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PROVIDENT BUCKINGHAM PRTNRS LP v. VILLADIEGO

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS: HOUSING PART B

PROVIDENT BUCKINGHAM PRTNRS LP
Petitioner-Landlord

-against-

ALVARO R. VILLADIEGO
74-15 35th Avenue, Apt# 3D
Jackson Heights, New York 11372
Respondent-Tenant

“JOHN DOE” & “JANE DOE”
Respondents-Undertenants

L&T Index # 65264/19

DECISION/ORDER

Hon. Clifton A. Nembhard

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of petitioner’s motion and respondent’s cross-motion.

Papers	Numbered
Notice of Motion and Affidavits Annexed	1
Order to Show Cause and Affidavits Annexed	
Answering Affidavits (Cross-Motion)	2
Replying Affidavits	3, 4
Exhibits	
Other	

Upon the foregoing cited papers, the decision/order on this motion and cross-motion is as follows:

Background

Petitioner commenced this nonpayment proceeding against to recover rent arrears from February 2019 to August 2019 totaling \$11,445.84. Prior to commencement, petitioner served a rent demand seeing \$5,400.00 in arrear through July 2019. Giuseppe Santamaria (“respondent”) filed a pro se answer on August 21, 2019. On August 29, 2019 Santamaria appeared and alleged that he is the sole occupant of the subject premises. Petitioner’s attorney drafted a purposed stipulation substituting respondent for “John Doe” and awarding petitioner a final judgment of

possession and warrant of eviction. Execution of the warrant was stayed to September 30, 2019 for payment of \$11,445.84 due through August. The proposal further provided that tenancy rights were not being conveyed to Santamaria. Respondent did not sign the stipulation. However, on November 27, 2019, the parties entered into a stipulation requiring him to pay \$16,392.08 for rent through November by December 27, 2019. The agreement provided that upon default, petitioner may move for entry of a judgment on eight days written notice. On March 9, 2020, petitioner moved to restore the case for a judgment and warrant based on respondent's failure to pay the \$16,392.08. Respondent thereafter retained counsel and cross-moved to vacate the stipulations and dismiss the petitioner's claim for rent. In the alternative, respondent sought leave to serve and file an amended answer.

Discussion

The Court will first address the cross-motion. Respondent argues that the stipulations should be vacated because he entered into them without an attorney and was not aware of his meritorious defenses. Petitioner, in opposition, argues that respondent knew what he was doing when he agreed to the stipulations because they were extensively allocuted to him. Moreover, it would be prejudicial to petitioner to vacate the stipulations three years after respondent received the benefits under them. To do so would set a precedent that in court stipulations have no effect if one party later decides that he no longer wants to be bound by it.

The August 29, 2019 proposal was not signed by respondent and therefore is not in issue. As to the November 27, 2019 agreement, is axiomatic that stipulations of settlement are highly favored by courts and are not lightly cast aside. *Hallock v. State of New York*, 64 NY2d 224 [Ct App 1984]. Generally, to be relieved from the consequences of a stipulation, a party must show cause sufficient to invalidate a contract such as fraud, mistake, collusion or accident. *Matter of Frutiger*, 29 NY2d 143 [Ct App 1971]. The court also has the power to relieve a party from the terms of a stipulation where it appears to have been entered into inadvisably or where it would be inequitable to hold the parties to the agreement. *600 Hylan Associates v. Pololshak*, 17 Misc3d 134(A) [App Term 2nd Dept 2007]. Courts have frequently exercised its discretion in cases involving unrepresented respondents who unknowingly waive potential defenses. *See, e.g., Hee Ja Yang v. Macadji*, 2018 NY Misc LEXIS 4685 [Civ Ct Bx] [respondent was not aware of overcharge claim]; *Dearie v. Hunter*, 177 Misc2d 525 [Civ Ct NY 1998] [respondent was unaware of Spiegel and defective rent demand defenses]. However, the fact that respondent is pro se, in and of itself, is insufficient to vacate a stipulation. It is only one factor a court will consider when presented with a motion to vacate a stipulation. *See, Wilson Prop. Corp. v. Alojzburda*, 2013 NYLJ LEXIS 7407 [Civ Ct Kings]. In *Wilson Prop. Corp. v. Alojzburda*, the Court considered, among other things, the sophistication of the respondent, the basis for the proceeding, the consideration given to respondent and whether respondent understood the legal ramifications of entering into the stipulation.

Respondent here argues that the stipulations are based on a mutual mistake between he and petitioner. Specifically, respondent asserts that there is no landlord-tenant relationship between them therefore he was not obligated to pay the rent arrears. In its affirmation in opposition,

petitioner states that there is in fact a landlord tenant relationship between the parties. This is not the case. The petition alleges that Alvaro R. Villadiego is the tenant of record and "John Doe" and "Jane Doe" are undertenants. Moreover, the rent demand was served only on Villadiego. As such, respondent is under no obligation to pay the rent. Respondent however is a senior who Adult Protective Services found eligible for their services. According to the notice of eligibility, respondent was found to "have a physical and/or mental impairment and because of that impairment he is unable to either manage his resources, carry out the activities of daily living or protect himself from neglect or hazardous situations without assistance from others". This, coupled with the lack of counsel, took the case out of the due and ordinary course of the proceeding and led to respondent agreeing to pay Villadiego's rent at the risk of having a monetary possessory judgment entered against him if he failed to do so.

Conclusion

Based on the foregoing, the cross-motion is granted. The November 27, 2019 stipulation is hereby vacated. The proposed answer annexed as an exhibit to the cross-motion is deemed filed and served. The motion is denied. The matter is adjourned to March 20, 2023 at 9:30 am.

This constitutes the decision and order of the Court.

SO ORDERED
HON. CLIFTON A. NEMBHARD

Date: March 2, 2023
Queens, New York

Hon. Clifton A. Nembhard, JHC