

<b>Arent Fox LLP v JDN AA, LLC</b>
2019 NY Slip Op 32968(U)
October 10, 2019
Supreme Court, New York County
Docket Number: 151654/2018
Judge: David Benjamin 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

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ARENT FOX LLP,

Plaintiff,

- v -

JDN AA, LLC D/B/A AUDI/NEWTON, SUBARU 46 LLC, and
DCN AUTOMOTIVE LLC

Defendant.

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INDEX NO. 151654/2018

MOTION DATE 09/24/2019

MOTION SEQ. NO. 008

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 008) 234, 235, 236, 237, 238, 239, 240, 241, 242

were read on this motion for RELIEF OF ATTORNEY

Upon the foregoing documents:

This action was commenced by Arent Fox LLP against Defendants for nonpayment of legal fees. The firm asserts claims for breach of contract, account stated, quantum meruit, unjust enrichment, and promissory estoppel. Discovery has been concluded in this action and Note of Issue has been filed. A pre-trial Conference has not yet been scheduled.

Now before the Court is the motion by Defendants' counsel, Brach Eichler LLC ("Brach Eichler"), to be relieved as counsel pursuant to CPLR §321 (b)(2). Plaintiff opposes this motion. For the following reasons, Defendants motion is Granted.

Brach Eichler cites to a breakdown in the attorney client relationship as its reason for being unable to continue to work with Defendants. Suriano Aff., ¶4 (NYSCEF 236) and Suriano Reply Aff., ¶3. (NYSCEF 241).

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). Movant has done so. Given that the case has not been scheduled for trial and there are no pending dispositive motions and discovery has concluded, Defendants should not be prejudiced by a change in counsel.

Plaintiff's opposition to this motion largely concerns the potential litigation delay that may result from Brach Eichler's request. While a stay has been requested by Brach Eisler, the Court does not find awarding such a brief stay will delay the trial of this matter or resolution of this matter. There are currently no pending appearances nor is there a trial date on the calendar.

The Court concludes that Brach Eichler has made a sufficient showing of entitlement to withdraw as counsel for Defendants and its motion is Granted. Brach Eichler is directed to advise Defendants that, as corporate Defendants, they may not appear *pro se* and must retain new counsel. *See* CPLR §321(a). Brach Eichler is also directed to comply with its obligation under Rule 1.16(d) of the Rules of Professional Conduct as stated below.

It is therefore:

**ORDERED** that the motion of Brach Eichler LLC to be relieved as attorney for Defendants in this action is granted, subject to the following conditions:

**ORDERED** that Brach Eichler LLC is to comply with its obligation under Rule 1.16(d) 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 clients, including giving reasonable notice to the clients, allowing time for employment of other counsel, delivering to the clients all papers and property to which the clients 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, Brach Eicher LLC shall serve a copy of this order with notice of entry upon Defendants 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 all parties, moving counsel shall forward a notice directing Defendants to appoint a substitute attorney within 30 days from the date of the mailing of the notice and Defendants shall comply therewith; it is further

**ORDERED** that any new attorney retained by Defendants 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 30 days from the date the notice to retain new counsel is served; it is further

**ORDERED** that no further proceedings may be taken against Defendants without leave of this court for a period of 30 days after service on Defendants 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); and 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 on November 26, 2019 at 11:30 a.m. in Room 222 for a Pre-Trial Conference.

10/10/2019  
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"/>	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"/>	REFERENCE
			<input type="checkbox"/>	DENIED
			<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT