

American Express Natl. Bank v Toro Kitchen, Inc.

2022 NY Slip Op 33512(U)

October 14, 2022

Supreme Court, New York County

Docket Number: Index No. 656415/2018

Judge: Debra A. James

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DEBRA JAMES PART 59

Justice

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AMERICAN EXPRESS NATIONAL BANK

Plaintiff,

- v -

TORO KITCHEN, INC.,

Defendant.

-----X

INDEX NO. 656415/2018

MOTION DATE 03/03/2022

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 51, 52, 53, 54, 55, 56, 58, 59, 60, 61, 62

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

ORDER

Upon the foregoing documents,

ORDERED that the motion of Jerome Lee, Esq., to be relieved as attorney for Toro Kitchen, Inc., is granted without opposition upon the filing by movant of proof of compliance with the following conditions: and it is further

ORDERED that Jerome Lee, Esq., shall serve a copy of this order with notice of entry upon the former client, Toro Kitchen, Inc., at its last known address by regular first class mail, and upon the attorneys for all other parties appearing herein by New York State Courts Electronic Filing System; and it is further

ORDERED that, together with the copy of the order with notice of entry served upon Toro Kitchen, Inc, Jerome Lee, Esq.,

shall forward a notice directing Toro Kitchen, Inc., to appoint a substitute attorney within thirty (30) days after service of such notice and such client shall comply therewith; and it is further

ORDERED that no further proceedings may be taken against defendant, Toro Kitchen, Inc., without leave of this court for a period of forty (40) days after service on Toro Kitchen, Inc., of the aforesaid notice to appoint a substitute attorney;

ORDERED that any new attorney retained by defendant 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 forty (40) days from the date the notice to retain new counsel is mailed; and it is further

ORDERED that plaintiff's motion for summary judgment (motion sequence number 002) is adjourned to December 14, 2022 and defendant is directed to post on NYSCEF opposition thereto twelve (12) days prior to such date and plaintiff is directed to post on NYSCEF a reply thereto no later than two (2) days prior to such date; and it is further

ORDERED that the departing attorney shall, within ten (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/suptctmanh).

DECISION

In this breach of contract action, counsel for defendant Toro Kitchen, Inc., Jerome Lee, Esq., seeks to withdraw as counsel. The motion is unopposed.

An attorney may move to be relieved as counsel of record upon a showing of good and sufficient cause, and reasonable notice to the client. (See CPLR 321[b](2); Mason v MTA N.Y. City Tr., 38 AD3d 258, 258 [1st Dept 2007]). A client's failure to pay reasonable legal fees to its counsel constitutes good cause for the withdrawal of such attorney from representing such party. (see Winters v Winters, 25 AD3d 601 [2nd Dept 2006]). Likewise, the failure of a client to communicate with its attorney constitutes good cause to be relieved as counsel. (See Bok v Werner, 9 AD3d 318 [1st Dept 2004]).

Here, counsel asserts that the attorney-client relationship has deteriorated. Counsel affirms that he was instructed by the defendant to cease efforts to defend the corporation, Toro

Kitchen, Inc., because there are no funds to resolve the matter with plaintiff, and no funds to pay counsel. Additionally, counsel has not been able to communicate with the defendant in approximately four months prior to filing the instant motion to be relieved as counsel. (see NYSCEF Doc No. 52).

Debra A. James

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<u>10/14/2022</u>			<u>DEBRA A. JAMES, J.S.C.</u>	
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
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"/>	FIDUCIARY APPOINTMENT