

Bellino v Doromet, Inc.
2022 NY Slip Op 33637(U)
October 20, 2022
Supreme Court, New York County
Docket Number: Index No. 655873/2021
Judge: Robert R. Reed
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 43

-----X
 STEVEN BELLINO,

Plaintiff,

- v -

DOROMET, INC., FRANK GIANNUZZI, BRUBEYK
 GARCIA NASCIMENTO

Defendant.
 -----X

INDEX NO. 655873/2021

MOTION DATE 10/19/2022

MOTION SEQ. NO. 005

**DECISION + ORDER ON
 MOTION**

HON. ROBERT R. REED:

The following e-filed documents, listed by NYSCEF document number (Motion 005) 62, 63, 64, 66, 67
 were read on this motion for ATTORNEY -
 DISQUALIFY/RELIEVE/SUBSTITUTE/WITHDRAW.

This is an action seeking the return of an investment in the corporate entity Doromet, Inc. Plaintiff, the investor, asserts claims for breach of contract, fraud, breach of covenant of good faith and fair dealing, conversion, and unjust enrichment (NYSCEF doc. no. 1).

In motion sequence 005, Mark Doerr, Esq., an attorney with Greenspoon Marder LLP, and counsel for defendants Doromet, Inc. and Frank Giannuzzi ("defendants"), moves for an order to be relieved as counsel and for an order adjourning the return date of plaintiff's pending motion to strike (motion seq. no. 004).

Doerr was retained in March of 2022 to represent the defendants in this action (NYSCEF doc. no. 64, para. 2). On August 19, 2022, Adam Kenner Esq., was admitted *pro hac vice* as co-counsel for the defendants (motion seq. no. 002). It was agreed at that time that Doerr would act as local New York counsel for defendants and that Kenner would serve as lead counsel based upon his longstanding relationship with defendants (NYSCEF doc. no. 64, para. 3). Since that time, Doerr affirms that significant differences have arisen between himself and defendants.

Specifically, Doerr identifies a complete breakdown in the attorney client relationship due to defendants' failure to pay his legal fees, and due to significant disagreement regarding compliance with defendants' ongoing discovery obligations (NYSCEF doc. no. 64, para. 5).

A consent to change attorney signed by Frank Giannuzzi individually, and on behalf of Doromet, Inc., was filed on October 3, 2022 (NYSCEF doc. no. 45). On October 12, 2022, one day following the filing of the instant motion, a consent and substitution of counsel was filed. Jason L. Abelove, of the Law Offices of Jason L. Abelove, was substituted as counsel for defendants (NYSCEF doc. no. 65).

In the instant motion, Doerr affirms, under penalty of perjury, that withdrawal of his representation is necessary due to an irretrievable breakdown in the relationship between himself, co-counsel, and defendants (NYSCEF doc. no. 64, para. 5). In addition to seeking to withdraw, Doerr also requests an order adjourning a pending motion to strike filed by plaintiff's counsel pursuant to CPLR §3126. Doerr requests additional time to allow incoming counsel to respond to plaintiff's motion.

In opposition, plaintiff's counsel, John Maggio, opposes an adjournment because a substitution of counsel is complete (NYSCEF doc. no. 66, para 5, 11). Additionally, Maggio argues that defendants remain represented by Adam Kenner, Esq. *pro hac vice*, who has been involved with the matter for several months (NYSCEF doc. no. 66, para 4). Maggio asserts that plaintiff will be prejudiced by further delay.

CPLR §321 (b)(1) provides:

“Unless the party is a person specified in section 1201, an attorney of record may be changed by filing with the clerk a consent to the change signed by the retiring attorney and signed and acknowledged by the party. Notice of such change of attorney shall be given to the attorneys for all parties in the action or, if a party appears without an attorney, to the party.”

The filing of a stipulation and consent to change counsel satisfies the purpose of CPLR 321(b), which is to afford protection to adverse parties and eliminate disputes and uncertainty regarding the authority of an attorney representing an opponent (*MacArthur v. Hall, McNicol, Hamilton and Clark*, 217 A.D.2d 429, 504 [1st Dept 1995]). The filing of a consent obviates the need to move to withdraw pursuant to CPLR§ 321(b)(2). Therefore, by filing the consent and substitution of counsel, Doerr rendered the instant motion substantially moot.

Regarding plaintiff's motion to strike (motion sequence 004), to establish prejudice based upon an unwarranted delay, plaintiff must show an injury, change of position, loss of evidence or some other substantiated disadvantage resulting from the delay (*Resk v City of New York*, 293 AD2d 661, 662 (2nd Dept 2002)). Here, plaintiff fails to establish any prejudice by a 30-day adjournment. An adjournment is warranted, especially where, as here, the consent to change attorney was filed only one day prior to the filing of the motion to strike, and new counsel was retained and substituted while the motion was pending (see NYSCEF doc. nos. 45, 46, 65). This is the first adjournment request made on plaintiff's motion, and a substantial change in circumstances or prejudice will not be occasioned by the limited delay.

Accordingly, it is hereby

ORDERED that the motion of Mark Doerr, attorney with Greenspoon Marder LLP, to withdraw as counsel for defendants Doromet, Inc. and Frank Giannuzzi, is denied as moot; and it is further


ORDERED that the motion of Mark Doerr to adjourn plaintiff's motion to strike pursuant to CPLR 3126 is granted; and it is further

ORDERED that the return date on motion sequence number 004, presently October 20, 2022, is hereby adjourned to November 21, 2022; and it is further

ORDERED that opposition papers on motion sequence number 004 shall be filed and served upon plaintiff so that they are received no later than November 14, 2022; and it is further

ORDERED that reply papers, if any, shall be filed no later than November 21, 2022.

10/20/2022
DATE


ROBERT R. REED, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: