SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

----------X

DONNA SAMUELS

Plaintiff,

-against-

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

Defendants.

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PRESENT: HON.
ANNA R. ANZALONE

INDEX NO.: 11501/12

ORDER WITH NOTICE OF ENTRY

PLEASE TAKE NOTICE that the within are true cop(ies) of the Orders of THE SUPREME COURT OF NASSAU COUNTY, TRIAL/IAS PART 26, dated January 26, 2016, entered by said Court on January 29, 2016, in favor of Plaintiff, ordering, that the Defendant's law firm is disqualified from representation of all three defendants, but that they may continue to represent one defendant if so desired; granting the portion of Plaintiff's motion seeking additional depositions which will be scheduled once defendants obtain new counsel; and ordering a stay for a period of 30 days.

Dated: Mineola, New York
February 5, 2016

MASSIMO & PANETTA, P.C.

By: _____
NICHOLAS J. MASSIMO, ESQ.
Attorney for Plaintiff
DONNA SAMUELS
200 Willis Avenue.
Mineola, New York 11501
(516) 683-8880

Cc: CONWAY, GOREN & BRANDMAN
Attorneys for Defendant
58 South Service Road
Suite 350
Melville, New York 11747
(631) 845-2600

SUPREME COURT - STATE OF NEW YORK

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

DONNA SAMUELS,

Plaintiff,

- against -

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.

TRIAL/IAS, PART 26
NASSAU COUNTY

Index No. 11505/12

Motion Seq. No.: 001
Motion Submitted: 01/05/16

The following papers read on this motion:

Notice of Motion 1
Affirmation in Opposition 2
Affirmation in Reply to Motion 3

The plaintiff, Donna Samuels, moves for an order disqualifying the defendants' attorney, the Law Office of Conway & Goren, from representing all three corporate defendants in this matter based upon a conflict of interest. The plaintiff also seeks an order directing the defendants, Ocwen Loan Servicing, LLC and Litton Loan Servicing, LP (hereinafter "Ocwen/Litton"), produce various corporate officers, employees and/or agents for depositions. "Ocwen/Litton" oppose the motion, and the plaintiff submits a reply. The motion is decided as follows.

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").

Motion to Disqualify

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).

Together with the cross claims contained in the defendants' answer, a conflict of interest exists for Conway & Goren. Accordingly, the plaintiff has met her burden required to disqualify the defendants' law firm and it is,

ORDERED, that the law firm of Kalb & Rosenfeld, P.C., 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 foregoing constitutes the decision and order of the Court.

DATED: January 26, 2016

ENTER:

Anna R. Anzalone

Hon. Anna R. Anzalone, JSC

ARA:jkg

cc: Massimo & Panetta, P.C.
Nicholas Massimo, Esq.
Attorneys for Plaintiffs
200 Willis Avenue
Mineola, NY 11501

Conway, Goren & Brandman
Attorneys for All Defendants
58 South Service Road
Suite 350
Melville, NY 11747

AFFIDAVIT OF MAILING/SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

ELENA S. DREDGER, being duly sworn, deposes and says:

I am not a party to this action. I am over the age of 18 years and I reside in Cedarhurst, New York.

On February 5th, 2016, I served the annexed ORDER WITH NOTICE OF ENTRY upon the parties listed below:

CONWAY, GOREN & BRANDMAN
Attorneys for Defendants
58 South Service Road, Suite 350
Melville, NY 11747

by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State by regular mail.

ELENA S. DREDGER

Sworn to me this 5th day
Of February, 2016

NOTARY PUBLIC

NICHOLAS J. MASSIMO
Notary Public, State of New York
No. 02MA6171906
Qualified in New York County
Commission Expires July 30, 2019