

**Cote v 36 Attorney St. Hous. Dev. Fund Corp.**

2025 NY Slip Op 32850(U)

August 6, 2025

Supreme Court, New York County

Docket Number: Index No. 162521/2014

Judge: Debra A. James

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. DEBRA A. JAMES**

**PART 59**

*Justice*

-----X

ANDREW COTE and LORETA COLOMBO,

Plaintiffs,

- v -

36 ATTORNEY STREET HOUSING DEVELOPMENT FUND  
CORPORATION, MAGGIE ALMONTE, MARTA  
PICHARDO, and JOLENE RIVERA,

Defendants.

-----X

**INDEX NO.** 162521/2014

**MOTION DATE** 05/08/2025

**MOTION SEQ. NO.** 003

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 86, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118

were read on this motion to/for DISMISSAL.

ORDER

Upon the foregoing documents, it is

ORDERED that the motion of plaintiff Loreta Colombo to vacate the Stipulation of Settlement dated February 16, 2023<sup>1</sup>, is denied; and it is further

ORDERED that the cross motion of defendant 36 Attorney Street Housing Development Fund Corporation to restore this action to the calendar for enforcement of the Stipulation of Settlement is granted; and it is further

<sup>1</sup>The Stipulation of Settlement dated February 16, 2023, was filed on April 27, 2023 (NYSCEF Doc No 71) with a request to "so-order". Such Stipulation of Settlement is deemed "So-Ordered" nunc pro tunc.

ORDERED and ADJUDGED that on the first, third, fourth and fifth counterclaims against plaintiff Loreta Colombo, interposed in its Answer, defendant 36 Attorney Street Housing Development Fund Corporation is granted a judgment of possession for Apartment 1, 36 Attorney Street, New York, New York, against plaintiff Loreta Colombo; and it is further

ADJUDGED that defendant 36 Attorney Street Housing Development Fund is entitled to possession of 36 Attorney Street, Apartment 1, New York, New York as against plaintiff Loreta Colombo, and the Sheriff of the City of New York, County of New York, upon receipt of a certified copy of this Order and Judgment and payment of proper fees, shall place defendant 36 Attorney Street Housing Development Fund Corporation in possession of 36 Attorney Street, Apartment 1, New York, New York, and plaintiff Loreta Colombo is directed to surrender shares attributable to Apartment 1 to such Sheriff, accordingly; and it is further

ADJUDGED that immediately upon entry of this Order and Judgment, and such placement of defendant 36 Attorney Street Housing Development Corporation in possession of 36 Attorney Street, Apartment 1, New York, New York, such defendant may exercise all acts of ownership and possession of such premises, including entry thereto, as against plaintiff Loreta Colombo; and it is further

ORDERED that the balance of the above-entitled action relating to outstanding maintenance arrears; total monthly rent under any sublease between plaintiff Loreto Colombo and any subtenant(s) which exceeded the amount of monthly maintenance set forth in the proprietary lease, received by plaintiff Loreto Colombo; reasonable attorney's fees incurred by defendant 36 Attorney Street Housing Development Fund Corporation in this action; and appraisal of the appreciation of the value of the shares attributable to Apartment 1, since plaintiff Loreta Colombo purchased such shares, is severed and shall continue; and it is further

This matter having come on before this court on May 8, 2025, on motion of the plaintiff Loreta Colombo to vacate the Stipulation of Settlement dated February 16, 2023, and cross motion of defendant 36 Attorney Street Housing Development Fund Corporation to restore the action to the calendar to enforce such Stipulation, and the plaintiff having been represented in connection therewith by herself, and the defendant 36 Attorney Street Housing Development Fund Corporation having been represented in connection therewith by Andrea Frances Shapiro, Esq., and, pursuant to CPLR 4317, the court having on its own motion determined to consider the appointment of a referee to determine as follows, and it appearing to the court that a reference to determine is proper and appropriate pursuant to CPLR

4317 (b) in that an examination of a long account will be required, and an issue of damages separately triable and not requiring a trial by jury is involved, it is now hereby

