

**RIZQ Props., Corp. v Brooks**

2023 NY Slip Op 33569(U)

September 15, 2023

Civil Court of the City of New York, Bronx County

Docket Number: L&T Index No. 333534/2022

Judge: Diane E. Lutwak

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CIVIL COURT OF THE CITY OF NEW YORK  
BRONX COUNTY: HOUSING PART K-SPP

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L&T Index # 333534/2022

RIZQ PROPERTIES, CORP.,  
Petitioner (Landlord),

-against-

**DECISION & ORDER**

PAULINE BROOKS,  
Respondent (Tenant).

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Hon. Diane E. Lutwak:

Recitation, as required by CPLR Rule 2219(A), of the papers considered in the review of Respondent's Order to Show Cause to Vacate Stipulation, Dismiss Petition and/or Other Relief:

PAPERS	NYSCEF DOC #
Order to Show Cause	14, 24
Attorney's Affirmation in Support	15
Respondent's Affidavit in Support	16
Memorandum of Law in Support	17
Exhibits A-F	18-23
Attorney's Affidavit in Opposition	27
Attorney's Affirmation in Reply & Exhibit A	29

**PROCEDURAL HISTORY**

This is a holdover eviction proceeding against the tenant of "All rooms, first (bottom) floor apartment" at 989 Burke Avenue in the Bronx. The proceeding is based upon a 90-day notice dated July 19, 2022 terminating the tenancy as of October 31, 2022 and advising Respondent that if she did not vacate the premises during the stated time frame Petitioner would "commence an Ejectment case" to remove her from the premises for holding over after the expiration of her term. The notice states there is no lease, the premises are located in a two-family dwelling, the apartment is not legal and the tenancy is not subject to rent control or rent stabilization. The Petition, filed on November 4, 2022, reiterates the allegations of the 90-day notice.

The case was initially calendared for November 29, 2022 in Intake Part 2 and then transferred to Resolution Part K-SPP and adjourned to December 21, 2022. On December 21 Petitioner by counsel and Respondent *pro se* settled the case in an agreement which awarded Petitioner a judgment of possession, warrant to issue forthwith, execution stayed through March 20, 2023 for Respondent to vacate and surrender the premises.

Respondent retained counsel and now before the court is her Order to Show Cause seeking to vacate the December 21, 2022 Stipulation of Settlement as improvidently entered into as this proceeding was commenced within twelve months of Petitioner's acceptance of "ERAP" (COVID-19 Emergency Rent Assistance Program) funds in violation of the ERAP Law, L. 2021, c. 56, Part BB, Subpart A, § 9(2)(d)(iv), *as amended by* L. 2021, c. 417, Part A, § 5, and because the predicate termination notice is defective. In the alternative, Respondent seeks leave to file an answer upon vacatur of the Stipulation or, if the Stipulation is not vacated, a stay of execution of the warrant of eviction pursuant to RPAPL § 749(3) and CPLR § 2201.

In support of the motion Respondent asserts that she applied for ERAP on February 2, 2022; her application was granted; and ERAP funds of \$17,600 were paid to Petitioner on July 18, 2022, one day before the date of Petitioner's 90-day termination notice which does not mention Petitioner's acceptance of ERAP funds. Respondent asserts she did not know about the ERAP Law's 12-month eviction protection following her landlord's acceptance of ERAP funds until retaining counsel.

In opposition, Petitioner does not dispute Respondent's allegations but asserts that the apartment is illegal and argues that the State's public policy against the renting of illegal apartments should be found to override the ERAP statute. Given the substantial delays that would follow if this case is dismissed and Petitioner is required to commence a new proceeding, Petitioner argues that Respondent's motion should be denied.

On reply, Respondent's attorney reiterates her original arguments and further argues that there is no exception from the ERAP Law's 12-month rule where ERAP funds are accepted on behalf of a tenant living in an illegal apartment.

## DISCUSSION

It is well-settled that stipulations of settlement "are favored by the courts and are not lightly case aside." *Hallock v State of New York* (64 NY2d 224, 230, 474 NE2d 1178, 485 NYS2d 510 [1984]). However, "where there is cause sufficient to invalidate a contract, such as fraud, collusion, mistake or accident," *id.*, "[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 1<sup>st</sup> 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]).

