Dzaferovic LLC 1 v Hernandez
2018 NY Slip Op 32795(U)
June 20, 2018
Civil Court of the City of New York, Queens County
Docket Number: 56958/18
Judge: Joel R. Kullas
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS
HOUSING PART D, RM. 406

Index No. L&T 56958/18
Motion Sequence 01

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DZAFEROVIC LLC 1,

Petitioner,

- against -

OSCAR A. HERNANDEZ,

Respondent,

JOHN and JANE DOE,

Occupant.

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DECISION/ORDER AFTER ARGUMENT
Present:
HON. JOEL R. KULLAS
Judge, Housing Court

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion seeking summary judgment and dismissal and for further relief:

Papers	Numbered
Notice of motion and affidavits annexed	1
Affirmation in Opposition	2
Affirmation in Reply	3
Supplemental affirmation	
Exhibits	
Stipulations	
Other	

Respondent moves for summary judgment (CPLR 3212(b)) and dismissal of this licensee holdover proceeding involving respondent's occupancy of 22-67 35th Street, Apt. 1C, Astoria, NY 11105 ("the subject premises"). Alternatively, respondent seeks an order granting him partial summary judgment (CPLR 3212(e)) declaring a purported surrender agreement signed by petitioner and respondent void and unenforceable. In order for respondent to prevail on his request for summary judgment, he must eliminate any triable issue of fact. See *Andre v Pomeroy*, 35 NY2d 361 (1974); see also, *Doize v Holiday Inn Ronkonkoma*, 6 AD3d 573 (2d Dept. 2004). He has the initial burden of proving entitlement to summary judgment and upon such proof, the opposing party must show facts sufficient to require a trial of a material fact. (See *Winegrad v New York Univ. Med. Center*, 64 NY2d 851 (1985) citing *Zuckerman v City of New York*, 49 NY2d 557 (1980)). When the existence of a triable issue "is even debatable,

summary judgment should be denied." *Ochoa v Walton Management*, LLC, 19 Misc3d 1131(A), 2008 WL 1991486 (NY Sup, 2008).

Respondent alleges that he is entitled to succession rights. In response, petitioner claims that respondent signed a stipulation dated December 20, 2017, whereby petitioner waived $4,591.12 in use and occupancy and respondent agreed to vacate by February 28, 2018 (hereinafter "surrender agreement"). (See Notice of Motion, Exhibit G.) It is well settled that stipulations of settlement are favored by the courts and are not lightly cast aside (see *Hallock v. State of New York*, 64 NY2d 224 [1984]). Adherence to this axiomatic rule not only allows efficient dispute resolution but maintains integrity of the litigation process. (*Id.*) Notwithstanding the aforementioned, courts retain control over the enforcement of stipulations and may relieve a party from the terms thereof where it appears that the stipulation was entered into inadvisably or where it would be inequitable to hold the parties to the agreement (*Matter of Frutiger*, 29 N.Y.2d 143 [1971]). The Court may exercise its discretion in setting aside a stipulation as having been inadvisably entered into where an unrepresented litigant unknowingly waives a potentially meritorious defense that could have otherwise defeated the action (*Northtown Roosevelt LLC v. Daniels*, 35 Misc. 3d 137 [A] (App Term, 1st Dept 2012]; *126 Bapaz, LLC v. Alamo*, 14 Misc. 3d 145[A] [App Term, 1st Dept 2007]; *329 Union Bldg. Corp. v LoGuidice*, 47 Misc3d 1 [App Term, 2nd, 11th & 13th Jud Dists 2015]).

Respondent argues that the court should vacate the surrender agreement because it is unconscionable, unenforceable, overreaching, the product of coercion and fraud, and respondent signed it without the assistance of counsel. Respondent cites several factors in support of these arguments. The surrender agreement was signed after petitioner brought respondent to petitioner's counsel's office. It was signed without court supervision, while respondent did not have the assistance of counsel. The agreement was drafted in English, and the conversation during the signing of the agreement was conducted in English, despite the fact that respondent's

first language is Spanish and he requests the services of a Spanish Interpreter while in court. Respondent signed under the mistaken belief that he did not have a potential claim of possession to the apartment. Respondent further contends that petitioner arrived at the door of the subject premises, called him and accosted him on a regular basis following the death of respondent's mother, to badger him into signing the surrender agreement. In support of his argument, respondent notes the death of his mother occurred in June 2017 and by July 7, 2017, petitioner had already drafted a proposed surrender agreement, which respondent declined to sign. (See Notice of Motion, Exhibit E.). Respondent signed the agreement without the presence or assistance of counsel. He signed the agreement without knowing that he might have a viable succession claim to the apartment in which his mother had lived for 38 years. Respondent is 63 years old; he presented a Senior Citizens Rent Increase Exemption (SCRIE) Rent Stabilized Apartment Renewal Application dated November 1, 2016, which lists respondent as an occupant of the subject premises. (Notice of Motion, Exhibit H.)

