
Rama and Manjula, LLC
(A Corporation)

Petitioner

against

Christine Fye and John Doe
26 Bushwick Avenue Apt. 2Frt
Brooklyn, NY 11211

Respondents

Motion to Vacate Stipulation of Settlement as Fatally Defective

1. Now comes John Doe, Respondent, proceeding *pro se* on behalf of Respondents, and respectfully prays this Honorable Housing Court grant this Motion to Vacate Stipulation of Settlement as Fatally Defective, on the basis of the information submitted below, and to declare the terms of the Stipulation null and void.
2. In support of this Motion, Respondents respectfully submit that the Stipulation is fatally defective in that:
 - a. Petitioner has engaged in a persistent pattern of illegal actions;
 - b. The Stipulation failed to provide any remedy for the Counterclaims made against Petitioner by Respondents based on Petitioner's Breach of Warranty of Habitability, and violating the terms of the Stipulation of Settlement that the Stipulation is based on a "review of all issues in the case";
 - c. Petitioner misrepresented the terms of the Stipulation to Respondent #1;
 - d. Shortcomings in the computerized information system in this Honorable Housing Court that prevented Respondent #2 from finding the Courtroom in a timely manner and in being a party to the Stipulation.
3. **Illegal Actions by Petitioner**
 - a. **Illegal Multiple Dwelling:** Petitioner has not registered the building with the City within the last three years as a multiple dwelling, as required by law, and has knowingly allowed a false and grossly outdated Certificate of Occupancy for the building to persist in the records of the Department of Buildings.
 - i. The Certificate of Occupancy for the building on file at the Department of Buildings - copy attached - is dated November 1924 and is based on permitted occupancy of the building for "Stores and 4 family apartments".
 - ii. The actual use of the building is as six apartments, all of which are currently occupied; the two additional apartments

- on the ground floor - have been converted from the former store and from a garage.

- iii. According to information provided by a tenant in one of the ground floor apartments, Petitioner acknowledged that the building did not have a valid Certificate of Occupancy at the time petitioner rented the apartment, and has failed to comply with the tenant's request for Petitioner to file a true Certificate of Occupancy.
- iv. Petitioner has failed to post a copy of the Certificate of Occupancy, and other information that is required by law to be posted in a multiple dwelling, in any visible part of the building.
- v. Respondents respectfully submits that the actions - and inaction - of Petitioner by no means represent an isolated case on Petitioner's behalf, and are indicative of a systematic pattern of illegal actions by Petitioner:
 - (1) When discussing this case with a Counselor at St. Nicholas Neighborhood Preservation Corporation, Resident #2 was informed that Petitioner - under the names of a number of different corporations - has been the subject of numerous complaints by Petitioner's tenants.

b. **Interest on Security Deposit:** Petitioner's failure to comply with the law concerning the building's Certificate of Occupancy can not be used as a justification for evading the responsibility of owners of building with six or more apartments to deposit Residents' security deposit in an interest-bearing account.

- i. Any Stipulation of Settlement must therefore require Petitioner to pay full interest on Residents' security deposit at such time as Residents vacate the apartment from the time the security deposit was made.

c. **Retaliatory Refusal to Renew Lease:** Petitioner's refusal to renew Respondents' lease was illegal, as it was in direct retaliation for Respondents' complaint to the Heating Department that resulted in a citation against Petitioner.

- i. Petitioner's agent admitted to Respondents that Petitioner's refusal to renew the lease was retaliatory.
- ii. Petitioner's illegal failure to file a Certificate of Occupancy can not be permitted to exempt Petitioner from requirements of the law the prohibit Petitioner from for less than six apartments does not provide Petitioner with immunity from the retaliatory non-renewal of the lease, as Petitioner has illegally failed to file a true Certificate of Occupancy.

d. **Improper Service:** Petitioner provided false and misleading information to the Court in the copy of the Five Day Notice that had been served on Respondents and in the sworn affidavit of Petitioner's process server.

- i. **False Affidavit of Process Server:** The Certificate of Service provided to the Court by Petitioner was false. No copies of the Five Day Notice were posted on the door of the

property on 15 April 2000 as claimed in the process server's sworn statement. Respondents also did not receive a copy of the Notice either by Certified Mail or by regular first class mail, nor did Respondents receive a notice of attempt to deliver Certified Mail from Petitioner.

