

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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CINDY ANN LAUDER,

Plaintiff(s),

-against-

DECISION & ORDER

Index No. 031423/2013
Motion #1&3

PAUL B. GOLDHAMMER, individually and as the Chief Executive Officer of Kantrowitz, Goldhamer & Graifman, P.C., RANDY PERLMUTTER, individually and as an agent of Kantrowitz, Goldhamer & Graifman, P.C., KANTROWITZ, GOLDHAMER & GRAIFMAN, P.C. and KANTROWITZ, GOLDHAMER & GRAIFMAN, LLP,

Defendant(s).

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Hon. Thomas E. Walsh II, A.J.S.C.

The following papers numbered 1-13 read on this motion by defendants for an Order: (i) dismissing the action against Paul B. Goldhamer individually; (ii) dismissing the action against Kantrowitz, Goldhamer & Graifman, LLP; (iii) pursuant to CPLR §3211(a)(7) dismissing the Second, Third, Fourth, Fifth, Sixth and Seventh causes of action as duplicative; (iv) granting defendants an award of counsel fees; (v) imposing sanctions against plaintiff and her counsel for their failure to voluntarily withdraw frivolous portions of the amended complaint; and, (vi) for such other and further relief as to the Court may seem just and proper; and, this cross-motion by plaintiff, pursuant to CPLR §3025(b), for an Order granting plaintiff leave to serve the Verified Second Amended Complaint and the exhibits annexed thereto; and, for an Order, pursuant to 22 NYCRR 1200.29 (RPC 3.7), disqualifying Barry Kantrowitz, Esq. as the attorney for the defendants, together with such other and further relief as to the Court may seem just and proper:

- Notice of Motion/Affirmation (Kantrowitz)/Exhibits (A-G)-1-3
- Defendant's Memorandum of Law-4
- Affidavit in Opposition (Lauder)/Exhibits (A1, A2-L)-5-6
- Notice of Cross-Motion/Affirmation (Winner)/Affidavit (Lauder)/Exhibits-7-10
- Affirmation in Opposition (Kantrowitz)-11
- Reply Affirmation/Exhibit-12-13

That part of defendant's motion (i) seeking a dismissal of the action as against Paul B. Goldhamer individually is denied. Mr. Goldhamer's stamped signature appears on the written Retainer agreement signed by plaintiff and as such his stamped signature was clearly intended to represent Mr. Goldhamer's signature and assent to the agreement [Defendant's Exhibit A]. The language of the Retainer agreement provides that Mr. Goldhamer would be responsible for plaintiff's case and would, in conjunction with plaintiff, make all major decisions in her case. Plaintiff states that as of January 29, 2009 she had an appointment to meet with Mr. Goldhamer and that prior to 2006 she met with Mr. Goldhamer for consultations on two separate occasions [Lauder Affidavit, p.4, §15]. The memorandum from PBG (Paul B. Goldhamer) dated August 1, 2006 [Plaintiff's Exhibit C] and dated May 3, 2006 [Plaintiff's Exhibit B] reflect consultations

by PBG (Paul B. Goldhamer) with the plaintiff on those two days. The e-mail from Paul Goldhamer dated January 25, 2010 [Plaintiff's Exhibit F] reveals direct communications between Mr. Goldhamer and plaintiff in the nature of his advice to her concerning her case.

That part of defendant's motion (ii) seeking a dismissal of the action as against Kantrowitz, Goldhamer & Graifman, LLP, is granted inasmuch as the LLP did not exist as an entity at any time [Kanrowiz Affirmation §10], and, in any event, the action against that defendant has been withdrawn [Lauder Affidavit, p.4, §12].

That part of defendant's motion, pursuant to CPLR §3211(a)(7), for an Order (iii) dismissing the plaintiff's Second, Third, Fourth, Fifth, Sixth and Seventh causes of action in the amended complaint [See Notice of Motion] as duplicative, is denied in light of this Court's Decision on the instant cross-motion and without prejudice to an application for summary judgment addressing plaintiff's second amended complaint upon the filing of plaintiff's Note of Issue in this action. The Court notes plaintiff's intention to withdraw her causes of action for fraud and constructive fraud [Lauder Affidavit, p.4, §12].

The Court, in the exercise of its discretion, denies that part of defendant's motion for (iv) an Order granting defendants an award of counsel fees and (v) imposing sanctions against plaintiff and her counsel for their failure to voluntarily withdraw frivolous portions of the amended complaint.

Plaintiff's cross-motion for leave to amend her pleadings by serving the second amended complaint is granted [CPLR §3025(b); *Noanjo Clothing, Inc. v. L&M Kids Fashion*, 207 A.D.2d 436 (2nd Dept., 1994); *Town of Thompson v. Alleva*, 76 A.D.2d 1022 (3rd Dept., 1980); and, *Coleman v. Cheseboro-Whitman Co.*, 177 Misc. 2d 560 (N.Y. Sup. 1998)].

Plaintiff's cross-motion for an Order disqualifying Barry Kantrowitz, Esq. from representing the defendants in this action is, under the circumstances framed by these motions, granted.

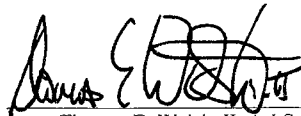
The foregoing constitutes the Decision & Order of the Court.

In arriving at this decision the Court has reviewed, evaluated and considered all of the issues framed by these motion papers and the failure of the Court to specifically mention any particular issue in this Decision & Order does not mean that it has not been considered by the Court in light of the appropriate legal authority.

All attorneys are advised that in every motion made in this Part that is supported by a transcript, document or any other form of exhibit, the affidavits, affirmations and or memorandum of law supporting the motion shall refer to the specific exhibit, transcript, document, and the page and line of the document or transcript, so that the Court can readily find the specific information counsel cites and argues in support of the motion.

All attorneys are also reminded that: (a) the published Individual Part Rules of this Court require a letter and conference as prerequisites to the submission of any written motion [See Judge Walsh's Individual Part Rules Art. IVA], and, (b) that printed "working copies" of electronic submissions must be delivered to chambers [See Judge Walsh's Individual Part Rules Art. XIII].

Dated: New City, New York
September 27, 2013



Thomas E. Walsh II, A.J.S.C.

To:

Kantrowitz, Goldhamer & Graifman, P.C.

Karen Winner, Esq.

Cindy Ann Lauder