

**Brecht v 24 W. 89th St., LLC**

2025 NY Slip Op 34192(U)

October 30, 2025

Supreme Court, New York County

Docket Number: Index No. 157267/2019

Judge: Arlene P. Bluth

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

**PRESENT: HON. ARLENE P. BLUTH PART 14**

*Justice*

-----X

PATRICIA BRECHT,

Plaintiff,

- v -

24 W. 89TH ST., LLC, MARK D. MILITANA

Defendants.

-----X

INDEX NO. 157267/2019

MOTION DATE 10/27/2025

MOTION SEQ. NO. 005

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 005) 142, 143, 144, 145, 146, 147

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

Upon the foregoing papers as well as the email communications submitted to this part, Eric M. Babat, Esq.’s motion to withdraw as counsel for defendant Mark Militana (“Dr. Militana”) is granted.

**Background**

Dr. Militana’s attorney, Eric M. Babat of Oddo & Babat, P.C., moved to withdraw as counsel of record for Dr. Militana by filing an order to show cause on September 9, 2025 (NYSCEF Doc. No. 142). The Court signed the OSC and set a return date of September 26, 2025 (NYSCEF Doc. No. 144). On September 23, 2025, Dr. Militana sent the Court an email requesting a 30-day adjournment; the Court uploaded the letter at NYSCEF Doc. No. 148-1. Dr. Militana said he currently lives in Virginia, is an Emergency Medicine Physician, and that he planned on opposing the relief sought by Mr. Babat and his firm (*id.*). Dr. Militana said that he needed an opportunity to “obtain advice and have a proper response prepared” (*id.*).

The Court usually does not accept email submissions; however, exceptions are sometimes made for non-lawyers. A court user uploads the communication to NYSCEF, as was done here at NYSCEF Doc. No. 148-1. In the court notice granting an adjournment to October 27, 2025, the Court advised that “Any future correspondence with the Court shall be made by uploading a letter to NYSCEF to make sure it is part of the record and that all parties are apprised” (NYSCEF Doc. No. 148).

On October 27, 2025, the return date for the instant motion, and after any documents the parties wished to be considered in connection with this motion should have already been submitted to NYSCEF, the Court got another email from Dr. Militana stating his objections – which the Court again uploaded at NYSCEF Doc. No. 149-1. Then, Mr. Babat’s office and plaintiff’s attorney Glenn Nick both responded to Militana’s emails stating their objections and concerns regarding Dr. Militana’s email (*id.*).

The Court considered Dr. Militana’s position, even though he ignored the Court’s directive that all correspondence needed to be uploaded to NYSCEF. Dr Militana raises several objections which he lists under the five general categories of 1) Disruptive Timing of the Request, 2) Prejudice to the Client, 3) Lack of Replacement Counsel, 4) Ethical and Procedural Duties, and 5) Failure to Meet Ethical Standards. Dr. Militana says that there had been no attorney-client issues between Mr. Babat and himself for the first several years of litigation but that recently Mr. Babat has been pressuring him to settle this case and that, “...Mr. Babat has been aggressively trying to force me to agree to relieve him as my counsel in this proceeding” (*id.*).

Dr. Militana finishes the email by saying that he would send supporting documents in a separate email and by requesting that if the Court does allow Mr. Babat to withdraw, that he be granted a 90-day adjournment to obtain new counsel (*id.*).

Mr. Babat's email reply denies Dr. Militana's claims, requests a conference to discuss these matters and to provide the Court with certain supporting documents *in camera* to avoid prejudicing Dr. Militana, and states that, "It would be best if we did not have any further communication with our client" (*id.*).

Then, on October 29, 2025 – two days after the adjourned return date on this motion, Dr. Militana sent two more emails – the first at 1:22 a.m. and the second at 1:25 a.m. The first email requires the Court to click on a link and download external content. The Court declines to open this link. The second email contained an 81-page PDF. The PDF contained a notarized affidavit that was a copy of the letter that had already been emailed to the Court on October 27 along with copies of the OSC and supporting papers. The remaining 72 pages of the document consist of largely unorganized and unlabeled emails going back to 2023 as well as two purported retainer agreements. Although Dr. Militana sent the document to the Court and to opposing counsel, the Court will refrain from uploading the document out of an abundance of caution. If anybody else who received that email wants to upload it, they can, but the Court does not want to permanently publish information that contains personal medical information about Dr. Militana, may be subject to attorney-client privilege, and/or relate to other litigation. The Court will however describe certain emails which were considered in rendering this decision – basically, Dr. Militana's own submissions show his lack of responsiveness and Mr. Babat's total frustration in trying to reach and communicate with his client.

## Discussion

Mr. Babat's affirmation in support of this motion to withdraw cited irreconcilable differences with the client as the main reason to justify withdrawal (NYSCEF Doc. No. 143). Secondly, Mr. Babat stated that representation became impracticable, as Dr. Militana often did not respond to his emails and/or voicemails (*id.*).

