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2021-06-02

### Morrison Mgmt. v. Moreno

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CIVIL COURT OF THE CITY OF NEW YORK  
BRONX COUNTY: HOUSING PART D/Room 550

-----X L&T Index # 45112/19

MORRISON MANAGEMENT LLC,  
Petitioner-Landlord,

-against-

PASCUAL MORENO (discharged superintendent/employee),  
Respondent-Employee,

**DECISION & ORDER**

“JOHN DOE” and “JANE DOE”  
Respondent/Occupants (Names Unknown).

Address:

2800 Bailey Avenue, Apt 23B  
Bronx, NY 10463

-----X

Hon. Diane E. Lutwak, Judge, Housing Court:

Recitation, as required by CPLR 2219(A), of the papers considered in the review of Petitioner’s motion for leave to execute a warrant of eviction:

<u>Papers</u>	<u>Numbered</u>
Notice of Motion, Affidavit and 12/2/2020 Stipulation of Settlement	1, 2, 3
Affirmation, Affidavit and Exhibits A-F in Opposition	4, 5, 6-11
Reply Affirmation	12

#### PROCEDURAL HISTORY

This is a holdover proceeding brought against the former resident superintendent of a building in the Bronx, Respondent Pascual Moreno, under Section 713(11) of the Real Property Actions and Proceedings Law (RPAPL). The case was settled between Petitioner by counsel and Respondent Moreno *pro se* on December 6, 2019 in an agreement awarding Petitioner a final judgment of possession, warrant of eviction to issue forthwith and execution stayed to February 15, 2020 for Respondent to vacate the subject apartment. After an inquest on January 10, 2020 the court issued a judgment of possession against the non-appearing Respondents sued as “Jane Doe” and “John Doe”. The court issued a warrant of eviction against all Respondents to City Marshal Barone on February 7, 2020.

On February 14, 2020 Respondent took out an Order to Show Cause which the court signed and made returnable on February 26, 2020, supported by his affidavit stating that he

was looking for another apartment. By Decision and Order dated February 26, 2020 the court granted that Order to Show Cause to the extent of staying execution of the warrant of eviction through and including March 31, 2020, noting that Respondent had “demonstrated that he is making good faith efforts to relocate”.

Before reaching the new deadline for Respondents to move out, the COVID-19 pandemic struck, Governor Cuomo issued his “New York on Pause” Executive Order, all evictions were put on hold and, on March 17, 2020, courthouse operations were limited to essential matters only. Thereafter, pursuant to Administrative Orders (“AO”) issued by the New York State Unified Court System’s Chief Administrative Judge Lawrence Marks, and Directives and Procedures (“DRP”) issued by the New York City Civil Court’s Administrative Judge Anthony Cannataro, various types of filings and processes have been phased back in.

#### PETITIONER’S MOTIONS

Now before the court is Petitioner’s third motion filed after the onset of the pandemic seeking leave to execute the warrant of eviction. The first motion was denied by Decision and Order dated August 18, 2020 as it failed to comply with the requirement under AO 160/20 and DRP-213, issued on August 12, 2020, that the motion papers include a “Notice to Respondent Tenant” in a form comparable to that attached to the directive as Exhibit A. The second, brought under DRP-213 and served with the required notice, was countered by a cross-motion to vacate the default judgment after inquest and to dismiss the petition filed by newly-retained counsel for Respondent Odalys Silvera, sued as “Jane Doe” (hereinafter referred to as “Respondent Silvera”). In her supporting affidavit Ms. Silvera referred to Respondent Moreno as her “longtime partner” who had died in September 2020. After several adjournments, in a written agreement dated December 2, 2020 Respondent Silvera withdrew her cross-motion and Petitioner’s DRP-213 motion was settled with a provision, *inter alia*, staying execution of the warrant of eviction through April 30, 2021.

Petitioner’s third motion, filed on April 19, 2021 and supported by an affidavit of its agent and a copy of the December 2, 2020 stipulation, seeks permission to serve a new Notice of Eviction and proceed to execute the warrant. Although not referenced in the moving papers, Petitioner appears to have filed this motion to secure the status conference required by Part A, Section 8(a)(1) of the COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020 (CEEFPFA), Ch. 381, Laws 2020, which the New York State legislature enacted, and the Governor signed, on December 28, 2020.

#### CEEFPFA

The legislature’s intent in enacting CEEFPFA, as stated in the opening section of the Act, subsection 3, is “to avoid as many evictions and foreclosures as possible for people experiencing a financial hardship during the COVID-19 pandemic or who cannot move due to an increased risk of severe illness or death from COVID-19.”

Initially, CEEFPA automatically stayed most pending eviction proceedings for 60 days. Further, one of CEEFPA's hallmarks is the "Hardship Declaration", defined in CEEFPA Part A § 1(b), which allows residential tenants suffering a financial and/or health-related hardship to submit to their landlords or to the court a statement, under penalty of perjury, that – with certain exceptions not relevant herein – prevents the filing of new eviction proceedings, stays pending eviction proceedings in a pre-warrant posture and stays execution of warrants issued prior to CEEFPA's effective date through August 31, 2021 (originally through May 1, 2021, extended on May 4, 2021).

CEEFPA defines "tenant" to include, "a residential tenant, lawful occupant of a dwelling unit, or any other person responsible for paying rent, use and occupancy, or any other financial obligation under a residential lease or tenancy agreement, but does not include a residential tenant or lawful occupant with a seasonal use lease where such tenant has a primary residence to which to return to."

