2023-06-21

147-25 N. Assoc. LLC v. Villanueva

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147-25 N. Assoc. LLC v Villanueva
2023 NY Slip Op 50602(U)
Decided on June 21, 2023
Civil Court Of The City Of New York, Queens County
Schiff, J.
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Decided on June 21, 2023

Civil Court of the City of New York, Queens County

147-25 Northern Associates LLC, Petitioner-Landlord,

against

Omar Villanueva, JANE DOE & JOHN DOE , Respondents-Tenants.

Index No. L&T 63863/19

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Logan J. Schiff, J.

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of Petitioner's motion for leave to execute on the warrant of eviction (motion sequence 6), and Respondents' cross-motions to vacate their respective stipulations of settlement (motion sequences 7 and 8): NYSCEF Doc. Nos. 21-63.

Upon the foregoing cited papers, the court's decision and order is as follows:

RELEVANT BACKGROUND AND PROCEDURAL HISTORY

147-25 Northern Associates LLC ("Petitioner") commenced this nonpayment proceeding against the tenant of record Omar Villanueva ("Respondent"), his spouse Rosa Guzman, who was named as Jane Doe ("Co-Respondent"), and John Doe (collectively "Respondents") by Notice of Petition and Petition on July 12, 2019. The Petition sought $2,649.50 in rent based on a monthly rent of $1,900 and pled that the apartment is subject to the Rent Stabilization Law.

Respondents did not answer the Petition and a default judgment was entered on [*2]September 11, 2019. Thereafter, Respondent filed an order to show cause for a stay of execution of the warrant. On the return date of that motion Respondent signed a *pro se* stipulation of settlement on October 7, 2019, agreeing to pay $8,999.50 in arrears owed through October 2019, with an initial payment of $4,000 due in October, and the remainder to be paid in installments over the following ten months. Respondent defaulted on this agreement and filed a second order to show cause, which resulted in an order staying execution of the warrant through November 30, 2023, for payment of $10,124.50 in arrears owed through November 2019. Thereafter, Respondent's spouse Jane Doe a/k/a Rosa Guzman filed an order to show cause on December 10, 2019, stating that her husband was in the hospital and requesting additional time on behalf of the household, a family of six with four minors, to pay the arrears. On December 30, 2019, Queens Legal Services filed a Notice of Appearance for an unspecified "Respondent" and signed a two-attorney stipulation of settlement agreeing to pay $6,174.50 in arrears owed through December 2019 pursuant to a one-year repayment schedule. The top of the agreement stated that Queens Legal Services was appearing for Respondent Omar Villanueva.

This proceeding was paused for much of 2020 due to the global COVID-19 pandemic, which resulted in statewide court shutdowns for much of 2020 beginning in March. Thereafter, on January 2, 2021, Respondent submitted a hardship declaration pursuant to the COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020 ("CEEFPA),

thereby effectuating an automatic stay of the proceeding.

In August 2021, Petitioner moved to restore the matter to the calendar, alleging $31,999.50 in arrears owed through August 2021 after crediting earmarked bi-monthly shelter allowance payments totaling $12,175 since the December 2019 stipulation. The Legal Aid Society filed a Notice of Appearance on August 26, 2021, on behalf of Respondent Villanueva. The parties signed an adjournment stipulation on September 22, 2021 "in contemplation of settlement" adjourning the motion to October 5, 2021. On October 7, 2021, Respondent applied for assistance pursuant to the Emergency Rental Assistance Program ("ERAP"), thereby effectuating a statutory stay of this proceeding pending a determination of eligibility (L. 2021, c. 56, Part BB, Subpart A, § 8, as amended by L. 2021, c. 417, Part A, § 4).

On December 21, 2022, Petitioner moved to vacate the ERAP stay and for permission to execute on the warrant of eviction because Respondent's ERAP application was approved and paid on July 18, 2022, for a period of 15 months in the amount of $28,500. Petitioner alleged that after crediting all payments the arrears were now $23,374.50 through November 2022. The motion was ultimately calendared for April 11, 2023, at which time the parties agreed to lift the ERAP stay and otherwise set a briefing schedule for the instant cross-motions.

On April 28, 2023, Respondent and Co-Respondent each moved to vacate their respective stipulations. Respondent argues that the only agreement he ever signed was the *pro se* agreement in October 2019, without counsel, which improvidently waived claims for rent overcharge. Co-Respondent meanwhile moves to vacate the December 2019 two-attorney stipulation based on office error and otherwise makes a substantively similar rent overcharge claim. Both parties argue that the current rent provisions in the stipulations should be stricken because they impair Respondents' right to assert defenses under the Tenant Safe Harbor Act ("TSHA") for arrears during a period of COVID-19-related financial hardship (L. 2020, c. 127, as amended by L. 2021, c. 417, Part D.). Petitioner opposes both motions, noting that Respondents have made only $3,400 in non-earmarked payments since the December 2019 stipulation and presently owe $37,266.50 in rent through May 2023.

DISCUSSION

I. Respondent Omar Villanueva's Motion to Vacate the October 2019 Stipulation of Settlement

The standard for vacating a stipulation of settlement is well known. In-court agreements facilitate efficient dispute resolution and are not lightly case aside (*see Hallock v State of New York* (64 NY2d 224, 230 [1984]). Nonetheless, a court retains the discretion to vacate an agreement "if it appears that the stipulation was entered into inadvisedly or that it would be inequitable to hold the parties to it" (*In re Frutiger's Estate*, 29 NY2d 143, 150 [1971] [internal quotation marks and citations omitted]).

A party's representation by counsel is a significant consideration in determining whether to vacate a stipulation of settlement (*see Shalimar Leasing, LP v Medina*, 155 N.Y.S.3d 520 [App Term, 2d, 11th & 13th Jud Dists, 2d Dept 2021]). Whereas an agreement signed by an attorney typically will not be invalidated barring "fraud, collusion, mistake or accident" (*Hallock* at 230 [1984]), or due to the waiver of a fundamental defect resulting in the unnecessary forfeiture of a rent-regulated tenancy or otherwise offending public policy (*see, e.g., Matter of 125 Ct. St., LLC v Nicholson*, 184 N.Y.S.3d 831 [2d Dept 2023]), the standard is more lax in the context of unrepresented litigants, who generally need only show the waiver of a potentially meritorious substantial defense (*see 600 Hylan Assoc. v Polshak* (17 Misc 3d 134[A] [App Term, 2d & 11th Jud Dists, 2d Dept 2007]). In housing court, where proceedings are frequently settled on the first or second appearance without the benefit of counsel, courts regularly vacate *pro se* stipulations that involve the needless loss of a rent-regulated tenancy (*see, e.g., 270 Glenmore Ave., LLC v Blondet*, 55 Misc 3d 133[A] [App Term, 2d, 11th & 13th Jud Dists, 2d Dept 2017]), or the waiver of substantive defenses, such as a colorable claim of rent overcharge (*see, e.g., Chauncey Equities, LLC v Murphy*, 62 Misc 3d 141[A] [App Term, 2d, 11th & 13th Jud Dists, 2d Dept 2019]); *Samson Mgt., LLC v Cordero*, 62 Misc 3d 129[A][App Term, 9th & 10h Jud Dists, 2d Dept 2018]; *2701 Grand Ass'n LLC v. Morel*, 50 Misc 3d 139(A) [App. Term, 1st Dept. 2016].

Respondent argues he improvidently signed an agreement in October 2019 settling the subject nonpayment proceeding without the benefit of counsel or an interpreter, which he did not request but nonetheless impeded his ability to understand the agreement given his limited English proficiency. As a result, Respondent asserts that he unknowingly waived a colorable claim of rent overcharge. Specifically, he argues that at the time of the settlement the apartment's rent had not been registered with the Division of Housing and Community Renewal ("DHCR") since 2014, a statutory basis for a rent freeze under the Rent Stabilization Law and Code. Moreover, Respondent notes that the leases Petitioner produced through informal discovery reveal that the rents registered with DHCR since 1999 do not correspond with the actual rents charged, and that Petitioner has taken several increases

between 2002 and 2009 that would have necessitated over $120,000 in renovations, which are entirely inconsistent with the condition of the apartment and evidence a fraudulent scheme to deregulate the unit. Respondent further argues that enforcement of the stipulation without vacatur or modification will impede Respondent's ability to avail himself of the protections of the TSHA, as the stipulation has a current rent provision, as well as other defenses, including based on the statutory warranty of habitability.

In opposition, Petitioner argues that Respondent's motion is untimely, having been made [*3]three and a half years after the initial agreement, that the agreement was not so much a settlement as a stay of execution of the warrant following a default judgment, for which Respondent has not proffered a reasonable excuse for the default under CPLR 5015, that Respondent and/or his unified-in-interest wife appeared through counsel in December 2019 following a third order to show cause seeking a stay of execution to pay the arrears, and once again settled this matter with an extension of time to pay. With respect to the alleged overcharge, Petitioner argues that the $1,900 preferential rent that Respondent has paid since the inception of the tenancy in 2018 could have easily been achieved solely due to statutorily permitted vacancy increases during each of the preceding tenancies without any credits for apartment improvements, and that while Petitioner erroneously did not register the unit for a number of years, it has subsequently corrected the registrations, which now list the unit as having a preferential rent of $1,900. Under these circumstances, given that the rent has remained unchanged for over four years, Petitioner argues Respondent has failed to state a cause of action for rent overcharge in light of CPLR213-a's four-year statute of limitations and lookback period for claims accruing prior to the June 14, 2019, enactment of the Housing Stability and Tenant Protection Act ("HSTPA").

The court will first address Respondent's argument that the October 2019 stipulation was improvidently signed because Respondent has limited English proficiency and did not understand what he was signing, despite not requesting an interpreter. Unquestionably, access to an interpreter in civil proceedings for individuals who do not fluently speak English is a critical right that is guaranteed by 22 NYCRR § 217.1. The failure to offer court-mandated interpretation is a due process concern (*see Matter of Er-Mei Y*, 29 AD3d 1013 [2d Dept. 2006]). That being said, the general rule is parties are presumed to have read agreements they sign and must request interpretation where needed before execution (*see Nerey v Greenpoint Mtge. Funding, Inc.*, 144 AD3d 646 [2d Dept 2016]). This principle applies to stipulations entered in court (*see Chase Manhattan Bank v. Mohamed*, 781 N.Y.S.2d 263, [App Term, 2d & 11th Jud Dists, 2d Dept 2003]). Here, the court has reviewed the recording of the October 2019 allocution, during which Respondent spoke comfortably in English and did not request

an interpreter or express any confusion over the terms of the agreement. Under these circumstances, the court cannot discern anything that should have led the court to determine that Respondent was "unable to understand and communicate in English to the extent that [he could not] meaningfully participate in the court proceedings" (NYCRR § 217.1) and would warrant vacatur on this basis.

In considering whether to vacate a stipulation, a court can consider a party's delay in seeking relief (*see Broadmass Assoc. v McDonald's Corp.,* 286 AD2d 409 [2d Dept 2001]; *2345 Crotona Gold, LLC v Dross*, 50 Misc 3d 143[A] [App Term, 1st Dept 2016]. At first blush, Respondent's motion is dilatory, filed in April 2023 several years after execution of the underlying October 2019 agreement. Respondent counters that most of the delay was caused by the unprecedented global pandemic that gripped our nation for much of the last three years, and Respondent should not be penalized for availing himself of his rights under statutes designed to avert mass evictions during a health crisis. This argument, while having some merit, does not account for the nearly five months between the initial signing of the agreement and the onset of the pandemic. Moreover, even presuming Respondent was for all practical purposes barred from filing a motion while the proceeding was statutorily stayed by virtue of CEEFPA and then ERAP (*but see Servs. for the Underserved, Inc. v Mohammed*, 2023 NY Slip Op 50536[U] [Civ Ct, Bronx Co 2023]; *Broadway Bretton, Inc. v Doe*, 2023 NY Slip Op 31979[U] [Civ Ct, NY Co [*4]2023]), Respondent's ERAP application was approved and paid in July 2022. Certainly at that point, if not earlier upon the initial determination of eligibility, the automatic stay occasioned by a pending ERAP application ceased, just as it started, "by operation of law" (*Avalonbay Communities, Inc. v Dukes*, 2023 NY Slip Op 5045[U] [App Term, 9th &10th Jud Dists, 2d Dept 2023]), and Respondent was free to seek vacatur of the stipulation without further court order.[FN1] Instead, Respondent made the strategic choice not to promptly file a motion, only seeking such relief ten months later in April 2023, after Petitioner moved for permission to execute on the warrant. Under these circumstances, Respondent's delay in seeking vacatur of the underlying settlement agreement is a factor that militates against granting Respondent's motion at this late stage.

The parties disagree whether Respondent's motion should be afforded the laxer standard of review suitable for a *pro se* stipulation. Petitioner argues that in December 2019, on Respondent's third order to show cause, Respondent appeared by counsel and settled the matter with another extension of time to pay. Respondent argues that this appearance was on behalf of his spouse, not him, that he was in the hospital at the time and never authorized the agreement notwithstanding what was a typographical error on the stipulation that indicated

Queens Legal Services was appearing on his behalf. The court notes that the Notice of Appearance that Queens Legal Services simultaneously filed is equally ambiguous and purported to be on behalf of an unspecified "Respondent." While the court is reluctant to deny Respondent the autonomy to act independent of his spouse if he did not authorize the settlement, as both he, his counsel The Legal Aid Society, and Queens Legal Services now argue was the case, the court is equally disinclined at this late stage to treat the agreement as that of an entirely unrepresented party given the unity of interest between Respondent and his wife and the absence of any credible assertion of a conflict of interest. Ultimately, the court need not definitively resolve this question because Respondent fails to meet even the laxer standard for vacatur of a *pro se* stipulation.

The core defense Respondent has alleged that might justify vacatur of the stipulation of settlement sounds in rent overcharge. As the rent in the unit has not increased since the inception of the tenancy in 2018, any claim for overcharge would be based on claims accruing prior to the HSTPA and therefore subject to CPLR 213-a's four-year statute of limitations and lookback rule, with a base date four years prior to any yet to be interposed rent overcharge claim (*see* *Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal*, 35 NY3d 332, 348 [2020]; *Wise v 1614 Madison Partners, LLC*, 214 AD3d 550, 550 [1st Dept 2023]. While [*5]there is a longstanding common law exception to the four-year lookback limitation where a party can demonstrate indicia of a fraudulent scheme to deregulate (*see Matter of Grimm v State of New York Div. of Hous. &Community Renewal Off. of Rent Admin*, 15 NY3d 358 [2010]), recent appellate case law has held that such claims must be pled in the same manner as common law fraud and must allege in detail "evidence of a representation of material fact, falsity, scienter, reliance and injury" (*Gridley v Turnbury Vil.*, 196 AD3d 95, 101 [2d Dept 2021]; *Burrows v 75-25 153rd St., LLC*, 2023 NY App. Div. LEXIS 1965 at *4 [1st Dept 2023].

In this instant case, Respondent has not attached a proposed late answer to his motion, however even broadly construing his affidavit as a pleading for purposes of the motion and considering the proposed late answer of his spouse, Respondent has not met the weighty pleading standard required by *Gridley* and *Burrows*. Respondent fails, in particular, to adequately plead reliance, notwithstanding a number of irregularities in the rental history and prior leases that may well have resulted in an overcharge award had an answer been timely filed. Nor does the most recent "deregulated" renewal lease offer allegedly made by Petitioner in 2020, which Respondent attaches in reply, change this result. Even assuming the court could consider documents raised for the first time on reply (*but see State Farm Fire and Casualty Co. v. LiMauro* decision, 103 AD2d 514 [2d Dept. 1984], *affd* 65 NY2d 369

[1985]), this offer does not obviate the requirement to plead reliance, nor is conduct occurring after the four-year base date generally relevant to this showing (*see Casey v Whitehouse Estates, Inc.*, 39 NY3d 1104 [2023]).[FN2] Thus, having failed to adequately plead fraud, Respondent has not alleged a colorable claim for rent overcharge that warrants vacatur of the October 2019 stipulation (*see 2345 Crotona Gold, LLC v Dross*, 50 Misc 3d 143[A] [App Term, 1st Dept 2016]; *C.H.T. Place, LLC v Rios*, 947 NYS2d 754 [App Term, 2d, 11th & 13th Jud Dists, 2d Dept 2012]).

As to Respondent's claim in his papers that the stipulation improperly impairs the right to assert a defense under the TSHA, the court finds that this defense can be asserted post-judgment without vacatur of the stipulation or excision of the stipulation's current rent provision (*see 115-50 Realty Corp. v Melgar*, 139 N.Y.S.3d 778 [Civ Ct, Queens Co 2020]). Accordingly, the matter is set down for a hearing on July 6 at 2:30 p.m. to determine what portion if any of the remaining arrears should be deemed non-possessory and therefore not subject to the stipulation's current rent provision.[FN3] The court notes that it will be Petitioner's burden to prove the absence of financial hardship under the TSHA given that Respondent filed a CEEFPA hardship declaration (*see* L. 2020, c. 127, §2(2)(a)). In lieu of a hearing, the parties (or Petitioner unilaterally) are encouraged to stipulate to severance or deeming non-possessory any TSHA-covered remaining arrears after exclusion of the ERAP payment and earmarked shelter payments during the relevant [*6]period of March 7, 2020, through January 15, 2022, which by the court's calculation may total less than $5,000. Arrears accruing after January 15, 2022, will remain subject to the current rent provision.

