

**DISTRICT COURT OF NASSAU COUNTY
FIRST DISTRICT L&T PART**

-----X
NATIONWIDE PROTECTION LTD.,

Petitioner(s)

INDEX NO. SP 3254/09

against

**Present:
Hon. Scott Fairgrieve**

LAZARO MARTINEZ,

Respondent(s)

-----X
**The following named papers numbered 1 to 3
submitted on this Motion
on October 27, 2009**

	<u>papers numbered</u>
<u>Notice of Motion and Supporting Documents</u>	<u>1</u>
<u>Order to Show Cause and Supporting Documents</u>	
<u>Opposition to Motion</u>	<u>2</u>
<u>Reply Papers to Motion</u>	<u>3</u>

On June 9, 2009, Nationwide Protection Ltd (hereinafter "Petitioner") and Lazaro Martinez (hereinafter "Respondent") entered into a Stipulation of Settlement Agreement (hereinafter "Settlement Agreement"). The Respondent, therein, consented to an immediate entry of judgment of possession with a warrant of eviction stayed until August 15, 2009. Respondent further agreed to tender a payment totaling \$1,180.00 to Petitioner for the May 15, 2009 - June 15, 2009 rental period. This amount was due on or before June 15, 2009. In consideration of the foregoing, Respondent also relinquished all claims to the return of his security deposit in the amount of \$1,500.00. Petitioner also agreed to waive all arrears in rent, as well as use and occupancy, through August 15, 2009. Lastly, the final provision in the Settlement Agreement stated that upon vacating the premises as per the stipulation, Petitioner was to deliver to the Respondent a signed statement acknowledging that all rent and other charges due for the premises have been paid in full.

Respondent was unable to vacate by the date set forth in the Stipulation of Settlement Agreement. Thus, Respondent brought an Order to Show Cause on September 11, 2009 requesting that the Petition instituted by the Petitioner should be dismissed, or in the alternative, the action should be restored to the trial calendar. On September 17, 2009, the Court denied Respondent's Order to Show Cause, but awarded the Respondent a stay of the execution of the warrant of eviction until September 30, 2009.

Apparently, Respondent timely vacated the subject premises on September 30,

2009. Respondent also paid \$1,128.00 of the \$1,180.00 pursuant to the Settlement Agreement. Respondent claims that the Settlement Agreement was complied with in regards to the monies to be paid to Petitioner because Respondent made a \$52.00 repair on the premises. Thus, \$52.00 was deducted from the \$1,180.00 to be paid to Petitioner.

The Petitioner now brings forth a Motion to Resettle the Short Form Order written by this Court on September 17, 2009. The Petitioner claims that on this date, Petitioner requested, by way of an Affidavit in Opposition, that this Court,

- (1) find the Respondent in default of the terms of service as set forth in the Order to Show Cause
- (2) deny Respondent's motion in all aspects
- (3) lift the stay from the warrant of eviction
- (4) amend Petitioner's Judgment to include an award for money damages for all unpaid back rent retroactive to April 2009 in the sum of \$1,394.00, and rent for the months of June, July, August, September in the amount of \$4,720.00
- (5) grant Petitioner legal fees totaling \$1,000.00.

By present Motion, Petitioner alleges that the Short Form Order written by this Court did not address Petitioner's request for rental arrears, rent for months post-petition, and legal fees; therefore, Petitioner requests that the Court amend its Judgment to include these amounts. The Petitioner further requests that the Petitioner's Judgment be amended to include use and occupancy fees for an aggregate of \$1,770.00 for the period of August 15, 2009 – September 30, 2009. In sum, Petitioner requests that this Court amend its Judgment to include monetary awards in the amount of \$6,114.00.

After a thorough review of all corresponding documents, the Court denies Petitioner's Motion to Resettle the Short Form Order to include a monetary judgment in favor of the Petitioner.

The Settlement Agreement is clear and does not entitle Petitioner to collect rental arrears, rent from June 2009 – September 2009, nor use and occupancy fees for the period of August 15, 2009 – September 30, 2009. It is explicitly stated in the Settlement Agreement that the Petitioner waives all other arrears in rent and use and occupancy through August 15, 2009. There is no provision in the Settlement Agreement that provides remedies for Petitioner in case Respondent defaults. If Petitioner wished to collect monies in the event that Respondent breached the Settlement Agreement, a provision detailing such claims should have been incorporated into the Settlement Agreement. Such a provision cannot be implied within a Settlement Agreement that has already been negotiated and signed.

In view of the foregoing, Petitioner Motion to Resettle the Short Form Order is denied.

So Ordered:

A handwritten signature in black ink, appearing to be 'S. F.', written over a horizontal line.

DISTRICT COURT JUDGE

Dated: **NOV 04 2009**

CC: Allen Michelson, Esq.
Lazaro Martinez, pro se

SF/mp