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[*1]

Inwood Tower, Inc. v V.F.
2022 NY Slip Op 50465(U)
Decided on May 31, 2022
Supreme Court, New York County
James, J.
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Decided on May 31, 2022

Supreme Court, New York County

Inwood Tower, Inc., Petitioner-Landlord,
against
V.F., Respondent-Tenant.

Index No. LT-066454/17

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Ta-Tanisha James, J.

The following papers, numbered 1 to 1-3, were read on this application to Vacate Stipulation

Notice of Motion/ Petition/ OSC - Affidavits - Exhibits No(s) 1

Answering Affidavits - Exhibits No(s) 2

Replying Affidavits No(s) 3

This is a holdover proceeding commenced by Petitioner-Landlord in June 2017. Petitioner alleged, *inter alia*, that Respondent-Tenant harassed tenants and staff, used inappropriate and derogatory language directed towards tenants and staff, and repeatedly parked in unauthorized parking spaces. On July 5, 2017, the initial return date of the proceeding, the housing court made a referral to Adult Protective Services ("APS") and adjourned the matter to August 14, 2017. On that date, the housing court adjourned the matter to October 2, 2017, for status of the APS referral. In the interim, Mr. F. retained counsel and interposed an answer denying the allegations and asserting various affirmative defenses. The matter was further adjourned over several additional dates and on June 21, 2018, the parties executed a probationary stipulation of settlement whereby Mr. F. agreed to abide by numerous conditions for a two-year period.

In June 2020, immediately prior to the expiration of the probationary stipulation, Petitioner filed a motion to restore the matter, alleging Mr. F. breached the stipulation of settlement between September 2019 and June 10, 2020. Petitioner sought a hearing to determine whether Mr. F. breached the terms and conditions of the June 2018 stipulation, and in the event of a finding of a material breach, issuance of an order granting final judgment of possession in favor of Petitioner and a warrant of eviction. Mr. F.'s counsel opposed the motion on the basis Petitioner failed to provide sufficient notice of the alleged violations, thus depriving Mr. F. and his family an opportunity to work with his medical providers to stabilize his mental illness such that the nuisance conduct would not occur. In an order dated October 5, 2020, the Housing Court found Petitioner-Landlord provided sufficient allegations of multiple breaches of the stipulation and [*2] provided notice as required by the stipulation and granted the motion to the extent of restoring the matter for a hearing. Additionally, the Housing Court made a second APS referral.

On January 25, 2021, Alexander Lombard, Esq., counsel for Mr. F. in the housing matter, filed an Article 81 Guardianship proceeding in Supreme Court seeking the appointment of a guardian for Mr. F. The Supreme Court found Mr. F. to be incapacitated and

appointed his sister, Olga F., as his guardian pursuant to an Order and Judgment dated August 13, 2021. Following her appointment, the Guardian retained The Legal Aid Society to represent her in her capacity as guardian with the power to defend the housing matter on behalf of Mr. F.

On October 22, 2021, the Guardian, through retained counsel, filed the instant motion seeking to vacate the June 2018 stipulation of settlement on the basis it violates the public policy of New York to protect the rights of the mentally infirm. The Landlord opposes the motion and asks the Court to schedule the matter for a hearing to determine whether the stipulation was breached. The Court commenced a hearing on the motion on April 7, 2022. The hearing was continued on April 8, 2022, and April 29, 2022. Following the conclusion of the hearing, the Court reserved decision. After a review of all papers submitted and the testimony and arguments during the hearing, the motion is granted for the reasons set forth herein.

The Guardian argues Mr. F. lacked capacity to enter into the stipulation due to his mental illness and did not have a guardian ad litem ("GAL") or Article 81 guardian to protect his rights or assist him to ensure compliance with the terms of the stipulation. The Guardian further asserts Mr. F.'s failure to comply with medication to treat his severe bipolar disorder is the primary reason for the nuisance conduct, and once home healthcare is implemented to assist with the medication regimen the conduct is not likely to persist.^[FN1] In opposition, Petitioner argues it is Mr. F.'s burden to prove incapacity and mere conclusory statements of stress or depression are insufficient to establish he was incompetent to comprehend and understand the nature of the settlement.

Stipulations of settlement are generally favored and are not lightly set aside. However, courts have discretion to vacate stipulations of settlements where there is a showing of "fraud, collusion, mistake, accident, or some other ground of the same nature" (*Matter of Frutiger*, 29 NY2d 143, 150 [1971]). This includes when a party "inadvertently, unadvisably or improvidently entered into an agreement which will take the case out of the due and ordinary course of proceeding in the action, and in so doing may work to his prejudice Where both parties can be restored to substantially their former position the court, as a general rule, exercises such power if it appears that the stipulation was entered into inadvisedly or that it would be inequitable to hold the parties to it" ([*Matter of New York Found. for Senior Citizens v Hamilton*, 170 AD3d 543](#) [1st Dept 2019] [internal citations omitted]).

It is the public policy of the state and its courts to rigorously protect the rights of the

[*3]mentally infirm, as set forth in *Vinokur v Balzaretti*, 62 AD2d 990 (2nd Dept 1978). Further, adequate representation by counsel is of no consequence as to whether defendants require a guardian ad litem to protect their interests in the action, and if so, whether one should be appointed. *Id.* The Appellate Division, First Department, and lower courts within have followed the holding set forth in *Vinokur*. In *Kalimian v Driscoll*, 1991 NY Misc. LEXIS 854 (App Term NY County Mar. 29, 1991, No. 91-411), the First Department affirmed a civil court decision vacating a jury verdict entered against a tenant suffering from mental illness when the tenant did not have a guardian ad litem appointed to protect her interest in the litigation. The Court held that "the fact that [the] tenant was represented by counsel in the trial proceedings is of little [, if] any, relevance in determining whether she was prejudiced by the absence of a guardian ad litem." *Id.*

Petitioner correctly argues no evidence, such as testimony from an expert witness or medical documentation, was presented in both the initial proceeding and the motion and hearing to vacate the stipulation as to the nature and extent of Mr. F.'s mental illness. In matters in which it has been determined a respondent suffers from mental illness severely impacting their insight and judgment such that appointment of a guardian ad litem or guardian is warranted, the records contain testimony from expert psychiatric witnesses and medial and treating reports that demonstrate the severe nature of the mental illness and resulting incapacity of the respondent to defend their own interests (*see New York Found.* at 544; *Kalimian* at *1). Here, only the Guardian testified, and no medical records were entered into evidence. Additionally, much of the Guardian's testimony was inadmissible hearsay or was speculative and conclusory, primarily based on observations of Mr. F.'s behaviors.

However, this matter is distinguishable by the stipulation itself, which includes reference to Mr. F.'s mental illness and conditions his compliance with the stipulation in part on his compliance with his mental health treatment and medication. The stipulation states in relevant part:

WHEREAS, representations have been made that Respondent F. is not a danger to himself or any other persons, and provided Respondent continues to take his medication and monthly medical treatment program.

The stipulation further states:

Respondent will continue his treatment with the following mental health team, and continue with a treatment program substantially the same as his court mandated treatment program with [redacted] located at [redacted], ph: [redacted], and will provide Petitioner with the identity of his treatment team by written notification,

via email or fax followed by regular mail, to the undersigned respective counsel for the Petitioner within ten (10) days hereof; and additionally, within thirty (30) days of any changes within thirty (30) days of same. Respondent's current treatment team consists of [redacted].

The inclusion of specific language that Mr. F. continue to receive mental health [*4]treatment, the name, address and phone number of his treatment program, the name of his treating doctor, and requirement that Petitioner be notified of any changes to his treatment team indicates Mr. F. suffers from severe mental illness. Mr. F.'s compliance with the stipulation being contingent upon his compliance with treatment, thereby elevates the allegations of mental illness beyond the realm of conclusory assertions of stress and depression.

Consequently, it was incumbent upon the parties and the court to ensure that mentally ill Mr. F. was vigorously protected in accordance with the public policy of this state. While a review of the court file, which the Court took judicial notice of during the hearing, indicates the housing court made two APS referrals, the file further indicates APS closed at least one of the referrals without assessing Mr. F. In an email from the court to the Human Resources Administration ("HRA"), which oversees APS, sent on October 5, 2020, inquiring as to the status of the referrals, HRA reported the first referral made at the commencement of this proceeding was closed based upon the assertion by Mr. F.'s counsel that Mr. F. had full understanding of the court proceeding. The same email indicates Mr. F. was not yet assessed on the second referral, and it remains unclear if he ever was. As the case law makes clear, representation by counsel alone is not enough to ensure the rights of a mentally infirm respondent are protected, thus it stands to reason that the determination of mental capacity made by an attorney does not supplant a proper assessment. Even if Mr. F. had been assessed and APS determined not to seek the appointment of a guardian ad litem, the court's inquiry does not end, as the court may determine whether to appoint a guardian ad litem *sua sponte* or on the application of any party. The court has an obligation to evaluate a party's need for a guardian ad litem even when the party is represented by counsel and the court may appoint a guardian ad litem at any stage of the proceeding. [*Cabrini Blockfront LLC v J.N.*, 63 Misc 3d 1221\(A\) \(Civ Ct NY County 2019\)](#). The *Cabrini* court further held that "where a guardian ad litem should have been appointed and was not, the resulting judgment must be vacated." *Id.*

The Court determines there is good cause to vacate the stipulation. The Court recognizes the length of time since the commencement of this proceeding and since the stipulation was entered into, as well as the troubling nature of the alleged nuisance conduct, and does not reach this determination lightly. Absent the stipulation which so clearly puts Mr. F.'s mental

illness at issue, the Court may have reached a different decision given the noted lack of documentation and testimony as to Mr. F.'s mental health history and its impact on his insight and judgment. However, in as much as the stipulation was negotiated and drafted by counsel for the landlord as well as Mr. F.'s counsel and the housing court accepted the stipulation as resolution of the proceeding, the obligation was on everyone to ensure Mr. F.'s rights were rigorously protected and that he had the capacity and ability to not only enter into the stipulation, but to comply with it. [\[FN2\]](#) This decision does not find Mr. F. lacked capacity at the time the stipulation was signed, rather it finds a full examination of Mr. F.'s capacity and whether he required the appointment of a guardian ad litem given his noted mental health condition did not occur, thus requiring vacatur [*5] of the stipulation in accordance with public policy. Lastly, the landlord is not entirely prejudiced as it is still entitled to a trial on the underlying proceeding or can negotiate a new settlement with the Guardian.

Accordingly, for the reasons set forth herein, the motion filed by the Guardian seeking to vacate the stipulation of settlement is granted. The stipulation is vacated, and the matter is adjourned to June 1, 2022, at 12:00 pm for a conference on the underlying nuisance holdover.

May 31, 2022
TA-TANISHA JAMES, J.S.C.

Footnotes

[Footnote 1:](#) Since her appointment, the Guardian has had Mr. F. evaluated for services and obtained home health aides and a social worker.

[Footnote 2:](#) While Ms. F. was involved with Mr. F. during the housing court proceeding, she lacked the legal authority to act on behalf of Mr. F. regarding legal decisions and ensuring compliance with the terms of the stipulation, medication, and treatment.

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