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78/79 York Assoc. LLC v Radetsky
2021 NY Slip Op 50609(U)
Decided on June 29, 2021
Civil Court Of The City Of New York, New York County
Kraus, J.
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on June 29, 2021

Civil Court of the City of New York, New York County

<p>78/79 York Associates LLC, Petitioner,</p> <p>against</p> <p>Inta Radetsky, Respondent</p>
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L & T 59414/10

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Sabrina B. Kraus, J.

BACKGROUND AND PROCEDURAL HISTORY

This summary nonpayment proceeding was commenced by Petitioner in March 2010. The petition sought \$5315.77 for rent due, from December 2009 through March 2010, at a monthly rent of \$1688.53. Respondent appeared *pro se* and filed an answer asserting that a portion of the sum sued for had already been paid and a general denial.

The initial court date was on June 9, 2010. The proceeding was adjourned twice and on

August 10, 2010, the parties entered into stipulation of settlement that was so-ordered by the court (Spears, J) Pursuant to the stipulation, respondent consented to the entry of a judgment

in the amount of \$11,808.42 as all rent due through August 2010. The parties agreed that the warrant of eviction would issue forthwith and execution was stayed for payments on September 5, 2010 and September 30, 2010.

The warrant of eviction issued on September 10, 2010.

On October 19, 2010, respondent moved by order to show cause for relief from the stipulation of settlement. That motion was resolved pursuant to a stipulation entered by the parties in open court. The stipulation provided:

Case discontinued as respondent tendered keys to the Apartment in September 2010. Petitioner reserves rights to \$11,221.04 which is owed through September 2010 after the application of the security deposit of \$1687.96. Respondent disputes petitioner's amount. Respondent believes only \$10,606.00 is due petitioner through September 2010.

An order was prepared for the Judge's signature, but it was never signed. Handwritten on the order form was a notation that the motion was granted pursuant to the parties' stipulation and the case was discontinued. The same notation, in the same handwriting is on the court file, but again not signed by the Judge.

THE PENDING MOTION

On June 22, 2021, respondent moved by order to show cause for an order vacating the judgment and related relief. Respondent stated she had received a Marshall's order and her wages were being garnished. Respondent alleged that Judge Spears had vacated the judgment on the date that the proceeding was discontinued, and that she had paid in full. At the time of the garnishment, petitioner was seeking to collect on a judgment that totaled \$25,128.14.

Petitioner submits opposition to the motion. Petitioner argues that respondent consented to the entry of the judgment when she signed the stipulation and that respondent sent letters in 2010 and 2011 seeking to make a payment plan for the balance of the arrears. Petitioner further argues that respondent has waited too long to seek to vacate the judgment.

DISCUSSION

Generally speaking, when a summary proceeding is discontinued by stipulation because possession has been surrendered, the parties will agree that the underlying judgment should be vacated and/or the court will order that the underlying judgment be vacated. In this case, it is very clear that the intention of the parties was that the underlying judgment be vacated. That is the only reason petitioner would have included a reservation of rights to seek the arrears due. If the parties had agreed to leave the judgment in place, no such reservation of rights would have been necessary.

It is somewhat less clear why the court did not issue an order vacating the judgment, or even sign an order officially disposing of the order to show cause. This court can only assume that it was an inadvertent error on the part of the Housing Court Judge presiding in the part.

A stipulation of settlement is a contract subject to the principles of contract construction and interpretation (*see Matter of Meccico v Meccico*, 76 NY2d 822, 823 824, 559 N.Y.S.2d 974, 559 N.E.2d 668; [Hanau v Cohen](#), 121 AD3d 940, 996 N.Y.S.2d 294; [Matter of Korosh v. Korosh](#), 99 AD3d 909, 953 N.Y.S.2d 72; [Ackermann v. Ackermann](#), 82 AD3d 1020, 919 N.Y.S.2d 209). In interpreting a contract such as a stipulation of settlement, a court should construe it in such a way as to give fair meaning to all the language employed by the parties to reach a practical interpretation of the expressions of the parties so that their reasonable expectations will be realized (*see Matter of Katz v. Dotan*, 95 AD3d 1328, 945 N.Y.S.2d 404; [Matter of Moss v. Moss](#), 91 AD3d 783, 937 N.Y.S.2d 270; [Hyland v. Hyland](#), 63 AD3d 1106, 1007, 882 N.Y.S.2d 276).

In this proceeding, the only interpretation of the parties stipulation of discontinuance that makes sense is that the parties intended for the judgment to be vacated. Petitioner's argument that the two handwritten notes written by respondent warrant a different result is not availing. In neither of those notes does respondent refer to a judgment. In both notes, respondent acknowledges a debt and promises to make payments toward said debt on a monthly basis.

WHEREFOR IT IS HEREBY ORDERED THAT the judgment entered on August 10, 2010 in the amount of \$11,808.42 be and same hereby is vacated, and all liens executions and restraints issued pursuant to said judgment are hereby lifted.

This constitutes the decision and order of the court.

Dated: New York, New York

June 29, 2021

Hon. Sabrina B. Kraus, JCC

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