II. Co-Respondent's motion

Co-Respondent's motion is substantively equivalent to Respondent's with the added hurdle of demonstrating sufficient cause to vacate a two-attorney settlement. This is a weighty burden as made clear by the Appellate Term in *Shalimar Leasing, LP v Medina*, 155 N.Y.S.3d 520 [App Term, 2d, 11th & 13th Jud Dists, 2d Dept 2021]). Respondent has not made an adequate showing under *Shalimar*, particularly as the proposed late answer does not adequately plead the elements of fraud in order to state a colorable claim for rent overcharge, as previously discussed.

III. Petitioner's motion

Petitioner's motion for leave to execute on the warrant is granted, however, under the

circumstances of this case the court exercises its discretion for good cause pursuant to RPAPL § 749(3) to stay execution through August 11, 2023, for payment of all rental arrears accrued as of the month in which payment is tendered, to be reduced by any outstanding arrears for which the court concludes a TSHA defense applies. While the court estimates that the arrears are presently approximately $39,000 without consideration of the TSHA defense (which may reduce the possessory balance to roughly $34,000), the parties are directed to confer and stipulate to the arrears in question in advance of the TSHA hearing, or if they are unable to do so, to submit their respective calculations by filing letters to the court on NYSCEF.

Finally, the court notes that while it cannot compel Petitioner to issue a proper rent-stabilized lease, it is advised that the failure to do so or any other conduct that frustrates Respondent's ability to timely obtain FHEPS and pay the arrears could constitute unlawful source of income discrimination and may result in further stays of execution or even vacatur of the warrant (*see, e.g., Monastery Manor v. Donati*, 28 Misc 3d 133(A) [App. Term, 9th & 10th Jud. Dists, 2d Dept 2010); *Eubanks v Kinsler*, 2020 NYLJ LEXIS 1083 [Civ Ct, Kings Co 2020]).

CONCLUSION

Accordingly, for the foregoing reasons, it is hereby

ORDERED that Respondents' motions to vacate their respective stipulations of settlement (motion seqs. 7 and 8) are denied; and it is further

ORDERED that the matter is set down for an evidentiary hearing on July 6, 2023, at 2:30 p.m. to determine what portion if any of the outstanding arrears is subject to a Tenant Safe Harbor Act defense and therefore not subject to the stipulations' current rent provisions; and it is further

ORDERED that Petitioner's motion for leave to execute on the warrant of eviction (motion seq. 6) is granted subject to a stay of execution through August 11, 2023, for Respondents to pay any non-TSHA-covered arrears owed through the month in which payment is tendered.

This constitutes the decision and order of the court.

Dated: June 21, 2023
Queens, New York

Hon. Logan J. Schiff, J.H.C.

Footnotes

Footnote 1: Alternatively, Respondent was also free to pay the arrears, as the household appears to have had an open public assistance case with a full shelter allowance throughout the pandemic. Given that there are four minors in the household, and this is a rent-stabilized apartment with a rent of at most $1,900, this is seemingly a textbook case for a rental subsidy under the FHEPS program (https://www.nyc.gov/site/ hra/help/fheps.page). The arrears upon payment of ERAP in July 2022 were approximately $18,000, well within the FHEPS standard limits. Such payment would have resolved the case without waiving any potential ongoing overcharge claim as "[a]ny lease provision that subverts a protection afforded by the rent stabilization scheme is not merely voidable, but void" (*Drucker v Mauro*, 30 AD3d 37 [1st Dept 2006]. The limited exception for settlement of a disputed rent overcharge claim in the Rent Stabilization Code (9 NYCRR] § 2520.13) is not applicable to a standard stipulation to pay arrears in housing court, particularly here where no rent overcharge counterclaim was ever interposed (*see 97-101 Realty, LLC v Sanchez*, 114 N.Y.S.3d 568, [App Term, 2d, 11th & 13th Jud Dists, 2d Dept 2019]).

Footnote 2: Respondent might have shown sufficient *indicia* of fraud to look back beyond the base date in order to establish a fraudulent scheme to deregulate under the standard articulated in *Grimm*. There, the Court of Appeals' decision focused on fraud on the system of rent stabilization itself rather than the traditional elements of fraud that might be required in a financial transaction, holding that what is required is a presentation of "evidence of a landlord's fraudulent deregulation scheme to remove an apartment from the protections of rent stabilization." Nonetheless, based on a footnote in *Regina* that referenced the traditional elements of fraud when discussing the fraud exception, the *Grimm* pleading standard has been tightened by the appellate courts, whose decisions are binding on this court (*see Mountain View Coach Lines v Storms*, 102 AD2d 663, 664 [2d Dept 1984]).

Footnote 3: While all parties and their clients are expected to appear, given the short notice they may do so virtually.

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