

Fordham Law School

## FLASH: The Fordham Law Archive of Scholarship and History

---

[All Decisions](#)

[Housing Court Decisions Project](#)

---

2022-12-15

### 499 WEST 130 STREET HDFC v. JOHNSON

Follow this and additional works at: [https://ir.lawnet.fordham.edu/housing\\_court\\_all](https://ir.lawnet.fordham.edu/housing_court_all)

---

#### Recommended Citation

"499 WEST 130 STREET HDFC v. JOHNSON" (2022). *All Decisions*. 754.  
[https://ir.lawnet.fordham.edu/housing\\_court\\_all/754](https://ir.lawnet.fordham.edu/housing_court_all/754)

This Housing Court Decision is brought to you for free and open access by the Housing Court Decisions Project at FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in All Decisions by an authorized administrator of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact [tmelnick@law.fordham.edu](mailto:tmelnick@law.fordham.edu).

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

499 WEST 130 STREET HDFC

Index No. 070600/19

Petitioner,

**DECISION/ORDER**

-against-

Motion Sequence 2

MARK JOHNSON, JOHN DOE, JANE DOE

Respondents.

HON KAREN MAY BACDAYAN, JHC

*Lazarus Karp, LLP*, for the petitioner

*NYLAG*, for the respondent

Recitation, as required by CPLR 2219 (a) of the papers considered in review of this motion by  
NYSCEF Doc Nos: 17-32.

**PROCEDURAL HISTORY AND BACKGROUND**

In this nuisance holdover proceeding, petitioner alleged that respondent, Mark Johnson, persistently and intentionally poured sticky brown and clear liquid from cups and white bags onto walls, staircases, floors, and in the lobby of the subject building. (NYSCEF Doc No. 20, petitioner’s exhibit A, petition and notice of termination at 11-12.)

The proceeding was settled by two-attorney stipulation in June 2021 agreeing that respondent would “refrain from engaging in any conduct akin to that alleged in the Notice of Termination, during the period between the date of this stipulation and December 31, 2021.” (NYSCEF Doc No. 21, petitioner’s exhibit B, probationary stipulation ¶ 4.) The stipulation provided that in the event of an alleged breach, petitioner would restore the proceeding to the court’s calendar on notice of motion for a hearing regarding whether respondent had breached the stipulation. (*Id.* ¶ 4.) The stipulation further provided that “[i]n the event that the period described in paragraph 3 above elapses without any party seeking to restore this matter to the Court’s calendar, this court case shall be deemed discontinued.” (*Id.* ¶ 6.) On December 20, 2021, petitioner filed a motion to restore upon respondent’s alleged breach. (NYSCEF Doc No. 10, motion [sequence 1].) The proceeding was thereafter stayed by an Emergency Rental

Arrears Program (“ERAP”) application. On October 17, 2022, petitioner filed this instant motion requesting that the ERAP stay be lifted,<sup>1</sup> and that the proceeding be restored for issuance of a final judgment and warrant of eviction based on a breach of the June 2021 stipulation. The allegations were the very same three instances cited in the first motion for such relief. (NYSCEF Doc No. 17, notice of motion [sequence 2].)

In both motions, filed 10 months apart, petitioner alleges that on three occasions between December 10, 2021 and December 15, 2021 respondent “projected” or “expelled” or “dripped” from his mouth a sticky red liquid onto the wall and floor of the fourth floor public hallway. (NYSCEF Doc No. 18, petitioner’s attorney’s affidavit; NYSCEF Doc No. 19, Loncke affidavit.) In opposition, respondent avers that he was sick that week, and was prescribed a “red, syrup-like medication” which made him extremely nauseated causing him to vomit three times on the fourth floor of the building. (NYSCEF Doc No. 28, Johnson affidavit ¶ 8-9.) The doctor then prescribed different medications, and the nausea abated. (*Id.* ¶¶ 10-11.)

### **DISCUSSION**

The court finds that respondent has credibly countered petitioner’s affidavit; that the three incidents between December 10 and December 15, 2021 could be considered one incident stemming from the same proximate cause; and that the described incidents are not “akin” to the specific allegations in the notice of termination. The liquid is a different color and the color has been credibly explained by respondent. Moreover, the liquid is not allegedly being *intentionally* poured on the *stairways* and indeed an affidavit submitted in support of the prior motion states that the video footage of the alleged incidents depicted respondent expelling the red liquid from his mouth onto *the walls*, but *not the floors, the stairway, or the lobby*. (NYSCEF Doc No. 12, Lopez affidavit ¶¶ 7-9.) As such, the court finds that vomiting sticky, red liquid on three separate occasions over a one-week span in December 2021 onto the wall of the fourth floor of the building does not rise to a breach of the stipulation which at this juncture warrants a hearing based on the affidavits submitted, nor the issuance of a judgment and warrant for respondent’s eviction.

---

<sup>1</sup> If the ERAP stay has not already been vacated, as it is not disputed that the ERAP application was provisionally approved, petitioner’s motion to lift the stay is granted. The instant motion is fully briefed and ripe for consideration.

**CONCLUSION**

Accordingly, for the foregoing reasons, it is ORDERED that petitioner’s motion to lift the ERAP stay is granted; and it is further ORDERED that petitioner’s motion hearing and a motion to the proceeding is deemed discontinued as was the result bargained for between the parties (NYSCEF Doc No. 21 ¶ 6); and it is further

ORDERED that all pending motions in this proceeding are deemed disposed by this decision and order.

This constitutes the decision and order of this court.

Dated: December 15, 2022  
New York, NY

So Ordered:



~~Hon. Karen May Bacdayan~~  
HON. KAREN MAY BACDAYAN  
Judge, Housing Part