

Wolfpack Land Dev., Ltd v Spearman
2024 NY Slip Op 35351(U)
June 12, 2024
Supreme Court, Westchester County
Docket Number: Index No. 62979/2022
Judge: Thomas Quiñones
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To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER – I.A.S. PART

PRESENT: HON. THOMAS QUIÑONES, J.S.C.

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WOLFPACK LAND DEVELOPMENT, LTD,

Plaintiff(s)

-against-

DELOIS SPEARMAN, MARGARET TUCKER,
as Agent/representative of DELOIS SPEARMAN,
and MARGARET TUCKER, individually,

Defendant(s).

DECISION & ORDER

Index No. 62979/2022

Motion Seq. No. 4

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The following papers were filed on the New York State Electronic Filing System (“NYSCEF”) as NYSCEF Doc. No. 126-146 and considered on Motion Seq. No. 4 filed by defense counsel, Pitcoff Law Group, PC, seeking to be relieved as counsel of record for the Defendants.

Upon the foregoing papers, the motion is determined as follows:

This action arises out of a dispute related to a Contract of Sale dated September 28, 2021 (the “Contract of Sale”) entered into between Plaintiff (as buyer) and Defendant Delois Spearman (as seller) pertaining to a two-family dwelling located at 23 High Street, Rye, New York. Plaintiff’s complaint alleges causes of action sounding in breach of contract, specific performance, and injunctive relief. Plaintiff also alleges a cause of action for tortious interference of contract against Defendant Margaret Tucker. According to Defendants, Tucker was lawfully acting pursuant to a Power of Attorney signed on February 27, 2021 which authorized Defendant Margaret Tucker (as well as non-party Jacqueline Tucker) to act on behalf of Spearman related to, inter alia, real estate transactions. (NYSCEF Doc. 45).

A Preliminary Conference Order was filed on December 7, 2022 setting forth a discovery completion deadline of August 3, 2023. In accordance with the Briefing Schedule dated September 20, 2023, the parties filed dispositive motions (Motion Seq. No. 2 and 3). Notably, Defendants have not yet filed reply on Defendants’ own dispositive motion and oral argument on dispositive motions in accordance with the Briefing Schedule has not been held.

Prior to filing a reply on Defendants' dispositive motion, Pitcoff Law Group, PC, as counsel of record for Defendants, filed a motion by Order to Show Cause, pursuant to CPLR § 321(b), requesting the following relief:

- (a) Granting Pitcoff Law Group, PC's Motion for Leave to Withdraw Appearance and Representation as Counsel for the Defendant in this matter;
- (b) Staying the action for sixty (60) days, which the Court reduced to thirty (30) days;
- (c) Together with such other and further relief as this Court deems just and proper.

The Order to Show Cause included a provision stating that "[t]he 02/13/2024 Oral Argument re: Motions #2, 3 is canceled. Such motions are adjourned/held in abeyance pending determination of the instant motion." (NYSCEF Doc. 133). Defense counsel's supporting affirmation cited a breakdown in attorney-client relationship and non-payment of legal fees as the basis for the instant application.

Plaintiff filed limited opposition requesting that any court order permitting withdrawal shall include a stay limited to a thirty-day period for Defendants to retain substitute counsel or otherwise proceed. Plaintiff states that this is the third law firm representing the Defendants which seeks to be relieved, and Plaintiff should not be further prejudiced by any such delay associated therewith.

Defendant Tucker, in her individual capacity and as agent of co-defendant Spearman, filed opposition to the motion. Tucker states the Defendants did not refuse to pay for services rendered; rather, Defendants paid certain invoices and sought a review to ascertain the reasonableness of other legal invoices. Defendant Tucker states that:

"I have had no issues with Mr. Pitcoff's representation in this matter until I received the invoices for work performed on the current pending motions for summary judgments in October and November of 2023...All of a sudden I began receiving more than one (1) invoice a month and the fees were large. On top of receiving these frequent high invoices totaling \$22,562.73 from Mr. Pitcoff's office. They also requested that we replenish our client trust fund with \$25,000.00 to further bill against... I had several questions as to why work on motions was going to cost approximately \$50,000.00. As a result of my questions attorney Pitcoff meet with my daughter Jacqueline (Jackie) Tucker and cousin, Pilar Atterberry in October to discuss the issue and memorialized the meeting in an October 30, 2023, letter." (Defendant's Opp. Exhibit "1").

Tucker states that they are "uncomfortable with spending another \$50,000.00 without further explanation." (Defendant's Opp. ¶5). Tucker further states that she has "already paid Mr. Pitcoff's office approximately \$47,000.00 to date for his representation and we have never questioned or REFUSED to pay Mr. Pitcoff's invoices. I do not know why he filed this motion, after he was offered a payment of \$15,000.00." (Defendant's Opp. ¶6). It is Defendant's position that permitting defense

counsel to be relieved at this late juncture with pending dispositive motion (specifically, the outstanding reply and oral argument on the motion filed by present defense counsel) is prejudicial to Defendants. To that end, Tucker states that she (and her daughter) consulted with other attorneys which were unwilling to accept this case based on its procedural posture, and Tucker states they are unable to represent themselves.

