

Burlington Ins. Co. v Castillo Iron Works, Inc.

2019 NY Slip Op 31120(U)

April 22, 2019

Supreme Court, New York County

Docket Number: 151907/2018

Judge: Joel M. Cohen

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JOEL M. COHEN PART IAS MOTION 3EFM
Justice
INDEX NO. 151907/2018
MOTION DATE 02/25/2019
MOTION SEQ. NO. 002
THE BURLINGTON INSURANCE COMPANY
Plaintiff,
- v -
CASTILLO IRON WORKS, INC.,
Defendant.

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 002) 33, 34, 35
were read on this motion to: RELIEVE COUNSEL

Upon the foregoing documents:

This action was commenced by The Burlington Insurance Company against Defendant
Castillo Iron Works, Inc. on March 2, 2018 alleging breach of contract, account stated and
attorney's fees. Defendant filed an Answer with counterclaims on May 18, 2018.

Now before the Court is Redmond Law's motion, brought by Order to Show Cause, to be
relieved as counsel on behalf of Defendant. Mr. Lee Kaplan, on behalf of Redmond Law, cites
unpaid legal fees as his reason for being unable to continue to work with Defendant. Kaplan
Aff., ¶5-7 (NYSCEF 13). This relief is being sought by way of Notice of Motion and was
unopposed. Counsel filed affidavits of service attesting that a copy of this motion was served
upon Defendant and Plaintiff's counsel.

No opposition having been filed, this motion is unopposed. For the following reasons,
the Court grants counsel's motion to withdraw as attorney of record for Defendant.

Relieving counsel from its representation of a party is appropriate where, inter alia, there
is adequate evidence showing a breakdown in the attorney-client relationship. Robinson v.
Friedman Mgt. Corp., 49 A.D. 3d 436, 437 (1st Dep't 2008); see also Bok v. Werner, 9 A.D.3d

318 (1st Dep't 2004) (reversing denial of motion to withdraw as counsel in view of counsel's claimed breakdown in relationship with client); *see also* Rule 1.16(c)(5) of the Rules of Professional Conduct (a lawyer may withdraw from representing a client when: the client deliberately disregards an agreement or obligation to the lawyer as to expenses or fees). Movant has done so. Given that the case is at an early stage, and no discovery schedule has yet been entered, Defendant should not be prejudiced by a change in counsel.

The Court concludes that Redmond Law PLLC has made a sufficient showing of entitlement to withdraw as counsel for Defendant and its motion is Granted. Redmond Law PLLC is directed to advise Defendant Castillo Iron Works, Inc. that, as a corporation, it must retain new counsel and cannot appear *pro se*. *See*, CPLR §321(a).

It is therefore:

ORDERED that the motion of Redmond Law PLLC to be relieved as attorney for Defendant in this action is granted without opposition, subject to the following conditions; it is further

ORDERED that Redmond Law PLLC is to comply with its obligation under Rule 1.16(e) of the Rules of Professional Conduct, as applicable to the facts presented, to "take steps, to the extent reasonably practicable, to avoid foreseeable prejudice to the rights of the client, including giving reasonable notice to the client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, promptly refunding any part of a fee paid in advance that has not been earned and complying with applicable laws and rules."; it is further

ORDERED that, within 10 days from entry, Redmond Law PLLC shall serve a copy of this order with notice of entry upon Defendant Castillo Iron Works, Inc. by email and by hard copy

at its last known address by certified mail, return receipt requested, and upon the attorneys for all other parties appearing herein by posting to the New York State Courts Electronic Filing System; it is further

ORDERED that, together with the copy of this order with notice of entry served upon Defendant, moving counsel shall forward a notice directing Defendant to appoint a substitute attorney within 30 days from the date of the mailing of the notice and the client shall comply therewith; it is further

ORDERED that any new attorney retained by Defendant shall file a notice of appearance with the Clerk of the General Clerk's Office (60 Centre Street, Room 119) and the Clerk of the Part within 40 days from the date the notice to retain new counsel is mailed; it is further

ORDERED that no further proceedings may be taken against Defendant without leave of this court for a period of 40 days after service on Defendant of the aforesaid notice to appoint a substitute attorney; it is further

ORDERED that the departing firm shall, within 10 days from entry, serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (Room 119); it is further

ORDERED that such service upon the Clerk of the General Clerk's Office, the filing of a notice of appearance as provided herein, and the filing of papers as aforesaid 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 at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that all parties are to appear at a Preliminary Conference on June 25, 2019 at 10:00 a.m.

4/22/2019
DATE


JOEL M. COHEN, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE