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420 E. 80th LLC v Coles
2023 NY Slip Op 50490(U)
Decided on May 16, 2023
Civil Court Of The City Of New York, New York County
Marcus, J.
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This opinion is uncorrected and will not be published in the printed Official Reports.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 May 16, 2023

Civil Court of the City of New York, New York County

<p>420 East 80th LLC, Petitioner,</p> <p>against</p> <p>Allison Coles, Respondent.</p>

Index No. LT-315689-22/NY

Attorney for Petitioner: Borah, Goldstein, Altschuler, Nahins & Goidel, PC, 377 Broadway, 6th Floor, New York, NY 10013

Attorney for Respondent: Singh & Rani LLP, 5 Penn Plaza, 23rd floor, New York, NY10001

Ilana J. Marcus, J.

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

Papers Numbered

Notice of Motion and Affidavits Annexed 1

Answering Affidavits 2

Replying Affidavits

Exhibits

Other

In this commercial licensee holdover proceeding concerning a parking space, respondent, who is now represented by counsel, moves by order to show cause to stay an execution of a warrant of eviction, vacate a prior stipulation of settlement, vacate the judgment and warrant against her, and dismiss the proceeding, or alternatively, permit respondent to file an answer or grant her time to comply with the stipulation. Petitioner opposes. Respondent's order to show cause is granted to the following extent:

By way of background, the parties executed a so-ordered stipulation of settlement with respondent, who was at that time self-represented, on November 7, 2022. By notice dated February 27, 2023, petitioner informed respondent she was in default of the parties' stipulation. The notice stated respondent must cure the default on or before March 6, 2023, or petitioner may execute on the warrant of eviction in accordance with parties' stipulation. Respondent failed to cure the default and petitioner served respondent with a fourteen-day notice of eviction with an earliest eviction date of March 27, 2023.

"Stipulations of settlement are favored by the courts and not lightly cast aside" (*Hallock v State*, 64 NY2d 224, 230 [1st Dept 1984]). However, when there is a showing of good cause indicating "fraud, collusion, mistake, accident, or some other ground of the same nature," courts are empowered to relieve the parties of the stipulation where it is possible to substantially restore the parties to their former position (*In re Frutiger's Est.*, 29 NY2d 143 [1971][internal quotation omitted]). Other grounds for the court's consideration include whether a party "inadvertently, unadvisably or improvidently entered into an agreement" to his or her prejudice (*id.* [internal citation omitted]).

In determining whether to exercise its discretionary authority to vacate a stipulation, the court must consider the facts and circumstances surrounding the document's execution, including whether the party seeking vacatur was represented by counsel at the time of entering the agreement and whether there are any potentially meritorious defenses ([see 2701 Grand Ass'n LLC v Morel](#), 50 Misc 3d 139(A) [App Term, 1st Dept 2016]; [Tabak Assocs., LLC v Vargas](#), 48 Misc 3d 143(A) [App Term, 1st Dept 2015]; [Northtown Roosevelt LLC v Daniels](#), 35 Misc 3d 137(A) [App Term, 1st Dept 2012]; [2722 8th LLC v Watson](#), 10 Misc 3d 140(A) [App Term, 1st Dept 2006]; [Striver 140 LLC v Cruz](#), 1 Misc 3d 29 [App Term, 1st Dept 2003]).

Here, respondent was not represented by counsel when she entered into the stipulation of settlement. Respondent also submitted documentary evidence tending to show the

existence of potentially meritorious defenses. Respondent avers that she is the rightful successor to her deceased uncle's rent-stabilized apartment and that the disputed parking space is an ancillary service to this apartment (*see* Coles Aff).

Respondent submits portions of a lease between petitioner and her deceased uncle, beginning December 1, 1970, which includes a parking space as part of the rental property (*see* NYSCEF Doc. No. 21). While not dispositive, given respondent did not submit proof of her legal succession, or the entire lease, respondent sufficiently raises the existence of a possibly meritorious defense (*see* 9 NYCRR 2520.6[r][3], 2522.5[g]; *Netherland Operating Corp. v Eimicke*, 135 AD2d 352 [1st Dept 1987]; [*First Lenox Terrace Assoc. v Hill*, 13 Misc 3d 488](#) [Civ Ct, New York County 2006]).

Furthermore, petitioner's affidavit concedes the parking space was provided by petitioner to respondent's deceased uncle, the lawful tenant of a rent-stabilized apartment, in June 2019 (*see* Denney Aff, ¶8). Petitioner also states tenant's lease for the apartment expires November 30, 2023, and argues that tenant's estate, and not respondent, is the current and lawful tenant in occupancy (*see id.*, ¶4) (*see* RPL 236; *Joint Properties Owners, Inc. v Deri*, 113 AD2d 691 [1st Dept 1986]). Petitioner failed to name the deceased tenant's estate as a respondent in the instant summary holdover proceeding. Failure to name the tenant's estate raises another possibly meritorious defense (*see Westway Plaza Assocs. v Doe*, 179 AD2d 408 [1st Dept 1992]).

Accordingly, it is hereby, ORDERED, that respondent's order to show cause is granted to the extent that the court vacates the stipulation of settlement dated November 7, 2022; vacates the judgment and warrant against respondent dated November 7, 2022; permits respondent to file an answer, and is otherwise denied; and it is further

ORDERED that respondent shall file an answer within 10 days of the date of entry of this decision and order.

This constitutes the decision and order of the court.

Dated: May 16, 2023
New York, New York
ILANA J. MARCUS
Judge of the Civil Court