

**Hanco v Rutland Nursing Home Inc.**

2025 NY Slip Op 33637(U)

September 8, 2025

Supreme Court, Kings County

Docket Number: Index No. 508076/2022

Judge: Devin P. Cohen

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Supreme Court of the State of New York  
County of Kings

Index Number 508076/2022  
Seqs. 003

Part LLIM

**DECISION/ORDER**

ELMER HANCO,

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 .....	<u>1</u>
Answering Affidavits .....	<u>2</u>
Replying Affidavits .....	_____
Exhibits .....	<u>Var.</u>
Other .....	_____

RUTLAND NURSING HOME INC. AND KINGSBROOK JEWISH  
MEDICAL CENTER,

Defendants.

RUTLAND NURSING HOME INC. AND KINGSBROOK JEWISH  
MEDICAL CENTER,

Third-Party Plaintiffs,

against

B&A RESTORATION CONTRACTORS INC.,

Third-Party Defendant.

B&A RESTORATION CONTRACTORS INC.,

Second Third-Party Plaintiff,

against

LUIS R CONSTRUCTION INC.,

Second Third-Party Defendant.

RUTLAND NURSING HOME INC. AND KINGSBROOK JEWISH  
MEDICAL CENTER,

Third Third-Party Plaintiff,

against

LUIS R CONSTRUCTION INC.,

Third Third-Party Defendant.

Upon the foregoing papers,<sup>1</sup> Gorayeb & Associates, P.C. (Gorayeb)'s motion to be relieved as counsel (Seq. 003) are 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 clients 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, Gorayeb served the instant order to show cause (OSC) upon the plaintiff individually and upon defense counsel as directed by the court. Plaintiff did not appear at the calendar call and did not interpose written opposition. The note of issue has not been filed and the case is not on the trial calendar. However, defendants filed written partial opposition.

As an initial matter, it is not clear that defendants have standing to oppose plaintiff's counsel's motion, as the motion is made against the plaintiff individually, not the defendants, and

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<sup>1</sup> The affirmation in further support of the order to show cause (OSC) has not been considered, as replies on OSCs are not contemplated by the CPLR.

the 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 plaintiff’s counsel withdrawing as counsel *per se*, but rather object to the justification Gorayeb has offered for withdrawal, object to Gorayeb’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 Gorayeb 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, the court neither sought nor accepted *in camera* disclosure. The reasons provided in movant’s papers, specifically that there has been a fundamental breakdown in communication and erosion of the attorney-client relationship, satisfy the “good cause” standard for attorney withdrawal in light of disciplinary rules which mandate withdrawal (*see* NY RPC 1.16 [b] and [c]). Upon Gorayeb’s representation to the court that it does not believe it can continue representation of the client, the court is satisfied that withdrawal is proper.

Finally, defendants’ request is improper insofar as they ask the court to condition Gorayeb’s withdrawal on a breach of client confidence and/or 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 Gorayeb’s disclosure is to improve their ability to litigate this action, which means that Gorayeb’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—Gorayeb is therefore prohibited from revealing confidential or privileged information without the consent of the client (*see* CPLR 4503).

Therefore, Gorayeb’s OSC to be relieved as counsel is granted. The action is stayed through November 7, 2025, although the stay shall end earlier if plaintiff retains new counsel and counsel files a notice of appearance (*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 Elmer Hanco by the same means as the underlying OSC within 10 days of the notice of entry, and upon opposing counsel via NYSCEF.

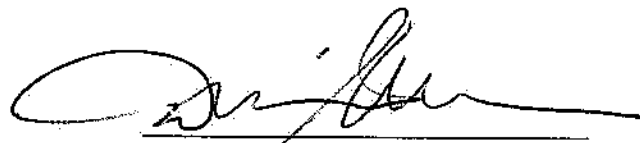
### Conclusion

Gorayeb’s motion to be relieved (Seq. 003) is granted.

This constitutes the decision and order of the court.

September 8, 2025

DATE



DEVIN P. COHEN  
Justice of the Supreme Court