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Sedgecliff LLC v. Oduro

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

-----X
SEDGECLIFF LLC,

Index No. L&T 49080/19

Petitioner,

-against-

DECISION/ORDER

MECHELLE ODURO,

Motion seq nos. 1, 2

Respondent.

-----X

HON. KISHA L. MILLER:

Doyle & Broumand, LLP, for Petitioner.
The Legal Aid Society, for Respondent.

Recitation, as required by C.P.L.R. § 2219(a), of the papers considered in review of the motions to restore for a final judgment of possession.

Papers

Numbered

Notice of Motion and Affidavits Annexed..... NYSCEF Doc. Nos. 4, 11
Answering and Affidavits Annexed..... NYSCEF Doc. No. 17

Upon the foregoing cited papers, the decision and order on the motions are as follows:

In this nonpayment summary eviction proceeding, Respondent filed a *pro se* answer, and following several adjournments, Petitioner and Respondent, who subsequently retained counsel, executed a stipulation of settlement dated November 30, 2020 (“Stipulation”). In the Stipulation, Respondent agreed to pay \$12,442.41, which the parties acknowledged represented all arrears owed through October 31, 2020, plus November rent by November 30, or Petitioner could restore for a judgment. Petitioner agreed to inspect and repair certain conditions in the apartment on access dates to be arranged by the parties. In May 2022, Petitioner filed a motion to restore the proceeding to the calendar and award Petitioner a final judgment of possession in the amount of \$12,442.41 based upon Respondent’s failure to comply with the Stipulation. The motion was not decided because Respondent applied for assistance through the COVID-19 Emergency Rental Assistance Program (“ERAP”), which stayed the proceeding. In September 2022, Respondent’s ERAP application was denied.

Petitioner now moves for an order restoring the proceeding to the calendar and granting Petitioner a final judgment of possession in the amount of \$24,570.84 with issuance of the warrant of eviction forthwith. Respondent opposes the motion.

The total amount owed as per the Stipulation is \$13,823.41 (representing \$12,442.41 owed through November 2020 plus November rent at \$1381). In June 2022, after the parties executed the Stipulation, Petitioner received \$16,572 in funds from the Landlord Rental Assistance Program (“LRAP”) covering rental arrears from March 2020 through February 2021 at \$1381 per month (NYSCEF Doc. No. 17, Affidavit or Affirmation in Opposition, Exhibit I). These payments are earmarked, meaning they must be applied to the period specified (*Greenbrier Gardens Apts. v Eustache*, 50 Misc 3d 142[A], 2016 NY Slip Op 50210[U] [App Term, 2d, 9th & 10th Jud Dists 2016]). As a result, of the \$16,572 Petitioner received in LRAP funds, \$12,429 of the amount (covering the period from March 2020 through November 2020) must be applied to the arrears owed as per the Stipulation. The LRAP payment reduces the amount owed through November 2020 to \$1,394.41 (\$13,823.41 minus \$12,429). After execution of the Stipulation, Respondents made two payments: \$720 on May 6, 2022, and \$650 on June 9, 2022 (NYSCEF Doc. No. 15). Absent proof of an agreement or specification on how these payments totaling \$1370 should be applied (*600 Hylan Assoc v Hunter*, 17 Misc 3d 134[A] [2d Dept 2007]), the payments must be applied to the arrears owed in the Stipulation, which further reduces the arrears owed through November 2020 to \$24.41 (\$1394.41 minus \$1370).

Petitioner requests a final judgment in the amount of \$24,570.84 as all rent owed through September 2022. But the petition has never been amended to include such arrears, and the Stipulation does not contain a current rent provision. The court must enforce the terms of the Stipulation as agreed by the parties.

A stipulation is a contract between the parties, governed by the principles of contract law for interpretation and effect. A contract “must be interpreted so as to give effect to the intention

of the parties as expressed in the unequivocal language employed” (*Caruso v Ward*, 146 AD2d 22 [1st Dept 1989]). In the absence of any affront to public policy, parties to a civil dispute have the right to chart their own litigation course (*T.W. Oil, Inc. v Consolidated Edison Co. of New York, Inc.*, 57 NY2d 574 [1982]). Here, both sides were represented by counsel when they executed the Stipulation and had the right to choose whatever language. Based on the material terms of the Stipulation, which are clear and unambiguous, and the small amount of arrears owed through November 2020, as per its terms, this court declines to grant Petitioner the relief it requests.

Accordingly, it is

ORDERED that Petitioner’s motion (seq. no. 2) to restore the proceeding to the calendar for a final judgment in the amount of \$24,570.84 is denied; it is further

ORDERED that Petitioner’s motion (seq. no 1) to restore for a final judgment in the amount of \$12,442.21 is also denied.

This constitutes the decision and order of the court.

Dated: October 31, 2022



KISHA L. MILLER, J.H.C.