Petitioner does not dispute respondent's representation of the facts surrounding the signing of the surrender agreement. Respondent also cites precedent supporting vacatur of the surrender agreement. For instance, in *Grasso v Matarazzo*, 180 Misc2d 686, (App Term, 2nd Dept 1999), the Appellate Term affirmed the trial court's vacatur of stipulation whereby a tenant with a mental illness agreed to surrender a rent controlled premises in which he resided for 35 years. The court explained:

> (T)he issue of whether the out-of-court surrender agreement here is void and unenforceable ultimately depends on whether it was entered into voluntarily or under duress and coercion. (*Id.*, 180 Misc2d at 688.)

Here, respondent alleges coercion which petitioner did not rebut. This alone warrants vacatur of the surrender agreement.

Another reason for vacatur is the fact that respondent signed the surrender agreement without the assistance of counsel or the supervision of the court or a Spanish interpreter. (See

Northtown Roosevelt LLC v. Daniels, 35 Misc. 3d 137 [A] and *126 Bapaz, LLC v. Alamo*, 14 Misc. 3d 145[A], supra.) The court has the authority to vacate the parties and return them to their original position if the stipulation was "inadvertently, unadvisably or improvidently entered into an agreement which will take the case out of the due and ordinary course of proceeding in the action, and works to his prejudice." entered into "inadvisedly" See e.g., *Matter of Frutiger*, 29 NY2d 143, 150 (1971); *Cabbad v Melendez*, 81 AD2d 626 (2nd Dept 1981); and *Solack Estates, Inc. v Goodman*, 102 Misc2d 504, 506, aff'd 78 AD2d 512 (1st Dept 1980). In this case, the court can return the parties to their original positions and they can litigate respondent's succession defense.

Respondent presents another basis for vacatur of the surrender agreement based upon the lack of "mutual assent" or a "'meeting of the minds.'" See *Reid v DDEH, 103 East 102 LLC*, 20 Misc3d 1113(A) (Sup Ct, NY County 2008). Contract principles require such an assent to all material terms for an agreement to be enforceable. *Id.* citing *Joseph Martin, Jr., Delicatessen, Inc. v Schumacher*, 52 NY2d 105, 109 (1980). The court in *Reid v DDEH, 103 East 102 LLC*, vacated an agreement whereby an unrepresented tenant signed a surrender agreement with her landlord after her apartment was damaged by a fire. The managing agent led the tenant to falsely believe she could not move back into her building because of the fire. The court found lack of mutual assent and voided the agreement as unconscionable. As in *Reid*, petitioner misled respondent into believing he had no other option than to vacate if he wanted to avoid eviction. (Hernandez affidavit, Para. 10-11.) Since respondent has a potential succession defense, any waiver of that protection under the Rent Stabilization Code would be void. *Drucker v Mauro*, 30 AD3d 37, 38 (1st Dept 2006). An exception of that rule permits waiver in a stipulation negotiated between parties and approved by the Division of Housing and Community Renewal or a court of competent jurisdiction. Rent Stabilization Code ("RSC") [9 NYCRR] § 2520.13. The facts before the court do not fall within that exception.

While respondent has shown multiple reasons requiring vacatur of the surrender agreement, he has yet to establish his succession rights. In particular, he has failed to show co-occupancy with his mother for one year prior to her passing, which is required for his succession claim. See RSC [9 NYCRR] § 2204.6(d); 9 [NYCRR] § 2523.5(b). Therefore, there is no basis for summary judgment at this point.

Based on the foregoing, respondent's motion is granted to the extent of declaring the surrender agreement void and unenforceable; and of deeming the answer interposed without opposition; (See Notice of Motion, Exhibit A) respondent's request for a finding that respondent is entitled to succession rights is denied without prejudice. The parties are directed to appear in Part D, Room 406 at 9:30am on July 26, 2018 for all purposes, including motion practice, if applicable, or trial.

This constitutes the decision and order of the court.

6-20-18
Date

JOEL R. KULLAS JUDGE HOUSING PART

JOEL R. KULLAS
Judge, Housing Court

The court has mailed copies to the parties:
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Civil Court of the City of New York
JUN 20 2018
ENTERED
QUEENS COUNTY