

### LANDLORD-TENANT

# Stipulations of Settlement: Not Always Final and Binding



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In the context of summary proceedings, as with other types of litigation, parties and the courts often prefer that disputes be resolved by consensual agreement. Settlements offer the parties the benefit of finality, and avoid the costs and risks involved in litigating a matter to a final conclusion. Settlements are encouraged by the courts, and it has long been the law that stipulations of settlement are “not lightly cast aside.” *Hallock v. State of New York*, 64 N.Y.2d 224, 230 (1984). Such is particularly so in the case of “open court” stipulations “where strict enforcement not only serves the interest of efficient dispute resolution but is also essential to the management of court calendars and the integrity of the litigation process.” *1420 Concourse Corp. v. Cruz*, 135 A.D.2d 371, 372 (1st Dept. 1987).

Nevertheless, there are limited instances where stipulations of

settlement *are* cast aside, and do not achieve the goal of finality which the parties presumably had intended to achieve by settling their dispute. This is particularly so in the context of *pro se* litigants, who are generally in a better position to try to avoid the consequences of a stipulation of settlement.

An October 2018 decision by Queens County Housing Court Judge Julie Poley in *Help Social Servs. Corp. v. John*, Index No. L&T 055660/2018 (Civ. Ct. Queens Co. 10/5/18) (*John*) stands as a recent example of a stipulation of settlement of a summary proceeding being set aside based upon certain compelling circumstances presented to the court.

In *John*, the landlord commenced a summary nonpayment proceeding against the residential tenant seeking to recover possession of the subject apartment B9, located at 203 Hollis Avenue, St. Albans, New York. The petition pleaded that the tenant received rental assistance from the New York City Living in Communities (LINC) Rental

Assistance program, and that the apartment was supportive housing pursuant to a memorandum of understanding with the New York City Department of Mental Health and Hygiene.

The tenant filed a *pro se* answer to the petition. At the first appearance in court in March 2018, the tenant, appearing *pro se*, entered into a stipulation of settlement with the landlord. The stipulation of settlement granted the landlord a final judgment of possession in the amount of \$5,930.48 owed through March 2018, warrant to issue forthwith, with execution of the warrant stayed through May 7, 2018 to permit the tenant to pay the rent arrears. If the tenant failed to pay the arrears on or before May 7, 2018, the landlord could execute on the warrant and evict the tenant from the apartment.

Thereafter, the tenant apparently retained counsel, who, on May 14, 2018, moved by order to show cause for an order (1) appointing a guardian ad litem for the tenant because he allegedly suffered from

mental illness, and (2) vacating the stipulation of settlement and dismissing the non-payment petition on the ground that the predicate rent demand was defective and improper. While the motion was pending, the Adult Protective Services program (part of the New York City Human Resources Administration) advised the court that the tenant was accepted for participation within their agency, and that the tenant was in need of assistance because the tenant “suffer[ed] from mixed bipolar disorder and impulsive control disorder, receives medication for these mental health conditions, and is receiving psychotherapy.” At that time, on consent of all parties, the court granted that portion of the motion seeking appointment of a guardian ad litem, and adjourned the remainder of the motion for argument and determination.

The court decided the remainder of the tenant’s motion in October 2018. At the outset, it observed that while stipulations of settlement are favored by the courts and “not lightly cast aside,” they *can* be vacated where a party can show “cause sufficient to invalidate a contract, such as fraud, collusion, mistake or accident.” The court, citing to the First Department’s decision in *1430 Concourse v. Cruz, supra*, further observed that it “possesses the discretionary power to relieve parties from the consequences of a stipulation effected during litigation on such terms as it deems

just and, if the circumstances warrant, it may exercise such power if it appears that the stipulation was entered into inadvisedly or that it would be inequitable to hold the parties to it.”

The Court also cited to several cases supporting the proposition that a stipulation of settlement may be vacated on the ground of “unilateral mistake” and that “vacatur of a stipulation is appropriate when a party—especially one who appears without counsel—enters into an agreement improvidently, and, in so doing, forgoes defenses sufficient to defeat the proceeding.”

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The court found that based on the foregoing principals, the tenant had established his entitlement to vacate the stipulation of settlement. It held that such was established by virtue of tenant’s “diagnosed mental illness and [tenant’s] affidavit stating he was uncertain whether he wanted to enter into the agreement in which he was not represented by counsel....”

To make matters worse for the landlord, the court went on to find that the predicate rent demand was defective, thereby requiring the dismissal of the nonpayment proceeding. It observed that a predicate rent demand required by RPAPL

§711(2) “must clearly state the approximate good faith estimate of the sum allegedly due as well as the period for which the rent is demanded.” The court found that the landlord’s rent demand was improper in that it failed to reflect payments (shown on the landlord’s own rent ledger) that the landlord had received from the New York City Human Resources Administration for the same period of time demanded in the rent demand and the petition. As such, it dismissed the proceeding without prejudice.

### Conclusion

*John* stands as a cautionary reminder that, particularly when dealing with *pro se* tenants, stipulations of settlement may ultimately not be enforced, and may not accomplish the goal of finality which had hoped to be achieved. Landlords cannot take comfort that because the tenant signed a stipulation of settlement, the matter has been finally resolved.