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2021-03-04

### CG-N Affordable LLC v. Bolshakov

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#### Recommended Citation

"CG-N Affordable LLC v. Bolshakov" (2021). *All Decisions*. 258.  
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**CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK: HOUSING PART R**

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**CG-N AFFORDABLE, LLC.,**

**L&T Index No. 75795/18**

**Petitioner,**

**DECISION/ORDER**

**-against-**

**ZINAIDA BOLSHAKOV,**

**Respondent.**

-----X  
**HON. ANNE KATZ**

In this nuisance holdover proceeding, petitioner seeks to gain possession of 515 West 52<sup>nd</sup> Street, Apartment 8H, New York, New York 10019 (“premises”). According to the petition dated October 15, 2018, respondent has engaged in the following behavior: sent harassing emails to management and staff; harassed the concierge and other employees; sent inappropriate holiday cards to the residents in the building and signed the cards with the name of another resident; ripped down signs in common areas; and sent inappropriate gifts to the staff.

This proceeding initially appeared on the Part D calendar on November 7, 2018. On February 27, 2019, respondent, by counsel, interposed a Verified Answer with Counterclaims. The Answer alleged the following: general denial; no breach of the substantial obligation of the tenancy; conduct does not rise to the level of a nuisance; failure to state a cause of action; retaliatory eviction; right to a post-trial cure; breach of the warranty of habitability; and harassment.

After extensive settlement conferences and motion practice in the resolution part, on October 6, 2020, the proceeding was transferred to Part R for trial. A Pre-trial Conference was held on October 28, 2020. After numerous adjournments, the proceeding was set for trial on March 30, 2021. Prior to the trial, on March 16, 2020, the Courts closed for non-emergency matters due to the COVID-19 pandemic. From June, 2020 through January, 2021, the Court conducted numerous virtual settlement conferences, to no avail. The proceeding was again set for trial on March 8, 2021 and March 9, 2021. Respondent filed a hardship declaration on or about January 21, 2021. Based upon respondent’s filing of the hardship declaration, respondent moves this Court, by Order to Show Cause for a temporary stay of the proceeding in accordance with the *COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020* (“*CEEFPA*”), enacted on December 28, 2020.

Respondent argues she is entitled to a stay under §2 of the *CEEFPA* which immediately stayed all eviction proceedings for 60 days to ensure the courts were prepared to conduct proceedings in compliance with *CEEFPA* and give tenants an opportunity to submit hardship declarations. Section §6 of *CEEFPA* also imposed an additional stay through May 1, 2021 on proceedings where a warrant had not yet issued when the tenant files a hardship declaration. Despite the stays pursuant to §2 and §6 of the *CEEFPA*, §9 of the *CEEPA*, carved out an exception to the stay when a tenant is “persistently and unreasonably engaging in behavior that substantially infringes on the use and enjoyment of other tenants or occupants or causes a substantial safety hazard to others”. Only in cases where nuisance behavior persists, there was no stay.

Respondent argues petitioner must prove that respondent is “persistently and unreasonably engaging in behavior that substantially infringes on the use and enjoyment of other tenants or occupants or causes a substantial safety hazard to others,” in order to avoid a stay of this proceeding pursuant to §6 of the *CEEFP*A. Respondent also argues that the court must impose a strict interpretation of the “carve out: and must avoid statutory interpretations which would render language superfluous. *Matter of New York County Lawyers' Assn. v. Bloomberg*, 95 AD3d 92, 940 NYS2d 229 (App. Div. 1<sup>st</sup> Dept. 2012). Respondent argues that petitioner failed to provide an affidavit or affirmation from someone with personal knowledge to state that respondent’s nuisance behavior has continued to date.

Petitioner argues that respondent is not entitled to a stay of the proceeding as respondent’s behavior falls under the “carve out” exception in §9 of the *CEEFP*A. According to petitioner, this proceeding may proceed to trial because it is a “pending proceeding” in which petitioner has alleged respondent has “persistently and unreasonably engaging in behavior that substantially infringes on the use and enjoyment of other tenants or occupants or causes a substantial safety hazard to others”. Petitioner argues that §9 of the *CEEFP*A provides that §2, §4, §6, and paragraph (ii) of subdivision a of §8 does not apply to this proceeding based upon the allegations in the petition, notice of termination and because of a Decision of the Hon. Kimon Thermos which denied respondent summary judgment as material issues of fact existed as to whether respondent’s behavior rose to the level of nuisance.

Petitioner also argues that since the onset of the proceeding, petitioner has established that respondent has engaged in persistent and unreasonable behavior pursuant to *RSC*§2524.3(b) and therefore, despite the hardship declaration, the stay until May 1, 2021 does not apply to the instant nuisance proceeding. Petitioner further argues that the only affidavit necessary from a petitioner is pursuant to Part A, §5 of *CEEFP*A, which requires that petitioner show that proper hardship declarations were served upon a tenant when submitting a “new” petition for filing and because this is a pending proceeding, it was not required to serve any affidavit. Petitioner repeats that respondent caused a nuisance and violated her lease, and therefore this proceeding should continue to trial.

Although this case was commenced in 2018, is ripe for trial and has been significantly delayed due to the COVID-19 pandemic, under the circumstances herein, this Court finds respondent is entitled to a stay of this proceeding pursuant to §2 and §6 of the *CEEFP*A. Petitioner did not submit an affidavit and/or affirmation from a person with personal knowledge to attest to the continuing nature of respondent’s nuisance behavior which “persistently” and “unreasonably” infringes on the use and enjoyment of other tenants or occupants or causes a substantial safety hazard to others”. Without the affidavit or affirmation as to the continuing nature of the behavior, it is impossible for this Court to determine that this proceeding falls within the exception carved out in §9 of the *CEEFP*A.

A trial will be held at 10:30 am on May 18, 2021 and May 19, 2021. The trial will be virtual unless notified by this Court otherwise. This Constitutes the Decision and Order of this Court.

Dated: New York, New York  
March 4, 2021



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HON. ANNE KATZ, J.H.C.

**ANNE KATZ  
JUDGE, HOUSING COURT**