New York State courts evaluate the sufficiency of predicate notices based on a standard of reasonableness "in view of all attendant circumstances". *Oxford Towers Co, LLC v Leites* (41 AD3d 144, 837 NYS2d 131 [1<sup>st</sup> Dep't 2007]); *Avon Bard Co v Aquarian Found* (260 AD2d 207, 210, 688 NYS2d 514, 517 [1<sup>st</sup> Dep't], *app disp'd*, 93 NY2d 998, 717 NE2d 1080, 695 NYS2d 743 [1999]); *Hughes v Lenox Hill Hospital* (226 AD2d 4, 17, 651 NYS2d 418, 427 [1<sup>st</sup> Dep't 1996], *app disp'd*, 90 NY2d 829, 683 NE2d 17, 660 NYS2d 552 [1997]). The notice must provide sufficient information to meet the tests of reasonableness and due process. *Jewish Theological Seminary of America v Fitzer* (258 AD2d 337, 338, 685 NYS2d 215 [1<sup>st</sup> Dep't 1999]). Predicate notices are not amendable; an eviction proceeding based upon an insufficient notice must be dismissed for failure to state a claim under CPLR R 3211(a)(7). *Chinatown Apts Inc v Chu Cho Lam* (51 NY2d 786, 412 NE2d 1312, 433 NYS2d 86 [1980]).

Under the ERAP statute, a landlord's acceptance of rental arrears from ERAP "shall constitute agreement" by the landlord "not to evict [a household] for reason of expired lease or holdover tenancy" for twelve months after it first receives ERAP funds. L. 2021, c. 56, Part BB, Subpart A, § 9(2)(d)(iv), as amended by L. 2021, c. 417, Part A, § 5. See *Liadi v Kaba* (78 Misc3d 1209[A], 183 NYS3d 843 [Civ Ct Qns Co 2023]); *JSB Props LLC v Yershov* (77 Misc3d 235, 241-42, 177 NYS3d 417, 422 [Civ Ct NY Co 2022]).

Vacatur of the December 21, 2022 settlement agreement is appropriate here as it constitutes an impermissible waiver of fundamental COVID-19 pandemic era ERAP rights by a tenant who was unrepresented at the time the agreement was signed. *Compare Drucker v Mauro* (30 AD3d 37, 814 NYS2d 43 [1<sup>st</sup> Dep't 2006]). Respondent, now represented by counsel, has shown – and it is undisputed - that the 90-day termination notice upon which this proceeding is based is dated one day after Petitioner received ERAP funds of \$17,600. That notice is unreasonable and defective on its face as it fails to mention Petitioner's receipt of ERAP funds, fails to mention that the ERAP law prohibits Petitioner from evicting Respondent for twelve months after receiving such funds so the true vacate date would be no sooner than July 18, 2023, and yet unequivocally directs Respondent to vacate the premises by October 31, 2022. As such, the termination notice is not only inaccurate, but in view of the attendant circumstances herein fails to provide Respondent with necessary information to frame a defense and therefore is an insufficient basis for this proceeding. *Herzl Realty LLC v Almodovar* (79 Misc3d 1223[A], 191 NYS3d 611 [Civ Ct Kings Co 2023]).

Further, upon vacating the settlement agreement and the judgment based on that agreement, dismissal of this proceeding for failure to state a claim under CPLR R 3211(a)(7) is also warranted as the predicate notice is unamendable and fatally defective. *Chinatown Apts Inc v Chu Cho Lam* (51 NY2d 786, 412 NE2d 1312, 433 NYS2d 86 [1980]).

Petitioner's argument that this court should deny Respondent's motion because of countervailing public policy concerns arising from its claim that the apartment is illegal falls

short. First, Petitioner fails to provide any facts regarding the illegal nature of the premises, which are described in the Petition as "All rooms, first (bottom) floor apartment" at the subject building. Second, the time for Petitioner to have raised this concern was either prior to accepting ERAP funds or, having accepted those funds, at the time it decided, one day later, to terminate Respondent's tenancy with a 90-day notice that failed to mention the ERAP law's 12-month eviction prohibition and failed to explain why it nevertheless was moving forward to evict Respondent within that 12-month period.

In interpreting the ERAP law, the Appellate Term, First Department has stated: "It is a fundamental principle of statutory interpretation that a court should attempt to effectuate the intent of the Legislature (see McKinney's Cons Laws of NY, Book 1, Statutes, § 76), and where the statutory language is clear and unambiguous, the court should construe the statute to give effect to the plain meaning of the words used." *Bank of NY Tr Co, NA v Courtney* (78 Misc3d 27, 29, 188 NYS3d 356, 358 [App Term 1<sup>st</sup> Dep't 2023]). The statutory language is clear as to the 12-month prohibition on an eviction "for reason of expired lease or holdover tenancy", and Petitioner's attempt to override this prohibition without even mentioning it in the 90-day termination notice warrants dismissal of this proceeding.

CONCLUSION

For the reasons stated above, it is hereby ORDERED that Respondent's motion is granted, the December 22, 2022 Stipulation of Settlement and judgment based on that Stipulation are vacated and this proceeding is dismissed, without prejudice. This constitutes the Decision and Order of the Court, which is being uploaded on NYSCEF.

  
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Diane E. Lutwak, HCJ

Dated: Bronx, New York  
September 15, 2023

APPROVED  
DLUTWAK, 9/15/2023, 7:48:03 AM