

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: **Kornreich, Shirley Werner, J.**  
Justice

PART 54

RABBI MILTON BALKANY

INDEX NO. 112604/04

- v -

MOTION DATE 2/16/06

VILLAGE VOICE MEDIA, INC., TOM ROBBINS  
and ALEXANDER ZAKHAROV

MOTION SEQ. NO. 1

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to 4 were read on this motion to Compel discovery

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits...

PAPERS NUMBERED

1

Answering Affidavits — Exhibits

2

Replying Affidavits

3

Cross-Motion:  Yes  No

Upon the foregoing papers, the motion of defendants Village Voice Media, Inc. ("VV") and Tom Robbins to compel plaintiff to produce certain discovery is decided as follows. This is an action to recover for defamation. Defendants VV and Robbins served various discovery demands on plaintiff in November 2004; plaintiff has failed to respond to said demands. *See* Aff. of Samuel M. Leaf, paras. 2-3. Thereafter, defendants VV and Robbins wrote to plaintiff's counsel seeking the previously demanded discovery. Plaintiff has not responded to that request.

Mark A. Berman, counsel for plaintiff, cross-moves to be relieved as counsel for plaintiff. Mr. Berman avers that "counsel's relationship with Rabbi Balkany . . . has gradually but irrevocably declined." Aff. of Mark A. Berman, para. 3. Neither plaintiff nor any party has opposed the cross-motion.

A formal motion to compel disclosure may be brought under CPLR 3124 if the "normal" methods of obtaining the disclosure are unsuccessful. *See* Siegel, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR C3124:1, at 735. Parties may demand disclosure of evidence, or information leading to evidence, relevant to the case without regard to the burden of proof. *Northway Engineering, Inc. v. Felix Industries, Inc.*, 77 N.Y.2d 332, 335 (1991). The failure to comply with such requests may result in a preclusion order "preventing the nondisclosing party from using the evidence in any manner during the course of the litigation[.]" *Id.*

Here, plaintiff has not produced discovery materials under the normal methods of disclosure, despite the demands of defendants VV and Robbins. Therefore, the Court directs plaintiff to comply with those discovery demands and cautions that, in future, plaintiff might face preclusion and/or striking of the complaint.

CPLR 321(b)(2) provides that an attorney may withdraw, upon motion with notice to the client of the withdrawing attorney and to all other parties in the action. Here, Mr. Berman has moved to withdraw and has orally stated that his client consents to such withdrawal. Further, his client was noticed and has not opposed. Thus, Mr. Berman's cross-motion is granted.

Accordingly, it is

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

ORDERED that plaintiff is directed to respond to all of the discovery demands of defendants VV and Robbins within twenty (20) days after plaintiff either appoints new counsel or appears *pro se*; and it is further

ORDERED that the motion of Mr. Berman to be relieved as counsel for plaintiff is granted, on consent, upon filing of proof of compliance with the following conditions; and it is further

ORDERED that Mr. Berman serve a copy of this order with notice of entry upon the former client at his last known addresses by certified mail, return receipt requested, and upon the attorneys for all other parties appearing herein by regular mail; and it is further

ORDERED that, together with the copy of the 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 30 days from the date of mailing the notice or he shall be deemed proceeding *pro se*; 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 30 days after service on the former client of the aforesaid notice to appoint a substitute attorney; and it is further

ORDERED that a lien for attorney's fees will attach pursuant to Judiciary Law § 475 (*Cohen v. Cohen*, 160 A.D.2d 571, 572 (1st Dept. 1990)), and as such the issue of the legal fees and disbursements is severed and shall be determined after the trial or settlement of this action; and it is further

ORDERED that counsel shall turn over the file pertaining to this case to new counsel or plaintiff; and it is further

ORDERED that all parties are to appear for a preliminary conference before the Court at 11:00 a.m. on March 30, 2006, at 111 Centre Street, Room 1227, New York, NY 10013.

The foregoing constitutes the decision and order of the Court.

**FILED**  
FEB 27 2006  
NEW YORK  
COUNTY CLERK'S OFFICE

**SHIRLEY WERNER KORNREICH**  
J.S.C.

Dated: February 17, 2006

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION  
Check if appropriate:  DO NOT POST  REFERENCE