- ii. **Actual Date of Service:** Petitioner's process server eventually did serve Respondents with a copy of the Five Day Notice - at approximately 10 am on the morning of April 20 - three days before the date of required payment. Respondent #2 is aware of the time, as he had just left the building when he was approached by a man who asked if Respondent #1 was in the building; Respondent #2 answered that she was not, and the man asked to be let into the building so he could deliver a notice to her. At that time, Petitioner's process server did not post a copy of the notice "upon a conspicuous part" of the property, but slipped it under the door of Respondents' apartment.
 - iii. **Failure to Comply with Five Day Notice Requirement:** The Five Day Notice that was finally served on Respondents on April 20 bore the date April 13, 2000, and stated that "You are required to pay by 04/23/00 which is more than five days from the date of service of this notice."
 - iv. **Respondents' response to Petitioner re Five Day Notice:** On reading the defective Five Day Notice that was delivered on 20 April, Respondents telephoned Petitioner and left a clearly-worded voice mail message stating that the Notice was not valid as it contained false information on the date of service and that it failed to provide the minimum of five days notice as required by law.
4. **Breach of Warranty of Habitability:** Petitioner has failed to maintain a habitable apartment, and has been grossly negligent in his persistent failure to correct a large number of defects in Respondents' apartment, and in the building as a whole, that have been reported to Petitioner by Respondents. Petitioner has persistently failed to correct the problems despite Respondents' repeated requests to Petitioner. The defects, forming the basis for Residents' Counterclaim against Petitioner, include the following:
- a. **Door Bell:** Petitioner has failed to provide a functioning door bell to Respondents' apartment. The door bell to Respondents' apartment has not worked for the two years Respondent #2 has occupied the apartment. This has resulted in substantial delays and inconvenience to Respondents when efforts have been made to receive important Certified Mail and overnight mail and packages and has cause inconvenience for Respondents' visitors.
 - b. **Security:** Petitioner has failed to correct serious security violations in the building.
 - i. **Outside Front Door:** In wet weather in the summertime, the outside front door of the building frequently fails to close automatically, with the result that on numerous occasions, Respondents have arrived at the building and found the front door not to have closed properly, allowing unrestricted entry to the building to any passerby, especially given the condition of the inner door that offers no barrier to entry.

- ii. **Inside door:** The lock on the inner door to the building can easily be pushed open - e.g. with a credit card, or piece of cardstock. Anyone who is able to enter the front door of the building can also reach the inside of the inner door by pushing back an unattached wire grille. (Respondents have taken photographs of this and other conditions, and are prepared to present the photos as evidence at a trial of Residents' Counterclaim.
- c. **Cleanliness:** Petitioner has not cleaned the stairs and hallway since Petitioner purchased the building, and both are in filthy condition.
- d. **Hot water:** Petitioner has failed to provide an adequate supply of hot water at a reasonable temperature. The hot water in Respondents' apartment has been very erratic. The hot water alternates between either scalding hot - seemingly above the legal maximum for apartments in New York City - and becoming cold very quickly.
 - i. **Discomfort, Denial of Opportunities for Relaxation:** Petitioner's failure to provide adequate hot water has resulted in Respondents very rarely being able to enjoy the opportunity of the relaxation of a hot bath. Respondent #2 normally works very long hours, and during the month of December 1999, his workload was even heavier than usual as he had undertaken major responsibilities for last-minute global dissemination of community-based contingency plans for potential Y2K disasters and he was frequently working as much as eighteen hours a day, and was sorely in need of the relaxation of a hot bath.
 - ii. **Inspection:** Respondents had complained repeatedly to Petitioner about the lack of heat. On one such particularly intolerable occasion, Respondents submitted to Petitioner that there are City laws concerning the provision of adequate heat. Petitioner told Respondents to report this. Respondents did so, and an Inspector visited the building, confirmed the violation, and issued a citation to Petitioner.
 - iii. **Retaliatory Non-Renewal of Lease:** Following this incident, Petitioner sent Respondents a letter (attached) refusing to renew the lease. Petitioner's agent subsequently admitted to Respondents - in the context of yet another effort by Respondents to have Petitioner correct a problem - that the refusal to renew the lease was in retaliation for the complaint and the citation.
 - iv. **Respondents' Lack of Response to Notice of Non-Renewal:** Since Petitioner's refusal to renew the lease clearly constituted an illegal retaliatory response - and was confirmed to be so by Petitioner's agent - Respondents considered it was not even worthy of a response.
- e. **Heat:** Petitioner has failed to provide adequate heat. The heating system in the building is severely dysfunctional, resulting in frequent failure to provide heat to Respondents' apartment in the winter, and providing unneeded and unwanted heat in warm weather.
 - i. After Respondents' repeated complaints, Petitioner eventually installed a new thermostat - with a locked cover

that prevents Respondents from adjusting the temperature - in the second floor hallway opposite a window.

