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### Rosewall Gardens Assocs. v. White

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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF BRONX: HOUSING PART F

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ROSEWALL GARDENS ASSOCIATES,

L&T Index No.: 38906/2019

Petitioner,

Motion Sequence Nos.: 3-4

-against-

**DECISION/ORDER**

FERN WHITE,

Respondent.

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KAREN MAY BACDAYAN, J.

*Gutman, Mintz, Baker & Sonnenfeldt, LLP*, by Avrum Kaniel, Esq. – for the Petitioner  
*Urban Justice Center*, by Claire Gunner, Esq. – for the Respondent

Recitation, as required by CPLR 2219 (a), of the papers considered in review of this motion, listed by NYSCEF document number: 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17.

Upon the foregoing cited papers, the decision and order on this motion is as follows:

**PROCEDURAL HISTORY**

This is a nonpayment proceeding commenced by Petitioner, Rosewall Gardens Associates (“Petitioner”), against Respondent, Fern White (“Respondent”). Respondent settled the proceeding without legal representation on December 2, 2019 by consenting to a final judgment in the amount of \$3,240.51 which she agreed to pay by January 18, 2020 along with January 2020 rent. (NYSCEF Doc No. 9.) The warrant issued on January 2, 2020. Also on January 2, 2020, Respondent, still without representation, settled an Order to Show Cause to stay execution of the warrant by agreeing to pay \$2,660.77 by February 28, 2020. (NYSCEF Doc No. 10.) The stipulation provided that “[a]ll payments made during the months thereafter shall first be applied to that months’ use and occupancy and then to satisfy the arrears due under Paragraph #1.” (*Id.* at ¶ 7.) This language is also known as a “current rent provision.” (It is this stipulation

which is relevant to the instant motion.) On March 12, 2020, Respondent entered into another agreement to pay \$3,579.29 by April 9, 2020. (NYSCEF Doc No. 11.)

During the Covid-19 pandemic, the proceeding was first administratively adjourned, and then stayed pursuant to various directives and laws. Now before the court is Petitioner's DRP 213 motion for permission to execute on the warrant. (*See* Civ Ct of the City of NY, Directive DRP-213, [August 12, 2020], available at <http://www.courts.state.ny.us/courts/nyc/SSI/directives/DRP/DRP213.pdf>.) DRP-213 Section 1(B) permits enforcement of warrants of eviction issued before March 17, 2020 only after a motion on notice for leave to do same. (*Id.*) Respondent has obtained counsel through special pandemic-related processes intended to expand the right to representation in housing court, and counsel cross-moves to vacate the judgment and warrant and to dismiss the proceeding on the basis that the final judgment has been satisfied.

Respondent argues, and Petitioner does not dispute, that Respondent paid \$922 in February 2020 to satisfy February 2020 rent. (NYSCEF Doc No. 6 at 13.) Thus, \$2,659.03 remained due through February 2020. (NYSCEF Doc No. 4 at 13-20.) Respondent had applied for a "one-shot deal" from the Human Resources Administration to prevent her eviction. The agency did not issue the checks until March 31, 2020, but, Respondent argues, the checks were earmarked for a period prior to February 1, 2020 and totaled \$2,659.03, a sum that precisely satisfied the remaining amount of the final judgment; therefore, Respondent urges, the final judgment has been satisfied by checks which should be applied to the final judgment amount. (NYSCEF Doc No. 6 at 9-23.)

Petitioner makes three arguments in opposition. First, Petitioner argues that the judgment cannot be satisfied because the checks were *not* earmarked. (NYCEF Doc No. 15 at 8-9.) Second, Petitioner argues that because the earmarkings on the checks do not comport with the actual amount of rent due for the earmarked period, the references are "irrelevant." (*Id.*) Third, Petitioner argues that because of the current rent provision the monies should not be applied to satisfy the judgment but, rather, to the rent that accrued in March 2020 and April 2020 prior to the checks being received and credited to Respondent's account on April 30, 2020. (*Id.* at 10 - 13.) In reply, Respondent counters Petitioner's position, and reiterates and emphasizes her own.

## DISCUSSION

Petitioner's first argument, that the HRA rent arrears checks are not earmarked, is unpersuasive. The court finds that the HRA checks were clearly earmarked to, collectively, be applied to rent that accrued prior to January 31, 2021.<sup>1</sup> (NYSCEF Doc No. 12.) Petitioner's second argument is specious given that Petitioner historically has accepted monies that are not in the exact amount of the rent due in any given month and applies them on its breakdown to the month in which received. Petitioner's breakdown attached to its motion papers at exhibit "2" demonstrates that since January 2013 it has accepted fluctuating payment amounts and applied them to the amount due at the time. (NYSCEF Doc No. 4 at 13-20.) For the reasons discussed below, Petitioner's third argument, regarding the current rent provision, need not be addressed as the court finds that the judgment herein was satisfied by the earmarked checks.

Baked into the culture of Bronx Housing Court, which has the highest eviction rate of any of the five boroughs,<sup>2</sup> and sees more indigent individuals and families facing eviction than any other housing court in the city,<sup>3</sup> is the expectation that, in most cases, rent arrears will be paid, at least in part, by a government agency. Prior to the implementation of the Universal Access to Counsel Act in 2017,<sup>4</sup> "[t]enants [were] 98-99% unrepresented while 80% of owners [had] legal representation."<sup>5</sup> It was then, and is now, very commonplace, for an unrepresented tenant to consent to a final judgment on the first court appearance, along with a current rent provision, not understanding the consequences of HRA delay on the proceedings.

The court takes judicial notice that HRA often experiences delays when issuing rental assistance monies. (*See 2246 Holding Corp. v Nolasco*, 52 AD3d 377, [1st Dept 2008] [recognizing that HRA delays in processing rent arrears payments are "beyond [a tenant's]

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<sup>1</sup> The three checks are 43711931 dated March 31, 2020 in the amount of \$886.35; 43711932 dated March 31, 2020 in the amount of \$886.34; and 43711933 in the amount of \$886.34. The checks state on their face, respectively: "EXCESS RENT – ACCRUED PRIOR TO PA FOR 2019/11/01 THRU 2019/12/31;" "EXCESS RENT – ACCRUED PRIOR TO PA FOR 2109/09/10 THRU 2019/10/31;" and EXCESS RENT – ACCRUED PRIOR TO PA FOR 2020/01/01 THRU 2020/01/31." (NYSCEF Doc No. 12.)

<sup>2</sup> According to data reported by the New York City Council, in 2018 the Bronx saw one eviction for every 79 units (1:79), compared to Brooklyn (1:180), or Manhattan (1:345). (*Residential Evictions*, New York City Council, available at <https://council.nyc.gov/data/evictions> [last accessed May 14, 2021].)

<sup>3</sup> *An Economic Snapshot of the Bronx*, Office of NY State Comptroller, available at <https://www.osc.state.ny.us/files/reports/osdc/pdf/report-4-2019.pdf> (last accessed May 14, 2021).

<sup>4</sup> *See* Administrative Code of the City of New York §§ 26-1301 – 26-1305.

<sup>5</sup> *New York City's Housing Court at 40: Controversies, Challenges, and Prospects for Its Future* at 11, available at [https://s3.amazonaws.com/documents.nycbar.org/files/2007336NYC\\_Housing\\_Court\\_at\\_40\\_HOUCOURT\\_3.11.13.pdf](https://s3.amazonaws.com/documents.nycbar.org/files/2007336NYC_Housing_Court_at_40_HOUCOURT_3.11.13.pdf) (last accessed May 13, 2021).

control”]; *Trump Park Ave. LLC v Summers*, NYLJ, March 17, 2016 at 33, 20116 NYLJ LEXIS 4991, \*6 [Civ Ct, NY County 2016, Stoller, J.] [the court took “judicial notice that obtaining an approval from HRA to pay rent arrears within three months and one week . . . is well within the time frame commonly seen”].)

