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2023-03-01

3482-3484 Fulton St. v. Reyes

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Civil Court of the City of New York
County of Kings - E
Part

219123
Index Number 300884-20
Motion Cal. # _____ Motion Seq. # 2

DECISION/ORDER

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion:

3482-3484 Fulton St.

Claimant(s)/Plaintiff(s)/Petitioner(s)
against

Reyes

Defendant(s)/Respondent(s)

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Order to Show Cause and Affidavits Annexed....	_____
Answering Affidavits	<u>2</u>
Replying Affidavits.....	_____
Exhibits	_____
Other.....	_____

Upon the foregoing cited papers, the Decision/Order on this Motion to Vacate the
voluntary discontinuance is as follows:

After argument, motion is denied. Petitioner seeks to vacate the stipulation discontinuing the proceeding without prejudice entered into 10/12/22. Petitioner states that law office failure led to this discontinuance. Respondent opposes stating that petitioner and counsel had ample opportunity to confirm their actions prior to entering into the stipulation.

While the court appreciates and is sympathetic to petitioner's counsel's busy case load and confusions arising from that, where there has been a mistake of fact... and there has been no fraud or deceit on the part of the other party... such a mistake will not constitute a basis to set aside the agreement" (Waterside 1 LLC v. Christian, 13 Misc 3d 158(A) [App Term 2d dep't, 2006]).

In the instant matter, the stipulation's "without prejudice" reserved any claims on behalf of the petitioner in a future proceeding, not in the instant one. As such, motion is denied. Proceeding discontinued. This constitutes the decision order of the court.

3/1/23
Date

Sergio Jimenez
Judge, Housing Court
Judge, Civil Court