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Camba, Inc. v. Fields

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

X

CAMBA INC.,

Petitioner,

-against-

JOSEPHINE FIELDS,
JOHN DOE and JANE DOE,

-and-

Respondents – Occupants,

Index No.

L&T 53951/18

Present:

Hon. Christel F. Garland

DECISION/ORDER

X

RECITATION, AS REQUIRED BY CPLR 2219(A), OF THE PAPERS CONSIDERED IN THE REVIEW OF THIS MOTION BY PETITIONER TO RESTORE AND X-MOTION BY RESPONDENT TO VACATE THE STIPULATION AND TO DISMISS

PAPERS

NUMBERED

Notice of Motion, Affidavits & Affirmation Annexed
Notice of Cross-Motion, Affidavits & Affirmation
Reply

3 (NYSCEF)
7 –21 (NYSCEF)
22, 23 (NYSCEF)

UPON THE FOREGOING CITED PAPERS, THE DECISION/ORDER IN THIS MOTION IS AS FOLLOWS:

Petitioner commenced this summary holdover proceeding on or about October 12, 2018, seeking to recover possession of the subject apartment which Petitioner alleges is not subject to rent regulation by virtue of the fact that it is rented by a not-for-profit agency and of which Respondent Josephine Fields (“Respondent”) is the sub-lessee.

The proceeding first appeared on the court’s calendar on October 30, 2018, following which time it was adjourned several times. By order of the court dated December 4, 2018, a *guardian ad litem* (“GAL”) was appointed to assist Respondent in this proceeding.

Then on March 28, 2019, the parties entered into a stipulation of settlement (“the stipulation”)

pursuant to which Petitioner acknowledged having received a current psychiatric evaluation for Respondent. The stipulation also acknowledged that Respondent executed documents referred to in the stipulation as a corrected occupancy agreement with program guidelines and a support plan. In addition, the stipulation provides that Respondent agreed to provide monthly access to the apartment as required by the program guidelines. Respondent further acknowledged that she understood that she must provide required documentation to Petitioner yearly in order to comply with the program guidelines. The stipulation was signed by Petitioner's counsel and the GAL and states that in the event of a default, Petitioner could restore the proceeding to the court's calendar¹.

By notice of motion dated February 18, 2020, Petitioner moved for an order, *inter alia*, restoring the proceeding to the court's calendar based on its claim that Respondent failed to comply with the terms of the stipulation by failing to provide Petitioner access to the apartment as agreed.

Respondent who subsequently retained counsel, moved for an order vacating the stipulation because at the time of the stipulation Respondent was unrepresented and unaware of certain defenses, and upon vacatur dismissing the petition because the notice of termination is ambiguous and fails to plead misconduct following the notice to cure period.

In opposition, Petitioner contends that Respondent has not met the standard required for the vacatur of the stipulation, she has had the benefit of the stipulation and her inability to comply with the stipulation is insufficient to set aside the agreement made by the parties. In addition, Petitioner contends that Respondent's inability to comply with the stipulation is precisely the basis of this holdover proceeding and points to the fact that she had the assistance of her GAL prior to entering into the stipulation. And that as such, the fact that she did not have the benefit of counsel did not deprive her of the ability to defend herself and that the allegations in the petition did not confuse her. Petitioner further points to the fact that the stipulation itself is not unduly harsh as it does not provide for a final judgment in its favor and only requires Respondent to fulfill the obligations set forth in the occupancy agreement which are contingent on her right to occupy the premises. Petitioner also opposes Respondent's request for discovery as nothing more than a fishing expedition and an attempt to establish her defenses which is impermissible.

Both motions are hereby consolidated for disposition.

It is well-settled that stipulations of settlement are favored by the courts (*Hallock v State of New York*, 64 NY2d 224, 230, 485 NYS2d 510 [1984]). However, upon a showing of good cause such as fraud, collusion, mistake, accident, or some other ground of the same nature, the court may vacate a stipulation (*Matter of Frutiger*, 29 NY2d 143, 150, 324 NYS2d 36 [1971]). The discretion of the court to vacate a stipulation is not confined to instances of collusion, mistake, accident, fraud and surprise (*see Solack Estates v Goodman*, 102 Misc 2d 504, affd 78 AD2d 512 [1980]). Moreover, "the court has [the] power to relieve a party from a stipulation which is unjust or harsh even when fully understood and authorized" (*Bond v Bond*, 260 AD 781, 782, 24 NYS2d 169 [1940]). In fact, the court should vacate the stipulation when the parties can be restored to their former status (2 Carmody-Wait 2d § 7:20).

¹ There is a third signatory to the stipulation that appears to be Respondent.

Here, at the time Respondent entered into the stipulation she did so with the assistance of her GAL but without the benefit of counsel. And the possibility that she waived potentially meritorious defenses is precisely the basis of the relief she seeks. Although the stipulation does not include a final judgment, it limits what Petitioner has to establish in order to obtain a final judgment of possession. For those reasons the portion of Respondent's motion which seeks an order vacating the stipulation is hereby GRANTED.

As to the portion of Respondent's motion seeking an order dismissing the petition, CPLR §§ 3211 (a) (2) and (7) provide that a party may move for judgment dismissing on or more causes of action asserted against him or her on the ground that the court does not have jurisdiction of the subject matter of the cause of action or the pleading fails to state a cause of action. As alternative forms of relief, Respondent seeks leave to interpose an answer as well as leave to conduct discovery.

Respondent's claim in support of this portion of the motion is that the notice of termination is ambiguous and does not plead misconduct following the expiration of the time to cure, and that the notice of termination includes additional bases for termination for which Respondent was not given an opportunity to cure and that it would have been impossible for Respondent to cure. Respondent also contends that the notice of termination makes reference to other opportunities to cure after the time to cure initially given had expired which gave Respondent conflicting statements about when her tenancy was terminated and made the notice of termination ambiguous. In addition to the above, Respondent contends that Petitioner's failed to correctly plead the regulatory status of the subject premises and its required compliance with the rules and regulations that govern the subject housing program. Specifically, Respondent asserts that due to Petitioner's receipt of state aid, it must comply with provisions in its contract with the state which provide additional protections to program participants who are members of a vulnerable population. To that end, Respondent argues that the petition does not plead that Petitioner took the required steps prior to terminating Respondent's tenancy which is a condition precedent to commencing this proceeding.

Petitioner for its part argues that although Respondent now claims that Petitioner fails to adequately describe the premises, she appeared and negotiated a stipulation that did not include a judgment and warrant, that only obligated her to do what she is required to do in the first place as a condition of her participation in the program and occupancy of the premises. As such, it argues that her lack of counsel did not deprive her of the ability to defend herself. Petitioner also opposes Respondent's request for discovery noting counsel's failure to attach the demand to her motion and because it is nothing more than a fishing expedition and Respondent's attempt to support of her defense with information she obtains during discovery which is impermissible.

"On a motion to dismiss pursuant to CPLR § 3211, the pleading is to be afforded a liberal construction...we accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (*Leon v Martinez*, 84 NY2d 83, 614 NYS2d 972 [1994] [internal quotation marks and citation omitted]). In "assessing a motion under CPLR 3211 (a) (7) ...the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one" (*Martinez* at 88).

As previously stated by this court relying on binding authority, this court's subject matter jurisdiction is conferred by statute and a petition which fails to state facts sufficient to constitute a cause of action does not render the proceeding jurisdictionally defective (*see Jackson v New York City Housing Authority*, 88 Misc 2d 121 [App Term, 1st Dept 1976]; *see also Birchwood Towers #2 Associates v Schwartz*, 98 AD2d 699 [Second Dept 1983]).

As to Respondent's claim that the petition fails to state a cause of action and requires dismissal, Respondent's argument is correct for many reasons. It is undisputed that the supportive services provided by Petitioner to Respondent and other occupants in this development are funded through the New York State Office of Mental Health. Its own website states so. However, the petition is silent on this important fact which would have alerted the court and Respondent to additional due process protections available to Respondent which are outlined in the Mental Hygiene Law (see Title 14 NYCRR § 595.9). As a result, the petition fails to comply with RPAPL § 741 (4) which requires that the petition state the facts upon which the special proceeding is based (see also *see Volunteers of America-Greater New York, Inc. v Almonte*, 65 AD3d 1155 [2d Dept 2009]) ("the petitioner was required to allege the existence of the contract between DHS and the petitioner, because without that allegation, the Civil Court and the tenant would be unaware that the City owned the building in which the premises were located, that the DHS operated that building as a SRO facility, and that the DHS contracted with the petitioner to handle the building's daily operations"). Further, the notice to terminate includes bases for termination which were not included in the notice to cure. Specifically, the claims relating to Respondent's abusive behavior towards CAMBA staff, Respondent not signing in all of guests and having unauthorized occupants in the apartment. Then, the notice of termination refers to several letters purportedly sent to Respondent after the date of the notice to cure and the date it was served, which upon reading seem to inform Respondent about what she needed to do to cure yet again. This created even more confusion about when Respondent was to cure, what conduct Petitioner was asking that she cure and by when she needed to cure.

Based on all of the above, Respondent's motion seeking an order dismissing the petition for failing to state a cause of action is GRANTED and the petition is dismissed. Petitioner's motion seeking an order restoring the proceeding to the court's calendar for an order granting it a final judgment is DENIED as moot.

This constitutes the decision and order of this court.

A copy of this order will be emailed to the parties.

DATED: July 15, 2022



Christel F. Garland, JHC

Appearances of the Parties

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