

<b>MDB Dev. Corp. v Naylor Concrete &amp; Steel Erectors, LLC</b>
2019 NY Slip Op 32520(U)
August 22, 2019
Supreme Court, New York County
Docket Number: 650622/2018
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JOEL M. COHEN PART IAS MOTION 3EFM

Justice

MDB DEVELOPMENT CORP.,
Plaintiff,

- v -

NAYLOR CONCRETE & STEEL ERECTORS, LLC,
Defendant.

INDEX NO. 650622/2018
MOTION DATE N/A
MOTION SEQ. NO. 005

DECISION + ORDER ON MOTION

NAYLOR CONCRETE & STEEL ERECTORS, LLC,
Plaintiff,

Third-Party
Index No. 595254/2018

-against-

DOKA USA, LTD., UNITED TRANSIT MIX, INC., HD SUPPLY
CONSTRUCTION SUPPLY LTD., MEN OF STEEL REBAR
FABRICATORS LLC, SUNBELT RENTALS, INC., FIDELITY
AND DEPOSIT COMPANY OF MARYLAND ZURICH
AMERICAN INSURANCE COMPANY, WC 28 REALTY, LLC,
ABC CORPORATIONS 1-10, RICKY NAYLOR, JOHN DOES
1-10

Defendant.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 131, 134, 135

were read on this motion to WITHDRAW AS COUNSEL

Upon the foregoing documents

Counsel for Defendant/Third-Party Plaintiff Naylor Concrete & Steel Erectors, LLC and
Third Counterclaim and Cross-Claim Defendant Ricky Naylor (collectively "Naylor
Defendants"), Robert O. Corini, Esq., seeks to withdraw as counsel pursuant to CPLR §321(b)(2)
and NYSCR §1200.15 (c)(1)(iv) and (c)(1)(vi). This motion is unopposed.

This action was commenced by MDB Development Corp. against Defendant Naylor Concrete & Steel Erectors, LLC on February 7, 2018 alleging breach of contract, diversion of lien law trust funds, and willful exaggeration of lien. Defendant Naylor Concrete commenced a third-party action against various defendants.

Now before the Court is Robert O. Corini, Esq.'s motion, brought by Order to Show Cause, to be relieved as counsel on behalf of the Naylor Defendants. Mr. Corini asserts that there has been a breakdown in his relationship with the Naylor Defendants due to their failure to remit payment for legal services and respond to communication efforts made by Mr. Corini, rendering continued and effective representation of the Naylor Defendants in this action impossible. *Corini Aff.*, ¶9-10 (NYSCEF 131).

The Order to Show Cause was signed on August 5, 2019 and directed opposition, if any, to this requested relief be filed by August 21, 2019 and further provided that a copy of the Order to Show Cause and the supporting papers upon which it is based shall be served upon all parties by certified mail. Counsel filed affidavits of service attesting that copies were served upon the parties. (NYSCEF 142). 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 the Naylor Defendants.

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 (1<sup>st</sup> Dep't 2008); *see also Bok v. Werner*, 9 A.D.3d 318 (1<sup>st</sup> 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 discovery is ongoing, Naylor Defendants should not be prejudiced by a change in counsel.

The Court concludes that Robert O. Corini, Esq. has made a sufficient showing of entitlement to withdraw as counsel for the Naylor Defendants and his motion is Granted. Mr. Corini is directed to comply with his obligation under Rule 1.16(e) of the Rules of Professional Conduct as stated below.

It is therefore:

**ORDERED** that the motion of Robert O. Corini, Esq. to be relieved as attorney for Defendant/Third-Party Plaintiff Naylor Concrete & Steel Erectors, LLC and Third-Party Counterclaim and Cross-Claim Defendant Ricky Naylor in this action is granted without opposition, subject to the following conditions; it is further

**ORDERED** that Robert O. Corini, Esq is to comply with his 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, Robert O. Corini, Esq shall serve a copy of this order with notice of entry upon both Defendant/Third-Party Plaintiff Naylor Concrete & Steel Erectors, LLC and Third-Party Counterclaim and Cross-Claim Defendant Ricky Naylor by email and by hard copy at their 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/Third-Party Plaintiff Naylor Concrete & Steel Erectors, LLC and Third-Party Counterclaim and Cross-Claim Defendant Ricky Naylor, moving counsel shall forward a notice directing Defendant/Third-Party Plaintiff Naylor Concrete & Steel Erectors, LLC and Third-Party Counterclaim and Cross-Claim Defendant Ricky Naylor 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/Third-Party Plaintiff Naylor Concrete & Steel Erectors, LLC and Third-Party Counterclaim and Cross-Claim Defendant Ricky Naylor 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/Third-Party Plaintiff Naylor Concrete & Steel Erectors, LLC and Third-Party Counterclaim and Cross-Claim Defendant Ricky Naylor without leave of this court for a period of 40 days after service on all parties of the aforesaid notice to appoint a substitute attorney; it is further

**ORDERED** that the departing attorney 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](http://www.nycourts.gov/supctmanh)); and it is further

**ORDERED** that all parties are to appear for a Status Conference in this matter on October 15, 2019 at 11:00 a.m.

8/22/2019 DATE	 JOEL M. COHEN, J.S.C.			
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE