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Lesline Ross v. Anita Grant

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART S

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Lesline Ross.,

Petitioner

Index No. LT # 75183/19

- against -

DECISION/ORDER

Anita Grant
618 Ashford Street
Apt. 2nd Floor
Brooklyn, New York 11207

Respondent.

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HON. HANNAH COHEN:

Recitation, as required by CPLR 2219(a), of the papers considered in the review of Respondent motion to dismiss.

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

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

Petitioner Lesline Ross, commenced this holdover proceeding to regain possession of the premises in 2019 after service of a ten day notice to quit. Respondent appeared with counsel and entered into a final judgment of possession, warrant to issue forthwith, execution stayed through January 31, 2020. Respondent then filed an order to show cause which was withdrawn on January 27, 2020. Respondent then filed a second order to show cause seeking a stay of the execution of the warrant pursuant to RPAPL 749(3) as respondent is a disabled senior and

required more time to seek a new apartment. Said order to show cause was returnable March 25, 2020. The court subsequently closed on March 17, 2020 due to the health pandemic caused by COVID-19. As a result, a series of administrative orders (“AO’s) and directives (“DRP’s”) were issued by the Chief Administrative Judge and the Supervising Judge of the Civil Court of New York.

The court calendared said order to show cause on February 14, 2022 and respondent subsequently withdrew its order to show cause. Respondent now moves by motion dated February 10, 2022 to vacate the stipulation of settlement dated October 8, 2019 and the warrant and judgment because it would be unjust and inequitable to require respondent to move out of her apartment when the petitioner accepted ERAP. Respondent also seeks summary judgment and dismissal of the proceedings as petitioner accepted ERAP payments, In support respondent submits an attorneys affirmation indicating that ERAP paid funds to the petitioner on respondents behalf and submits documentation from the OTDA portal and an affidavit from the respondent. Respondent argues that pursuant to COVID-19 ERAP of 2021 [L. 2021, N.Y. Ch. 56] which states that as a condition of accepting funds from the ERAP program, landlords can “not evict for reasons of expired lease or holdover tenancy any household on behalf of whom rental assistance is received for 12 months after the first rental assistance payments is received...”. Respondent further argues that enforcement of the original stipulation would be unjust as ERAP payments were received. Respondent states that upon the court vacating the stipulation, summary judgment should be granted pursuant to CPLR 3212 as ERAP funds were accepted and there are no issues of fact before the court.

Petitioner opposed the motion and argues that any ERAP funds received were used for

rent for March 2020 onwards and that as respondent did not vacate by January 30, 2020 pursuant to the stipulation, she is liable for rent arrears for November 2018 through March 2020 and ongoing rent for months not covered by the ERAP payments. Petitioner is support points the court to OTDA questions and answers Question #6 which states “if a tenant owed rental arrears that predated the COVID-19 pandemic, or does not pay rent in the future, a landlord would not be prohibited from beginning an eviction once any applicable eviction moratorium has expired.”

In reply respondent contends that as the acceptance of ERAP funds dictate that a petitioner may not evict for 12 months equates to not being able to maintain a holdover proceeding at all, therefore justifying vacatur of the stipulation and judgment and warrant.

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].

Here, respondents counsel wrote the stipulation of settlement that was signed and agreed to by the petitioner who was and is pro-se. Respondent has not enumerated any legal grounds to invalidate the so ordered stipulation entered into on October 8, 2019. Furthermore it is uncontested that respondent did not vacate pursuant to the stipulation on or before January 30, 2020, well before the beginning period covered by COVID-19 legislation. Respondent argument that an acceptance of ERAP funds invalidates a pre existing judgment and warrant is unfounded.

The statute clearly states that a petitioner may not evict for 12 months following an acceptance of funds, but does not state that an eviction cannot be maintained if one already exists. This is clear by OTDA guidance in reinforcing a 12 month stay in holdover proceedings while permitting new non payments proceedings to be commenced. When constructing a statute, the court must conclude that the legislature deliberately placed wording to serve its intended purpose (See Rodriguez v Perales, 86 NY2d 361 [1955]; Bitzarkis v Evans, 2021 NY Slip Op 21280 [Civil Ct Kings Co November 2021]). Had the legislature intended that ERAP recipients who have had prior judgment and warrants that pre date the pandemic in holdover proceeding, be granted a vacatur of any judgment or warrant upon acceptance of ERAP funds, the statute would have so stated. Additionally, although respondent alleges payment in December 2021 it is unclear from the proof presented what month ERAP actually paid, how much was paid and for which months they were designated towards. Based upon the above, respondents motion is denied in all aspects.

This constitutes the decision and order of this Court.

Dated: Brooklyn, New York
March 25, 2022

HON. HANNAH COHEN, J.H.C.