

COURT DECISIONS

NEW YORK | LANDLORD/TENANT LAW

'Chelsea' Does Not Bar Civil Court From Granting Post-Eviction Relief, Restoring Possession

RESPONDENT tenant moved to be restored to possession of the subject premises. Petitioner landlord opposed the motion, arguing respondent did not demonstrate the ability to make payments still owing. It argued it was entitled to enforce the judgment and execute the warrant under *Chelsea 19 Assoc. v. James*, alleging respondent failed to demonstrate "good cause." The court noted that after respondent, who resided in the premises for 38 years, made all payments due under a stipulation, he was hospitalized for nearly two weeks. The court questioned whether *Chelsea* barred the Civil Court from granting post-eviction relief and restoring a tenant to possession, and if *Chelsea* divested the Civil Court of the discretion to relieve a tenant of a default under the terms of a stipulation. It noted *Chelsea* did not overrule cases permitting the Civil Court to vacate a warrant for good cause shown, finding it possessed discretionary power to relieve parties from the consequences of a stipulation effected during litigation. The court found respondent paid all rent due through March 2010, plus marshal and legal fees. Hence, it found the case presented appropriate circumstances to restore respondent to possession and relieve him from the terms of the stipulation.

443 East 78 Realty LLC v. Tupas, 96367/09
(March 23), Civil Court, Judge Schreiber.
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'Chelsea' Does Not Bar Civil Court From Granting Post-Eviction Relief, Restoring Possession

Judge Michelle D. Schreiber

443 EAST 78 REALTY LLC v. TUPAS, 96367/09, Decided 03/23/10—

David P. Haberman, Esq., Rose & Rose

Jason Blumberg, Esq., MFY Legal Services, Inc.

DECISION/ORDER

The respondent moved, pro se, to be restored to possession¹. Although the petitioner admitted receipt of \$2,015.56, it opposed the motion by submitting an affirmation from counsel and an affidavit from the property manager. The petitioner states that after the payment the respondent still owed \$663.84 in rent and \$1,245 in marshal and legal fees. The petitioner asserts that the respondent did not demonstrate the ability to make the payment and that it was entitled to enforce the judgment and execute the warrant pursuant to Chelsea 19 Assoc. v. James, 67 A.D.3d 601 (1st Dep't 2009). The petitioner asserts further that the respondent "failed to set forth a legally cognizable excuse for failing to timely pay the monies due pursuant to the stipulation and there is no basis to restore Respondent to the subject premises from which she [sic] was legally evicted." Petitioner also states that it had pictures taken of the subject premises from the front door after the eviction and that the photographs show "garbage and various items of random detritus" obscuring the entrance; the claim is that the condition presents a safety hazard. Finally, petitioner asserts that it does not believe the respondent lives in the apartment.

A decision/order of this Court on the return date of the motion states, "The resp is a 62 year old man who has resided in the subject premises for 38 years. The resp settled the instant nonpayment case by stipulation dated 12/22/09. The stip has a FJLL of \$1,447.88; payment of \$700 due 1/25/10 & \$747.88 by 2/1/10 with Jan & Feb rent due by the 11th of each month. It is not disputed that resp paid \$2,015.56 of the total owed thru 2/10 of \$2,679.80. The resp was admitted to the hospital on Jan 27, 2010 and remained hospitalized for 14 days due to 2 cardiac surgeries. The instant OSC was not noticed as a post-evict as resp did not apparently inform the clerk he had been evicted but as per pet's attorney the resp was evicted on 2/19/10. Based upon resp's age & the above circumstances the resp was referred to ACP (assigned counsel project) & has an appointment with a lawyer tomorrow. Accordingly all stays remain in effect & matter adjourned to 3/5/10 at 9:30 am for all purposes. In the interim access is ordered for resp to get personal items from the apt today (3/3/10) from 4-6 pm."