Decision:

“The decision to grant or deny permission for counsel to withdraw lies within the discretion of the trial court, and the court’s decision should not be overturned absent a showing of an improvident exercise of discretion.” (*Bank of America, N.A. v Chadha*, 214 A.D.3d 695 [2d Dept. 2023]; citing *Cashdan v Cashdan*, 243 AD2d 598, 598 [2d Dept. 1997], *J.S. v P.B.*, 176 AD3d 790, 791 [2d Dept. 2019]. “An attorney may withdraw from representing a client for good and sufficient cause.” (*Bank of America, N.A. v Chadha*, 214 A.D.3d at 695-696). “An attorney may be permitted to withdraw from employment where a client refuses to pay reasonable legal fees.” (*Bank of America, N.A. v Chadha*, 214 A.D.3d at 696; citing *Villata v Kokkinos*, 170 AD3d 1077, 1079 [2d Dept. 2019], cf. *Cashdan v Cashdan*, 243 AD2d 598, 598 [2d Dept. 1997]).

Here, defense counsel argues that Defendants failed to pay legal fees incurred in accordance with their obligations pursuant to the Engagement Letter (NYSCEF Doc. 12, Lati Aff. ¶11). However, it is well settled that nonpayment of counsel fees alone will not entitle an attorney to withdraw from representation (*Cashdan v Cashdan*, 243 AD2d 598, 598 [2d Dept. 1997]). Moreover, Defendant Tucker states that Defendants have in fact paid defense counsel for legal fees totaling \$47,000.00 (M. Tucker’s Opposition ¶17). Defendants state that they requested clarification as to the multiple invoices received for work performed in connection with the two pending dispositive motions and requested a meeting to review how the work on dispositive motions would cost \$50,000.00. (*Id.* at ¶¶4-5). Defendants state they never “refused” to pay for further legal fees and, in fact, Defendants state they met with defense counsel to review certain legal invoices and Defendants even offered to pay an additional \$15,000.00. (*Id.* at ¶6). Accordingly, defense counsel has not demonstrated that Defendants refused to pay reasonable legal fees, or otherwise demonstrated entitlement to withdraw as counsel of record at this juncture.

Moreover, the record does not demonstrate that the Defendants’ “conduct render[ed] it unreasonably difficult for [counsel] to carry out [his] employment effectively” (*Cashdan v Cashdan*, 43 A.D.2d 598 [2d Dept. 1997]; citing Code of Professional Responsibility DR 2–110[C][1] [d] [22 NYCRR 1200.15(c)(1)(iv)]). Tucker stated that “I have had no issues with Mr. Pitcoff’s representation in this matter until I received the invoices for work performed on the current pending motions for summary judgments in October and November of 2023. (NYSCEF Doc. 137, Tucker Aff. ¶2). Defense counsel’s initial supporting affirmation stated, in a conclusory fashion, that there was a breakdown of the attorney-client relationship. Any further arguments proffered for the first time in reply were not properly before the court (see, *Allstate Insurance Co. v Dawkins*, 52 A.D.3d

826 [2d Dept. 2008]), as same deprive defendants of the opportunity to respond to same. Nonetheless, such reply arguments, including Defendants' efforts to limit the legal fee expended on motion reply papers, relates back to a legal fee dispute (and not the substantive legal arguments and strategy of the case).

Lastly, the Court recognizes that defense counsel filed the instant application just one week prior to its deadline to file reply papers on Defendants' dispositive motion and less than two weeks prior to the scheduled oral argument on the parties' pending dispositive motions. Defendants state that they attempted to secure substitute counsel to no avail due to such procedural posture of this case. Thus, permitting withdrawal of defense counsel at this juncture of the case would significantly prejudice Defendants. Based on the foregoing, it is hereby

ORDERED that, Motion Seq. No. 4 filed by defense counsel, Pitcoff Law Group, PC, seeking to be relieved as counsel of record for the Defendants is DENIED IN ITS ENTIRETY for the reasons herein stated. It is further

ORDERED that, any stay provision(s) in the Order to Show Cause are hereby lifted. It is further

ORDERED that, Defendant's reply related to Defendants' motion for summary judgment (Motion Seq. No. 3) shall be filed to NYSCEF by June 21, 2024. It is further

ORDERED that, oral argument on Plaintiff's motion for summary judgment (Motions Seq. No. 2) and Defendants' cross-motion for summary judgment (Motion Seq. No. 3) shall be held on June 26, 2024 at 3:30p.m. by Microsoft TEAMS. (The Judge's Court Clerk will circulate the Microsoft TEAMS virtual conference link and phone access information to all counsel of record registered on NYSCEF).

The foregoing constitutes the Decision and Order of this Court.

Dated: June 12, 2024
White Plains, New York

ENTER:



HON. THOMAS QUIÑONES, J.S.C.

TO: *Filed to NYSCEF*