

Auguste v Steinberger

2025 NY Slip Op 32053(U)

June 3, 2025

Supreme Court, New York County

Docket Number: Index No. 805146/2020

Judge: Judith N. McMahon

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JUDITH N. MCMAHON PART 30M

Justice

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INDEX NO. 805146/2020

HEATHER AUGUSTE,

MOTION DATE 05/28/2025

Plaintiff,

MOTION SEQ. NO. 001

- v -

JEREMY STEINBERGER, MEGAN LANDY, CHRISTOPHER HAHN, MOUNT SINAI MORNINGSIDE F/K/A MOUNT SINAI ST. LUKE'S HOSPITAL, EHUD SARLIN, LISA SINGH, CITY MD,

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 64, 65, 66, 67, 68, 69, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85

were read on this motion to/for ATTORNEY - DISQUALIFY/RELIEVE/SUBSTITUTE/WITHDRAW .

Upon the foregoing documents, and consistent with the decision placed on the record at the conclusion of oral argument of this Order to Show Cause on May 28, 2025, the application of The Pagan Law Firm P.C., to withdraw as attorneys of record for the plaintiff, Heather Auguste, and for a charging lien for attorney fees and itemized disbursements pursuant to its retainer upon the \$1,500,000.00 (one million five hundred thousand) global settlement of this matter, is granted in its entirety. The Clerk is hereby directed to seal this Order and the papers upon which it is based, except to the parties, their attorneys of record, and authorized court personnel.

This zealously litigated medical malpractice action was instituted by the filing of a Summons and Complaint on June 3, 2020 (see NYSCEF Doc. No, 1). At the conclusion of a comprehensive course of discovery that included numerous depositions, the Court executed a

certification order¹ on September 18, 2023 (*see* NYSCEF Doc. No. 53), and plaintiff placed this case on the trial calendar with the filing of her Note of Issue and Certificate of Readiness on October 10, 2023 (*see* NYSCEF Doc. No. 61). Thereafter, the parties participated in a JAMS mediation (October 28, 2024) as well as eight pretrial conferences that were conducted by this Court on: October 30, 2023, January 22, 2024, June 10, 2024, September 30, 2024, November 12, 2024, December 12, 2024, January 9, 2025, and March 3, 2025. On March 3, 2025, plaintiff, through her attorney, accepted the defendants' global settlement offer of \$1.5 million dollars. To date Ms. Auguste has not executed the closing documents.

During oral argument of this application Ms. Auguste admitted that she gave consent to settle her case for 1,500,000.00 but she refused thereafter to sign the closing documents unless The Pagan Law Firm, P.C. reduced its fee or waived it entirely, as plaintiff believes she was not fully informed of all the circumstances concerning settlement of the matter. This application by The Pagan Law Firm, P.C., to be relieved as counsel and for a charging lien followed. Ms. Auguste does not oppose her counsel's withdrawal, but she does oppose imposition of a charging lien on the settlement that the law firm secured. Defendants do not substantively oppose The Pagan Law Firm P.C.'s application, but request that any stay in favor of plaintiff be limited to thirty days.

The Court notes that both The Pagan Law Firm P.C. and Heather Auguste submitted documentation for *in camera* review, inclusive of hundreds of email correspondences between the two consisting of case updates and answers to plaintiff's questions concerning the litigation².

¹ The Court conducted sixteen (16) conferences before the filing of the Note of Issue at which The Pagan Law Firm, P.C. participated on behalf of plaintiff.

² These documents were returned to Tania Pagan, Esq., and Heather Auguste in person during oral argument on May 28, 2025.

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]).

Conduct on the part of the client rendering it unreasonably difficult to carry out the employment effectively is a valid ground for terminating the attorney-client relationship (*see Rann v. Lerner*, 160 AD2d 922 [2d Dept. 1990]). “The decision to grant or deny permission for counsel to withdraw lies within the discretion of the trial court” (*McDonald v. Shore*, 100 AD3d 602, 603 [2d Dept. 2010]; [internal quotation marks and citations omitted]).

Under Judiciary Law §475, a charging lien automatically comes into existence, without notice or filing, upon commencement of the action, and is measured by the reasonable value of the attorney's services in the action, unless fixed by agreement (*Resnick v. Resnick*, 24 AD3d 238, 239 [1st Dept. 2005]). “It has long been held that attorneys who terminate their representation for *just cause* continue to be entitled to enforce their liens...[a] charging lien is waived by an attorney who *without just cause* neglects or refuses to proceed with the prosecution of a case” (*Klein v. Eubank*, 87 NY2d 459, 462 [1996]). “Good cause is generally based upon an irretrievable breakdown in the relationship or a failure of cooperation by the client” (*Moore v. The City of New York*, 2024 WL 1008544 [1st Dept. 2024]; [internal citations and internal quotations omitted]). 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.

Here, Tania M. Pagan, Esq., of The Pagan Law Firm P.C. avers that after conveying the closing documents to Heather Auguste for execution, she received communications from her client that demonstrated “irreconcilable differences, a deterioration of communication, a

breakdown of trust, and erosion of the attorney client relationship” (*see* NYSCEF Doc, No. 65, para. 19), and further, that “as a result of these communications, [she] “is unable to continue to represent Heather Auguste” (*id.*).

The Court finds, based upon its review of the record, inclusive of the affirmations and testimony of Tania Pagan, Esq. and Heather Auguste, that good and sufficient cause exists for The Pagan Law Firm, P.C., to withdraw as counsel (*see Mason v. MTA New York City Transit*, 38 AD3d 258 [1st Dept. 2017]). Moreover, the Court finds that The Pagan Law Firm P.C. is entitled to a charging lien pursuant to its retainer.

Wherefore, it is hereby

ORDERED that the application of the Pagan Law Firm, P.C., to be relieved as attorneys for plaintiff, Heather Auguste, is granted in its entirety for good cause shown; and it is further

ORDERED that no further proceedings may be taken in this matter without leave of court until **September 30, 2025**, at which time this case will appear in **Part 40** for plaintiff to advise Part 40 whether she has retained substitute counsel, or whether she will be proceeding *pro se*; and it is further

ORDERED that The Pagan Law Firm, P.C., may enforce the statutory charging lien upon the proceeds of the lawsuit pursuant to Judiciary Law §475; and it is further

ORDERED that the Clerk of the Court is directed to seal this Order and the papers upon which it is based except to the parties, their attorney of record, and authorized court personnel; and it is further

ORDERED that all other relief requested is denied.

Hon. Judith N. McMahon
J.S.C.

6/03/2025

DATE

HON. JUDITH N. MCMAHON