

Reynolds v City of New York

2023 NY Slip Op 31441(U)

April 25, 2023

Supreme Court, New York County

Docket Number: Index No. 160580/2022

Judge: Denise M. Dominguez

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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. DENISE M DOMINGUEZ PART 21

Justice

-----X

INDEX NO. 160580/2022

VAUGHN REYNOLDS,

MOTION SEQ. NO. 001

Plaintiff,

- v -

THE CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF SANITATION, ROBERT GARCIA, NEW
YORK CITY TRANSIT AUTHORITY, METROPOLITAN
TRANSPORTATION AUTHORITY, MTA BUS COMPANY,
MANHATTAN AND BRONX SURFACE TRANSIT
OPERATING AUTHORITY (MABSTOA), SANDY MARTE

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 17, 21, 22, 23

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

Upon reading the above listed documents and having heard oral arguments, the unopposed motion by Order to Show Cause by ARONOFF LAW, P.C., counsel for Plaintiff VAUGHN REYNOLDS, is granted.

This personal injury matter arises out of a February 8, 2022 motor vehicle accident that occurred on 3rd Avenue near East 109th Street in Manhattan between a New York City Department of Sanitation vehicle and a bus. Plaintiff, VAUGHN REYNOLDS, a passenger on the bus at the time of the accident, has alleged to have sustained various personal injuries as a result of the February 8, 2022 accident.

This action was commenced on behalf of Plaintiff by ARONOFF LAW, P.C., on December 12, 2022 by the filing of the summons and complaint (NYSCEF Doc. #1). Defendants NEW YORK CITY TRANSIT AUTHORITY, METROPOLITAN TRANSPORTATION AUTHORITY, MTA BUS COMPANY, MANHATTAN AND BRONX SURFACE TRANSIT OPERATING AUTHORITY, and SANDY MARTE joined issue by filing an answer on January 6, 2023. Defendants THE CITY OF NEW YORK and NEW YORK CITY DEPARTMENT OF

SANITATION joined issue by filing an answer on February 16, 2023. A preliminary conference has not yet been held in this matter and it appears no significant discovery has occurred.

ARONOFF LAW, P.C., counsel for Plaintiff, now moves by Order to Show Cause: 1) to be relieved as counsel for Plaintiff pursuant to CPLR 321(b)(2); 2) for a 60 day stay to allow the Plaintiff to retain new counsel; and 3) for a charging lien as to attorneys' fees and disbursements to be determined upon the conclusion of the matter. ARONOFF LAW, P.C. served the Plaintiff with the motion by Order to Show Cause via regular and certified mail (NYSCEF Doc. #22). No opposition to the motion has been submitted.

Upon review, the motion is granted.

“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.” (CPLR 321(2)). “[A]n attorney may withdraw as counsel of record upon a showing of good and sufficient cause, and reasonable notice to the client. (*Mason v. MTA New York City Transit*, 38 A.D.3d 258, 832 N.Y.S.2d 153, 154 [1st Dept 2007]). ARONOFF LAW, P.C. has demonstrated good and sufficient cause to be relieved and has shown due notice to Plaintiff of the within application.

ARONOFF LAW, P.C.'s request to assert a charging lien for disbursements and attorneys' fees, to be assessed at the conclusion of this matter, is also granted. “Under Judiciary Law § 475, a charging lien automatically comes into existence, without notice or filing, upon commencement of the action, and is measured by the reasonable value of the attorney's services in the action, unless fixed by agreement. *Resnick v. Resnick*, 24 A.D.3d 238, 239, 806 N.Y.S.2d 200, 201 [1st Dept 2005]). “[W]here an attorney's representation terminates and there has been no misconduct, no discharge for just cause and no unjustified abandonment by the attorney, the attorney's right to enforce the statutory charging lien is preserved....” (*Klein v. Eubank*, 87 N.Y.2d 459, 464, 663 N.E.2d 599, 601 [1996]). “Generally, however, if an attorney is discharged without cause he will be allowed a charging lien upon the proceeds of the lawsuit, the amount to be determined on a quantum meruit basis at the conclusion of the case.” (*People v. Keefe*, 50 N.Y.2d 149, 156, 405 N.E.2d 1012, 1015 [1980]). Upon review, ARONOFF LAW, P.C. is entitled to reimbursement for reasonable value of its attorneys' services, to be determined at the conclusion of this matter.

Accordingly, it is hereby

ORDERED that the motion of ARONOFF LAW, P.C.. to be relieved as attorney for Plaintiff, VAUGHN REYNOLDS ,is granted without opposition upon filing of proof of compliance with the following conditions; and it is further

ORDERED that, within 20 days from entry, ARONOFF LAW, P.C. shall serve a copy of this order with notice of entry upon the former client, Plaintiff, VAUGHN REYNOLDS, at his/her last known address by regular and certified mail, return receipt requested, and upon the attorneys for all other parties appearing herein via the New York State Courts Electronic Filing System; and it is further

ORDERED that, together with the copy of this order with notice of entry served upon the Plaintiff VAUGHN REYNOLDS, ARONOFF LAW, P.C.. shall forward a notice directing Plaintiff VAUGHN REYNOLDS to appoint a substitute attorney within 60 days from the date of the mailing of the notice and Plaintiff VAUGHN REYNOLDS shall comply therewith, except that, in the event the Plaintiff intends instead to represent himself/herself, he/she shall notify the Clerk of the Part of this decision in writing within said 60-day period; and it is further

ORDERED that any new attorney retained by Plaintiff VAUGHN REYNOLDS shall file a notice of appearance with the Clerk of the General Clerk's Office and the Clerk of the Part within 60 days from the date the notice to retain new counsel is mailed; and it is further

ORDERED that no further proceedings may be taken in this matter without leave of this court for a period of 60 days after service on Plaintiff VAUGHN REYNOLDS of the aforesaid notice to appoint a substitute attorney; and it is further

ORDERED that ARONOFF LAW, P.C.'s charging lien is preserved until such time as a Court, upon settlement or judgment, may hear and determine the reasonable value of attorney's services provided; and it is further

ORDERED that ARONOFF LAW, P.C. shall serve a copy of this order with notice of entry upon the Clerk of the Court and the Clerk of the General Clerk's Office; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office 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).

4/25/2023

DATE

CHECK ONE:

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CASE DISPOSED
 GRANTED DENIED
 SETTLE ORDER
 INCLUDES TRANSFER/REASSIGN

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NON-FINAL DISPOSITION
 GRANTED IN PART
 SUBMIT ORDER
 FIDUCIARY APPOINTMENT

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OTHER
 REFERENCE

HON. DENISE M. DOMINGUEZ
J.S.C.