- (1) Initially, the new thermostat did nothing to correct the lack of heat, however, Respondents discovered that by opening the window and allowing freezing air to come into the building, this was often, but not always, sufficient to start up the furnace and provide heat to Respondents' apartment.
 - (2) Respondents were reluctant to use this improvised means of activating the thermostat as it is extremely wasteful of energy, and Respondent #2 has had a lifelong commitment to energy conservation, and a primary focus of his work for the past eleven years has involved participation in numerous United Nations Conferences and other proceedings relating to sustainability and to the responsible use of the Earth's finite natural resources.
- ii. On the occasions when the heat does come on, Respondents' apartment tends to become overheated very quickly - even though Respondents have turned off all but one radiator; Respondents' only available remedy has been to open a window.
 - iii. The lack of heat in Respondents' apartment meant that the main bedroom, which has no radiator in it, was frequently too cold to allow Respondents to sleep in reasonable comfort, requiring Respondents to move the bed into the living room for most of the winter. This has effectively required Respondents to forfeit normal use of part of the apartment, and has interfered with the normal use of the living room.
 - iv. The defects in the heating system have persisted since the date of the Stipulation. In the midst of the unusual spells of hot and cold weather in the recent past, the behavior of the heating system can only be described as bizarre. On many recent days of warm and hot weather, the heat has come on in Respondents' apartment, while on the unseasonably cold days, there has been no heat.
 - v. Respondents have maintained records of some of the worst episodes of malfunctioning of the heating system, and can also provide relevant narrative description of these episodes.
- f. **Stove:** Petitioner has failed to repair or replace a gas stove that has only one working burner, resulting in great inconvenience to Respondents when preparing meals.
 - g. **Sink:** Petitioner has failed to repair a leaking drain from the sink.
 - h. **Failure to provide access to Meters:** Petitioner has failed to access to meters for gas and electric service. This failure has resulted in Respondents twice having had to pay a \$25 penalty to Con Edison.
 - i. **Garbage and Recycling:** Petitioner has only provided four garbage cans to serve the six apartments - one of the cans is for

recycling. The garbage area is always a mess, and there is usually not enough room in the cans to place one's garbage or recycling materials.

j. **Graffiti:** Petitioner has made no effort to remove a growing body of graffiti on the outside walls.

5. **Misrepresentation of Terms of Stipulation:** Petitioner - through his attorney - had misrepresented the terms of the Stipulation to Respondent #1 as follows:

a. Petitioner did not advise Respondent #1 that the Stipulation included the two payments of \$800 due under the terms of the Stipulation on 15 June 2000 and 1 July 2000

b. Petitioner represented to Respondent #1 that the Stipulation included two months of free rent - for the months of June and July 2000 - however no reference was made to these terms in the Stipulation.

i. An examination of the payments called for in the Stipulation reveals that Petitioner had sought rent for one month more than was due, and would have only provided for one month's rent-free occupancy of the apartment.

c. Petitioner persuaded Respondent #1 to agree to the Stipulation despite her communicating clearly to him that:

i. She wanted the matter to go to trial.

ii. She did not want to agree to the terms to any Stipulation without full consultation with Respondent #2 - her husband and a named Respondent in the proceedings before this Court.

d. Petitioner stated to Respondent #1 that Respondents would not be able to reach a more favorable settlement if the matter were to go to trial.

