

I.R. 136 E. 70th LLC v Lexington Sell Rug Inc.

2023 NY Slip Op 33137(U)

September 5, 2023

Supreme Court, New York County

Docket Number: Index No. 153888/2021

Judge: Leslie Stroth

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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. LESLIE A. STROTH PART 12

Justice

-----X

I.R. 136 E. 70TH LLC,

Plaintiff,

- v -

LEXINGTON SELL RUG INC., ROBEN KEYPOUR

Defendant.

-----X

INDEX NO. 153888/2021

MOTION DATE 05/12/2023

MOTION SEQ. NO. 006

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 006) 101, 102, 103, 104, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116

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

Counsel for defendants Lexington Sell Rug Inc. and Roben Keypour (defendants), Kaufman & Kahn, LLP, moves for an order pursuant to CPLR 321 to be relieved as counsel for defendants based on an irrevocable breakdown in communications between defendants and their current counsel. The underlying matter is an ejectment action seeking to recover possession of a store located at 956 Lexington Avenue, New York, New York, as well as damages in the amount of \$595,214.94.

An attorney may withdraw as counsel of record upon a showing of good and sufficient cause for withdrawal and where reasonable notice has been provided to plaintiffs. *See Genn v Ratnathicam*, 187 AD3d 539 (1st Dept 2020). Deterioration of the attorney-client relationship is a commonly recognized ground for a withdrawal motion. Good and sufficient cause exists where there are "...irreconcilable differences between the attorney and the client with respect to the proper course to be pursued in litigation." *Winters v Rise Steel Erection Corp.*, 231 AD2d 626 (2d Dept 1996).

In support of his motion, attorney Robert L. Kahn affirms that due to the irrevocable breakdown between attorney and client in this matter, Attorney Kahn cannot continue to defend this matter. Attorney Kahn affirms that defendants have made it unreasonably difficult to for him to communicate with them. Attorney Kahn furth affirms that he has not been able to have a meaningful discussion with defendants for several months. Attorney Kahn also moves to be relieved on the ground of non-payment of fees, pursuant to CPLR 321 (b) (2). Attorney Kahn's affirmation does not contain details as to Attorney Kahn's dealings with defendants to avoid prejudicing their rights. No opposition has been filed by plaintiff or opposing counsel.

The matter was heard on April 25, 2023, at which counsel for plaintiff and defendants appeared. The Court directed Attorney Kahn to provide a confidential supplemental affirmation describing his communications with defendants for *in camera* review. Upon receipt of the confidential affirmation in further support of the order to show cause, the Court now finds that Kaufman & Kahn, LLP has demonstrated good and sufficient cause to be relieved as counsel.

As the additional information provided in the supplemental affirmation would be prejudicial to defendants, the Court declines to re-iterate the particulars in the within motion. Moreover, the Court notes that because discovery is not complete and the note of issue has not yet been filed, the prejudice resulting from allowing Kaufman Kahn, LLP to withdraw is limited.

Therefore, it is

ORDERED that the motion of Kaufman & Kahn, LLP to be relieved as attorney for defendants Lexington Sell Rug Inc. and Roben Keypour is granted upon filing of proof of compliance with the following conditions; and it is further

ORDERED that, within 10 days from entry, said attorney shall serve a copy of this order with notice of entry upon the former clients at their last known address by certified mail, return

receipt requested, and upon the attorneys for all other parties appearing herein by posting to 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 former client, moving counsel shall forward a notice directing the former client to appoint a substitute attorney within 60 days from the date of the mailing of the notice and the client shall comply therewith, except that, in the event defendants intends instead to represent themselves, they 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 defendants 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 70 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 60 days after service on the former client of the aforesaid notice to appoint a substitute attorney; and it is further

ORDERED that if a notice of appearance is not timely filed by a new attorney on behalf of corporate defendant Lexington Sell Rug Inc., then the outgoing attorney shall remain as its counsel of record¹; and it is further

ORDERED that if no notice of appearance by a new attorney or written notice of intent to proceed self-represented is timely filed by individual defendant Roben Keypour, then the outgoing attorney shall remain their counsel of record; and it is further

¹ The Court notes that pursuant to CPLR 321 a corporation must appear by an attorney, and Lexington Sell Rugs Inc. cannot proceed without representation.

ORDERED that the departing attorney shall, within 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/supctmanh); and it is further

ORDERED that the Part Clerk shall schedule the matter for a discovery conference with the Court on the next available date, following the expiration of the 60-day stay.

The foregoing constitutes the decision and order of the Court.

<p><u>9/5/2023</u> DATE</p>	 _____ LESLIE STROTH, J.S.C.																																
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