#### RESPONDENT SILVERA'S OPPOSITION TO THE MOTION

On April 23, 2021 Respondent Silvera by her attorney filed a Hardship Declaration with the "financial hardship" option checked off. On May 7, 2021, in opposition to Petitioner's motion Respondent Silvera filed her own affidavit and an affirmation of her attorney, asking the court to stay execution of the warrant of eviction until August 31, 2021. In her affidavit Respondent Silvera asserts that she was "the unmarried romantic partner" of Respondent Moreno, that they moved into the apartment together in 2008, that Mr. Moreno lived in the apartment "in the dual capacity as both a super and tenant" and that she "would have been the successor tenant upon his death." Respondent Silvera further asserts that her name was listed as the apartment's tenant of record from 2015 through 2018 in registrations filed by Petitioner with the New York State Division of Housing and Community Renewal (DHCR), as reflected in a DHCR apartment registration statement attached to her opposition papers.

#### PETITIONER'S REPLY

In reply, Petitioner argues that Respondent Silvera does not fall within CEEFPA's definition of a tenant, pointing to the fact that neither she nor Respondent Moreno ever paid rent or use and occupancy. Petitioner further argues that Respondent Silvera settled any tenancy claims she may have had, either in her own name or as successor to Respondent Moreno, in the December 2, 2020 stipulation of settlement.

#### DISCUSSION

The court agrees with Respondent Silvera that she falls well within CEEFPA's broad definition of a "tenant", which includes a "lawful occupant of a dwelling unit". CEEFPA Part A § 1(3). There are no facts before the court to indicate that Respondent Silvera was an intruder or squatter, who might not have rights under CEEFPA. *See Realty Enter LLC v Williams* (2021 NYLJ LEXIS 360, \*8 [Civ Ct Qns Co 2021])("had Respondent been indefensibly sued solely as a

squatter, [CEEFPA] would not protect him, since he would not be a ‘tenant’ as defined therein”). Rather, Respondent Silvera’s assertions that she was the longtime partner of Respondent Moreno, that they moved into the subject apartment together in 2008 and that her name was listed on the DHCR apartment registration history in the years 2015 through 2018 were undisputed. While it was Mr. Moreno who was the building’s superintendent, Ms. Silvera clearly was his licensee who had permission to live in the apartment with him and therefore was a “lawful occupant”. See *Rosenstiel v Rosenstiel* (20 AD2d 71, 76, 245 NYS2d 395, 400-01 [1<sup>st</sup> Dept 1963]); *Realty Enter LLC v Williams, supra*.

Petitioner’s argument that Respondent Silvera does not fit CEEFPA’s definition of “tenant” because she had no obligation to pay rent or use and occupancy is rejected under the principle of statutory construction that holds that, “The placement of a comma before the disjunctive ‘or’ in a statute that lists several alternatives indicates an intent to discriminate between the various parts of the sentence.” 97 NY Jur Statutes § 120 (2). See, e.g., *S.U. v New York Univ Langone Med Ctr* (2021 NYLJ LEXIS 460, \*21-22 [Sup Ct NY Co 2021]), citing *Van Patten v La Porta* (148 AD2d 858, 860, 539 NYS.2d 132, 134 [3<sup>rd</sup> Dep’t 1989]). The “lawful occupant of a dwelling unit” alternative in CEEFPA’s definition of “tenant” is bounded by commas on both sides, with the latter comma placed immediately before the disjunctive “or”. Accordingly, the statute’s punctuation indicates an intent to differentiate between a “lawful occupant” and the next part of the “tenant” definition which includes the rent payment language. Further, whereas CEEFPA specifically excludes certain seasonal use tenants or occupants from the definition of a “tenant”, a licensee is not similarly excluded.

Moreover, CEEFPA includes a specific statement of legislative intent to “avoid as many evictions and foreclosures as possible” for “people” affected by the COVID-19 pandemic, and further states: “COVID-19 presents a historic threat to public health. Hundreds of thousands of residents are facing eviction or foreclosure due to necessary disease control measures that closed businesses and schools, and triggered mass-unemployment across the state. The pandemic has further interrupted court operations, the availability of counsel, the ability for parties to pay for counsel, and the ability to safely commute and enter a courtroom, settlement conference and the like. Stabilizing the housing situation for tenants, landlords, and homeowners is to the mutual benefit of all New Yorkers and will help the state address the pandemic, protect public health, and set the stage for recovery.” CEEFPA § 3. Accordingly, it is appropriate for the courts to construe the statute broadly. See, e.g., *NYCTL 2016-A Tr v Neighborhood Youth & Family Servs, Inc* (2021 NY Misc LEXIS 469, 2021 NY Slip Op 21023, ¶ 3 [Sup Ct Bx Co 2021])(finding that CEEFPA’s “landlord” definition “clearly encompasses a purchaser at a tax lien foreclosure sale”); *Jacob Cram Coop, Inc v Ziolkowski* (2021 NY Misc LEXIS 246, 2021 NY Slip Op 30174(U), ¶ 3 [Sup Ct NY Co 2021])(finding CEEFPA’s “eviction proceeding” definition to include ejectment actions, “in spite of the failure of the Legislature to specifically use the term ‘action’ as applied to landlord-tenant disputes”).

The factual allegations in Respondent Silvera's affidavit in opposition regarding her relationship to Respondent Moreno and successor tenant status need not be addressed as she has not moved to vacate the December 2, 2020 stipulation and only asks the court to stay execution of the warrant of eviction to August 31, 2021 under CEEFPA.

#### CONCLUSION

Accordingly, Petitioner's motion is granted to the extent of allowing the warrant of eviction to be executed on or after September 1, 2021. This constitutes the Decision and Order of the court, copies of which will be emailed to the parties' attorneys and uploaded to NYSCEF.



Hon. Diane E. Lutwak, HCJ

Dated: Bronx, New York  
June 2, 2021



Copies sent to:

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