ORDERED that a Judicial Hearing Officer ("JHO") or Special Referee shall be designated to determine the following individual issues of fact, which are hereby submitted to the JHO/Special Referee for such purpose:

(1) the issue of the outstanding maintenance arrears that plaintiff Loreta Colombo owes defendant 36 Attorney Street Housing Development Corporation, from December 2013 to the time when possession of Apartment 1 is delivered to defendant 36 Attorney Street Housing Development Fund Corporation;

(2) the issue of total monthly rent on any sublease from subtenant(s) paid to plaintiff Loreto Colombo, over the amount of monthly maintenance set forth in the proprietary lease for Apartment 1, received by plaintiff Loreto Colombo, as sublessor;

(3) the issue of reasonable attorney's fees incurred by defendant 36 Attorney Street Housing Development Fund Corporation in this action;

(4) the issue of the appraisal of the appreciation of the value of the shares attributable to Apartment 1, since plaintiff Loreta Colombo purchased such shares, which amount of appreciation shall be deducted from the total amount of monetary damages assessed against plaintiff Loreta Colombo and in favor of defendant

36 Attorney Street Housing Development Fund Corporation; and it is further

ORDERED that the powers of the JHO/Special Referee shall not be limited beyond the limitations set forth in the CPLR; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court at [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh) at the "References" link), shall assign this matter at the initial appearance to an available JHO/Special Referee to determine as specified above; and it is further

ORDERED that pro se plaintiff Loreto Colombo and counsel for defendant 36 Attorney Street Housing Development Fund Corporation, with conference with the Principal Court Attorney assigned to the Clerk of the Special Referee, shall immediately consult one another, and counsel for defendant 36 Attorney Street Housing Development Corporation shall, within thirty (30) days from the date of this Order, submit to the Special Referee Clerk by e-mail an Information Sheet (accessible at the "References" link on the court's website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the defendant 36 Attorney Street

Housing Development Fund Corporation and pro se plaintiff Loreta Colombo of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that on the initial appearance in the Special Referees Part the parties shall appear for a pre-hearing conference before the assigned JHO/Special Referee and the date for the hearing shall be fixed at that conference; the parties need not appear at the conference with all witnesses and evidence; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue(s) specified above shall proceed from day to day until completion and counsel must arrange their schedules and those of their witnesses accordingly; and it is further

ORDERED that plaintiff Loreta Colombo, pro se, and defendant's counsel shall file memoranda or other documents directed to the assigned JHO/Special Referee in accordance with the Uniform Rules of the Judicial Hearing Officers and the Special Referees (available at the "References" link on the court's website) by filing same with the New York State Courts Electronic Filing System (see Rule 2 of the Uniform Rules).

#### DECISION

With respect to plaintiff Loreta Colombo's motion to vacate the Stipulation of Settlement dated February 16, 2023, this court agrees with defendant 36 Attorney Street Housing

Development Fund Corporation that plaintiff Loreta Colombo has failed to assert fraud, collusion, and/or mutual mistake or accident, which is the standard for invalidating a Settlement Agreement, as with respect to any other contract. See Hallock v New York, 64 NY2d 224, 230 (1984). Nor, as argued by defendant, does plaintiff's change of mind constitute a basis for relieving her from the terms of the Stipulation. See Thompson Med Co v Benjamin Pharms, 4 AD2d 504, 505 (1<sup>st</sup> Dept 1957).

As for defendant Housing Development Fund Corporation's cross motion to restore the matter to the calendar and to grant such defendant a judgment of possession and monetary damages upon plaintiff Loreta Colombo's breach of the Settlement Agreement, such remedy is set forth in the Stipulation of Settlement, the terms of which this court must enforce.

*Debra A. James*

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<u>8/6/2025</u>			<u>DEBRA A. JAMES, J.S.C.</u>	
<b>DATE</b>				
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input checked="" type="checkbox"/>	REFERENCE
			<input type="checkbox"/>	OTHER