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KOSCIUSZKO PLAZA LLC v. ALVARADO

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

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KOSCIUSZKO PLAZA LLC,

Index No. 88494/19

Petitioner,

DECISION/ORDER

-against-

Mot. seq. nos. 1 & 2

ALIZABETH ALVARADO, ET AL.,

Respondents.

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The following e-filed documents, listed by NYSCEF document numbers 3-6; 15-19; 23 were read on these motions for leave to execute the warrant of eviction and to modify the parties January 2020 settlement agreement and other relief.

This nonpayment summary eviction proceeding settled in January 2020, at which time Respondents were unrepresented by an attorney. By the end of October 2021, after payments by Respondents made between January 2020 and September 2020 totaling \$16,300.00, and after payment in September 2021 of \$39,600.00 from the Emergency Rental Assistance Program (earmarked for August 2020 through October 2021), Respondents had an outstanding rent balance of \$5,905.00, slightly less than their balance at the time of the January 2020 agreement.

But for the agreement’s “current rent provision,” the proceeding would have been discontinued in early March 2020, by which time Respondents had paid more than the \$6,365.00 required by the agreement. Current rent provisions, which technically operates to keep Petitioner’s remedies alive even where Respondents have paid the rent arrears due at the time the proceeding was settled, or as here, more than that amount, if ongoing rent has not been paid as well, are typical in this era of landlord-tenant practice, particularly where the tenant is unrepresented (*cf. Ruppert House Co. Inc. v Altman*, 127 Misc 2d 115 [Civ Ct, NY County 1985] [wherein the Hon. David Saxe set forth his reasons for refusing to “so order” an agreement (with a pro se tenant) because it contained a “current rent provision”]). In this case, not only has the current rent provision kept the proceeding alive pending a “zero balance,” but it may also have operated to deprive Respondents of the protections of the Tenant Safe Harbor Act (see L 2020, ch 127, § 2[1] [precluding a “judgment of possession” and “issuance of a warrant of eviction” under certain circumstances for rent accruing “during the COVID-19 covered period”]). Had the

agreement not provided for a judgment and a warrant, or had the case been commenced a few months later, those protections would be available.

Under the circumstances, the court concludes that Petitioner's motion for leave to execute should be denied. Though through no fault of its own, by the time the motion was able to be decided Petitioner had been paid a total of \$55,900.00 in rent, and over two years had passed since the parties' agreement. But for the current rent provision, the proceeding would be discontinued in early March 2020, by which time Respondents had paid more than the \$6,365.00 required by the agreement. Whatever the fairness of a current rent provision agreed to by litigants unrepresented by an attorney (*see* Nicole Summers, *Civil Probation*, 75 Stan L Rev ____ [forthcoming 2023] [available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3897493]), under these circumstances, which include the passage of the TSHA, the court will not enforce it. The court notes that Respondents' cross-motion was filed in August 2021, and Petitioner did not oppose the motion (which opposition comprises one substantive sentence) until March 30, 2022, in court, declining the court's offer for additional time to oppose.

Accordingly, it is ORDERED that Petitioner's motion (seq. no. 1) is denied; and it is further

ORDERED that Respondents' motion (seq. no. 2) is granted as set forth below; and it is further

ORDERED that the warrant of eviction shall be vacated and the proceeding is discontinued, without prejudice to Petitioner's outstanding rent claims.

This is the court's decision and order.

Dated: July 5, 2022

Michael L. Weisberg, JHC