

Squillace v MBH 185 Malcolm LLC
2026 NY Slip Op 30242(U)
January 20, 2026
Supreme Court, New York County
Docket Number: Index No. 156417/2017
Judge: Hasa A. Kingo
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. HASA A. KINGO PART 65M
Justice

-----X
DEVON SQUILLACE,
Plaintiff,
- v -
INDEX NO. 156417/2017
MOTION DATE 12/04/2025
MOTION SEQ. NO. 008

MBH 185 MALCOLM LLC, MARJORIE DESROSIERS,
NORA DOCKERY, GABRIELLE FRICKER, YAN NEILSON,
CALLAHAN SMITH, TERRANCE CAESAR, DEBORA
FREDERICK,
Defendant.

**DECISION + ORDER ON
MOTION**

MBH 185 MALCOLM LLC
Plaintiff,
-against-

Third-Party
Index No. 595161/2018

NORA DOCKERY, GABRIELLE FRICKER, YAN NEILSON,
CALLAHAN SMITH
Defendant.

MARJORIE DESROSIERS
Plaintiff,
-against-

Second Third-Party
Index No. 595485/2018

NORA DOCKERY, GABRIELLE FRICKER, YAN NEILSON,
CALLAHAN SMITH
Defendant.

The following e-filed documents, listed by NYSCEF document number (Motion 008) 396, 397, 398, 399,
406, 413, 414, 415, 416
were read on this motion to WITHDRAW.

With the instant motion, Defendants, Third Party Defendants and Second Third Party
Defendants, Nora Dockery, Gabrielle Fricker and Callahan Smith, seek an order, pursuant to CPLR

§ 321(b)(2), permitting counsel Michael Heitmann, Esq. (“Movant”) to be relieved as attorney of record for Nora Dockery, Gabrielle Fricker, and Callahan Smith, together with a stay of proceedings to allow those parties a reasonable opportunity to retain substitute counsel. Movant further requests that the pending motions be scheduled following the expiration of the statutory stay.

BACKGROUND AND PROCEDURAL HISTORY

This action arises from personal injuries allegedly sustained by plaintiff Devon Squillace. The matter has proceeded through extensive pleading and third party practice, resulting in multiple defendants, third party defendants, and second third party defendants.

Movant appeared in this action on behalf of Nora Dockery, Gabrielle Fricker, and Callahan Smith. As discovery progressed, including the exchange and review of deposition testimony, factual positions emerged that placed these parties in direct adversity to one another. Following that review, Movant concluded that continued representation would create an irreconcilable conflict of interest under the Rules of Professional Conduct. Each of the affected clients thereafter discharged Movant and consented to the termination of the attorney client relationship.

Movant commenced this application by order to show cause seeking leave to withdraw and a stay of proceedings. Defendant and third party plaintiff MBH 185 Malcolm LLC do not oppose the withdrawal, but request that any stay be limited to the thirty day period contemplated by CPLR § 321(c).

ARGUMENTS

Movant argues that withdrawal is mandatory where counsel is confronted with conflicting interests that cannot be reconciled, and where the clients have discharged counsel. Movant further asserts that a stay is necessary to prevent prejudice, particularly in light of pending summary judgment motions and the complexity of the procedural posture of the case.

MBH 185 Malcolm LLC does not oppose the relief permitting withdrawal, but urges the court to strictly limit any stay to thirty days, noting the strong policy favoring the orderly and timely progression of litigation once counsel has been relieved.

No party asserts that the application has been brought in bad faith or for purposes of delay.

DISCUSSION

CPLR § 321(b)(2) authorizes an attorney to withdraw by leave of court upon notice to the client and all appearing parties. New York courts routinely grant such relief where continued representation would violate the Rules of Professional Conduct or where the attorney client relationship has irretrievably broken down. Where, as here, counsel demonstrates that the representation involves differing and adverse interests, withdrawal is not only appropriate but required (*see* Rules of Professional Conduct rule 1.7 and rule 1.16).

The record establishes that Movant's clients have taken adverse positions as to liability and that Movant has been discharged. Under these circumstances, continued representation would place counsel in an untenable ethical posture and undermine the integrity of the proceedings. Accordingly, good cause exists to permit withdrawal.

CPLR § 321(c) provides for an automatic stay of proceedings for thirty days following a change or withdrawal of counsel, absent a showing of good cause for a longer or shorter period. The court finds that a thirty day stay strikes the proper balance between protecting the affected parties' right to secure new counsel and avoiding unnecessary delay. No basis has been shown for extending the stay beyond that period.

Following expiration of the stay, the pending motions must be promptly addressed so that this long pending matter may proceed in an orderly fashion.

Accordingly, it is hereby

ORDERED that Movant's motion to be relieved as counsel for Nora Dockery, Gabrielle Fricker, and Callahan Smith is granted, upon filing of proof of compliance with the conditions set forth herein; and it is further

ORDERED that Movant shall serve a copy of this decision and order with notice of entry upon the former clients at their last known addresses by certified mail, return receipt requested, and upon all other parties by filing on the New York State Courts Electronic Filing System; and it is further

ORDERED that, together with the copy of this decision and order with notice of entry served upon the former clients, Movant shall forward a notice directing the former clients to appoint substitute counsel within thirty days from the date of mailing, and the former clients shall comply therewith; and it is further

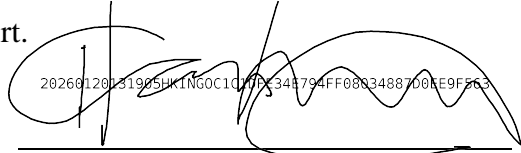
ORDERED that, if any former client elects to proceed without counsel, that party shall submit written notice of that election by correspondence uploaded to NYSCEF and by electronic mail to the Part 65 Clerk at the Supreme Court Civil Division; and it is further

ORDERED that any new attorney retained by Nora Dockery, Gabrielle Fricker, or Callahan Smith shall file a notice of appearance with the Clerk of the General Clerk's Office and with the Clerk of Part 65 within thirty days from the date the notice to retain new counsel is mailed; and it is further

ORDERED that no further proceedings may be taken against Nora Dockery, Gabrielle Fricker, or Callahan Smith without leave of this court for a period of thirty days after service upon them of the notice to appoint substitute counsel; and it is further

ORDERED that the pending motions bearing sequence numbers 005, 006, 007, and 009 shall be calendared in Part 65, Supreme Court of the State of New York, located at 80 Centre Street, Room 308, New York, New York 10031, on Tuesday March 10, 2026 at 9 30 AM.

This constitutes the decision and order of the court.



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HASA A. KINGO, J.S.C.

1/20/2026

DATE

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