

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU**

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GAIL SCHAFFER,

Plaintiff,

-against-

KRISTIN M. HIGGINS and KELLY JO HAYNES,

Defendants.

**MICHELE M. WOODARD,  
J.S.C.**

TRIAL/IAS Part 16

**Index No.: 7894/05**

**Motion Seq. No.: 06**

**DECISION AND ORDER**

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**Papers Read on this Motion:**

Bruno, Gerbino & Soriano, LLP's Order to Show Cause	06
Plaintiff's Opposition	xx
Bruno, Gerbino & Soriano, LLP's Reply	xx

Counsel for the Defendants, Bruno, Gerbino & Soriano, LLP, hereinafter referred to as the "Bruno Firm" move for an order pursuant to CPLR §321(b) relieving them as counsel for the Defendants Higgins and Haynes.

This action was commenced by the Plaintiff to recover for alleged injuries sustained in a motor vehicle accident that took place on March 29, 2005. Defendant Higgins was the owner of the vehicle allegedly driven by Haynes. According to the investigative reports, Higgins loaned her car to her cousin Danny Watson to go on a date with Haynes. Higgins does not know Haynes. Watson and Haynes allegedly met over the internet. Watson does not know how to contact Haynes, which led to counsel hiring the investigators to locate Haynes. The investigators started with the addresses on the police report. The Defendants were initially represented by the Law Offices of Steven J. Smetana, who had been "in-house" counsel for AutoOne Insurance Company. Subsequently, the Law Offices of Steven J. Smetana closed. Thereafter, the defense of the Defendants was assigned to the Bruno Firm. Counsel has detailed in his affirmation the attempts made to contact the Defendants and proceed with the case. Through the use of two investigation service companies, the firm was informed that Higgins lived in Hicksville, NY. The private investigator ascertained a Nevada, Las Vegas address for Haynes. According to counsel, the person located and identified as Haynes in Nevada claims to not have been involved in the accident and denied being the driver of the subject car. Notwithstanding their inability to adequately discuss the matter with Higgins and Haynes, the Bruno Firm continued to represent the Defendants.

The Plaintiff opposes the Defendant's application claiming that the Defendant's participation is inconsequential in this matter because liability has already been established.

The Bruno firm has withdrawn their application as pertaining to Defendant Kristin Higgins based on recent conversations wherein she agreed to cooperate with the defense of the within action.

Generally, there are three primary reasons allowing withdrawal of an attorney from a case: failure of a party to remain in contact with counsel; deterioration of the attorney/client relationship; and non-payment of legal fees. *Tartgalione v Tiffany*, 280 A.D. 2d 543 (2 Dept 2001). An attorney does not have an unfettered right to unilaterally withdraw from representing a client; good cause is required, to be determined ultimately by the Court. *Countryman v Watertown House Authority*, 13 Misc. 3d 632 (App. Term, First Dept 2006).

The Bruno Firm's application is **granted**. It is hereby

**ORDERED**, that the firm of Bruno, Gerbino & Soriano, LLP is relieved as counsel for Defendant Kelly Jo Haynes. It is further

**ORDERED**, that a copy of this Order must be served personally, or by certified mail, return receipt requested, upon counsel for the Plaintiff Mintz & Schaffer at 30 South Ocean Avenue, Freeport, New York 11520, and upon Defendant Kelly Jo Haynes, 1450 East Harmon Avenue, Apt 13, Las Vegas, Nevada 89119 pursuant to CPLR§2103(b)(1)(3) within five (5) days of this Decision. It is further

**ORDERED**, that any future proceedings are **Stayed** for thirty days to allow the Defendant Kelly Jo Haynes an opportunity to secure Counsel and otherwise protect her rights in this matter. It is further

**ORDERED**, that the parties are directed to appear for trial on January 8, 2009 at 9:30 a.m. in Central Jury for trial.

This constitutes the **DECISION** and **ORDER** of the Court.

**DATED:** November 19, 2008  
Mineola, N.Y.

**ENTER:**



HON. MICHELE M. WOODARD  
J.S.C.

H:\DECISION - WITHDRAW or RELIEF AS COUNSEL\Schaffer v Higgins.wpd

**ENTERED**  
NOV 25 2008  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE