

Lopez v City of New York

2025 NY Slip Op 33883(U)

October 9, 2025

Supreme Court, New York County

Docket Number: Index No. 654663/2024

Judge: Hasa A. Kingo

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. HASA A. KINGO PART 05M

Justice

-----X

MARIAH LOPEZ,

Plaintiff,

- v -

CITY OF NEW YORK, NEW YORK CITY DEPARTMENT
OF HOMELESS SERVICES, NEW YORK CITY HUMAN
RESOURCES ADMINISTRATION,

Defendant.

-----X

INDEX NO. 654663/2024

MOTION DATE 10/03/2025

MOTION SEQ. NO. 005

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 005) 55, 56, 58
were read on this motion to ASSIGN ATTORNEY.

Plaintiff Mariah Lopez (“Plaintiff”), by Order to Show Cause dated July 25, 2025 (Mot. Seq. No. 005), seeks the appointment of counsel to represent her in this civil action sounding in breach of contract. Defendants oppose any order compelling the City or any municipal defendant to provide or to pay for Plaintiff’s counsel, although defendants state they do not object to Plaintiff being appointed counsel through an available *pro bono* program or referral.

BACKGROUND AND PROCEDURAL HISTORY

Plaintiff commenced this action in 2024 alleging claims for breach of contract against the City and certain City agencies. By Order to Show Cause dated July 25, 2025, Plaintiff sought the appointment of counsel. Defendants responded by affirmation dated August 8, 2025, arguing that (a) there is no constitutional or statutory right to the appointment of counsel in private civil litigation; (b) there is no obligation for a municipal defendant to provide or to pay for adverse parties’ counsel; and (c) defendants do not oppose an appointment of counsel for Plaintiff through a *pro bono* legal services organization or court-annexed *pro bono* program.

ARGUMENTS

The Order to Show Cause requests appointment of counsel. The Order to Show Cause asserts (or implies) that Plaintiff lacks the financial means to retain counsel and that appointment is necessary so Plaintiff may effectively prosecute her claims.

Defendants concede that Plaintiff may seek appointment of *pro bono* counsel, but vigorously oppose any order requiring the City or the municipal defendants to provide or to pay for counsel for an adverse private litigant. Defendants argue, as a matter of law, that there is no statutory or constitutional basis to compel a municipal defendant to fund or provide counsel in a

private civil action, and that the right to appointed counsel at public expense arises in limited contexts (criminal proceedings and certain civil proceedings implicating fundamental liberty interests) and does not extend to ordinary breach of contract suits.

DISCUSSION

It is axiomatic under New York law that there is no general constitutional right to appointed counsel in private civil litigation. The Court of Appeals has made clear that the “mandatory direction to provide counsel to defendants in criminal cases derives from the Federal and State cases applying Federal and State constitutional provisions,” and that “[n]o similar constitutional or statutory provision applies to private litigation” (*Matter of Smiley*, 36 NY2d 433, 438–39 [1975][discussing the distinct constitutional guarantees that give rise to appointed counsel in criminal cases]). The reasoning of *Smiley* is instructive: while the State must provide counsel in many criminal contexts when the defendant is indigent, the State has not been held constitutionally required to provide counsel for litigants in private civil matters.

Appellate authority applying these principles to particular facts reinforces that appointment of counsel in civil cases is the exception and not the rule. For example, the Appellate Division, Third Department, has considered a request for assigned counsel under the Americans with Disabilities Act and related claims and affirmed denial where the claims did not implicate the liberty interests that have been found to merit appointment of counsel; the court concluded that the lower court did not abuse its discretion in declining to assign counsel (*Planck v. County of Schenectady*, 51 AD3d 1283, 1283–1284 [3d Dept 2008]). As that court emphasized, the assignment of counsel in civil matters is generally reserved for circumstances in which fundamental rights or liberty interests are implicated or where exceptional circumstances make the assistance of counsel necessary to ensure fairness and due process.

Applying these authorities to the present motion requires (1) identifying the nature of the underlying action and (2) assessing whether the extraordinary circumstances that have warranted appointment of counsel in certain civil cases are present here.

First, the underlying action is a private civil suit for breach of contract. Such claims are ordinarily private disputes for which the law provides procedural mechanisms (pleadings, discovery, dispositive motions, trial) that parties may pursue without the assistance of appointed counsel. The Court of Appeals’ clear statement in *Smiley* that “no similar constitutional or statutory provision applies to private litigation” compels the conclusion that Plaintiff’s claim, standing alone, does not provide a basis for appointment of counsel at public expense.