Dr. Militana's October 29 email production did not direct the Court to any particular emails or put them into context; the Court assumes that they were provided to show that Dr. Militana was not an unresponsive client. The Court will only consider the emails from 2025, since Mr. Babat's motion to withdraw is partly predicated on the *recent* difficulty he has had in communicating with Dr. Militana.

The emails support Mr. Babat's contention that Dr. Militana was difficult to reach. For example, in an email dated February 5, 2025, Mr. Babat requests a call back, and no response email is attached. The Court has no idea if Dr. Militana ever responded to the email, but the next email that Dr. Militana provided is from about four months later, dated June 2, 2025.

On June 16, 2025, Mr. Babat wrote "It is unfortunate that I never heard back from you regarding this case...I need to speak to you ASAP. Please call me on my cell." Again, there is no indication that Dr. Militana responded. In an apparent escalation, on July 2, 2025, Mr. Babat wrote "As you know, I have tried to reach you several times since the court conference last week and I am not going to chase you any more. There is simply no way this matter can be resolved without your cooperation..." In a July 14, 2025 email, Mr. Babat expresses that since he never heard from Dr. Militana, that he was not able to discuss settlement with plaintiff's attorney. In an August 15, 2025 email, Dr. Militana himself offers his "sincere apologies" for a delayed response and admits that he understands Mr. Babat's concerns about timely communication.

Dr. Militana's email production has certainly helped prove Mr. Babat's position; it is crystal clear to the Court that there are indeed irreconcilable differences between Mr. Babat and Dr. Militana. For starters, lawyers need to be able to reach their clients, and Dr. Militana has submitted documents suggesting that he failed to respond too often and for too long. And clients need to feel their lawyer is on their side, yet Dr. Militana himself stated that Mr. Babat was *aggressively* trying to *force* him into relieving Mr. Babat as his counsel and to settle this case. Then Mr. Babat effectively said that he should not even be in the same room as Dr. Militana. Faced with a client who feels bullied by his lawyer and a lawyer who is fed up with the antics of his client, the Court grants Mr. Babat's motion to withdraw.

With regard to Dr. Militana's request for a 90-day stay, the Court finds that is far too long. Dr. Militana has known for a long time that he should have been looking for new counsel – the fact that he failed to find another attorney on his own necessitated this motion. Plus, Dr. Militana already got an adjournment to oppose this motion which gave him an extra month. It is simply not fair to the plaintiff, who filed this simple trip and fall case six years ago, to have this case further delayed unnecessarily. This case is on the trial calendar and there are plenty of attorneys who specialize in trial work and can get up to speed quickly. There is no reason for Dr. Militana to feel pressured into settling; he can retain another attorney, or he can represent himself. But this case will next appear on the Trial Assignment Part Calendar on December 18, 2025 at 9:30 a.m. The failure to appear that day, self-represented or by counsel, may result in appropriate penalties assessed by the judge then presiding.

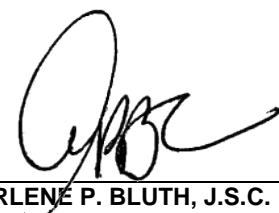
Accordingly, it is hereby

ORDERED that Mr. Babat’s and Oddo and Babat’s motion to withdraw as counsel for defendant Mark Militana is granted conditioned upon outgoing counsel complying with the following:

ORDERED that within 10 days of this order, outgoing attorney serve a copy of this order with notice of entry upon Mark Militana by certified mail and email and upon the attorneys for the other parties by posting to the New York State Courts Electronic Filing System; and it is further

ORDERED that, together with a copy of this order with notice of entry served upon the former client, moving counsel shall forward a notice directing the former client to appoint a substitute attorney or that he may appear self-represented; and counsel shall upload an affidavit of service for the notice and decision within 10 days of mailing to the former client; and it is further

ORDERED that all proceedings are stayed until November 28, 2025 and the matter will next appear on the TAP calendar on December 18, 2025.

|                           |  |                            |                                     |                       |
|---------------------------|--|----------------------------|-------------------------------------|-----------------------|
| <u>10/30/2025</u><br>DATE | <br>ARLENE P. BLUTH, J.S.C. |                            |                                     |                       |
| CHECK ONE:                | <input type="checkbox"/>   | CASE DISPOSED              | <input checked="" type="checkbox"/> | NON-FINAL DISPOSITION |
| APPLICATION:              | <input checked="" type="checkbox"/>  | GRANTED                    | <input type="checkbox"/>            | GRANTED IN PART       |
| CHECK IF APPROPRIATE:     | <input type="checkbox"/>   | SETTLE ORDER               | <input type="checkbox"/>            | SUBMIT ORDER          |
|                           | <input type="checkbox"/>   | INCLUDES TRANSFER/REASSIGN | <input type="checkbox"/>            | FIDUCIARY APPOINTMENT |
|                           |  |                            | <input type="checkbox"/>            | OTHER                 |
|                           |  |                            | <input type="checkbox"/>            | REFERENCE             |