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2023-03-03

### 96 Malcolm X Realty, LLC v. Jackson

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[\*1]

<b>96 Malcolm X Realty, LLC v Jackson</b>
2023 NY Slip Op 50285(U) [78 Misc 3d 129(A)]
Decided on March 3, 2023
Appellate Term, Second Department
Published by <a href="#">New York State Law Reporting Bureau</a> pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on March 3, 2023

SUPREME COURT, APPELLATE TERM, SECOND DEPARTMENT, 2d, 11th and 13th  
JUDICIAL DISTRICTS

PRESENT: : CHEREÉ A. BUGGS, J.P., LISA S. OTTLEY, LOURDES M. VENTURA, JJ  
2022-34 K C

**96 Malcolm X Realty, LLC, Appellant,**

**against**

**Bonita Jackson, Respondent.**

Altschul & Altschul (Mark A. Altschul of counsel), for appellant.

Bonita Jackson, respondent pro se (no brief filed).

Appeal from an order of the Civil Court of the City of New York, Kings County (Consuelo Mallafre Melendez, J.), dated December 17, 2021. The order granted tenant's motion to vacate a final judgment entered May 17, 2010 and all income executions and restraining notices in a nonpayment summary proceeding.

ORDERED that the order is affirmed, without costs.

In this nonpayment proceeding, commenced in March 2010, to recover possession of the premises based upon tenant's alleged rent arrears of \$4,800, the parties entered into a so-ordered stipulation, dated May 17, 2010, in which tenant consented to the entry of a final judgment awarding landlord possession and the sum of \$4,200 and the parties agreed to a payment plan through July 31, 2010. A final judgment was entered on May 17, 2010 in

accordance with the stipulation. By motion dated July 8, 2010, tenant moved to vacate the final judgment and the parties entered into a second so-ordered stipulation, dated July 16, 2010, in which the parties agreed that tenant's motion was granted as set forth therein. The stipulation provided, among other things, that "Execution of the warrant is stayed until 8/2/2010 for [tenant] to *either* pay \$4,725.00 *or* vacate the subject premises" (emphasis added). As is relevant to this appeal, tenant, by order to show cause dated November 21, 2021, moved to vacate the final judgment and all the [\*2]income executions and restraining notices she had received in November 2020, stating that she vacated the apartment over 10 years prior. By order dated December 17, 2021, the Civil Court granted tenant's motion. On appeal, landlord does not make any arguments with respect to the parties' July 16, 2010 stipulation. In particular, landlord does not refute tenant's sworn statement that she vacated the apartment or argue that such vacatur did not entitle her to have the final judgment vacated. Thus, we find no basis to disturb the Civil Court's December 17, 2021 order.

Accordingly, the order is affirmed.

BUGGS, J.P., OTTLEY and VENTURA, JJ., concur.

ENTER:

Paul Kenny

Chief Clerk

Decision Date: March 3, 2023

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