

M. Alfonso Painting Corp. v I Labor, LLC

2019 NY Slip Op 33205(U)

October 25, 2019

Supreme Court, New York County

Docket Number: 652883/2013

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

M. ALFONSO PAINTING CORP., Plaintiff, - v - I LABOR, LLC, WBB CONSTRUCTION, INC., SHAYA BRODCHANDEL, CHAIM TESSLER Defendant. INDEX NO. 652883/2013 MOTION DATE N/A MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 45, 46, 47 were read on this motion for WITHDRAWAL OF COUNSEL

Upon the foregoing documents:

This action was commenced by M. Alfonso Painting Corp. against Defendants based on an alleged failure to pay for services rendered. The firm asserts claims for breach of contract, fraud, and an accounting. Discovery is ongoing.

Now before the Court is the motion by Defendants' counsel, Cozen O'Connor, to be relieved as counsel pursuant to CPLR §321 (b)(2). This motion is unopposed. For the following reasons, Cozen O'Connor's motion is Granted. Cozen O'Connor cites to a breakdown in the attorney client relationship and Defendants' failure to remit payment for legal services rendered as the reasons for being unable to continue to work with Defendants. Loh Aff., ¶2 (NYSCEF 24).

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 Rules of Professional Conduct Rule

1.16(c)(5) (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, the case has not been scheduled for trial and there are no pending dispositive motions, Defendants should not be prejudiced by a change in counsel. Cozen O'Connor advised Defendants of its intent to withdraw and received no objection. *Loh Aff.*, ¶10.

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

It is therefore:

ORDERED that the motion of Cozen O'Connor to be relieved as attorney for Defendants in this action is granted, subject to the following conditions:

ORDERED that Cozen O'Connor 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, Cozen O'Connor 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 the corporate Defendant 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 (or an individual Defendant proceeding *pro se*) 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 or proceed *pro se*; 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); and it is further

ORDERED that all parties are to appear on December 17, 2019 at 10:00 a.m. in Room 222 for a Status Conference.

This constitutes the Decision and Order of the Court.

10/25/2019

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	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE