

LANDLORD-TENANT

Appellate Courts Stress Finality of Stipulations



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Many landlord-tenant cases are resolved by a stipulation of settlement. Courts generally favor such stipulations as an efficient means of resolving litigation in a system that would otherwise be overwhelmed by the volume of cases on the court calendars. That is especially so in Housing Court.

A recent decision by the Appellate Division, First Department in *Chelsea 19 Associates v. James*,¹ illustrates a basic principle that courts have applied to stipulations of settlement to promote their use, i.e., that they need to be accorded finality and not easily avoided once entered into. (Jeffrey Turkel and Bradley S. Silverbush, partners at Rosenberg & Estis, P.C., represented the owner before the Appellate Division.) The court recognized that in certain circumstances, albeit rare, it could be proper to set aside a stipulation of settlement. However, the Appellate Division stated, the "tenant's claimed difficulty in obtaining funds" he had stipulated to pay by a certain date, such that he did not tender that money until approximately seven months after the stipulated date, "does not fall under that rubric."

We discuss here the facts of the *Chelsea 19* case, the decisions therein by the Civil Court, the Appellate Term and the Appellate Division addressing the issue of enforcing the parties' stipulation and certain of the cases cited by the Appellate Division on that issue.

In *Chelsea 19 Associates*, the tenant was a rent-stabilized tenant. His monthly stabilized rent was \$2,995.85 through Aug. 31, 2006, and increased to \$3,209.07 through Aug. 31, 2008. The owner commenced a non-payment proceeding in April 2006 seeking \$18,528.97 for arrears for the period from October 2005 through April 2006, plus legal fees.²

The parties settled the proceeding on Oct. 31, 2006, by a stipulation that was so-ordered by New York County Civil Court Judge Peter M. Wendt. In the stipulation, the tenant

acknowledged that, through Oct. 31, 2006, he owed rent of \$33,115.20, and the owner granted the tenant an abatement of \$2,500.00, leaving a balance of \$31,115.20. The tenant consented to the release to the owner of \$10,000.00 that was on deposit with the court, and tendered an additional \$17,115.20. That left a balance of \$4,000.00, which, in the stipulation, the tenant agreed to pay no later than Dec. 31, 2006.

The stipulation also provided in relevant part that:



In the event of a default in payment, petitioner may restore this matter upon 8 day's notice for entry of a possessory/money judgment for any and all sums due, and for issuance of a warrant. Respondent may cure any default in payment during said 8 days.³

The tenant did not pay the \$4,000.00 by the Dec. 31, 2006 deadline. After the tenant had also not paid rent for January, February and March 2007, the owner moved for a judgment for all outstanding arrears and for a possessory judgment. On April 25, 2007, the owner obtained a default judgment of possession and for the unpaid \$4,000.00 due

under the stipulation. A warrant of eviction was issued.

Ultimately, after a series of unsuccessful motions by the tenant to vacate the judgment, as summarized in the Appellate Division decision, "[i]n July 2007, tenant returned to Civil Court tendering all moneys due under the stipulation as well as rent arrears that had subsequently accrued, and seeking vacatur of the judgment and warrant." (Rent arrears had subsequently accrued since the tenant had paid no rent at all in 2007.) The Civil

stances, a forfeiture is not favored, and tenant should be given an opportunity to cure his default.⁴

The order directed the petitioner "to accept the \$25,600 tendered." The order also provided that "under these circumstances, the petitioner should not only obtain rent owed but be made whole; thus recover legal fees incurred in this proceeding," as per the parties' lease. The Civil Court set the matter down for a hearing on legal fees.

The owner appealed the Civil Court's order to the Appellate Term. By order dated Oct. 8, 2008, the Appellate Term (Douglas E. McKeon, presiding justice and Justices William J. Davis and Sherry Klein Heitler) reversed Civil Court, denied the tenant's motion and reinstated the default final judgment, stating that:

In the absence of any excuse whatsoever for tenant's calendar default or a proper showing of a meritorious defense to landlord's rent claim, tenant's motion to vacate the default judgment should have been denied. Nor was a further stay of execution of the warrant of eviction appropriate in view of tenant's extensive and unexplained rent defaults, both prior to and during the pendency of this "summary" proceeding.⁵

The tenant appealed to the Appellate Division, First Department, which, in an order entered Nov. 24, 2009, unanimously affirmed the Appellate Term. The Appellate Division panel was Presiding Justice David Friedman and Justice James M. McGuire, Dianne T. Renwick, Rosalyn H. Richter, and Sallie Manzanet-Daniels. Citing *Hotel Cameron Inc. v. Purcell*⁶ and *Hallock v. State of New York*,⁷ the court stated that "[e]nforcement of stipulations of settlement, including those in housing court cases, is highly favored by the courts."

The Appellate Division recognized that in certain circumstances, a court could properly choose not to enforce a stipulation, but concluded that none of those circumstances applied in *Chelsea 19 Associates*. Citing *Hotel Cameron* and *City of New York v.*

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Court (Peter M. Wendt, J.) granted the tenant's motion and vacated the warrant.

That July 27, 2007 Civil Court order stated in relevant part:

Respondent has been a tenant, a rent stabilized tenant, in this apartment over 21 years and lives there with his 13 year old daughter who has lived in the apartment for her entire life. To date, \$25,547.75 is owed. Respondent tenders bank checks and money orders totaling \$25,600. Respondent's delay in payment was not willful or deliberate but a result of difficulty in obtaining the funds. Under these circum-

130/40 Essex Street Development Corp.,⁸ the court reasoned as follows:

While the court has discretion not to enforce a stipulation of settlement "where there is evidence of fraud, overreaching, unconscionability, or illegality" [citation omitted], tenant's claimed difficulty in obtaining funds does not fall under that rubric. Accordingly, tenant does not show a meritorious defense to the stipulation, his loss of possession is not a forfeiture but "merely the contracted-for-consequence" of his noncompliance with the stipulation... and Civil Court lacked the discretion not to enforce the stipulation... (citations omitted).⁹

The Appellate Division also rejected the tenant's argument that the landlord's renewal of the tenant's rent-stabilized lease, during the pendency of the appeal before the Appellate Term, purportedly vitiated the warrant of eviction. Quoting from *Waterside Plaza, LLC v. Smith*,¹⁰ the court stated:

Landlord was legally obligated under the Rent Stabilization Code to tender the lease renewal (see 9 NYCRR 2523.5) "and, as such, cannot be deemed to have waived the right to seek judicial rescission of the lease based on [the tenant's] alleged material breach thereof."¹¹

City of New York v. 130/40 Essex Street Development Corp.,¹² one of the cases on which the Appellate Division relied in *Chelsea 19 Associates*, involved similar factual circumstances. There, a landlord had commenced a summary proceeding against a tenant, and the parties had entered into a so-ordered stipulation of settlement in which the tenant consented to the entry against it of a judgment of possession and a money judgment for rental arrears. The stipulation also provided for issuance of a warrant of eviction forthwith, with execution stayed on condition that the tenant pay the amount of the judgment in monthly installments over the course of a year. If the tenant defaulted in complying with any of the terms of the stipulation, the landlord would be entitled to execute the warrant of eviction upon service of a five-day notice of default.

The tenant tendered, five days late, a check for the first installment payment required by the stipulation, but that check was rejected by the bank with the explanation that the account on which it was drawn had been closed. Thereafter, the tenant failed to make the second payment under the stipulation and also failed to pay timely the current monthly base rent.

After the landlord had served a five-day notice of default, a warrant of eviction was issued. Two days later, the tenant's attorney persuaded the landlord to delay executing the warrant by promising to tender by the close of business that day a third-party's check for \$46,770.80. That amount represented full payment of the stipulated judgment and all subsequent arrears up to that date. The attorney, however, failed to keep his promise to deliver such a check.

The tenant then moved by order to show cause to vacate and set aside the stipulated judgment of possession and warrant of eviction, representing that it had lined up a third party to pay the amounts owed the landlord. The motion, however, was not accompanied by any tender of money, and the Civil Court denied the motion and vacated all previously granted stays.

One week after the denial of its motion, the tenant again moved by order to show cause for essentially the same relief, and, now, submitted a certified check in the amount of \$56,109.96. That check had been obtained with funds provided by a third-party and represented payment of the stipulated judgment and all subsequent rental arrears. The tenant requested that the certified check be held in escrow by the clerk pending determination of the motion.

The Civil Court denied the motion, but, on the tenant's appeal, the Appellate Term reversed and granted the tenant's motion. The Appellate Division then reversed the Appellate Term. Quoting from the Court of Appeals decision in *Hallock*, the Appellate Division stated that:

In relieving [the tenant] of the terms of the Stipulation into which it had entered freely, knowingly and with the advice of counsel, Appellate Term ran afoul of the long-established principle that "[s]tipulations of settlement are favored by the courts and not lightly cast aside."¹³

The court continued:

[The tenant] offers no valid excuse for its failure to tender installment payments due under the Stipulation, as well as accruing rent, for more than three months. As Civil Court correctly observed, lack of funds did not excuse [the tenant's] failure to make timely payments under its commercial lease and the Stipulation. Further, under the circumstances of this case, Appellate Term inappropriately allowed its concern to avoid a forfeiture of [the tenant's] alleged expenditures for leasehold improvements to override the [landlord's] contractual right to timely payments under the lease and the Stipulation.¹⁴

Hotel Cameron Inc. v. Purcell,¹⁵ another case relied on by the Appellate Division in *Chelsea 19 Associates*, was a nuisance hold-over proceeding. The alleged nuisance was that the tenant had, on multiple occasions, threatened other tenants and employees of the landlord. The case was resolved by a stipulation of settlement which provided for a judgment of possession and a warrant of eviction. Execution of the warrant was stayed for a two-year period conditioned on the tenant's compliance with certain terms, including not engaging in any behavior alleged in the notice of termination annexed to the petition.

The court enforced the landlord's right under the stipulation to evict the tenant, on five days' notice, for having breached the stipulation by once again engaging in the same objectionable conduct. In so ruling, the Appellate Division

emphasized the significant function stipulations serve:

Strict enforcement of stipulations of settlement serve the interest of efficient dispute resolution, and is essential to the management of court calendars and the integrity of the litigation process.¹⁶

The court continued:

Given the circumstances under which the stipulation was executed and the provisions advantageous to tenant therein, equity would not be served by refusing to enforce the stipulation. Additionally, we would discourage landlords from resolving housing court matters through stipulations of settlement if we were not to enforce this stipulation.¹⁷

Following are points to consider in reviewing the reasoning of these cases:

The factual situation in *Chelsea 19* involves, in the Appellate Term's words, "extensive and unexplained rent defaults, both prior to and during the pendency of this 'summary' proceeding." Not only did the tenant fail to pay by the date stipulated the arrearage that was the subject of the stipulation, but, subsequent to the stipulated date for payment of the arrearage, the tenant thereafter failed for three months to pay current rent. Only then did the landlord seek relief based on the default provision in the stipulation. Ultimately, it was not until approximately seven months after the payment date under the stipulation, during which time the tenant paid no rent at all, that the tenant sought to tender the stipulated payment and the subsequently accrued rent arrears. Similarly, in *130/40 Essex Street Development Corp.*, the tenant not only failed to make the payments per the stipulated schedule but also accumulated months of rental arrears subsequent to the stipulation.

In short, *Chelsea 19 Associates* seemingly demonstrates that the Appellate Division, and the Appellate Term, First Department, will not tolerate a tenant's essential disregard of a stipulated rent payment schedule and of subsequently accruing rent obligations. A tenant's supposed difficulty in obtaining funds is not a cognizable justification for such non-compliance. The message appears to be that extremely delayed payment, even if attorney's fees are imposed, is justice denied and inconsistent with the finality that should be accorded to stipulations.

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1. 67 A.D.3d 601, 889 N.Y.S.2d 564 (1st Dep't 2009), NYLJ, Nov. 30, 2009, p. 26, col. 5.
2. Certain facts set forth in this article are taken from the Appellate Division Record on Appeal. See Record on Appeal at pp. 16-17, 94.
3. Appellate Division Record on Appeal at p. 45.
4. Appellate Division Record on Appeal at p. 10.
5. 21 Misc.3d 129(A), 873 N.Y.S.2d 232, 2008 N.Y. Slip. Op. 52013(U) (App. T. 1st Dep't. 2008).
6. 35 A.D.3d 153, 827 N.Y.S.2d 13 (1st Dep't. 2006).
7. 64 N.Y.2d 224, 485 N.Y.S.2d 510 (1984).
8. 302 A.D.2d 292, 756 N.Y.S.2d 23 (1st Dep't. 2003).
9. 64 A.D.3d at 602, 889 N.Y.S.2d at 566.
10. 12 A.D.3d 231, 785 N.Y.S.2d 419 (1st Dep't. 2004).
11. 67 A.D.3d at 602, 889 N.Y.S.2d at 566.
12. See footnote 8, supra.
13. 302 A.D.2d at 293, 756 N.Y.S.2d at 25.
14. 302 A.D.2d at 294, 756 N.Y.S.2d at 25.
15. See footnote 6, supra.
16. 35 A.D.3d at 155, 827 N.Y.S.2d at 15.
17. 35 A.D.3d at 156, 827 N.Y.S.2d at 15-16.