

Sky Lofts, LLC v CA Bedford Holdings LLC
2020 NY Slip Op 33336(U)
October 7, 2020
Supreme Court, New York County
Docket Number: 650009/2015
Judge: Melissa A. Crane
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. MELISSA ANNE CRANE PART IAS MOTION 15EFM

Justice

-----X

SKY LOFTS, LLC

Plaintiff,

- v -

CA BEDFORD HOLDINGS LLC

Defendant.

-----X

INDEX NO. 650009/2015
MOTION DATE N/A
MOTION SEQ. NO. 006

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 006) 189, 190, 191, 192, 193, 194, 195

were read on this motion to/for ATTORNEY - DISQUALIFY/RELIEVE/SUBSTITUTE/WITHDRAW .

In this action seeking damages, in part, for breach of contract, the law firm Sukenik, Segal & Graff, PC (SSG) moves by Order to Show Cause (OSC) in Motion Seq. No. 06 (Doc No. 189)¹ to withdraw as counsel (CPLR 321 [b] [2]) for plaintiff Sky Lofts LLC, individually and derivatively on behalf of CAB Bedford LLC (Sky Lofts).

FACTUAL AND PROCEDURAL BACKGROUND

For purposes of the application before the court, the following facts as alleged in the OSC application are pertinent:

SSG was retained by Yehuda Backer (Yehuda), who was the sole member and manager of Sky Lofts. In 2019, Yehuda’s health began to deteriorate and his son, Samuel Backer (Backer), was appointed an officer of Sky Lofts, becoming the individual making all decisions on behalf of Sky Lofts in this litigation. David C. Segal (Segal), a partner at SSG, now asserts in

¹ References to “Doc No.” followed by a number refer to documents filed in NYSCEF.

his affirmation dated August 14, 2020 (Segal aff) (Doc No. 190) that he “cannot identify any person who can provide guidance on behalf of” Sky Lofts “as to the direction of the litigation” (Segal aff at ¶ 1) because communication with Backer has become non-existent.

On or about April 16, 2020 Yehuda passed away (Segal aff at ¶ 6) and SGG was not advised as to who “succeeded” Yehuda’s membership interest in Sky Lofts, nor who was its current corporate manager (*id.*) Specifically, Segal asserts that on or about July 24, 2020 he emailed and called Backer in connection with the instant litigation seeking documents, information and guidance on how to proceed with the prosecution of this action but all of SSG’s messages went unanswered (Segal aff ¶ 7) (7/24/20 email, Doc No. 191). Thereafter, on July 27, 2020 SSG sent Backer another email (Doc No. 192) advising him of SSG’s intention to seek relief from the court to withdraw as counsel for Sky Lofts. As of this OSC application, SSG has not received any communication from Backer.

ARGUMENTS

SSG contends that the court should grant the application to withdraw as counsel for Sky Lofts because: (1) the lack of communication with Sky Lofts has prevented SSG from “effectively” prosecuting and representing plaintiff in this matter (Segal aff at ¶ 8 and 9); and (2) the application to be relieved as counsel for plaintiff is warranted pursuant to rule 1.16 (c) (7) of the Rules of Professional Conduct, which states, in pertinent part:

“... (c) Except as stated in paragraph (d), a lawyer may withdraw from representing a client when: ...

(7) the client fails to cooperate in the representation or otherwise renders the representation unreasonably difficult for the lawyer to carry out employment effectively; ...”.

Sky Lofts did not oppose this OSC application. However, defendants CA Bedford Holdings, LLC, CA Bedford Holdings II LLC, Cab Bedford LLC, Alex Adjmi, and Ira Gordon,

argue that SSG's application must be denied because: (1) plaintiff will unfairly use this motion to further delay the prosecution of this action; (2) Backer attended several depositions on behalf of Sky Lofts as an "officer" of plaintiff corporation and therefore is the person directing the prosecution of this action on behalf of Sky Lofts; (3) at a February 2020 court settlement conference, plaintiffs' counsel represented that Backer sought financial documents from defendants in order to facilitate settlement discussions and therefore SGG's claim that they have had no communication with Backer within the last six to nine months, is "irreconcilable"; (4) SGG's failure to communicate with defendants as to the status of the case until this application, raises questions as to this application being a dilatory tactic to further delay the prosecution of this action to prejudice defendants; and (5) as there is no proof as to who succeeded Yehuda, the sole member of Sky Lofts, the court must dismiss this action with prejudice (see generally, Affirmation in Opposition to OSC, Doc No. 194).

