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### College Apts. LLC v. Gedeon

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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF KINGS: HOUSING PART D

-----X  
COLLEGE APARTMENTS LLC,

Petitioner

Index No. LT # 79046/19

- against -

**DECISION/ORDER**

MARIE GEDEON, JOHNNY GEDEON  
3413 Avenue H  
Apt 5H  
Brooklyn, New York 11210

Respondent.

-----X  
**HON. HANNAH COHEN:**

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Recitation, as required by CPLR 2219(a), of the papers considered in the review of petitioner;s motion to execute upon the warrant pursuant to AO 160 and DRP-213 and respondents opposition seeking dismissal and ensuing reply.

<u>Papers</u>	<u>Numbered</u>
Notice of Motion	1
Opposition	2
Reply	3

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Upon the foregoing cited papers, the Decision and Order on this Motion is as follows:

In November 2018, petitioner commenced this non payment vase against Marie G Gideon, respondents-tenant and John Doe undertenant-occupant and a default judgment was entered. On December 27, 2019 Johnny Gedeon filed an order to show cause returnable January 6, 2020, alleging he was the son and that his mother passed away on 12/21/17 and that he has been paying the rent under his name and that he has succession rights. On January 6, 2020, Johnny Gedeon appearing *pro*

se was substituted as the John Doe and the case was discontinued against Marie Gedeon. Johnny Gedeon consented to an entry of a final judgment of possession, warrant to issue forthwith and execution stayed for the payment of \$11,357.37 plus current rent. The stipulation indicated that Mr. Gedeon executed a two year lease at \$1,629.97 and that upon payment of above, petitioner agreed to recognize respondent's succession and counter sign the lease renewal and return it to respondent. Upon default warrant to execute upon service of a marshal's notice. Mr. Gedeon then filed a second order to show cause alleging that he need additional time to pay. The parties entered into a second stipulation on February 21, 2020 staying the warrant through March 30, 2020 for \$12,628.10 to be paid plus current rent.

Petitioner by motion pursuant to AO 160-20 and DRP- 213 seeks to execute upon the warrant of eviction as Mr. Gedeon defaulted on the terms of his stipulation. Respondent, Johnny Gedeon with counsel, opposes the motion and argues that Mr. Gedeon was never on his mother's lease and is therefore not responsible for her arrears. Additionally, Mr. Gedeon asserts that as he never paid the full arrears, the lease if offered, was never signed and returned to the petitioner.

Courts have held that a stipulation of settlement is essentially a contract and will not be lightly set aside absent proof of fraud, collusion, mistake or other ground sufficient to invalidate a contract (See *Hallock v State of New York*, 64 NY2d 224 [1984]. However, courts have the discretionary power to relieve parties from consequences of a stipulation "if it appears that the stipulation was entered into in advisedly or that it would be inequitable to hold the parties to it" see *Matter of Frutiger*, 29 NY2d 143 [1971]. See also *Weitz v Murphy*, 241 Ad2d 547 [1997]; *1420 Concourse Corp. v Cruz*, 135 AD2d 371 [1987]. Furthermore, the Appellate Division in *Cabbad v Melendez*, 81 AD2d 626 [2<sup>nd</sup> Dept 1981]) found good cause to vacate a stipulation where it appears a party has "inadvertently, un advisably or improvidently entered into an agreement which will take


the case out of the due and ordinary course of proceeding in the action, and work to his prejudice.”

Here, respondents affidavit coupled with the seemingly undisputed fact that Marie Gedeon was deceased before the case commenced, is sufficient to demonstrate that the stipulation was entered into in advisedly and which took the case out of its ordinary course. The court is further concerned that on January 6, 2020, Mr. Gedeon was not sufficiently advised of the deviation that his case took, and the potential prejudicial impact it may have had on his case (See *270 Glenmore Ave. LLC v Blondet*, 55 Misc.3d 133(A) [A.T. 2<sup>nd</sup> Dept 2<sup>nd</sup>,11<sup>th</sup> and 13<sup>th</sup> Jud. Dists. 2017]); *Samson Managment LLC v Cordero*, 62 Misc3d 129(A)[ Supreme Court, App Term 2018] .

As the tenant of record, the only named respondent in the non payment proceeding was deceased at the time the proceeding was commenced, the proceeding was a nullity from its inception (*Garbed v Boesky*, 142 AD3d 584 [2016]). This defect could not be cured by stipulating to amend the caption for the occupant, Johnny Gedeon for the deceased respondent (*Chrissy v Estate of Eyra*, 136 AD3d 760[2016]; see *U.S. Bank N.A. v Cadeumag*, 147 AD3d 881 [2017]; *356-358 SJP, LLC. v Dorothy Stewart, Nicholas Stewart*, 68 Misc 3d 132(A) [App Term 2<sup>d</sup>,11<sup>th</sup> and 13<sup>th</sup> Jud. Dists 2020]). As such, petitioner’s motion is denied, the judgment and warrant are vacated and the petition is dismissed.

This constitutes the decision and order of this court.

Dated: December 18, 2020  
Brooklyn, New York

  
\_\_\_\_\_  
Hannah Cohen, J.H.C.

HANNAH COHEN  
JUDGE, HOUSING COURT