

Bull Hill, LLC v HFZ Member RB Portfolio LLC

2024 NY Slip Op 32618(U)

July 18, 2024

Supreme Court, New York County

Docket Number: Index No. 654561/2022

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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<p>BULL HILL, LLC, HARDY LANE INVESTMENT FUND, LLC, HARDY LANE FOUNDATION, INC.,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">- v -</p> <p>HFZ MEMBER RB PORTFOLIO LLC, HFZ MEMBER RB ACQUISITIONS LLC, HFZ RB PORTFOLIO MANAGER, LLC, HFZ RB ACQUISITIONS MANAGER, LLC, HFZ CAPITAL GROUP, LLC, MONROE CAPITAL LLC, ZIEL FELDMAN, HELENE FELDMAN, NIR MEIR</p> <p style="text-align: center;">Defendants.</p>	<p>INDEX NO. <u>654561/2022</u></p> <p>MOTION DATE <u>06/17/2024</u></p> <p>MOTION SEQ. NO. <u>010</u></p> <p style="text-align: center;">AMENDED DECISION + ORDER ON MOTION¹</p>
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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 010) 184, 185, 186, 187, 188, 227, 231, 232, 236, 237, 254, 255

were read on this motion to

ATTORNEY WITHDRAWAL

Morrison Cohen LLP (“Morrison Cohen”) seeks to withdraw as counsel for Defendants HFZ RB Portfolio Manager, LLC, HFZ RB Acquisitions Manager, LLC, H F Z Capital Group LLC, Ziel Feldman, and Helene Feldman (together, the “HFZ Defendants”) and nominal defendants HFZ Member RB Portfolio LLC and HFZ Member RB Acquisitions LLC (the “Nominal Defendants”) and requests a stay of all proceedings in the Action for forty-five days to allow the HFZ Defendants and the Nominal Defendants sufficient time to retain new counsel.

Plaintiffs Bull Hill, LLC, Hardy Lane Investment Fund, LLC, and Hardy Lane Foundation, Inc. (collectively, “Plaintiffs”) partially oppose this motion on the ground that

¹ This Amended Decision & Order *only* clarifies the scope of communications Morrison Cohen is directed to retain (*see* page 3). All dates contained in the Original Decision & Order control.

Morrison Cohen's withdrawal at this time may prejudice Plaintiffs and Plaintiff request certain requirements be placed on Morrison Cohen's withdrawal.

Morrison Cohen's motion is granted. An attorney may withdraw as counsel upon a showing of good and sufficient cause and reasonable notice (NY CPLR § 321:2). Further, an attorney may withdraw from representation where the client "deliberately disregards an agreement or obligation to the lawyer as to expenses or fees" (NYCRR 1.16 [c][5]; *see also Weiss v Spitzer*, 26 AD3d 675 [1st Dept 2007] [permitting attorney to withdraw where client was almost \$4,000 in arrears]; *Winters v Winters*, 25 AD3d 601, 601 [2d Dept 2006] [holding that an attorney may withdraw where the client "refuses to pay reasonable legal fees"]). Here, Morrison Cohen submits that it has not been paid for its services rendered in connection with the Action, and the HFZ Defendants are not expected to be in position to pay Morrison Cohen in the future for its services in connection with the Action (NYSCEF 185¶2 ["Speyer Affirm"]). The HFZ Defendants do not oppose Morrison Cohen's motion to withdraw. The Court concludes that Morrison Cohen has made a sufficient showing of entitlement to withdraw as counsel.

Moreover, Plaintiffs do not oppose the request for a stay in order to allow the HFZ Defendants to find new counsel (NYSCEF 236 ¶7 [Barday Affirm]).² Thus, the forty-five day stay requested is granted.

Plaintiffs do, however, propose certain undertakings by outgoing counsel to minimize the disruption of the discovery schedule and resulting prejudice to Plaintiffs. The Court finds several of those proposals to be reasonable under the circumstances. Accordingly, Morrison

² Plaintiffs' request that the Court enter default judgment in the event the corporate HFZ Defendants do not identify new counsel in forty-five days is premature. If the HFZ Defendants do not obtain new counsel, the Court, upon proper motion by Plaintiffs at that time, can decide whether entry of a default judgment is appropriate.

Cohen is directed to (1) provide up-to-date contact information for each of the HFZ Defendants to Plaintiffs' counsel and the Court; (2) produce any documents of the HFZ Defendants responsive to Plaintiffs' document requests that it has already collected and reviewed or, in the event no documents have been collected and reviewed by Morrison Cohen, to confirm same; (3) retain all of their communications and documents relating to the underlying facts, transactions, claims and defenses at issue in this action, as Plaintiffs have argued that certain communications between Morrison Cohen and the HFZ Defendants are subject to the crime-fraud exception to attorney-client privilege.³

The Court considered Plaintiffs' remaining arguments and finds them unavailing.

Accordingly, it is therefore:

ORDERED that the motion of Morrison Cohen to be relieved as counsel for the HFZ Defendants and the Nominal Defendants is **GRANTED**; it is further

ORDERED that Morrison Cohen is to comply with his 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

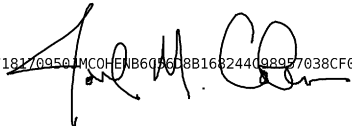
³ To be clear, nothing in this Order shall be deemed to affirmatively authorize the destruction of *any* communications and documents, including documents that might be subject to independent retention obligations in this or any other action or investigation. The purpose of this order is to identify a targeted set of documents that *must* be retained for purposes of this action.

ORDERED that Morrison Cohen shall promptly serve a copy of this order upon HFZ Defendants and the Nominal Defendants 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 the corporate Defendants shall appoint substitute counsel within forty-five (45) days from the date of this order; Ziel Feldman and Helene Feldman must appoint substitute counsel or advise the Court of their intention to proceed *pro se*; and it is further

ORDERED that no further proceedings may be taken against HFZ Defendants and the Nominal Defendants without leave of this court until forty-five days from the date of notice.

This constitutes the Decision and Order of the Court.

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JOEL M. COHEN, J.S.C.

7/18/2024
DATE

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