DISCUSSION

An attorney of record may only withdraw or be changed or discharged in the manner set forth by CPLR 321. Here, SSG seeks to be relieve as counsel in accordance with CPLR 321 (b) (2), which states, as follows:

"... (b) Change or withdrawal of attorney. ... 2. An attorney of record may withdraw or be changed by order of the court in which the action is pending, upon motion on such notice to the client of the withdrawing attorney, to the attorneys of all other parties in the action or, if a party appears without an attorney, to the party, and to any other person, as the court may direct."

Therefore, until an attorney of record is discharged by order of the court, the attorneys continue to represent the party client. In this case, there is no dispute that SSG has complied with the notice requirements of both CPLR 321 (b) and the court's OSC (Doc No. 193). Additionally, an attorney is entitled to withdraw on grounds that the client failed to respond to the attorney of

record as the lack of communication makes “it unreasonably difficult for [the attorney] to represent [the client] effectively” (*Bok v Werner*, 9 AD3d 318, 318 [1st Dept 2004]).

Defendants’ opposition relies upon an unsubstantiated insinuation that SSG has been in communication with Backer within a period of time shorter than six to nine months. This conclusory statement not only fails to demonstrate any prejudice to defendants were SSG relieved as counsel for Sky Lofts, but also lacks evidentiary proof that the delay, if any, in the prosecution of this action is based upon an intentional act by SSG. Indeed, since the commencement of this action in 2015, the parties have proceeded with the prosecution and defense of this action by not only participating in extensive motion practice and protracted discovery, but by also appearing at settlement conferences wherein SGG demonstrated a good faith effort to settle this matter on behalf of Sky Lofts. Lastly, defendants’ application to dismiss this case is denied, for failure to provide notice of motion to all parties that defendants were seeking affirmative dispositive relief from the court (see, CPLR 2214).

Accordingly, it is

ORDERED that the motion of Sukenik, Segal & Graff, PC to withdraw as counsel for plaintiff Sky Lofts LLC, individually and derivatively on behalf of CAB Bedford LLC is granted without opposition upon filing of proof of compliance with the following conditions:

ORDERED that said Sukenik, Segal & Graff, PC serve a copy of this order with notice of entry upon the former client at his its last known address by certified mail, return receipt requested, and upon the attorneys for all other parties appearing herein by overnight mail within ten days of the efiled date of this decision and order; and it is further

ORDERED that, together with the copy of this order with notice of entry served upon the former client, moving counsel shall forward a notice directing the former client to appoint a

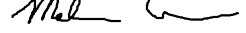
substitute attorney within 30 days from the date of mailing the notice and the client shall comply therewith; and it is further

ORDERED that any new attorney retained by plaintiff Sky Lofts LLC, individually and derivatively on behalf of CAB Bedford LLC file a notice of appearance with the Clerk of the Trial Support Office (Room 158) and the Clerk of the Part within 30 days from the date the notice to retain new counsel is mailed; and it is further

ORDERED that no further proceedings may be taken against the former client without leave of this court for a period of 30 days after service on the former client of the aforesaid notice to appoint a substitute attorney; and it is further

ORDERD that defendants CA Bedford Holdings, LLC, CA Bedford Holdings II LLC, Cab Bedford LLC, Alex Adjmi, and Ira Gordon’s the application to dismiss is denied without prejudice to interpose such dispositive relief, on notice and in the event of plaintiff’s non-compliance with the court’s order.

The parties shall appear for a status conference on December 21, 2020 at noon by phone.

<u>10/7/2020</u> DATE			 MELISSA ANNE CRANE, 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	<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