

Washington v Popescu

2023 NY Slip Op 31753(U)

May 22, 2023

Supreme Court, New York County

Docket Number: Index No. 150213/2019

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

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INDEX NO. 150213/2019

HATTIE WASHINGTON,

MOTION SEQ. NO. 001

Plaintiff,

- v -

RADU POPESCU, MTA BUS COMPANY, METROPOLITAN
TRANSPORTATION AUTHORITY (MTA), NEW YORK CITY
TRANSIT AUTHORITY

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30

were read on this motion to/for SUBST/RELIEVE/WITHDRAW COUNSEL.

Upon reading the above listed documents and having heard oral argument, the unopposed motion by Order to Show Cause by Brian J. Levy & Associates, P.C., counsel for Plaintiff HATTIE WASHINGTON, is granted.

This personal injury matter arises out of a September 19, 2018 motor vehicle accident that occurred at or near the intersection of Battery Place and Broadway in Manhattan, between a tour bus that the Plaintiff was operating and the Defendants' bus. Plaintiff has alleged to have sustained various personal injuries as a result of the accident.

This action was commenced on behalf of Plaintiff by Brian J. Levy & Associates, P.C. on behalf of the Plaintiff on January 9, 2019 by the filing of the summons and complaint (NYSCEF Doc. #1). Defendants RADU POPESCU, MTA BUS COMPANY, METROPOLITAN TRANSPORTATION AUTHORITY (MTA) and NEW YORK CITY TRANSIT AUTHORITY joined issue by filing an answer on February 1, 2019. A preliminary conference was held in this matter on August 2, 2019 and a review of the record shows that despite the parties participating in several discovery conferences, party depositions remain outstanding and the note of issue has not been filed.

Brian J. Levy & Associates, 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 stay to allow the Plaintiff to retain new counsel; 3) extending the Plaintiff's time to file the note of issue and 4) for a charging lien as to attorneys' fees and disbursements to be determined upon the conclusion of the matter. Brian J. Levy & Associates, P.C., served the Plaintiff with the motion by Order to Show Cause via certified mail (NYSCEF Doc. #29, 30). 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]). Brian J. Levy & Associates, P.C., has demonstrated good and sufficient cause to be relieved and has shown due notice to Plaintiff of the within application.

In light of the withdraw of Brian J. Levy & Associates, P.C. as counsel for Plaintiff, this matter shall be stayed for 60 days in order for the Plaintiff to retain new counsel, or to advise this Court that Plaintiff will appear in this matter *pro se*. As discovery remains outstanding, the date by which the note of issue is to be filed is hereby extended. The date for filing the note of issue will be set at the next status conference, which will be held following the stay in this matter.

Brian J. Levy & Associates, P.C. 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, Brian J. Levy & Associates, 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 Brian J. Levy & Associates, P.C. to be relieved as attorney for Plaintiff, HATTIE WASHINGTON, 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, Brian J. Levy & Associates, P.C. shall serve a copy of this order with notice of entry upon the former client, Plaintiff HATTIE WASHINGTON, 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 HATTIE WASHINGTON, Brian J. Levy & Associates, P.C. shall also forward a notice directing Plaintiff HATTIE WASHINGTON to appoint a substitute attorney within 60 days from the date of the mailing of the notice and Plaintiff HATTIE WASHINGTON shall comply therewith, except that, in the event the Plaintiff intends instead to represent himself/herself, he/she shall notify the Clerk of this Part of this decision in writing within said 60-day period; and it is further

ORDERED that any new attorney retained by Plaintiff HATTIE WASHINGTON 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 HATTIE WASHINGTON of the aforesaid notice to appoint a substitute attorney; and it is further

ORDERED that the parties shall submit a joint proposed status conference order as per Part 21 Rules on September 15, 2023, at which time a new note of issue filing date will be provided by the Court.

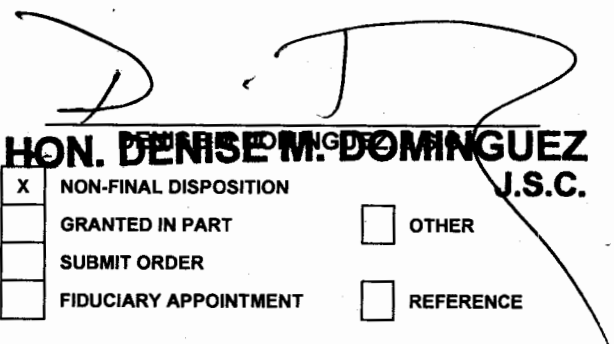
ORDERED that Brian J. Levy & Associates, P.C.'s charging lien is preserved until such time as a Court, upon settlement or judgment, may hear and determine the reasonable value of attorney's services provided; and it is further

ORDERED that Brian J. Levy & Associates, 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).

5/22/2023
DATE

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input checked="" type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE


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