6. **Effective Denial of Opportunity for Respondent #2 to Participate in Proceedings:** Respondent #2 was effectively denied the opportunity to participate in the pre-trial negotiations; had he been able to participate he would not have agreed to the Stipulation as it was written.

a. **Failure of the Court to Provide Timely Information of Location of the Courtroom:** The Court was unable to provide Respondent #2 with timely information as to which Courtroom the matter was being heard in, preventing him from reaching the Courtroom in time to participate in pre-trial negotiations with Petitioner.

i. Respondent #2 - not being in possession of a copy of the Court document indicating the number of the Courtroom - proceeded to Room 203 on the advice of a Courtroom employee.

ii. When Respondent #2 - after a lengthy wait in the Information line in Room 203 - culminating in a period of approximately 15 minutes when the Court Officer staffing the Information window was absent from the window - asked the Court Officer at the Attorney window if she could look up the case. When Respondent #2 gave her the name of Respondent #1, the Officer informed him that there was no such case in the computer. When Respondent #2 stated that he knew the matter

was scheduled, and also gave her the address of the property, the Court Officer at the Attorney Window in 203 looked again in the computer, and still was unable to find any record of the matter; she suggested to Respondent #2 that perhaps the matter was being heard as a Small Claims matter and directed him to the appropriate window.

- iii. Respondent #2 then proceeded to the Small Claims information window, again with no success; from there he was advised to go to another floor, once again without success in locating any information about the case or where it was being heard.
 - iv. Respondent #2 eventually returned to the Information window in Room 203. This time, the Court Officer was present at the Information window; he was also initially unable to find a record of the case. After Respondent #2 insisted that the case was scheduled, the Court Officer then asked if there were other persons named in the proceedings; when informed by Respondent #2 that he had been included as John Doe, the Court Officer was finally able to identify the case and to provide Respondent #2 with the location of the Courtroom.
- b. When Respondent #2 finally arrived at the correct Courtroom, Respondent #1 described to him the terms of the Stipulation as they had been presented to her (i.e. without reference to the \$800 payments due on 6/15/00 and 7/1/00 and as including no rent for the months of June and July), and informed Respondent #2 that she had already signed the Stipulation - despite her reservations about its terms, and her desire that the case go to trial - but that it had not yet been presented to the Judge for approval.
- i. Respondent #2 reluctantly agreed to the terms of the Stipulation as described to him by Respondent #1, despite Respondents' conviction that the persistent failure of Petitioner to correct Housing Code violations and the grossly negligent manner in which Petitioner had managed the property (described below) were of such magnitude that Respondents would prevail at a Court Trial.
 - ii. Based on the understanding of the Stipulation as it had been represented to Respondent #1, Respondent #2 consented to Respondent #1 proceeding with having the Stipulation approved by the Judge.
 - iii. At the time of the Court date, Respondent #2 had been engaged in the preparation of critical recommendations for a major conference that was to be held at the United Nations from 22-26 May for which Respondent #2 was in a position of substantial responsibility. Respondent #1 suggested that Respondent #2 go to Respondents' automobile, where he was able to resume work on the recommendations on his portable computer.
7. **Respondents' Counterclaim:** In the face of Petitioner's persistent and gross failure to correct the defects in the apartment and the building, Respondents decided to withhold payment of rent until the problems were corrected to Respondents' satisfaction. Respondents respectfully request that this Honorable Housing Court order Petitioner to:
- a. Correct all the above-noted defects of the apartment and common areas of the building;

- b. Make payment - or issue credit against future rent due - of two month's rent (\$1,600) -in compensation for the discomfort, inconvenience and damages suffered by Respondents over the past two years;
 - c. File a true Certificate of Occupancy for the building and post it and other requisite information in a conspicuous part of the building;
 - d. Provide Residents with the opportunity to renew the lease to the apartment;
 - e. Place Residents' security deposit (\$750) into an interest-bearing account immediately, and add \$160 to that account to make up for the interest that would have been earned by that deposit at 8% per annum interest in the two and a half years since Petitioner purchased the building.
8. **Establish Escrow Account:** Respondents further respectfully request that this Honorable Housing Court establish an escrow account to hold future rent payments from Respondents until the requisite repairs are made by Petitioner.
9. **Apologies for Delays in Filing of this Motion:** Respondents respectfully pray that this Honorable Housing Court accept Respondents' apologies for the delay in filing this Motion, taking into consideration the following:
- a. **Burdensome and Time-Consuming Procedures:** The requirements of this Honorable Housing Court are unduly burdensome and inequitable for parties who are unable to afford the services of an attorney, and fail to make appropriate or effective use of modern technology that is now routinely used in the conduct of business, and that could greatly enhance the equitable and timely administration of justice and the law in this Honorable Housing Court.
 - i. **Service of Documents:** Current procedures fail to allow for the provision for timely, efficient and inexpensive procedures for service of documents that could be readily made available through well-designed protocols and procedures for the use of electronic mail and standard electronic forms.
 - ii. **Comprehensive, Accessible Information Systems:** The task of gaining access to facts and records that are necessary for this Honorable Housing Court - for example, access to Certificates of Occupancy and records of complaints and citations - is burdensome for all parties, including this Honorable Housing Court. These burdens can be greatly lessened for all parties through the application of readily available relational database and Internet technologies.
 - iii. **Particular Burdens of Respondents in this Case:** Respondent #2 has had longstanding responsibilities in his more than full-time *pro bono* work as United Nations Representative and Information Ecologist for Information Habitat: Where Information Lives, a Non-Governmental Organization in Special Consultative Status with the Economic and Social Council of the United Nations, during the period immediately following the time of the Court hearing.

