CIVIL COURT OF THE CITY OF NEW YORK
BRONX COUNTY: HOUSING PART C/Room 590

----------X L&T Index # 301527/22

GERARDO ROMERO,

Petitioner/Landlord

-against-

DECISION & ORDER

KEYNISHA HENRY,

Respondent/Tenant

----------X

Hon. Diane E. Lutwak, HCJ:

Recitation, as required by CPLR R 2219(A), of the papers considered in the review of Petitioner's motion (seq #6) to restore case to calendar, vacate Stipulation of Discontinuance dated November 10, 2022 and enter judgment in favor of Petitioner:

Papers	NYSCEF DOC #
Notice of Motion	46
Attorney's Affirmation and Petitioner's Affidavit in Support	47
Exhibits 1-4 in Support	48-51
Attorney's Affirmation in Opposition	53
Exhibits A-E in Opposition	54-58
Respondent's Affidavit in Opposition [Exhibit F]	59

FACTUAL BACKGROUND & PROCEDURAL HISTORY

This is a nonpayment eviction proceeding commenced by Petitioner-Landlord Gerardo Romero against Rent Stabilized Respondent-Tenant Keynisha Henry by Notice of Petition and Petition filed January 21, 2022 seeking rent arrears of $7900, comprised of $1580/month for September 2021 through January 2022.

Upon Respondent's failure to file an Answer, Petitioner moved (motion seq #1) to amend the Petition to date, based on a rent ledger dated March 9, 2022 (NYSCEF Doc. #8) showing receipt of just one payment from September 2021 forward (check #153 for $1600), and for entry of a default judgment and issuance of a warrant of eviction. That motion was denied by Decision/Order dated May 10, 2022 due to procedural defects in the Petition.

Petitioner then moved (seq #2) to correct those procedural defects and for entry of a default judgment, again based on the rent ledger dated March 9, 2022 (NYSCEF Doc. #15), and other relief. Court file notes indicate that on June 8, 2022, the motion return date, both sides

appeared, Petitioner consented to Respondent filing an Answer by July 19 and the case was adjourned to July 26.

On July 19 Respondent filed first an Order to Show Cause (OSC) (seq #3) which the court rejected, noting that Respondent had been instructed to file an Answer by July 19, not an OSC, and then an Answer. At the July 26 conference Respondent provided information about a pending application for "ERAP" (COVID-19 Emergency Rent Assistance Program); the case was stayed pursuant to L. 2021, c. 56, Part BB, Subpart A, § 8, as amended by L. 2021, c. 417, Part A, § 4, and placed on the Court's ERAP Administrative Calendar.

On August 9, 2022 Petitioner moved to lift the ERAP stay (seq #4) due to denial of the ERAP application, supported by an ERAP denial noticed dated July 13, 2022 (NYSCEF Doc. #25). Upon default, Petitioner's motion was granted by Decision/Order dated September 19, 2022. With the ERAP stay lifted, Petitioner's prior still-pending motion (seq #2) was also granted, allowing the procedural defects in the Petition to be corrected and entering a possessory judgment on default against Respondent. Further, based on a rent ledger dated August 8, 2022 (NYSCEF Doc. #28) again showing receipt of just one payment from September 2021 forward (check #153 for $1600), the court entered a monetary judgment against Respondent for the Petition amount of $7900.

Respondent then retained counsel who filed an OSC (seq #5) supported by, *inter alia*, an ERAP provisional approval notice dated September 16, 2022 (NYSCEF Doc. #41), seeking vacatur of the default judgment; permission to file an Amended Answer raising jurisdictional defenses, affirmative defenses and counterclaims; dismissal of the Petition; and other relief. On November 10, 2022 the proceeding was discontinued by written stipulation, with prejudice as to all rent due through September 2022 and without prejudice to rent due for October and November 2022.

