

Hersh v Beda

2025 NY Slip Op 33655(U)

October 1, 2025

Supreme Court, New York County

Docket Number: Index No. 160061/2020

Judge: Debra A. James

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DEBRA A. JAMES

PART 59

Justice

-----X

MARK HERSH,

Plaintiff,

- v -

ROBERT BEDA, SHIRLEY REINFELD, and SHARON OLSON, JAY PODOLSKY,

Defendants.

-----X

INDEX NO. 160061/2020

MOTION DATE 10/01/2025

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 83, 84, 85, 86, 87, 88, 89

were read on this motion to/for DISQUALIFY COUNSEL

ORDER

Upon the foregoing documents, it is

ORDERED that the motion to disqualify counsel for defendants is granted, and Rosenberg & Estis, P.C. is hereby disqualified from representing defendants in this matter pursuant to Rules 1.9(a) and 1.10 of the Rules of Professional Conduct (22 NYCRR § 1200.0); and it is further

ORDERED that counsel for the movant, within twenty-one (21) days after the entry of this order, shall serve a copy of this order with notice of entry upon counsel for all other parties by posting on NYSCEF and upon defendants themselves by overnight mail at the last known addresses; and it is further

ORDERED that the action is stayed from this date until forty-five (45) days after service of a copy of this order with notice of entry upon counsel for all parties and upon defendants, who shall, within such period, retain another attorney in place of the attorneys and law firm named above; and it is further

ORDERED that the new attorney retained by defendants shall serve upon all parties a notice of appearance and file same with the Clerk of the General Clerk's Office and the Clerk of the Part within such forty-five (45)-day period; and it is further

ORDERED that such filing with the Clerk of the General Clerk's Office and the Clerk of the Part shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website; and it is further

ORDERED that counsel are directed to post on NYSCEF a proposed discovery compliance conference order or competing proposed discovery compliance order(s) at least two days before December 4, 2025, on which date counsel shall appear via Microsoft Teams, unless such appearance, by joint request to SFC-Clerk-Part59@nycourts.gov, be waived by the court; and it is further

ORDERED that, except as exhibits to motions or for demands for bills of particulars and responses thereto (as latter constitute an amplification of the pleadings), counsel shall refrain from posting on any NYSCEF discovery demands or

responses thereto, as same unnecessarily and improperly clutter the docket, and should be exchanged among counsel only (see In Re Westchester Rockland Newspapers, Inc., 66 AD2d 335, 338 [2nd Dept 1979]), as discovery is **not for public viewing** on the official court docket, and see also, Scollo v Good Samaritan Hosp, 175 AD2d 278, 279 (2d Dept 1991) (“Pretrial discovery” “are not ‘sittings of court’”, “are conducted in private as a matter of modern practice”, and “is not a public component of a trial”).

DECISION

As in Kassis v Teacher’s Ins and Annuity Assn, 93 NY2d 611, 618 (1999) (emphasis added),

“Here, the undisputed facts in the record evidence that [Brett Evan Gossett] played an appreciable role as counsel for plaintiff in this case while at [Romer Debbas LLP]. . . Given [Gossett]’s extensive participation in [the herein litigation] and [Rosenberg & Estis]’s representation of the adversary in the same matter, [defendants’] burden is especially heavy. [Defendants’] conclusory averments that [Gossett] did not acquire such confidences during the prior representation failed to rebut that presumption as a matter of law. **The erection of a ‘Chinese Wall’ in this case, therefore, was inconsequential.** Thus, we hold, as matter of law, that disqualification is required.”

See also Hotel 237, LLC v GM Canmar Residence, Corp, 235 AD3d 447 (1st Dept 2025), lv to appeal dismissed, __ NY3d ____, 2025 NY Slip Op 76653 (September 18, 2025).

Debra A. James

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10/1/2025

DATE

DEBRA A. JAMES, J.S.C.

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