

Evunp Holdings LLC v Frydman
2020 NY Slip Op 31838(U)
June 12, 2020
Supreme Court, New York County
Docket Number: 650841/2014
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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EVUNP HOLDINGS LLC, EVURTI LLC, ELI
VERSCHLEISER,

Plaintiffs,

- v -

JACOB FRYDMAN, JFURTI LLC, SUMMER INVESTORS
LLC, WINTER 866 UN LLC, SUNEET SINGAL, FIRST
CAPITAL REAL ESTATE INVESTMENTS, LLC, FIRST
CAPITAL REAL ESTATE TRUST, INC., JOHN DOES #1-
10,

Defendants.

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INDEX NO. 650841/2014

MOTION DATE 03/12/2020

MOTION SEQ. NO. 015

**DECISION + ORDER ON
MOTION**

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 015) 380, 381, 385, 388,
390, 391, 392, 414

were read on this motion to WITHDRAW AS COUNSEL.

In Motion Sequence Number 015, Defendants’ counsel, Daniel Edelman, Esq., seeks to withdraw as counsel. He asserts that withdrawal is warranted because “Defendants have discharged [his] services as counsel” and “communications with Defendants ha[ve] become strained” (NYSCEF 381 [Edelman aff]). Edelman notes that Defendants filed a motion for summary judgment (the reply papers for which have not yet been submitted but are subject to the parties’ briefing schedule) and asserts that “a stay is required so that [he] will not have to perform any further legal services and to prevent any prejudice to Defendants” (*id.* ¶¶ 6-8).

Plaintiff opposes the motion to the extent that it requests a stay of any duration and, further, argues that Edelman should not be permitted to withdraw “while the motion for summary judgment is pending” (NYSCEF 391, ¶¶ 3-7 [stating that Defendants have “repeatedly”

changed counsel—even variously terminating and re-hiring Edelman “several times” — throughout the action]).

The motion to withdraw as counsel is granted subject to the conditions set out below. Generally, a client has an “unqualified right to terminate the attorney-client relationship at any time without any obligation other than to compensate the attorney for “the fair and reasonable value of the completed services” (*e.g. Matter of Thelen LLP*, 24 NY3d 16, 28 [2014]). Nothing in this record suggests that Edelman has not been paid for his services to date. The Court will not now require that Edelman continue his representation of Defendants following his discharge simply because Edelman filed the moving papers for the parties’ pending motion for summary judgment. Counsel is *required* to withdraw its representation upon termination by the client under Rule 1.16 (b) of the Rules of Professional Conduct.

Plaintiff’s opposition to the request is moot given that Defendants “have already obtained new counsel, Mr. Andrew Hayes, who has already recorded representation” though has not filed a notice of appearance (NYSCEF 392, ¶ 12 [Edleman reply aff] [filed 05/26/20]). Under the circumstances, no party will be prejudiced by Edelman’s withdrawal and no stay of proceedings against Defendants is necessary.

* * * * *

Accordingly, it is

ORDERED that Edelman’s motion to be relieved as counsel for Defendants is **granted**, subject to the following conditions; it is further

ORDERED that Edelman shall comply with all 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, . . . 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 24 hours from the Court’s entry of this Order on NYSCEF, Edelman 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, as well as upon the attorneys for all other parties and any *pro se* parties appearing herein by posting to the New York State Courts Electronic Filing System; it is further

ORDERED that any substitute attorney retained by Defendants shall file a notice of appearance within 2 days from the date that outgoing counsel’s notice to retain new counsel is sent; it is further

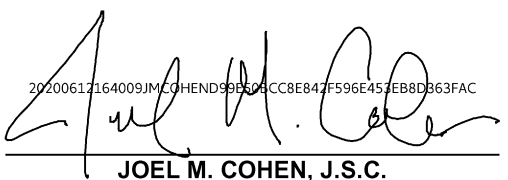
ORDERED that outgoing counsel shall, within 5 days from the Court’s entry of this Order on NYSCEF, serve a copy of this Order with notice of entry upon the Clerk of the General Clerk’s Office (Room 119); it is further

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 28, 2020 at 11:00 a.m.**

This Constitutes the Decision and Order of the Court.

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JOEL M. COHEN, J.S.C.

6/12/2020
DATE

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
		<input type="checkbox"/>	DENIED	<input type="checkbox"/>
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"/>	OTHER
			<input type="checkbox"/>	REFERENCE