Now before the court is Petitioner's motion to vacate the November 10, 2022 Stipulation based upon mutual mistake. Petitioner argues, "When the stipulation was entered the parties were under the misapprehension that Respondent had paid $3,200 in January 2022. However, those checks were dishonored by Respondent's bank." Exhibit #3 to the motion is what appear to be copies of the front sides of two personal checks from Respondent, numbered 153 and 154, both dated January 11, 2022, each for $1600, and each with a note to the left of the check stating, "RETURN REASON-A NOT SUFFICIENT FUNDS" (NYSCEF Doc. #50). Petitioner points out that the ERAP funds were earmarked to cover rent due for all months from September 2021 through September 2022 except for the month of January 2022 (ERAP Application Approval Notice dated 10/26/2022, NYSCEF Doc. #49). Exhibit 4 to the motion is a statement dated January 20, 2023 entitled "Breakdown of Rent Owed by Tenant" which starts with a balance due as of October 31, 2022 of $3203.70 (NYSCEF Doc. #51).

In her affidavit in opposition, Respondent states she recalls receiving information about return of one of the two checks dated January 11, 2022 for insufficient funds but does not recall

what happened after that and has been unable to secure relevant records from her bank. Respondent asserts that she agreed to the settlement on November 10, 2022 in reliance on Petitioner's rent ledgers he prepared in March, August and November 2022. The first two of these ledgers show that of the two checks dated January 11, 2022, one (#153) was credited and the other (#154) was returned for insufficient funds and, for the period of September 2021 through March 2022 the total rent paid was $1600, by check #153. The third ledger shows that as of November 7, 2022 the only months for which rent was due were October and November 2022. Copies of these ledgers accompany Respondent's opposition papers as Exhibits A, B and D (NYSCEF Doc. ## 54, 55 and 57).

Respondent's attorney points out that Petitioner has made conflicting claims, now asserting in his motion papers that the parties "were under the misapprehension that Respondent had paid $3200 in January 2022" yet having previously generated rent statements – in March and August 2022 – that acknowledge receipt in January 2022 of a payment of $1600, with another payment of $1600 having been rejected for insufficient funds. Further, Respondent challenges the adequacy of Petitioner's proof that both checks were rejected in January 2022 for insufficient funds. Respondent argues that if any mistake was made it was unilateral, not mutual, that Petitioner has failed to meet the legal standard for vacating an agreement by counsel and it would be prejudicial to Respondent at this juncture to vacate the stipulation and permit Petitioner "to correct its own negligence".

DISCUSSION

It is well-settled that stipulations of settlement "are favored by the courts and are not lightly cast aside." *Hallock v State of New York* (64 NY2d 224, 230, 474 NE2d 1178, 485 NYS2d 510 [1984]). This is especially so in the case of "open court" stipulations where the party seeking vacatur is represented by counsel. *Weissman v Bondy & Schloss* (230 AD2d 465, 467-68, 660 NYS2d 115, 117 [1st Dep't 1997], *app dismd*, 91 NY2d 887, 691 NE2d 637, 668 NYS2d 565 [1998]); *Zombeck v Segesta* (2013 NY Misc LEXIS 1488, 2013 NY Slip Op 30733[U][Civ Ct NY Co 2013])(citing *Town of Clarkstown v MRO Pump & Tank, Inc* (287 AD2d 497, 731 NYS2d 231 [2nd Dep't 2013]).

Nevertheless, "where there is cause sufficient to invalidate a contract, such as fraud, collusion, mistake or accident," *Hallock, supra*, "[t]he court 'possesses the discretionary power to relieve parties from the consequences of a stipulation effected during litigation upon such terms as it deems just and, if the circumstances warrant, it may exercise such power if it appears that the stipulation was entered into unadvisedly or that it would be inequitable to hold the parties to it.'" *Genesis Holding, LLC v Watson* (5 Misc3d 127[A], 798 NYS2d 709 [App Term 1st Dep't 2004]), *quoting 1420 Concourse Corp v Cruz* (135 AD2d 371, 373, 521 NYS2d 429 [1987], *app dism'd,* 73 NY2d 868, 534 NE2d 325, 537 NYS2d 487 [1989]), *citing Matter of Frutiger* (29 NY2d 143, 150, 272 NE2d 543, 324 NYS2d 36 [1971]).