On March 5, 2010 MFY Legal Services, Inc. appeared in Court as "a friend of the Court" and requested an adjournment. The application was granted; the matter was thereafter further adjourned to March 22, 2010 for additional submissions. On March 22, 2010 this Court granted the respondent's motion in a short form order based upon the tender in Court of all rent due through March 2010 plus an additional \$1,308.20 in legal/marshal fees. The instant decision/order is issued as indicated in the short form order.

The affirmation submitted by MFY states that the respondent suffers from numerous medical ailments including a serious heart condition and that he has been

forced to go on unpaid medical leave from his employment as a result. On January 27, 2010, after making all payments due to date pursuant to the stipulation, the respondent was hospitalized; medical documentation is annexed showing admission to the hospital on January 27, 2010 and discharge on February 9, 2010 after two cardiac procedures due to "STEMI" and placement in the CCU. The discharge plan indicated the respondent was medically stable and would be released to home with family.

The petitioner submits an affirmation from counsel in further opposition to the motion. The affirmation largely repeats, verbatim, the statements in the prior affirmation, but with one significant difference. The petitioner claims that legal and marshal fees now total \$2,495, an unexplained increase of one thousand two hundred and fifty dollars, and asserts it is entitled to be made whole. The petitioner reiterates that Chelsea 19 Associates v. James precludes granting the relief requested herein as the respondent has failed to demonstrate "good cause." Finally, the petitioner asserts that the respondent's hospitalization for "heart trouble" does not establish that he suffered a heart attack and "does not qualify as an adequate defense to the stipulation of settlement as contemplated by Chelsea 19 Associates...."

In Chelsea 19 Assoc. v. James² the parties stipulated that over \$30,000 was owed in rent through October 31, 2006 based upon a monthly rental of approximately \$3,000. The tenant failed to make the final payment of \$4,000 due by December 31, 2006, and failed to tender rent for the months of January through March 2007. The petitioner moved to restore the case for a judgment; the motion was granted on default on April 25, 2007. In July 2007 the respondent moved to vacate the default judgment. Although the respondent had more than \$25,000 available to cover the rent then due, he failed to offer any excuse for the delay of more than six months since the entry of the default judgment or the failure to tender any current rent due since the default. The Civil Court granted the respondent's motion to vacate the default judgment finding the delay was not willful or deliberate, and without a finding of good cause. The Appellate Term reversed based upon a lack of either an excusable default or a meritorious defense. The Appellate Division affirmed in a decision that indicated that the Civil Court, under those particular circumstances, lacked the discretion not to enforce the stipulation. In the same sentence however, the Appellate Division cited RPAPL §749(3), which allows the Court to vacate a warrant upon a showing of good cause.

There are two distinct issues presented to this Court: the first is whether Chelsea 19 bars the Civil Court from granting post-eviction relief and restoring a tenant to possession, and the second is whether Chelsea 19 divests the Civil Court of the discretion to relieve a tenant of a default under the terms of a stipulation. This Court does not interpret Chelsea 19 as a bar to the granting of relief post-eviction or as divesting it of the discretion

CIVIL COURT

Judge
Schreiber

to relieve a tenant of a default under a stipulation under appropriate circumstances.

As to the first issue, the Appellate Division decision in *Chelsea 19* did not overrule a long line of cases allowing the Civil Court to vacate a warrant for good cause shown pursuant to RPAPL §749(3). In *Brusco v. Braun*, 84 N.Y.2d 674 (1994) the Court of Appeals stated that, "[t]he Civil Court may in appropriate circumstances vacate the warrant of eviction and restore the tenant to possession even after the warrant has been executed." In determining factors warranting the exercise of discretion and a finding of good cause Courts have looked to various factors including the length of the term of the tenancy, the occupants of the apartment, and the availability of funds. In cases like *Parkchester Apartments v. Scott*, 271 A.D.2d 273 (1st Dep't 2000) and *102-116 Eighth Avenue v. Oyola*, 299 A.D.2d 296 (1st Dep't 2002), the Appellate Division, First Department upheld the authority of the Court to vacate the warrant in appropriate circumstances. In *2246 Holding v. Nolasco*, 52 A.D.3d 377 (1st Dep't 2006), the Appellate Division upheld the Civil Court's exercise of its discretion to vacate a warrant of eviction and restore a tenant to possession where the payment defaults were caused by factors beyond the tenant's control and forfeiture of a rent regulated lease could be avoided. See also e.g., *Riverside Gardens Realty, LLC v. Kneisel*, 2006 NY Slip Op 51793(U), (AT 1st Dep't).

Turning to the issue of relief from the terms of the stipulation it is noted that although grounds sufficient to invalidate a contract will relieve a party from a stipulation, the discretion of the Court is not so confined. *Hallock v. State of NY*, 64 N.Y.2d 224 (1984). Thus, in *Teitelbaum Holdings Ltd. v. Gold*, 48 N.Y.2d 51, 54 (1979), the Court of Appeals held that, "the power of a trial court to exercise supervisory control over all phases of pending actions and proceedings has long been recognized (e.g., *Barry v. Mutual Life Ins. Co.*, 53 N.Y. 536, 539 (1873)). Incident to this general authority, a court possesses discretionary power to relieve parties from the consequences of a stipulation effected during litigation. (Citations omitted)." Accordingly, the Appellate Division decision in *Chelsea 19 Associates* must be viewed in light of the long line of cases establishing the Court's authority to exercise its supervisory power and vacate a stipulation where a party has inadvertently, unadvisedly or improvidently entered into the agreement. See e.g., *In re Estate of Fruitiger*, 29 N.Y. 2d 143 (1971); *Solack Estates v. Goodman*, 78 A.D.2d

512 (1st Dep't 1980); *Cabbad v. Melendez*, 81 A.D.2d 626 (2nd Dep't 1981).

Most recently, and after the decision of the Appellate Division in *Chelsea 19*, the Appellate Term, First Department issued a decision in *361 West 21st HDFC v. Frazier*, 2009 NY Slip Op 29482, finding that the Civil Court had the authority, based upon its general supervisory power, to enforce so-ordered stipulations and in that case to allow for the tenant to remain. For all of these reasons, this Court finds that it has the authority under the aforementioned long line of cases from the Court of Appeals, to the Appellate Division, to the Appellate Term, to exercise its discretion and grant relief in this case.

Chelsea 19 does not mandate a lease forfeiture for a long term rent stabilized senior citizen tenant who has made substantially all of the payments due pursuant to a stipulation, then suffers a heart attack, is hospitalized for fourteen days and then released to the care of family, and therefore delays in the final payment of the current monthly rent of \$615.96 plus arrears of \$47.88. The respondent has now paid all rent due through March 2010 plus reasonable marshal and legal fees. Accordingly, this case presents appropriate circumstances to restore the respondent to possession and relieve him from the terms of the stipulation. The petitioner's request for additional legal fees for the submission of largely repetitive papers is denied in the discretion of the Court. See e.g., *Schoenaru v. Lek*, 283 A.D.2d 200 (1st Dep't 2001). The judgment and warrant are vacated as satisfied.

1. The motion actually sought restoration to the calendar as apparently respondent did not inform the clerk that he had already been evicted. See the order of this Court dated 3/3/10.

2. In counsel for respondent's further affirmation in support of the motion he quotes Dr. Richard Fogoros, <http://heartdisease.about.com/od/heartattack/g/STEMI.htm>, stating that "STEMI is an acronym meaning 'ST segment elevation myocardial infarction,' which is a type of heart attack.... Myocardial infarctions (heart attacks) occur when a coronary artery suddenly becomes at least partially blocked by a blood clot, causing at least some of the heart muscle being supplied by that artery to become infarcted (that is, to die). Heart attacks are divided into two types, according to their severity. A STEMI is the more severe type."

3. The Court notes that the nonpayment case was commenced on the heels of the expiration of the probationary period pursuant to a stipulation in a chronic nonpayment holdover proceeding. ■