

<b>NG Crown 20 E 46th St., LLC v G.E.B. Med. Mgt. Inc</b>
2019 NY Slip Op 30057(U)
January 9, 2019
Civil Court of the City of New York, New York County
Docket Number: L&T 62136/18
Judge: Sabrina B. Kraus
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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK: PART 52

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NG CROWN 20 E 46<sup>TH</sup> STREET, LLC X

Petitioner - Landlord

-against-

G.E.B. MEDICAL MANAGEMENT INC  
20 East 46<sup>th</sup> Street, 7<sup>th</sup> Floor  
New York, New York 10456

Respondent-Tenant

“ABC Corp” and “XYZ Inc.”

Respondent - Undertenants  
\_\_\_\_\_ X

**DECISION**

**Index No.: L&T 62136/18**

**HON. SABRINA B. KRAUS**

**BACKGROUND**

This summary nonpayment proceeding was commenced by Petitioner to recover possession of 20 East 46<sup>th</sup> Street, 7<sup>th</sup> Floor, New York, New York 10456 (Subject Premises), based on the allegation that G.E.B. Medical Management Inc (Respondent) had failed to pay rent due under the parties’ lease.

**PROCEDURAL HISTORY**

Petitioner’s attorney issued a three day rent demand dated April 24, 2018 seeking \$219,730.94 in arrears for a period from March 2017 to April 2018. The charges sought included base rent at \$25,478.76 per month, plus charges for additional rent items.

The petition was filed on May 11, 2018. Respondent failed to answer or appear and in June 2018, Petitioner applied for a default judgment. The judgment was signed and the warrant of eviction issued July 11, 2018.

On June 18, 2018, Respondent appeared by counsel.

On July 24, 2018, Respondent moved for an order vacating the default. On September 26, 2018, the motion was denied (Ramirez, J) pursuant to a decision and order finding Respondent had neither demonstrated a reasonable excuse for failing to appear, nor a meritorious defense to Petitioner's claim. All stays on execution of the warrant were vacated.

On January 3, 2019, Petitioner executed on the warrant and evicted Respondent.

### **PENDING MOTION**

On January 8, 2019, Respondent moved for an order to be restored to possession. The motion was passed to January 9, 2019, to afford the parties an opportunity to submit additional papers. On January 9, 2019, the court heard brief oral argument and reserved decision.

### **FACTS ALLEGED**

The underlying facts are essentially uncontested. After Respondent's motion to vacate the default was denied, Respondent's counsel contacted Petitioner's counsel to negotiate a settlement. They discussed a settlement that provided Respondent would pay \$90,000 upon execution of the settlement, and \$10,000 per month towards arrears over the monthly rent.

On November 15, 2018, Petitioner's counsel sent Respondent's counsel a proposed stipulation of settlement (Ex D). Petitioner's counsel received no response. On November 20, 2018, Petitioner's counsel emailed Respondent's counsel to inquire about the status of the stipulation. Respondent's counsel stated he had not reviewed the stipulation and had been focused on other matters, and that his client had not responded to him when he had forwarded the stipulation to his client (Ex E).

The parties negotiated terms from November 25-29, 2018 and on December 3, 2018, Petitioner's counsel sent Respondent's counsel a revised proposed stipulation. Respondent's counsel did not respond and on December 6, 2018, Petitioner's counsel again followed up by email to inquire as to the status of the stipulation.

Respondent's counsel replied the following day by email which stated in pertinent part "Sorry for the delay I wasn't paying attention. I TOLD Bruce to sign. They can pick up the money on Monday or he will deliver it." However Respondent's counsel did not sign the stipulation and instead attached to his December 7 email a decision from another action pending against his client in Bronx County.

Petitioner's counsel responded by email and requested that Respondent's counsel send her an executed stipulation. Petitioner's counsel specifically advised that she would not execute the stipulation until she had received a signed copy from Respondent's counsel along with the required payment due on execution.

Respondent's counsel did not respond. From December 7 through December 18 Respondent's counsel did not contact Petitioner's counsel.

On December 18, 2018, Petitioner's counsel again emailed Respondent's counsel and stated that as she had received neither an executed stipulation nor the payment due, Petitioner intended to execute on the warrant. Respondent's counsel apologized, again stated his client had "dropped the ball" and expressed surprise that payment had not been received.

On December 19, 2018, the Marshall's notice was served. Respondent's counsel made no further attempt to communicate with Petitioner's counsel until Respondent was evicted on January 3, 2019.

On January 8, 2019, Petitioner received payment by mail of three checks dated December 19, 2018.

On January 7, 2019, Respondent's counsel filed the pending post eviction order to show cause. On January 9, 2018, Petitioner's counsel returned the tendered payments to Respondent's counsel.

**RESPONDENTS' ORDER TO SHOW CAUSE TO  
BE RESTORED TO POSSESSION IS DENIED**

Petitioner alleges there was no enforceable stipulation in place. Respondent argues the stipulation was enforceable even though no executed copy was delivered by him to Petitioner.

CPLR § 2104 governs stipulations and provides in pertinent part

An agreement between parties or their attorneys relating to any matter in an action, other than one made between counsel in open court, is not binding upon a party unless it is in a writing subscribed by him or his attorney .....

Respondent argues that the stipulation should be deemed to have been executed and that there was no due date for the payment so it can't be deemed late. Respondent relies primarily on *Forcelli v Gelco Corp* 109 AD3d 244 (2013).

The facts of that case are not applicable to the case at bar. *Forcelli* held that where the parties had an oral agreement which was memorialized in an email that constituted a binding agreement as the email did not condition the settlement on any further occurrence.

In the case at bar, Petitioner's counsel was crystal clear at all times that absent her receipt of an executed stipulation and the payment due upon execution, she would not sign and there would be no deal.

The plain language of CPLR § 2104 requires that to be enforceable as against Petitioner, the stipulation would have to be signed by Petitioner or Petitioner's counsel (*Kataldo v Atlantic Chevrolet Cadillac* 161 AD3d 1059).<sup>1</sup>

Based on the foregoing, the court finds that there was no enforceable stipulation between the parties and there is no basis to restore Respondent to possession over Petitioner's objections. The court further notes that there are substantial arrears outstanding which Respondent acknowledges it has no immediate ability to pay.

Any stay on re-letting is vacated. Removal of remaining belongings is stayed through January 15, 2019 to afford Respondent an opportunity to remove its property. Petitioner to afford Respondent supervised access during normal business hours. After January 15, 2019, Petitioner may remove any remaining property in accordance with the law.

This constitutes the decision and order of the court.

Dated: January 9, 2019  
New York, New York

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Hon. Sabrina B. Kraus, J.C.C.

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<sup>1</sup> Respondent's counsel also annexes some email communications between the parties. The court has reviewed them and does not find that they warrant a different result.