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2021-07-13

### Regtounda Aminata v. Lennox

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#### Recommended Citation

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Civil Court of the City of New York

County of NY  
Part B

Index Number 14518/2017  
Motion Cal. # \_\_\_\_\_ Motion Seq. # \_\_\_\_\_

DECISION/ORDER

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion:

Regtoumda Aminata  
Claimant(s)/Plaintiff(s)/Petitioner(s)  
against  
Lennox + Pennamoon et al.  
Defendant(s)/Respondent(s)

Papers	Numbered
<u>Cross</u> Notice of Motion and Affidavits Annexed.....	<u>①</u> NYSCEF <u>14</u>
Order to Show Cause and Affidavits Annexed....	<u>②</u> NYSCEF <u>19</u>
Answering Affidavits .....	_____
Replying Affidavits.....	_____
Exhibits .....	_____
Other.....	_____

Upon the foregoing cited papers, the Decision/Order on this Motion to \_\_\_\_\_

is as follows:

Respondent cross moves to vacate  
the May 24, 2019 stipulation on the basis of  
mutual mistake and/or unilateral mistake.

Stipulations of settlement are favored by the  
courts and not lightly cast aside. Stipulations may be  
vacated for cause sufficient to invalidate a  
contract based on fraud, collusion, mistake or  
accident and only under such circumstances  
will a party be relieved from the consequences  
of a stipulation. Matter of Frutiger, 29 N.Y.2d  
143 (1971); Hallock v. State of NY,  
64 N.Y.2d 224 (1984).

~~Whereby, a contract entered into made by~~

Date 7/13/2021

Judge, Civil Court Frances A. Ortiz  
Judge, Housing Court

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Civil Court of the City of New York

County of NY

Index Number 14518/2017

Part B

Aminata

Claimant(s)/Plaintiff(s)/Petitioner(s)

against

Lennox et al

Defendant(s)/Respondent(s)

DECISION/ORDER

Stipulations may be voided based on unilateral mistake if (1) enforcement would be unconscionable; (2) the mistake is material and made despite the exercise of ordinary care by the owner; (3) the innocent party had no knowledge of the error and (4) it is possible to place the parties to the status quo ante. 104-106 East 81 St. LLC v. O'Brien, 12 Misc.3d 1175(A) (MCty, Civct 2006).

Here, the May 24, 2019 stipulation was a 3 attorney stipulation where the owner agreed to many conditions including to ~~pay~~ restore gas service to the subject premises within 90 days <sup>3 months or</sup> of them receiving \$84,027.58 subject to reasonable delays

7/13/2021

Date

Fe Frances A. Ortiz  
Judge, Housing Court

Judge, Civil Court

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Civil Court of the City of New York

County of \_\_\_\_\_

Index Number ~~14578~~ 14578/2017

Part β

Aminata  
Claimant(s)/Plaintiff(s)/Petitioner(s)

against

Lennox + Penman  
Defendant(s)/Respondent(s)

DECISION/ORDER

Petitioners complied but now respondents have learned that they owe an additional \$42,201.19 and \$22,398.28 to Con Ed and can't pay it. As such they claim that the

May 24 2019 stipulation should be vacated.

Respondent's motion to vacate the May 24 2019 stipulation is denied. Respondent has not shown any of the five elements discussed above. For instance, enforcement of the stipulation is not unconscionable nor is the mistake material to restoration of gas services, nor would petitioners be placed in status quo ante upon vacation of the stipulation.

The cross motion to join/implead

7/13/2021

Date

Frances A. Ortiz  
Judge, Housing Court

Judge, Civil Court

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Civil Court of the City of New York

County of NY  
Part B

Index Number 14578/2017

Aminata

Claimant(s)/Plaintiff(s)/Petitioner(s)

against

Lennax et al

Defendant(s)/Respondent(s)

DECISION/ORDER

Con Edison is granted pursuant to CCA § 110(d) L  
Con Edison is a necessary party to this proceedings in order to effectuate proper housing maintenance standards such as restriction of gas service to the premises

The cross motion to extend compliance with the stipulation of May 24, 2017 is granted to extent of setting matter down for a hearing an extension of time + contempt ~~the~~ motion.

1. Counsel for respondent/owner will forthwith e-mail a copy of this Order to counsel for Consolidated Edison at Lauka@coned.com and mail a copy of the paper with Notice of Entry to Con Ed Law Department, Office of the Secretary 4 Irving Place, Rm: 1850S, NY, NY 10003 them

Ordered: The clerk is to amend the

7/13/2021

Frances A. Ortiz  
Judge, Housing Court  
fa

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Date

Judge, Civil Court

Civil Court of the City of New York

County of \_\_\_\_\_

Index Number 14578/2017

Part B

Aminata

Claimant(s)/Plaintiff(s)/Petitioner(s)

against

Lermax et al.

Defendant(s)/Respondent(s)

DECISION/ORDER

caption to include Consolidated Edison  
as additional respondent herein.

This is the decision and order of  
the court.

(F)

7/13/2021

Date

Frances A. Ortiz  
Judge, Housing Court

Judge, Civil Court

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