

SRS Capital Funds, Inc. v Bujan
2020 NY Slip Op 31808(U)
June 10, 2020
Supreme Court, New York County
Docket Number: 654888/2019
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART IAS MOTION 3EFM

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SRS CAPITAL FUNDS, INC., USRS CAPITAL FUNDS,
INC., CAPITAL FUNDING JN, INC., JOSEPH
SCHULMAN, TZILA SCHULMAN

Plaintiffs,

- v -

ARTY BUJAN, WILLIAM LEES, CARDINAL EQUITY, LLC,

Defendants.

INDEX NO. 654888/2019

MOTION DATE 03/04/2020

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 30, 31, 32, 33, 34
were read on this motion to WITHDRAW AS COUNSEL.

Now before the Court is the motion brought by Defendants’ counsel, the law firm Ellenoff, Grossman & Schole LLP (“EGS”), to withdraw as counsel. EGS, through one of its attorneys, John B. Horgan, explains that Defendants have not fully or timely paid their legal fees, in violation of the parties’ Engagement Letter (NYSCEF 31 [Horgan Aff.]). Further, Horgan avers, EGS warned Messrs. Bujan and Lees that EGS would be forced to seek withdrawal as counsel if Defendants did not pay all outstanding legal fees by February 28, 2020 (*id.* ¶ 16). Defendants did not pay (*id.* ¶ 17). As of March 3, 2020, EGS says it is owed \$58,560.00 in outstanding legal fees (*id.* ¶ 14 n.1). EGS filed the instant motion, by Order to Show Cause, the next day.

The motion to withdraw as counsel, which is unopposed, is granted subject to the conditions set out below. An attorney may withdraw from representation where the client “deliberately disregards an agreement or obligation to the lawyer as to expenses or fees”

(NYCRR 1.16 [c] [5]); *see also Weiss v Spitzer*, 26 AD3d 675 [1st Dept 2007] [permitting

attorney to withdraw where client was almost \$4,000 in arrears]; *Winters v Winters*, 25 AD3d 601, 601 [2d Dept 2006] [holding attorney may withdraw where client "refuses to pay reasonable legal fees"]. Here, the terms of the Engagement Letter provide that EGS may terminate the representation of Defendants if an invoice is not paid within thirty days (Horgan Aff. ¶ 20; see NYSCEF 32 [Engagement Letter] ["reserv[ing] the right, in the event that payment is not made on a reasonably timely basis, to withdraw from the representation"]). The Court finds, moreover, that the parties are not prejudiced by EGS's withdrawal: the Court recently decided Defendants' motion to dismiss, permitting several causes of action to proceed, and no discovery schedule has yet been entered.

As part of its motion, EGS also seeks "a temporary stay of the proceedings for at least thirty (30) days for Defendants to retain new counsel" (Horgan Aff.). By letter to the Court dated June 5, 2020, however, Plaintiffs request that Defendants be given no more than 14 days to retain new counsel (NYSCEF 38). Given that Defendants have already had several months to begin the search for new counsel – EGS filed the Order to Show Cause seeking withdrawal on March 3 – the Court finds that a 3-week stay is appropriate here.

In sum, the Court concludes that EGS has made a sufficient showing of entitlement to withdraw as counsel for Defendants, and its motion is granted. EGS is directed to advise Defendants that, as to Cardinal, it must retain counsel to continue this litigation (*see* CPLR § 321 [a]). EGS is also directed to comply with its obligation under Rule 1.16(e) of the Rules of Professional Conduct, as stated below.

Therefore, it is

ORDERED that EGS's motion to be relieved as counsel for Defendants is **GRANTED** subject to the following conditions; it is further

ORDERED that EGS 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 are 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 5 days from entry of this Order, EGS shall serve a copy of this Order with notice of entry upon Defendants by email and, if practicable, 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 the Defendants, moving counsel shall forward a notice directing the Defendants to appoint a substitute attorney within 21 days of such notice (*see* CPLR § 321). If any individually named Defendant elects to proceed in this matter *pro se*, that individual must advise the Court of such a decision within 30 days of moving counsel’s notice; it is further

ORDERED that any new attorney retained by Defendants shall file a notice of appearance within 21 days from the date the notice to retain new counsel is sent; it is further

ORDERED that no further proceedings may be taken against any of the Defendants without leave of this court until 21 days from the date of notice; it is further

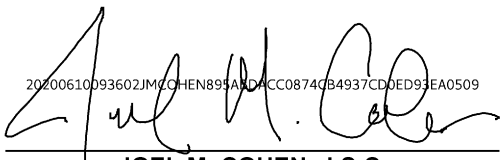
ORDERED that the departing attorney shall, within 5 days from entry, serve a copy of this Order with notice of entry on the Clerk of the General Clerk’s Office (Room 119); it is further

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 for a Status Conference on **July 14, 2020 at 11:00 a.m.**

This Constitutes the Decision and Order of the Court.

6/10/2020
DATE


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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