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Stuyvesant Manor Inc. v. Zayas

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Stuyvesant Manor, Inc. v Zayas
2021 NY Slip Op 50607(U)
Decided on June 25, 2021
Civil Court Of The City Of New York, Kings County
Slade, J.
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Decided on June 25, 2021

Civil Court of the City of New York, Kings County

<p style="text-align: center;">Stuyvesant Manor, Inc., Petitioner,</p> <p style="text-align: center;">against</p> <p style="text-align: center;">Francisco Zayas, Carla Perez, J/J Doe, Respondents.</p>

L & T 79449/19

Petitioner's Atty: Rosenblum & Bianco LLP, 100 Merrick Road, Suite 306E, Rockville Centre, NY 11570

Respondent's Atty: RiseBoro LEAP, 195 Montague Street, Suite 1220, Brooklyn, NY 11201

Kimberley S. Slade, J.

This matter appears before this Court in an unusual procedural posture as, following entry of a prior decision on the merits in this matter distributed in early March 2021, which denied Respondent's CPLR 5015 order to show cause seeking to vacate a default judgment

entered in February 2020, Respondent thereafter filed a hardship declaration and then a letter application with the Court, based upon the newly enacted COVID-19 Emergency Eviction and Foreclosure Prevention Act ("CEEFPA") Section 7, requesting simply that the default judgment be removed without further legal process and invoking the stay provisions of the hardship declaration. Petitioner filed a Notice of Objection. The matter was conferenced and then briefed. The Court reaches the following decision.

As recited in the decision and order issued by this Court, dated March 1, 2021, this is a holdover proceeding in which Respondent was employed as a superintendent and, upon termination of his employment, Petitioner sought possession of the subject apartment previously given as an incident of his employment. The proceeding first appeared on the Court's calendar on October 21, 2019. Carla Perez ("Perez"), the co-occupant and partner of Respondent, appeared and the case was adjourned until January 9, 2020, when Perez consented to a possessory judgment providing both for the forthwith issuance of a warrant of eviction, and for its stay through April 30, 2020. An inquest as to the defaulting Respondents, Francisco Zayas ("Zayas" or "Respondent") and John and Jane Doe, was later conducted on February 19, 2020. On that date, a possessory judgment was entered as to all. On March 13, 2020 the warrant issued, and subsequently New York State locked down due to the emergence of the COVID-19 pandemic, and only emergency cases were heard by the Court.

As the Court later resumed hearing pre pandemic cases, this matter was restored to the calendar on Petitioner's DRP 213 motion filed on September 22, 2020 seeking, *inter alia*, leave [*2] to requisition and enforce the warrant of eviction. Then, by order to show cause dated November 18, 2020 Respondent Zayas moved to vacate the default judgment and warrant, asserting various theories for the grant of this relief. The motion was opposed, and the matter submitted for decision. The legislature then passed CEEFPA on December 28, 2020 which *inter alia* stayed all proceedings for an initial sixty day period which precluded this Court from rendering its decision until the initial stay lapsed.

This Court issued a detailed decision and order dated March 1, 2021 that denied Respondent's order to show cause seeking to vacate the inquest judgment finding neither excusable default nor meritorious defense. On March 9, 2021, Zayas filed a COVID 19 hardship declaration with the Court. On March 10, 2021, Respondent then filed a letter with the Court, ostensibly pursuant to CEEFPA Section 7 stating, "I am the respondent in the (above captioned) case. My address is 575 Herkimer Street. A default judgment was issued

against me. I request that the default judgment be removed, and the case restored to the calendar." (NYSCEF). On March 12, 2021, Petitioner filed a Notice of Objection to Respondent's letter, stating as objections the doctrine of *res judicata* and collateral estoppel based upon this Court's earlier decision, and arguing that Respondent, as a superintendent, is not a tenant within the meaning of CEEFPA and is thus ineligible for the protections afforded by the hardship declaration. Petitioner also argues that CEEFPA is only applicable to default judgments entered during the pandemic and, to the extent that this Court interprets Section 7 of CEEFPA as applying to default judgments entered prior to the pandemic, that this provision violates constitutional due process. A briefing schedule was established, and the matter submitted for this decision.