- (1) In particular, Respondent #2 has had major obligations as a member of the Executive Committee, Coordinator for Information and Communication, and Convenor of an Information Ecology Working Group for the Millennium Forum that was held at United Nations Headquarters in New York from 22-26 May and that was attended by more than 1,200 representative from non-governmental organizations from over 100 countries.
 - (2) Respondent #2 has been required to devote intensive time and energy to address critical follow-up matters to the Forum in the period since then, in addition to other pressing responsibilities - responsibilities that have been made substantially more difficult in the face of his need prepare this Motion and to engage in research and consultation on matters of law and fact to defend Respondents' home against the illegal actions of Petitioner and the defective Stipulation of Settlement.
 - (3) Respondent #2 also faces major responsibilities in the broader context of his duties on behalf of Information Habitat, including planning and preparations for a major initiative to be launched on the 20 June 2000, the Summer Solstice / Mid-Summer's day, and in conjunction with final preparations for his key support role in a major women's peace initiative in Sierra Leone.
10. On the basis of the information presented above, Respondents respectfully pray that this Honorable Court grant this Motion to Vacate Stipulation of Settlement as Fatally Defective, and to declare the terms of the Stipulation null and void; and to order a trial on the basis that takes full cognizance of Respondents' Counterclaim.
 11. Respondents further pray that this Honorable Housing Court will consider a comprehensive set of remedies that Respondents is in the process of completing that include:
 - a. Modernizing the system for administration of this Honorable Housing Court through the appropriate use of information and communication technology.
 - b. Taking into consideration international agreements relating to sustainable and ecologically sound housing - including Agenda 21 adopted at the 1992 Earth Summit and the 1996 Habitat Agenda adopted at the Second United Nations Conference for Human Settlements (Habitat II). Both of these agreements have been signed by the United States Government, and include agreements to involve local units of government in their implementation.
 - i. Respondents further stipulate as fact that the United Nations Centre for Human Settlements (UNCHS) has launched a Global Campaign for Secure Tenure as a central element of its follow-up to Habitat II, and will be hosting a panel discussion at United Nations Headquarters on Wednesday 14 June 2000.
 - ii. Respondents respectfully gives notice to this Honorable Housing Court of their intention to present the instant case as a Case Study for the Global Campaign for Secure Tenure, and to present it as such at the forthcoming panel discussion and to other interested parties, as it represents

a classic case of unlawful and irresponsible actions by a landlord of sub-standard inner-city rental properties, and of the undue and inequitable burdens faced by tenants under the present system for administration of justice in this Honorable Housing Court.

12. Respondents are convinced that a well-developed demonstration proposal for such remedies may have an excellent chance of obtaining funding for its implementation from the Housing and Urban Development (HUD) department of the United States Government, or from some other such source, especially given that the County of Kings / Borough of Brooklyn has a very substantial stock of sub-standard rental housing.
 - a. In particular, Respondents submit that these remedies may be of particular interest and relevance to the International Affairs division of HUD given that, to Respondents' knowledge, the County of Kings / Borough of Brooklyn has the most diverse population, in terms of international origin, of any county in the United States, and for that matter, of any local jurisdiction in the entire world. Respondents have already communicated with an official in the International Affairs division to explore possible interest in this case and in supporting a pilot project in this Honorable Housing Court.

Respectfully submitted this 12th day of June in the year 2000.

John Doe