

Supreme Court, Appellate Division, Second Department,
New York.

**In the Matter of Irma MARTINEZ, Petitioner-
Respondent,**

v.

**Laura JACOBSON, etc., et al., Appellants, et al.,
Respondent.**

Aug. 24, 1998.

In commercial nonpayment proceeding, landlord and tenant entered into written stipulation providing for entry of monetary and possessory judgment in favor of landlord and issuance of warrant of eviction. The Civil Court, City of New York, Laura Jacobson, J., refused to sign judgment because she had not previously reviewed or "so-ordered" stipulation. Landlord brought article 78 proceeding in nature of mandamus to compel the signing of judgment and issuance of warrant. The Supreme Court, Kings County, Vinik, J., granted petition. On appeal, the Supreme Court, Appellate Division, held that: (1) stipulation was binding, and (2) granting of judgment was strictly a "ministerial act."

Affirmed.

West Headnotes

[1] Compromise and Settlement  **5(1)**

89k5(1) Most Cited Cases

Stipulation settling commercial landlord's nonpayment proceeding against tenant was binding, even though judge had not "so-ordered" stipulation; stipulation was signed by counsel for respective parties during court appearance, and there was no evidence of fraud, overreaching, unconscionability, or illegality. McKinney's CPLR 2104.

[2] Mandamus  **51**

250k51 Most Cited Cases

Signing of judgment of stipulation settling commercial landlord's nonpayment proceeding against tenant was simply a "ministerial act," and thus, landlord's clear right to relief justified utilization of mandamus remedy, where stipulation was signed by counsel for respective parties during court appearance and there was no evidence of fraud, overreaching, unconscionability, or illegality.

Dennis C. Vacco, Attorney-General, New York, N.Y. (Thomas D. Hughes and Lyssa M. Sampson of counsel), for appellants.

Meryl L. Wenig, Brooklyn, N.Y., for petitioner-respondent.

SULLIVAN, J.P., PIZZUTO, ALTMAN and
FRIEDMANN, JJ.

MEMORANDUM BY THE COURT.

In a proceeding pursuant to CPLR article 78 in the nature of mandamus to compel the signing of a judgment in favor of the petitioner and the issuance of a warrant of eviction in a proceeding entitled *Martinez v Paulino* in the Civil Court of the City of New York under Index No. 83151/96, Laura Jacobson, a Judge of that court, and Jack Baer, Chief Clerk of that court, appeal from a judgment of the Supreme Court, Kings County (Vinik, J.), dated August 1, 1997, which granted the petition.

ORDERED that the judgment is affirmed, with costs.

In settlement of a commercial nonpayment proceeding commenced pursuant to RPAPL article 7, the attorneys for the petitioner and for the respondent Elido Paulino entered into a written stipulation providing for the entry of a monetary and possessory judgment in favor of the petitioner and the issuance of a warrant of eviction. The appellant Judge refused to sign the judgment presented to her for signature because she had not previously reviewed or "so-ordered" the stipulation. The petitioner then commenced this CPLR article 78 proceeding in the nature of mandamus to compel the signing of a judgment and issuance of the warrant. The Supreme Court granted the petition, concluding that the stipulation was binding pursuant to CPLR 2104 and, under the circumstances, the granting of a judgment was a strictly ministerial act. We agree.

[1] The stipulation, signed by counsel for the respective parties during a court appearance, was binding. There is no requirement that such a stipulation be "so-ordered" (*see*, CPLR 2104). While a Judge certainly has discretion to refuse to enforce a stipulation where there is evidence of fraud, overreaching, unconscionability, or illegality (*see*, *Hallock v. State of New York*, 64 N.Y.2d 224, 485 N.Y.S.2d 510, 474 N.E.2d 1178), there is no such evidence in this case. Consequently, there was no legal basis for the Judge's refusal to enforce the parties' stipulation.

[2] Under the unique circumstances of this case, the signing of a judgment was simply a ministerial act. The petitioner has demonstrated a "clear legal right" to relief and, therefore, the remedy of mandamus is available (*see*, *Matter of County of Fulton v. State of New York*, 76 N.Y.2d 675, 678, 563 N.Y.S.2d 33, 564 N.E.2d 643). The fact that a Judge may have discretion to refuse to enforce a stipulation under certain circumstances does not defeat the right to mandamus relief in this case where there was no reason to refuse to do so (*see*, *Matter of Mennella v. Lopez-Torres*, 91 N.Y.2d 474, 672 N.Y.S.2d 834, 695 N.E.2d 703).