Second, the court must assess whether extraordinary circumstances exist that would justify departure from the general rule. Appellate authority permits appointment only in narrow circumstances — for example, where a litigant’s fundamental liberty interests are at stake (parental rights, custody, confinement) or where the complexity of the matter and the litigant’s incapacity to proceed would make meaningful access to justice impossible without counsel (*see Planck*, 51 AD3d at 1283–84 [affirming denial where liberty interests were not implicated]). The record before the court contains no allegation — and the underlying breach of contract claim by its nature does not implicate — those liberty interests that have been found to trigger compulsory

appointment of counsel. Nor has Plaintiff shown that the legal or factual issues presented in this contract action are of such extraordinary complexity that an indigent, *pro se* litigant cannot meaningfully proceed without appointed counsel. To the contrary, the normal case management tools available in this court (discovery rules, opportunity to renew with supplemental submissions, access to court conferences, and summary disposition procedures) are adequate to protect Plaintiff's right to proceed and to ensure fair process.

Accordingly, under controlling authority, Plaintiff is not entitled as of right to appointment of counsel at public expense in this private civil action. *Smiley's* categorical distinction between criminal/quasi-criminal constitutional guarantees and private civil litigation compels this result, and *Planck* confirms that a denial of appointed counsel will not be disturbed when the complaint does not implicate liberty interests warranting assignment of counsel.

Separate from the question whether the court may appoint counsel, the Order to Show also seeks an order compelling the municipal defendants to provide or to pay for Plaintiff's counsel. That requested relief rests on no statutory duty and no recognized constitutional requirement. As defendants correctly observe, there is no statutory or contractual obligation requiring a municipal defendant to furnish legal representation to an adverse party in civil litigation; nor does the Constitution or controlling state precedent impose such an obligation in ordinary private civil suits (*see Matter of Smiley*, 36 NY2d at 438–39).

To order a municipal defendant to pay for an adverse private litigant's counsel would be extraordinary relief and would be inconsistent with the principle that the right to appointed counsel at public expense is limited and exceptional. The court declines to endorse such an unprecedented shift in the allocation of litigation costs and responsibilities in private suits in the absence of any statutory authority or controlling constitutional principle requiring it.

The court is not unmindful of the practical challenges faced by self-represented litigants, particularly those of limited financial means. While the law does not authorize the court to compel the defendants to provide or to pay for counsel in this private civil action, the court is mindful of Plaintiff's expressed need for legal guidance and advocacy.

Defendants have indicated that they do not oppose Plaintiff being appointed counsel through an available *pro bono* program. In that spirit, and consistent with the court's responsibility to ensure access to justice, the court refers Plaintiff to the New York City Bar Legal Referral Service (citybarlegalreferral.org; telephone 212-626-7373), which is open Monday through Friday, 8:30 A.M. to 5:30 P.M. The Legal Referral Service is dedicated to providing low-cost consultations with licensed attorneys and can connect litigants to a range of legal services appropriate to their needs and financial circumstances.

Plaintiff is also encouraged to explore other low-cost or *pro bono* legal resources that may be available through community-based or nonprofit organizations. Additionally, Plaintiff may contact the Supreme Court, Civil Branch, Help Center, located at 60 Centre Street, Room 119A, New York, NY 10007, by telephone at 646-386-3120, or by email at SFC-HelpCenterNY@nycourts.gov, to obtain guidance on navigating court procedures and identifying additional services that may assist her in this or related matters.

The court expresses its understanding and appreciation for Plaintiff’s efforts to pursue her claims and assures her that such administrative referrals are not a reflection on the merits of her case, but rather a recognition that the court must act within the limits of its lawful authority while endeavoring to ensure that all litigants are afforded meaningful access to justice.

For the reasons stated above and those discussed herein, Plaintiff’s application must be denied to the extent it seeks to compel Defendants to provide or to fund counsel. However, the court has provided Plaintiff with information concerning the New York City Bar’s Legal Referral Service and the Supreme Court Help Center that may assist her in her efforts.


Accordingly, it is hereby

ORDERED that Plaintiff’s Order to Show Cause dated July 25, 2025 (Mot. Seq. No. 005), seeking the appointment of counsel, is DENIED to the extent it seeks an order compelling Defendants to provide or to pay for counsel; and it is further

ORDERED that Plaintiff is referred to the New York City Bar Legal Referral Service (citybarlegalreferral.org; 212-626-7373), open Mondays through Fridays from 8:30 A.M. to 5:30 P.M., for low-cost consultation and referral to licensed counsel; and it is further

ORDERED that Plaintiff is encouraged to contact the Supreme Court, Civil Branch, Help Center, located at 60 Centre Street, Room 119A, New York, NY 10007 (telephone 646-386-3120, email SFC-HelpCenterNY@nycourts.gov) to obtain additional guidance and information about available legal and procedural resources.

This constitutes the decision and order of the court.

<p><u>10/9/2025</u> DATE</p>			 <hr/> <p>HASA A. KINGO, J.S.C.</p>
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE