

Duke Ellington Trio HDFC v Gorriz

2016 NY Slip Op 30627(U)

April 13, 2016

Civil Court of the City of New York, New County

Docket Number: L&T 69265/2015

Judge: Sabrina B. Kraus

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This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART D

DUKE ELLINGTON TRIO HDFC, X

Petitioner-Landlord

HON. SABRINA B. KRAUS

-against-

DECISION & ORDER

Index No.: L&T 69265/2015

HECTOR S. GORRITZ & SUSAN ANTON
155 WEST 106TH STREET, Apt. 1C
NEW YORK, NEW YORK 10025

Respondents-Tenants

“JOHN DOE” AND “JANE DOE”

Respondents -Undertenants

X

BACKGROUND

This summary holdover proceeding was commenced by **DUKE ELLINGTON TRIO HDFC** (Petitioner) against **HECTOR S. GORRITZ** and **SUSAN ANTON** (collectively “Respondents”), the tenants of record of 155 WEST 106TH STREET, Apt. 1C, NEW YORK, NEW YORK 10025 (Subject Premises), based on the allegation that Respondents are month to month tenants whose tenancy was subject to termination on thirty days notice.

PROCEDURAL HISTORY

Petitioner issued a thirty day notice of termination dated April 2, 2015. The petition is dated June 15, 2015, and the proceeding was initially returnable July 13, 2015. On that date the proceeding was dismissed based on Petitioner’s failure to appear.

On August 18, 2013, Petitioner moved to vacate the dismissal and its default in appearing. The motion was granted by the court (Black, J) pursuant to a decision and order that set a trial date for November 13, 2015, provided Respondents could serve an answer by October 23, 2015, and directed Respondents pay use and occupancy by the 10th of each month for October and November 2015.

On November 13, 2015, the parties entered into a stipulation of settlement. The stipulation provided for entry of a judgment of possession, and the entry of a money judgment for \$5262.40 for use and occupancy due through November 2015, at the rate of \$1315 per month. Respondents were to vacate by February 28, 2016, and execution of the warrant was stayed for payments of use and occupancy and the vacate date. The stipulation was so-ordered by the court (Black, J).

THE CURRENT MOTIONS

Respondents obtained counsel who filed a notice of appearance dated December 15, 2015. On December 23, 2015, Respondents moved for an order vacating the stipulation of settlement, and dismissing the underlying holdover proceeding. On March 9, 2016, Petitioner cross-moved for an order seeking relief regarding use and occupancy.

On March 18, 2016, the court heard argument and reserved decision. The motion and cross-motion are consolidated herein for determination and granted to the following extent.

Respondents argue that the stipulation which Respondents entered, without representation by counsel, should be vacated because tenants in the HDFC may only be evicted for good cause, and no such cause was alleged in the pleadings herein. Respondents further argue that the petition failed to comply with RPAPL § 741 because it asserts an exemption from

Rent Stabilization based on the allegation that the rent was \$2500 or more prior to Respondents' taking occupancy of the Subject Premises. In fact, Respondents argue the Subject Premises is exempt from regulation based on its non-profit status.

Petitioner argues that Respondents fail to allege a sufficient basis to vacate the stipulation as a matter of law, and that Petitioner should be entitled to execute on the warrant of eviction. Petitioner further asserts that it did have good cause to evict Respondents, because Respondents had failed to make timely rent payments and that Respondents were advised of this, as a basis for not renewing their lease, pursuant to a letter dated February 25, 2015. Petitioner also attached a breakdown showing the history of Respondents payments from 2010 forward.

DISCUSSION

It is well settled that stipulations of settlement are favored and should not easily be set aside (*Hallock v State of New York* 64 NY2d 224).

However, where both parties can be restored substantially to their former positions, a court may exercise its discretion to vacate a stipulation.

It is sufficient if it appear that either party had inadvertently, unadvisably inadvertently, unadvisably or improvidently entered into an agreement which will take the case out of the due and ordinary course of proceeding in the action, and in doing so may work to his prejudice. Where both parties can be restored to substantially their former position the court as a general rule, exercises such power if it appears that the stipulation was entered inadvisedly, or that it would be inequitable to hold the parties to it.

(*Matter of Frutiger* 29 NY2d 143, at 150 citations omitted; *see also Cabbad v Melendez* 81 AD2d 626).

In the case at bar, Respondents were not represented at the time they entered the stipulation, and Respondents moved to vacate the stipulation within one month. At oral argument of the instant motions, Petitioner's counsel conceded that Respondents were not advised by the

court during the course of the allocution of the stipulation that as tenants of an HDFC, they could only be evicted upon a showing of good cause (*512 East 11th Street HDFC v Grimmet* 181 AD2d 488; *City of New York v Valera* 216 AD2d 237). Respondents have asserted a meritorious defense to the underlying proceeding, in that no good cause is alleged in the predicate notice or the petition. Good cause to vacate the stipulation is also asserted based on based on the failure of the Petitioner to accurately state the basis for exemption from Rent Stabilization [*Park Properties Associates, LP v Williams* 38 Misc3d 35 (*failure to make accurate allegations regarding regulatory status or type of regulation governing tenancy provided good cause to vacate a stipulation*)].

Based on the foregoing, Respondents have established a right to vacate the stipulation if the parties can be restored to the status quo. As far as the request to dismiss the proceeding that part of Respondent's motion is denied. While the petition does not assert good cause and has some incorrect allegations, to restore the parties to the status quo, Petitioner should be afforded an opportunity to amend the petition, as a condition of granting Respondents' motion to vacate the stipulation. While the case law requires Petitioner assert good cause, there is no requirement that the good cause must be asserted in the predicate notice, rather than in the petition. There is no prejudice to Respondents in allowing said amendment as Respondents have remained in possession of the Subject Premises and their counsel will be permitted to file an amended answer, and Respondents were in fact apprised of Petitioner's alleged good cause in writing prior to the commencement of the proceeding.

Additionally, Respondents' motion to vacate the stipulation must be conditioned on the payment of outstanding use and occupancy in order to restore the parties to the status quo.

Pursuant to the stipulation of settlement, Respondents agreed there was \$5,262.40 due in use and occupancy through November 2015. The parties agreed that use and occupancy would be set at \$1315.60 per month. Respondents were to pay said sum by December 31, 2015 and to pay use and occupancy for the additional months by the 10th of each month. Thus the total use and occupancy due through April 2016 is \$11,840.40. Respondents have paid a total of \$3946.80 leaving arrears of \$7893.60 due through April 2016.

Based on the foregoing Respondents' motion to vacate the stipulation of settlement is granted on condition that Respondents pay \$7893.60 due through April 2016 by certified funds or money order on or before April 27, 2016. On default, the motion shall be deemed denied, all stays vacated and Petitioner may execute the warrant of eviction.

Upon payment of same, Petitioner may serve an amended petition on or before May 9, 2016. Respondents may file an answer to said amended pleading within ten days of receipt of same and the proceeding is restored to the calendar for all purposes on May 23, 2016 at 9:30 am.

This constitutes the decision and order of the Court.

Dated: New York, New York
April 13, 2016

Sabrina B. Kraus, JHC

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