

254 Park Ave. S. LLC v Sgroi

2023 NY Slip Op 31023(U)

March 30, 2023

Civil Court of the City of New York, New York County

Docket Number: Index No. LT-308208-22/NY

Judge: Tracy Ferdinand

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NYSCEF DOC. NO. 19
Civil Court of the City of New York
County of New York
Part: Part H, Room: 830
Date: December 21, 2022

RECEIVED NYSCEF: 03/30/2023
Index #: LT-308208-22/NY
Motion Seq #: 1

Decision/Order

254 Park Avenue South LLC
Petitioner(s)

-against-
Ernest Sgroi
Respondent(s)

Present: Tracy Ferdinand
Judge

Recitation, as required by CPLR 2219(A), of the papers considered in the review of this Motion for:
Restore

PAPERS	NUMBERED
Notice of Motion and Affidavits Annexed	___ 1 [NYSCEF 12-13]___
Order to Show Cause and Affidavits Annexed	_____
Answering Affidavits	___ 2 [NYSCEF 17]___
Replying Affidavits	___ 3 [NYSCEF 18]___
Exhibits	___ 1 a-b [NYSCEF 14-15]___
Stipulations	_____
Other _____	_____
_____	_____

Upon the foregoing cited papers, the Decision/Order in this Motion is as follows:

This summary non-payment proceeding was settled by a two-attorney stipulation in October 2022, wherein respondent agreed to pay \$51,319.28 as rent due through October 2022 plus November and December rent on or before December 26, 2022. Petitioner agreed to correct certain conditions in the apartment.

Paragraph (7) of the stipulation provides in pertinent part:

“Upon default by either party, the instant proceeding may be restored to the calendar following notice to opposing counsel at least 8 days in advance of the hearing date, and the movant may seek appropriate relief.”

Petitioner now moves for entry of a final judgment in the amount of \$53,833.18 and issuance of a warrant of eviction based upon the respondent’s default in payment. Respondent opposes arguing that the stipulation did not specifically reserve the right to seek entry of judgment if respondent defaulted and consequently, petitioner is not entitled to said relief.

The Appellate Term in *Gloria Homes Apts. LP v Wilson*, 47 Misc 3d 142[A], 2015 NY Slip Op 50665[U] [App Term 2015] reversed the lower court’s entry of a judgment of possession holding:

“On this record, the court's finding that landlord was "entitled" to a final judgment of possession cannot be sustained. Manifestly, the stipulation at issue did not provide for the entry of judgment if tenant breached any of its provisions (*see 133 Plus 24 Sanford Ave. Realty Corp. v. Xiu Lan Ni*, 47 Misc 3d 55, 7 N.Y.S.3d 819, 2015 NY Slip Op 25059 [App Term, 2d, 11th & 13th Jud Dists [2015]). Indeed, no legal basis was shown by landlord or identified by the hearing court for reading into the stipulation the ultimate remedy of eviction in the absence of specific language authorizing that result.” *Id* at 142.

While petitioner argues that entry of a judgment of possession is the “quite obvious..” remedy in the context of a summary non-payment proceeding where a respondent defaults on a stipulation, the reality is that is it not the only remedy. The negotiated remedy and relief could have been included in the stipulation. The fact remains, it was not.

In *ML 1188 Grand Concourse LLC v Sha*, 64 Misc 3d 1224[A], 2019 NY Slip Op 51237[U] [Civ Ct, Bronx County 2019] when faced with the almost identical argument, the court held:

“Petitioner is asking the Court to enforce the agreement as if it provided Petitioner the remedy of a judgment in the event of default when it does not. The parties here were both represented by counsel and have the right to chart their own litigation course. *Trump v Trump* (179 AD2d 201, 204, 582 NYS2d 1008, 1009 [1st Dep't 1992]). Under the facts and circumstances of this case it would be inappropriate for this Court to interpret the "appropriate relief" language of the default provision to include a judgment of possession for Petitioner, especially given the well-settled principle that courts do not look favorably upon the forfeiture of leases. *2246 Holding Corp v Nolasco* (52 AD3d 377, 378, 860 NYS2d 516, 518 [1st Dep't 2008]).” *Id.* at 1224.

Similarly, here the court declines to infer a right to judgment when that immediate, and absolute relief is not specified in the two-attorney stipulation.

Accordingly, petitioner’s motion for a judgment and warrant is denied.

This constitutes the Decision/Order of this Court.

Date: 3/30/23

HON. TRACY FERDINAND
JUDGE, HOUSING COURT
Judge, Civil/Housing Court

Generated: March 28, 2023