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Tzifil Realty v. Mazrekaj

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART 0

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TZIFIL REALTY CORP.,

L&T Index No. 89035/19

Petitioner,

Mot. Seq. # 6

-against-

DECISION/ORDER

HASSAN "ANDY" MAZREKAJ,

Respondent.

-----X

Present: Hon. Heela D. Capell
Judge, Housing Court

Recitation, as required by CPLR § 2219(a), of the electronically filed papers considered in the review of the petitioner’s order to show cause to vacate the stay resulting from Respondent’s filing of a COVID-19 Hardship Declaration, numbered as they appear on NYSCEF.

Papers	Numbered
Order to Show Cause & Affirmation Annexed.....	106, 113, 115,
Exhibits.....	107-112,
Answering Affidavits.....	118,
Exhibits.....	119-126,
Reply Affidavits.....	129,
Exhibits.....	130-138

Upon the foregoing cited papers, the Decision and Order on this motion is as follows:

Tzifil Realty Corp. (“Petitioner”) commenced this holdover proceeding against Hassan “Andy” Mazrekaj (“Respondent”), seeking possession of 922 East 15th Street, Apt. 1C, Brooklyn, NY 11230 (“Premises”) on the grounds that Petitioner terminated Respondent’s employment as superintendent of the subject building. On December 28, 2020, while the proceeding was pending in the Resolution Part, the Governor signed the COVID-19 Emergency

Eviction and Foreclosure Prevention Act of 2020, L. 2020, c. 381 (“CEEFPFA”) into law.

CEEFPFA initially stayed all summary proceedings through May 1, 2021 for certain occupants of real property who filed a “Hardship Declaration” with the Court pursuant to Part A, §6 of CEEFPFA. CEEFPFA was subsequently amended to extend this stay through August 31, 2021. (2021 N.Y. SB 6362.)

This proceeding was transferred to Part O for trial on May 11, 2021. On that day, this court held a pre-trial conference with the parties and adjourned the proceeding for trial. On May 12, 2021, Respondent filed a Hardship Declaration, pursuant to CEEFPFA, and checked the box corresponding to the following declaration:

“A. (x) I am experiencing financial hardship, and I am unable to pay my rent or other financial obligations under the lease in full or obtain alternative suitable permanent housing because of one or more of the following:

1. Significant loss of household income during the COVID-19 pandemic.
2. Increase in necessary out-of-pocket expenses related to performing essential work or related to health impacts during the COVID-19 pandemic.
3. Childcare responsibilities or responsibilities to care for an elderly, disabled, or sick family member during the COVID-19 pandemic have negatively affected my ability or the ability of someone in my household to obtain meaningful employment or earn income or increased my necessary out-of-pocket expenses.
4. Moving expenses and difficulty I have securing alternative housing make it a hardship for me to relocate to another residence during the COVID-19 pandemic.

5. Other circumstances related to the COVID-19 pandemic have negatively affected my ability to obtain meaningful employment or earn income or have significantly reduced my household income or significantly increased my expenses. To the extent that I have lost household income or had increased expenses, any public assistance, including unemployment insurance, pandemic unemployment assistance, disability insurance, or paid family leave, that I have received since the start of the COVID-19 pandemic does not fully make up for my loss of household income or increased expenses.”

This court stayed this proceeding in compliance with the statute.

Petitioner filed the instant order to show cause to vacate the stay on the grounds that Respondent is not covered by CEEFPA, and cannot utilize a Hardship Declaration to stay the trial. Petitioner argues that the language of the Hardship Declaration excludes occupants who are not tenants pursuant to a lease agreement, because it contains the word “tenant” and not “occupant.” Specifically, the Hardship Declaration begins with the words. . . “Notice to Tenant” and includes the sentence, “I understand that I must comply with all other lawful terms under my tenancy, lease agreement or similar contract.” Petitioner maintains that the words “tenant” and “rent” and “lease” in the statute indicate that the New York State Legislature purposely intended to exclude from CEEFPA’s coverage occupants who do not have lease agreements with their landlords. Petitioner further argues that Respondent never paid rent or use and occupancy. It is undisputed that this proceeding is predicated upon termination of Respondent’s employment, that Respondent has not paid use and occupancy and does not have a lease agreement for the Premises.

Respondent relies upon CEEFPA's definition of "tenant" as "[a] residential tenant, lawful occupant of a dwelling unit, or any other person responsible for paying rent or use and occupancy...." (see Part A, §3 of the Act). Respondent maintains that when the New York State Legislature enacted CEEFPA, it was intended to cover as many individuals as possible in order to prevent evictions during the COVID-19 pandemic. Therefore the statute should be read broadly to carry out this purpose.

In a recent holdover summary proceeding, *Realty Enter. LLC v Williams*, the Honorable Kimon Thermos ruled that because the respondent-occupant was claiming succession rights to the subject apartment, he could file a Hardship Declaration and was protected by the CEEFPA stay of eviction proceedings. Notably, the court held respondent did not need to be in privity of contract with the landlord to be protected from eviction under CEEFPA. (*Realty Enter. LLC v Williams*, 2021 NYLJ LEXIS 360, Civil Ct, Queens County, 2021.)

Similarly, in (*Silverstein v Huebner*, Civil Ct, Kings County, March 22, 2021, Stoller, J. Index No. 94101/18), the Honorable Jack Stoller rejected Petitioner's argument that CEEFPA only applied to tenants, and not occupants. The court held that "[p]rivacy of estate is not required for liability for use and occupancy. Rather, occupancy is all that gives rise to liability for use and occupancy as a matter of quantum meruit." (*Id. citing Eighteen Assoc., LLC v Nanjim Leasing Corp.*, 257 AD2d 559 [2d Dept 1999].) In *Huebner*, an occupant remained in possession after the tenant of record vacated the Premises and filed a Hardship Declaration during the pendency of a holdover proceeding. The court found that the occupant was entitled to a stay of the trial, although they did not have a lease with the landlord, because they were incurring liability for use and occupancy for the subject apartment.

This court agrees that the definition of “tenant” in CEEFPA is intentionally expansive. Section 3 of the Act, states that the Legislature intends to “avoid as many evictions ... as possible” for people experiencing pandemic-related hardships or who have difficulty moving. Indeed in matters of statutory interpretation, legislative intent is the “great and controlling principle.” (*Silverstein, citing Matter of Sedacca v. Mangano*, 18 N.Y.3d 609, 615 [2012].)

Here, Respondent and his family have occupied the Premises for over ten years and Petitioner is seeking a judgment against Respondent for use and occupancy in this proceeding. In fact, Petitioner filed a motion before the Honorable Malaikah Sherman, for an order compelling Respondent to pay use and occupancy *pendente lite*.¹ Accordingly, by Petitioner’s own admission, Respondent fits squarely within CEEFPA’s definition of “tenant,” as “any other person responsible for paying rent or use and occupancy.” The proceeding is therefore stayed by virtue of Respondent’s filing of the Hardship Declaration. This proceeding will be restored to the court’s calendar on September 15, 2021 at 10:00 A.M. for trial.

This constitutes the decision and order of this Court.

Dated: New York, New York
June 14, 2021



HON. HEELA D. CAPELL, J.H.C.

¹ The motion was denied without prejudice to renewal by Judge Sherman (*see* NYSCEF Doc 87).