

SUPREME COURT - STATE OF NEW YORK

PRESENT: Honorable Anna R. Anzalone  
Justice of the Supreme Court

\_\_\_\_\_  
DONNA SAMUELS,

Plaintiff,

- against -

x  
TRIAL/IAS, PART 26  
NASSAU COUNTY

Index No. 11505/12

Motion Seq. No.: 002  
Motion Submitted: 05/05/16

OCWEN LOAN SERVICING, LLC; LITTON LOAN  
SERVICING LP; RE/MAX OF NEW YORK AND  
RE/MAX BEST FRANCHISEE (wherein the  
franchisee's corporate name if fictitious),

Defendants.

\_\_\_\_\_  
The following papers read on this motion:

|                                 |   |
|---------------------------------|---|
| Notice of Motion .....          | 1 |
| Affirmation in Opposition ..... | 2 |

The defendants move for an order granting reargument of the decision of this Court dated January 26, 2016. The plaintiff opposes the motion.

The motion to reargue is granted. Upon reargument, the Court replaces the previous decision with the following:

The plaintiff commenced this premises liability action seeking damages for personal injuries she allegedly incurred when she slipped and fell at the home she rented from the defendants, "Ocwen and Litton." The plaintiff claims the defendants were negligent in maintaining the premise. Issue was joined when the Law Office of Conway & Goren, as attorneys for all three defendants, served a verified answer which contained six affirmative defenses and five cross-complaints by "Ocwen and Litton" against the defendant, I.M. Best d/b/a Remax Best (hereinafter "Re/Max").

The plaintiff argues that “Ocwen/Litton” and “Re/Max” each not only deny liability on the issue of the management and maintenance of the property at issue, but these defendants each claim the other is responsible. The defendants’ law firm merely denies the existence of a conflict.

The disqualification of an attorney is a matter that rests within the sound discretion of the court (*Gjoni v The Swan Club, Inc.*, 134 AD3d 896 [2d Dept 2015]; citing *Albert Jacobs, LLP v Parker*, 94 AD3d 919 [2d Dept]). Any doubts as to the existence of a conflict of interest must be resolved in favor of disqualification so as to avoid even the appearance of impropriety (*see Cohen v Cohen*, 125 AD3d 589, 590 [2d Dept 2015]; *Halberstam v Halberstam*, 122 AD3d 679 [2d Dept 2014]). “Due to the ‘significant competing interests in attorney disqualification cases,’ however, the Court of Appeals has advised against ‘mechanical application of blanket rules,’ in favor of a ‘careful appraisal of the interests involved’” (*Gabel v Gabel*, 101 AD3d 676, 676-677 [2d Dept 2012] quoting *Tekni-Plex, Inc. v Meyner & Landis*, 89 NY2d at 131 [Ct App 1996]).

During various depositions, the defendants’ counsel objected to all questions posed to his clients which referenced the term “property manager.” The plaintiff argues that at this point in the discovery process, there is no answer as to which of the defendants were responsible for the management and maintenance of the property at issue because the defendants all seem to point the finger at each other. “Ocwen and Litton” claim that Re/Max is responsible for the management and maintenance of the property. Re/Max argues that they are not the responsible party. Moreover, the plaintiff has set forth written documentation in which “Litton” instructed the plaintiff to send all rent payments to its Houston, Texas office and to do so to the Attention of “Property Management.” Correspondence also indicated

“Litton” would be providing utilities and the plaintiff should contact the defendant, Re/Max with any problems (*see* Exhibit G). In correspondence dated September 19, 2011, “Ocwen” informed the plaintiff of a “Change of Property Management” and admitted “Ocwen Loan Servicing LLC is now responsible for the management of the property.” Specifically, “Ocwen” listed Mike Carroll of Re/Max Best as the property manager (*See* Exhibit H).

ORDERED, that the law firm of Conway & Goren is herewith disqualified from further representation of all three defendants herein but may proceed to represent one of the defendants if so desired; it is further,

ORDERED, the portion of the plaintiff’s motion seeking additional depositions is granted. However, in light of the foregoing, the scheduling of said depositions is stayed until such time as the defendants are able to obtain new counsel; and it is further,

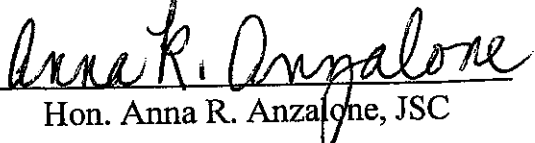
ORDERED, that all proceedings in the instant action are stayed for a period of 30 days of the date hereof. The plaintiff is further directed to serve a copy of this order upon the defendants, at their last known address and counsel, within ten days of receipt of this Decision and Order.

The parties are directed to appear for a compliance conference in this matter on August 1, 2016 at 9:30 a.m. before the Hon. Anna R. Anzalone and report to Supreme Court, 100 Supreme Court Drive, Mineola, New York, Part 26.

The foregoing constitutes the decision and order of the Court.

DATED: June 24, 2016

ENTER:

  
Hon. Anna R. Anzalone, JSC

ARA:jkg

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