In this context it cannot be said that it was not anticipated by the parties that Respondent would apply for a one-shot deal to satisfy her arrears. (*See* NYSCEF Doc No 14 at 64, affidavit in support of OSC #1 dated January 16, 2020 [“I can get a one shot deal”]; *see also* NYSCEF Doc. No 14 at 55, affidavit in support of OSC #2 dated February 28, 2020 [“I am waiting for HDU [Homeless Diversion Unit] to make a decision on my case for a one-shot deal. I paid Feb rent”].) For the reasons set forth above, it comes as little surprise that the HRA checks were not issued until March 31, 2020 (four months after the proceeding first appeared on the court’s calendar and two and a half months after Respondent indicated she was applying for HRA assistance). That the tendered checks were earmarked to cover rent through January 2020 in an amount equal to the outstanding through February 2020 after Respondent paid February 2020 rent,<sup>6</sup> but dated March 31, 2021, is also not surprising considering the expectation of HRA delays.

“[A] debtor’s intention to apply a payment to a particular debt may be inferred from various factors, *including whether the amount of the payment equals the amount of a specific debt.*” (*A & E Tiebout Realty, LLC v. Johnson*, 23 Misc 3d 1112[A], 2009 NY Slip Op 50715[U] [Civ Ct, Bronx County 2009], *aff’d* 26 Misc 3d 131[A], 2010 NY Slip Op 50055[U] [App Term, 1st Dept 2010].) “[A] direction as to how a payment is to be applied may be evidenced by circumstances as well as words. A payment may be attended by circumstances which demonstrate its application as completely as words could demonstrate it.” (*L & T E. 22 Realty Co v Earle*, 192 Misc 2d 75, 76 [App Term, 2d Dept 2002] [internal citations omitted]; *see also Tayloe v Sandiford*, 20 US 13, 20 [1822] [holding that “a positive refusal to pay one debt, and an acknowledgment of another, with a delivery of the sum due upon it” would be a circumstance evincing an intent to apply payment to debt for a particular sum].)

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<sup>6</sup> HRA requires “future ability” to pay the ongoing rent, often demonstrated by the availability of funds to pay the monthly rent while the rent arrears application is pending. (*See generally* Bruce Jordan, *New York City Civil Court: Need Help Paying Rent*, available at [http://www.courts.state.ny.us/courts/nyc/ssi/seminar\\_transcripts/Need\\_Help\\_Paying\\_Rent.pdf](http://www.courts.state.ny.us/courts/nyc/ssi/seminar_transcripts/Need_Help_Paying_Rent.pdf) [last accessed May 7, 2021].)

Under these circumstances, i.e., where the outstanding judgment amount was paid to the penny by delayed HRA checks earmarked to satisfy the precise remaining stipulated amount once Respondent had paid her February 2020 rent, vacatur of both the judgment and warrant is appropriate. Had Respondent's application to HRA for rent arrears been expeditiously processed, the judgment would likely have been timely satisfied without regard to March and April 2020 rent. *Regardless*, had the HRA checks been properly credited as earmarked, Respondent's account would have a zero-balance due through February 2020; thus, the judgment has been satisfied.

Under the analysis employed by the court herein, it is not necessary to parse the applicability of the current rent provision. That the unrepresented Respondent entered into a third stipulation after her second Order to Show Cause to stay execution of the warrant to allow HRA to process monies that ultimately satisfied the final judgment is of no moment, and does not command a contrary result.

### **CONCLUSION**

Accordingly, the Petitioner's motion is DENIED, and the Respondent's cross-motion is GRANTED, insofar as the judgment and warrant are vacated and the proceeding is dismissed without prejudice to the parties' claims and defenses to any outstanding rent.

This constitutes the decision and order of this court.

Dated: May 14, 2021  
Bronx, New York

So Ordered:



**Hon. Karen May Bacdayan**

HON. KAREN MAY BACDAYAN  
Judge, Housing Part