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Brown v City of New York
2024 NY Slip Op 50299(U)
Decided on March 22, 2024
Appellate Term, First Department
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This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on March 22, 2024
SUPREME COURT, APPELLATE TERM, FIRST DEPARTMENT
PRESENT: Tisch, J.P., James, Perez, JJ.
571545/23

William Brown, Petitioner-Appellant,

against

The City of New York, Respondent-Respondent.

Petitioner appeals from an order of the Civil Court of the City of New York, New York County (Vijay M. Kitson, J.), entered January 25, 2023, which sua sponte dismissed the petition in a holdover summary proceeding.

Per Curiam.

Order (Vijay M. Kitson, J.), entered January 25, 2023, reversed, without costs, petition reinstated, and matter remanded to Civil Court for further proceedings.

The sua sponte dismissal of the holdover petition is not appealable as of right (*see* CCA 1702[a][2]). However, given the extraordinary nature of the dismissal relief, we deem the notice of appeal from that portion of the order to be a motion for leave to appeal, and grant such leave (*see* CCA 1702[c]; *Ray v Chen*, 148 AD3d 568 [2017]).

The power of a court to dismiss an action or proceeding sua sponte "should be used sparingly and only in extraordinary circumstances" (*Ray v Chen*, 148 AD3d at 569 [internal quotation marks and citation omitted]). Here, based on the record before us, no such circumstances exist to warrant dismissal. The court's conclusion, based upon its colloquy

with the pro se petitioner, that petitioner is not a landlord or person entitled to maintain this proceeding and that Civil Court lacks jurisdiction to grant the relief, is unsupportable on the thin record so far developed. In reinstating the petition, we express no view as to the ultimate outcome on the merits.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

I concur I concur I concur

Decision Date: March 22, 2024

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