Where mistake is alleged as the basis for a request to vacate a stipulation, case law provides different standards for mutual and unilateral mistakes:

- A mutual mistake renders an agreement voidable and subject to rescission if it is substantial and existed at the time of the agreement. *Gould v Bd of Educ of Sewanhaka Cent High School Dist* (81 NY2d 446, 453, 599 NYS2d 787, 790, 616 NE2d 142, 146 [1993]). However, "there is a 'heavy presumption that a deliberately prepared and executed written instrument [manifests] the true intention of the parties', and a correspondingly high order of evidence is required to overcome that presumption. The proponent of reformation must 'show in no uncertain terms, not only that mistake or fraud exists, but exactly what was really agreed upon between the parties'". *Chimart Assocs v Paul* (66 NY2d 570, 574, 498 NYS2d 344, 347, 489 NE2d 231, 234 [1986] [internal citations omitted]). "The idea is that the agreement as expressed, in some material respect, does not represent the 'meeting of the minds' of the parties." *Gould v Board of Educ, supra* (81 NY2d at 453, 599 NYS2d at 790, 616 NE2d at 146).

- A unilateral mistake may render an agreement voidable if four criteria are met: (1) enforcement would be unconscionable; (2) the mistake is material and made despite the exercise of ordinary care by the party in error; (3) the innocent party had no knowledge of the error; and (4) it is possible to place the parties in status quo ante. *104-106 E 81st St LLC v O'Brien* (12 Misc3d 1175[A], 824 NYS2d 764 [Civ Ct NY Co 2006]). Vacatur of a stipulation may be warranted, "if failing to do so would result in unjust enrichment of the [petitioner]." *Weissman v Bondy & Schloss* (230 AD2d 465, 469, 660 NYS2d 115 [1st Dep't 1997], *app dismd,* 91 NY2d 887, 691 NE2d 637, 668 NYS2d 565 [1998]).

Here, the agreement Petitioner now seeks to void is based on his own rent statement dated three days earlier, which itself is corroborated by two prior rent statements he generated during this litigation and relied on in making earlier motions. *See* NYSCEF Doc. ## 8, 15 and 28. All of these rent statements support the settlement agreement's conclusion that the only rent owed at that time was for October and November 2022. Petitioner's rent statements dated March 9, 2022 and August 8, 2022 both reflect a payment of $1600 by check #153 credited on January 28, 2022, with another payment of $1600 by check #154 having been rejected that same day. Clearly, in settling Respondent's OSC on November 10, 2022 both parties relied on the multiple rent statements generated by Petitioner. Petitioner does not explain how and when he discovered information leading him to believe that check #153 had also been rejected for insufficient funds, or why this was not reflected in the statements he prepared dated March 9, 2022, August 8, 2022 and November 7, 2022.

Petitioner has demonstrated neither a mutual nor a unilateral mistake warranting vacatur of the November 10, 2022 settlement agreement. Under the mutual mistake standard, Petitioner did not meet its heavy burden to "show in no uncertain terms", *Chimart Assocs v*

Paul, supra, that a mistake existed at the time the agreement was negotiated and that the agreement "does not represent the 'meeting of the minds' of the parties," *Gould v Board of Educ, supra.* Petitioner is the one who created the rent ledgers upon which the parties relied in their settlement agreement, and any mistake in those ledgers was Petitioner's. Further, the copies Petitioner now provides of the two checks in question do not include fronts and backs, or any indication of how, by whom and when those copies were generated.

Under the unilateral mistake standard, even if the court were to find that Petitioner has made a sufficient showing that both of Respondent's checks dated January 11, 2022 were rejected for insufficient funds, on the undisputed history of this case as described above it is not "unconscionable" to hold the parties to their agreement. Petitioner has not shown that he exercised reasonable care in commencing this proceeding and then generating three rent ledgers over a period of nine months crediting Respondent's account with a $1600 payment in January 2022, if in fact that payment had been rejected along with another payment for the same amount made on the same day. *104-106 E 81st St LLC v O'Brien, supra.*

CONCLUSION

Accordingly, it is hereby ORDERED that Petitioner's motion is denied. This constitutes the Decision and Order of the court, which is being uploaded to NYSCEF.

Hon. Diane E. Lutwak, HCJ

Dated: Bronx, New York
March 18, 2023

APPROVED
DLUTWAK , 3/18/2023, 8:41:20 AM

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