, the motion to withdraw is **granted**.

Because the Respondents are currently residing out-of-state, and there is a pending contempt motion in the related action (*Abrams v Abrams*, Index No. 658845/2021, Dkt. 221), the Court will require them, as urged by Petitioners, to obtain an in-state Process Agent for service of process in connection with the ongoing disputes in this action. Therefore, it is

ORDERED that DSPLLC’s motion to withdraw as counsel to Respondents is **granted**. DSPLLC is also deemed to have withdrawn as to any purported representation he may have entered on behalf non-party SEPI Realty LLC in this action; it is further

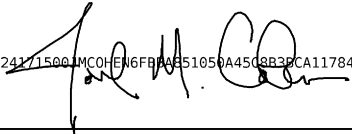
ORDERED that DSPLLC is to comply with its obligations under Rule 1.16(d) of the Rules of Professional Conduct, as applicable to the facts presented, to “take steps, to the extent reasonably practicable, to avoid foreseeable prejudice to the rights of the clients, including giving reasonable notice to the clients, allowing time for employment of other counsel, delivering to the clients all papers and property to which the clients are entitled, promptly refunding any part of a fee paid in advance that has not been earned and complying with applicable laws and rules;” it is further

ORDERED that DSPLLC shall promptly serve a copy of this order upon Respondents by email, and, if practicable, by hard copy at their last known home and business addresses, respectively, by certified mail, return receipt requested; it is further

ORDERED that Respondent Russell Abrams shall either appoint substitute counsel or advise the Court of his intention to proceed in this matter *pro se*, **on or before July 25, 2024**; and the remaining Entity Respondents, which cannot appear *pro se*, shall appoint substitute counsel by the same date. Further, all Respondents shall appoint an in-state process agent **on or before July 25, 2024**. The identity and service address of that Process Agent shall be filed as a letter to NYSCEF; it is further

ORDERED that, except upon a showing of extraordinary circumstances and good cause appearing, no further proceedings may be taken in this action adverse to Respondents without leave of this court until **July 25, 2024**. However, nothing in this Order shall prevent this Court from ruling on the pending withdrawal motion filed by Petitioners’ counsel. Importantly, all previous orders of the Court remain in place and must be adhered to by all parties.

This constitutes the Decision and Order of the Court.

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6/24/2024
DATE

JOEL M. COHEN, 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