

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART G

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KENT VILLAGE HOUSING CO., INC.,
Petitioner,

INDEX NUMBER: L&T 88829/10

-against-

KATARZYNA IWANOWICZ,
FERNANDO RIVERA,
TERESA IWNOWICZ,
Respondents.

DECISION & ORDER

_____X
MARIA MILIN. JHC:

Recitation, as required by CPLR, 2219(a), of the papers considered in review of this motion (001) to vacate the Stipulation dated October 4, 2010:

Order to Show Cause and Affidavit Attached.....	1,2,3
Affirmation in Opposition.....	6
Exhibits.....	4,5, 6-9

Upon the foregoing cited papers, the decision and order of the court is as follow:

This is a holdover proceeding commenced against respondents, Katarzyna Iwanowicz and Fernando Rodriguez, and Teresa Iwanowicz to recover possession of Apartment 25E (Apartment) located at 541 Wythe Avenue , Brooklyn, New York. This proceeding was brought pursuant to the issuance of a Certificate of Eviction by New York City Department of Housing Preservation and Development (HPD) and was commenced by notice of termination dated June 28, 2010.

The unrefuted record reveals that after a due process hearing on December 4, 2008 before an HPD Administrative Hearing Officer, a determination was issued by HPD, dated January 6, 2009, finding that respondents Fernando Rodriguez and Katarzyna Iwanowicz, did not reside in the Apartment as their primary residence and that respondent Teresa Iwanowicz was not entitled to succession rights. Respondent Teresa Iwanowicz, commenced a CPLR Article 78 proceeding to challenge HPD's determination in Supreme Court Kings County. By order dated September 9, 2009, Supreme Court transferred the Article 78 proceeding to the Appellate Division, Second Department for a substantial evidence review. However, the respondent Teresa Iwanowicz failed to timely process the transfer of her Article 78 proceeding to the Appellate Division and the proceeding was deemed abandoned.

The instant holdover proceeding was commenced in August 2010, and on October 2,

2010, respondents Katarzyna Iwanowicz and Teresa Iwanowicz, appeared, with the benefit of counsel, and interposed a detailed written answer in opposition to the petition and asserting defenses. On October 4, 2010, the parties entered into a stipulation of settlement (Stipulation), which was signed by the petitioner's counsel, respondents' counsel and by both Teresa and Katarzyna Iwanowicz, and so ordered by the court. The Stipulation provided, in relevant part , for a judgment of possession in favor of the petitioner, and execution was stayed for a period in excess of five months, through March 31, 2011, on condition that use and occupancy be tendered by the 10th day each month at the monthly rate of \$720.00, throughout the duration of the stay period.

Respondent, Teresa Iwanowicz, now moves by order to show cause (motion sequence 001). The first prong of the motion seeks an permitting her to discharge her prior counsel, Okarma & Czaplicka, and to substitute the law firm of Jack L. Glasser, as her counsel . This portion of the motion is granted.

Movant, Teresa Iwanowicz, further moves for an order vacating the Stipulation of Settlement, on the grounds that when she appeared in court in October 2010, that due to her " poor command of the English language" , she " had no idea at the time that I was being evicted from the apartment" and that she " was in complete ignorance of what was going on around me with respect to this apartment" . (See, ¶¶ 6 , 7 & 13 , Affidavit of Teresa Iwanowicz, dated February 7, 2010). The petitioner opposes the motion.

Overwhelming appellate authority has made clear that stipulations of settlement " are favored by the courts and not lightly cast aside". **Hallock v State of New York**, 64 NY2d 224, 230 (1984). While the court has discretion to relieve a party of the consequences of a stipulation, granting such relief is confined to very special circumstances , such as when a party has inadvertently or improvidently entered into an agreement , which will take the case out of the due and ordinary course of the proceeding and causes undue prejudice. **144 Woodruff Corp. v Lacrete**, 154 Misc 2d 301, 302 (Civ Ct Kings Co 1992).

Here, no good cause exists for invalidating the Stipulation.

First and foremost it is noted that this holdover proceeding is predicated on the adverse administrative determination that Teresa Iwanowicz is ineligible for continued occupancy of the subject apartment. As such , Teresa Iwanowicz's contention that the Stipulation involved forfeiture of her right to remain in the apartment is of no avail. The doctrine of res judicata applicable to quasi judicial determinations of administrative agencies precludes review of HPD's determination that Teresa Iwanowicz lacks succession rights to the apartment in this holdover proceeding. Any right she may have to assert her claim to occupancy ended when she failed to timely process the transfer of her Article 78 petition. Accordingly, Teresa Iwanowicz, has failed to demonstrate that she inadvertently waived any substantial defenses to this proceeding by executing the Stipulation. Moreover,

she received a substantial benefit from the Stipulation in the form of being permitted to occupy the apartment for a stay period in excess of five months, despite her lack of a defense.

Next, movant's claims that her prior counsel lacked authority to represent her and that she appeared in Housing Court and executed the Stipulation while in a state of oblivion regarding the fact that she was facing eviction from the apartment are belied by the record. In January 2009, movant appeared at the HPD hearing and testified in opposition to petitioner's request for the Certificate of Eviction and in support of her claim for succession rights. The Decision/Certificate of Eviction specifically indicates that: "A Polish interpreter was present at the hearing and translated the proceedings for Teresa Iwanowicz".

In January 2010, the petitioner, commenced a prior holdover proceeding against the respondents predicated on the same facts alleged in support of the case at bar. In the prior case movant appeared by the same counsel, Okarma & Czaplicka, she repudiates in this motion. Moreover, in support of a motion to dismiss that case, interposed on her behalf by Okarma & Czaplicka, movant submitted a sworn affidavit, dated February 9, 2010, in which she summarizes in careful detail the underlying facts involved in petitioner's claims to recover possession of the apartment and specifically ratifies the authority of her prior counsel to act on her behalf. The existence of this affidavit renders movant's claims that when she signed the Stipulation on October 10, 2010, she had "no idea at the time that I was being evicted from the apartment" and "was in complete ignorance of what [was] going on around me" disingenuous at best.

Lastly, it must be noted that the fact that Tesesa Iwanowicz, waited until the end of the stay period before moving to vacate the Stipulation, further undermines the bona fides of her motives in seeking to be relieved of the consequences of the agreement. See, **Board of Mgrs. Of Atrium Condominium v West 78th St Corp.**, 19 AD3d 241 (AD 1st Dept 2005).

Based on the foregoing, that prong of the motion which seeks to vacate the Stipulation is denied. To allow respondents to voluntarily vacate with dignity, the court exercises its discretion to stay execution on this final occasion to April 15, 2011. Upon default in vacating as set forth above the warrant may be executed after service of a marshal's notice which may be served by first class mail.

This is the decision and order of the court.

DATED: MARCH 25, 2011
BROOKLYN, NEW YORK



MARIA MILIN, JHC