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78/79 York Assoc. LLC v. Radetsky

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78/79 York Assoc. LLC v Radetsky
2022 NY Slip Op 50865(U)
Decided on September 15, 2022
Appellate Term, First Department
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on September 15, 2022
SUPREME COURT, APPELLATE TERM, FIRST DEPARTMENT
PRESENT: Brigantti, J.P., Tisch, Michael, JJ.
570163/22

78/79 York Associates LLC, Petitioner-Appellant,
against
Inta Radetsky, Respondent-Respondent.

Petitioner appeals from an order of the Civil Court of the City of New York, New York County (Sabrina B. Kraus, J.), entered on or about June 29, 2021, which granted respondent's motion to vacate a judgment entered August 10, 2010 and lifted all liens, executions and restraints imposed upon respondent in connection with that judgment.

Per Curiam.

Order (Sabrina B. Kraus, J.), entered on or about June 29, 2021, affirmed, with \$10 costs.

Civil Court correctly determined that the parties intended that the underlying August 2010 judgment be vacated when they subsequently entered into the October 2010 stipulation of discontinuance. When a matter is discontinued, it is as if the proceeding has never begun. Everything done in the case, including prior orders or judgments, is annulled (*see Matter of HSBC Bank USA, NA [Makowski]*, 72 AD3d 1515 [2010]; *Newman v Newman*, 245 AD2d 353 [1997]). Since the August 2010 judgment was a nullity, the court properly lifted all liens, executions and restraints issued upon respondent pursuant to that judgment. Petitioner's remedy, which was clearly anticipated by its reservation of rights in the stipulation, was to

commence a plenary action for the disputed arrears.

All concur

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Clerk of the Court

Decision Date: September 15, 2022

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