

Bermeo v 677 Eleventh Ave. Realty, LLC

2025 NY Slip Op 31440(U)

April 7, 2025

Supreme Court, Kings County

Docket Number: Index No. 509775/2023

Judge: Devin P. 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 Kings

Index Number 509775/2023
Seqs. 03

Part LL1M

DECISION/ORDER

DIEGO BERMEO,

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion

Plaintiff,

Papers Numbered

against

Notice of Motion and Affidavits Annexed
Order to Show Cause and Affidavits Annexed: 1-3
Answering Affidavits 4
Replying Affidavits 5
Exhibits Var
Other _____

677 ELEVENTH AVENUE REALTY, LLC ET AL,

Defendants.

Upon the foregoing papers, plaintiff’s counsel Surdez & Perez P.C.’s (“Surdez”) motion to be relieved as counsel (Seq. 03) is decided as follows:

Generally, an attorney is permitted to withdraw as counsel upon “such notice . . . as the court may direct,” after a reasonable “showing that good cause exists to end the attorney-client relationship” and that the motion is not being made as a tactic to delay a hearing or trial (CPLR 321 [b] [2]; *Matter of Cassini*, 182 AD3d 13, 40 [2d Dept 2020]; *see also Rivardeneria v New York City Health and Hospitals Corp.*, 306 AD2d 394 [2d Dept 2003]). “The decision to grant or deny permission for counsel to withdraw lies within the discretion of the trial court” (*Bank of Am., N.A. v Chadha*, 214 AD3d 695, 695 [2d Dept 2023]). Break-downs of the attorney-client relationship, failure of cooperation by a client, and actions or requests by a client that would cause the attorney to violate the Rules of Professional Conduct by continuing representation, among other reasons, serve as good cause for ending the attorney-client relationship (*see Farage v Ehrenberg*, 124 AD3d 159, 165 [2d Dept 2014]; *see also Green v Gasparini*, 24 AD3d 505 [2d Dept 2005]).

Here, Surdez served the instant OSC upon the plaintiff pursuant to CPLR 308 (4), after exhausting the methods set forth in the first three subsections of 308 for personally serving plaintiff, and upon defense counsel as directed by the court. Plaintiff individually did not oppose the motion. The note of issue has not been filed and the case is not on the trial calendar. However, defendants filed written opposition to this motion.

As an initial matter, it is not clear that defendants have standing to oppose Surdez's motion, as the motion is made against the plaintiff individually, not the defendants, and defendants would not be "aggrieved" as defined by the Appellate Division if this motion were granted (*see Mixon v TBV, Inc.*, 76 AD3d 144, 156–157 [2d Dept 2010]). Moreover, defendants do not actually state opposition to Surdez withdrawing as counsel *per se*, but rather object to the justification Surdez has offered for withdrawal, object to Surdez's request to disclose additional information *in camera* if it is required, and demand that the relief requested be conditioned upon the exchange of attorney-client communications and attorney records.

Defendants are incorrect that allowing Surdez to provide additional details or information *in camera* is impermissible. "Where withdrawal may be accomplished simply on the basis of counsel's statement that professional considerations require it, no more should be disclosed" (NYS Bar Ethics Opinion 1057 [6/5/2015] at ¶ 14). Where withdrawal cannot be so accomplished, the court may conduct an *in camera* hearing to assess the validity of counsel's request (*id.* at ¶ 15). This practice is permitted to "prevent a party from being prejudiced by the application of counsel to withdraw" (*ISC Holding AG v Nobel Biocare Investments, N.V.*, 759 F Supp.2d 289, 294 [SDNY 2010] [*aff'd sub nom. ISC Holding AG v Nobel Biocare Fin. AG*, 688 F3d 98 (2d Cir 2012)]). "A judge may initiate or consider any *ex parte* communications when authorized by law to do so" (NY Rules of Chief Administrative Judge § 100.3 [e]).

However, notwithstanding the propriety of an *in camera* showing, no *ex parte* or *in camera* discussion was held. Surdez advises the court in its papers that they seek withdrawal due to over a year and a half of plaintiff failing to respond to Surdez's communication attempts. A plaintiff who does not remain in contact with their firm or does not respond to any of said firm's correspondence suffices as a showing of "good cause." (*see Tartaglione v Tiffany*, 280 AD2d 543, 543 [2d Dept 2001]). Upon Surdez's representation that the request to withdraw was made on good cause, the court neither sought nor accepted *ex parte* communication in this application.

Finally, defendants' request is improper insofar as it asks the court to condition Surdez's withdrawal on a breach of client confidence and/or of a violation of attorney-client privilege. Rule 1.6 (a) prohibits attorneys from "knowingly [revealing] confidential information to the disadvantage of a client or for the advantage of the lawyer or a third person" absent 1) the consent of the client; 2) the disclosure is "impliedly authorized to advance the best interest of the client"; or 3) the disclosure is permitted by Rule 1.6 (b). None of the permissions in Rule 1.6 (b) apply here. Defendants make clear in their opposition that the request for Surdez's disclosure is to improve their ability to litigate this action, which means that Surdez's disclosure would be "for the advantage of . . . a third person." Moreover, attorney-client privilege can only be waived by the client and generally survives the termination of the attorney-client relationship—Surdez is therefore prohibited from revealing confidential or privileged information without the consent of the client (*see CPLR 4503*).

Therefore, Surdez's OSC to be relieved as counsel is granted upon the individual plaintiff's default. The action is stayed until June 7, 2025, although the stay shall end earlier if plaintiff retains new counsel (*Wells Fargo Bank, N.A. v Kurian*, 197 AD3d 173 [2d Dept 2021]).

This determination is made without prejudice to any legitimate discovery rights parties may have in this or any other properly commenced action.

Counsel shall serve this order upon Diego Berneo by the same means as the underlying OSC within 10 days of the notice of entry, and upon opposing counsel via NYSCEF.

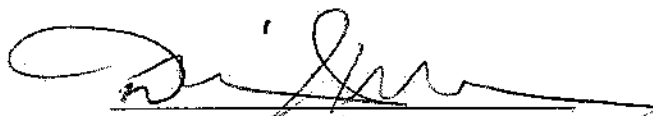
Conclusion

Surdez's OSC to be relieved (Seq. 003) is granted.

This constitutes the decision and order of the court.

April 7, 2025

DATE



DEVIN P. COHEN

Justice of the Supreme Court