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2021-11-05

### 516 Realty NY LLC v. Hamner

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"516 Realty NY LLC v. Hamner" (2021). *All Decisions*. 53.  
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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK

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Index No. 75309/18

516 REALTY NY LLC,

Petitioner,

-against-

DECISION/ORDER

EVA HAMNER,

Respondent.

-----X

SCHNEIDER, J.

This is a nonpayment proceeding, commenced by petitioner in October 2018. Both sides have been represented by counsel since the beginning of the case. In March 2019 a stipulation between the parties indicated that \$6189.56 was tendered to petitioner covering rent due through February 2019, and that respondent would tender the March and April 2019 rent at \$770.57 per month by April 26, 2019. The stipulation also required repairs to the apartment. In June 2019, petitioner’s motion for judgment was granted on consent. The June stipulation provides for a judgment for \$3082.26, representing the rent for March through June 2019 at \$770.57 per month. A warrant issued on that judgment on June 20, 2019. Execution of the warrant was stayed several times to permit more time to pay. The last stipulation before the onset of the Covid-19 pandemic emergency in New York is dated February 25, 2020. This stipulation indicates that respondent has tendered \$6215.99 in court, that she owes a balance of \$1566.01 through February 2020, and that she will pay that amount plus the March 2020 rent of \$770.57 by March 24, 2020. The stipulation included a paragraph providing that payments made after the one made in court would be credited to current rent first and then to the outstanding arrears.

At this point in the case, the pandemic disrupted court operations, and the case was not heard again until early in 2021 when the court first heard petitioner's motion for leave to execute on the June 2019 warrant of eviction. In support of this motion, petitioner submitted a rent ledger showing payment of one month's rent during the months of March 2020 through October 2020 when the papers were prepared, but no payment of the amount due under the February 2020 stipulation.

Initially, in early post-pandemic appearances, respondent's counsel and a representative of the City's Adult Protective Services indicated that APS was holding checks for the arrears because respondent's SCRIE had been suspended, and that as soon as the SCRIE was restored, the checks would be released. It appears that the payments made during the earlier pandemic period came from the APS Financial Management Unit. However, in May 2021, APS notified the court that the agency had closed out its case for the respondent because respondent was in a nursing home for long term care and no plan for discharge. At about the same time, respondent's counsel moved for appointment of a guardian ad litem for the respondent, because she was in a nursing home after suffering a second stroke and was not accessible to her attorney. This motion was granted by order dated May 21, 2021.

Respondent then cross-moved, under the Covid-19 Emergency Eviction and Foreclosure Act of 2020 (CEEFPFA) and the Tenant Safe Harbor Act (TSHA), to vacate the judgment and warrant, or, in the alternative, for a stay of execution of the warrant. Respondent has filed a Hardship Declaration, signed for her by her attorney after a telephone conversation between respondent and the attorney in which respondent confirmed the truth of each allegation in the declaration. Petitioner opposes the cross-motion on several grounds. First, petitioner argues that the Hardship Declaration signed by counsel is invalid on its face. Second, petitioner argues that respondent has not demonstrated any financial hardship. Third, petitioner argues that the Tenant Safe Harbor Act does not invalidate the "current rent first" provision in the parties' pre-Covid stipulation. A rent ledger submitted with petitioner's papers in opposition to the cross-motion shows that monthly rent payments of the tenant's share of the SCRIE-

assisted rent, presumably made by the Financial Management Unit of APS, continued each month through March 2021, and that HRA released payments totaling \$2336.58, perhaps the previously withheld arrears payment, in April 2021. The ledger also shows that the petitioner stopped giving respondent a SCRIE credit, and actually started charging her the amount that had been her SCRIE credit each month starting in March 2020, the month after the last stipulation in the case.

As a preliminary matter, the court finds that the Hardship Declaration in this case was properly filed. When the document was filed in March 2021, the respondent, an elderly woman with disabilities, was confined to a nursing home and unable to sign the document on her own. Her attorney read the document to her on the telephone, confirmed with her the truth of the facts she was claiming, and confirmed with her that she wanted the attorney to sign and file the document for her. Under the circumstances, including the continuing Covid-19 pandemic, accepting the Declaration in this form is a reasonable accommodation of the respondent's disability. Petitioner has a right, under L. 2021, Ch. 417, Part C, to challenge the tenant's claim of hardship, but has not done so.

The central substantive issue on these motions is the applicability of the Tenant Safe Harbor Act to the facts here. The Tenant Safe Harbor Act, L. 2020, Ch. 127, provides, in pertinent part, "No court shall issue a warrant of eviction or judgment of possession against a residential tenant or other lawful occupant that has suffered a financial hardship during the Covid-19 covered period for the nonpayment of rent that accrues or becomes due during the Covid-19 covered period." Under the statute, the covered period begins March 7, 2020. The end date of the period has been extended to January 15, 2022, L. 2021, Ch. 417, Part D. The same law states that a Hardship Declaration based upon financial hardship filed under CEEFPA or the successor statute creates a rebuttable presumption that the tenant has suffered a financial hardship for purposes of the Tenant Safe Harbor Act.

Petitioner cannot execute on its existing warrant in this case until after January 15, 2022, because the existing warrant does not comply with L. 2021, Ch. 417, Part C, the successor statute to

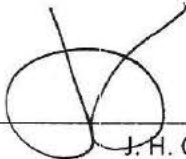
CEEPPA. If petitioner's motion is granted, this court will have to permit the issuance of a new warrant that complies with the statute. Petitioner specifically requests permission to obtain such a new warrant. Since respondent has long since paid petitioner enough money to satisfy what she owed petitioner before the beginning of the Covid-19 covered period, such a warrant would clearly be issued, if the court permitted it, only because the respondent did not pay rent that accrued or became due for the Covid-19 covered period. Petitioner argues, of course, that it is entitled to enforce the "current rent first" provision of the February 2020 stipulation, negotiated in good faith between the attorneys for both parties. However, that provision in the stipulation cannot be deemed to waive the tenant's rights under a statute that had not even been adopted when the stipulation was signed. For that reason, the court finds that enforcement of the "current rent first" provision, on the facts of this case, would violate the Tenant Safe Harbor Act.

The court notes certain additional facts that militate against issuance and execution of a warrant of eviction here. Throughout the long history of this case, the parties agreed repeatedly that the tenant had SCRIE, and that her SCRIE-adjusted rent was \$770.57 per month. The February 2020 stipulation provided that after the payment made in court when the stipulation was signed, the tenant's balance was \$1566.01. The record shows that respondent was credited with an additional payment of \$770.57 after the signing of the stipulation in February 2021, and with a payment for the same amount every month from March 2020 through March 2021. In April 2021 the tenant paid \$2336.58, an amount sufficient to pay the outstanding balance from February 2020 with a significant amount left over. The balance shown on the petitioner's ledger results the fact that in March 2020, the month following the signing of the stipulation, petitioner stopped applying the SCRIE credit and, in addition, starting charging the respondent an additional amount each month equal to what had been her SCRIE credit. These may have been entirely legitimate charges, but a strict application of the "current rent first" provision would,

in essence, permit petitioner to use its warrant exclusively to collect charges that were never the subject of this litigation and were not even collectible at the time of the last signed stipulation.

For all the foregoing reasons, the petitioner's motion for leave to execute on the warrant is denied. The respondent's motion is granted solely to the extent of vacating the warrant of eviction and marking the judgment satisfied, without prejudice to petitioner's claims for later accruing rent.

Dated: 11/5/21

  
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J. H. C.