Section 7 of CEEFPA provides:

"7. Default judgments. No court shall issue a judgment in any proceeding authorizing a warrant of eviction against a respondent who has defaulted, or authorize the enforcement of an eviction pursuant to a default judgment, prior to August 31, 2021, without first holding a hearing after the effective date of this act upon motion of the petitioner. The petitioner or an agent of the petitioner shall file an affidavit attesting that the petitioner or the petitioner's agent has served notice of the date, time, and place of such hearing on the respondent, including a copy of such notice. If a default judgment has been awarded prior to the effective date of this act, the default judgment shall be removed and the matter restored to the court calendar upon the respondent's written or oral request to the court either before or during such hearing and an order to show cause to vacate the default judgment shall not be required."

At Section 8, entitled "Post warrant of eviction," the statute provides, as relevant here:

"In any eviction proceeding in which an eviction warrant has been issued prior to the effective date of this act, but has not yet been executed as of the effective date of this act, including eviction proceedings filed on or before March 7, 2020, the court shall stay the execution of the warrant at least until the court has held a status conference with the parties."

Petitioner argues that Respondent may not seek to remove the default judgment entered prior to the onset of the pandemic as this Court has already ruled on this question in its March 1, 2021 decision and order which denied Respondent's motion. Petitioner contends that the legislature could not have intended that defaults be vacated in this manner after orders were issued upon them, arguing that Respondent's remedy is or would have been to appeal, and not to merely write the letter provided for by CEEFPA for the removal of judgments. Respondent

[*3] argues that as this Court took the March 1, 2021 decision on submission on November 30, 2020 and, as CEEFPA was not passed until December 28, 2020, it was not then available and, consequently, as the Court did not rule on the Section 7 CEEFPA letter request to remove the judgment, that it is still his right to exercise this option, which had not previously existed.

Petitioner alternatively argues that Section 7 of CEEFPA does not apply to this proceeding as a warrant has issued and thus Section 8 applies. Petitioner argues that rudimentary principles of statutory analysis apply in this matter, and cites *Gaden v. Gaden*, 29 NYS2d 80, 86 (1971) in support of this proposition, " all parts of the statute are to be read and construed together to determine the legislative intent" of a statute and, in pursuing that argument, Petitioner argues that each section of the CEEFPA tracks the various stages of a proceeding as delineated in the RPAPL, from commencement of a proceeding through eviction status. Based on this, Petitioner argues that this Court must read Section 7 as applying where a default judgment has entered but a warrant has yet to issue, and rule upon this matter pursuant to the language in Section 8, and not 7 as a warrant has previously issued.

Respondent disagrees with Petitioner arguing that there is no distinction made within CEEFPA Section 7 between proceedings in which a warrant has issued and one where a judgment has entered but a warrant has not Respondent asserts the Court must "vacate" (statute states "remove") a default judgment whether a warrant has issued or not, and that the Court lacks any discretion to *not* remove the judgment on an applicant's request In effect that it is a ministerial task

In this matter, Respondent's motion to vacate the default judgment was submitted for consideration in November 2020 CEEFPA passed on December 28, 2021 and became law that day A proper reading of Section 7 of CEEFPA is that it does patently apply to default judgments whether a warrant has issued or not Its primary purpose is to provide a streamlined procedural mechanism to allow a defaulting respondent an ability to appear on a petitioner's motion to enforce the default and eliminate the need for the defaulting respondent to either formally cross move or independently move via order to show cause to vacate the default While it is not an intuitive read, Section 7 ultimately requires that a petitioner seeking to enforce a default move to either "issue a judgment in any proceeding authorizing a warrant of eviction against a respondent who has defaulted," or "authorize the enforcement of an eviction pursuant to a default judgment " In either scenario, the respondent must have defaulted prior to August 31, 2021, with no time restriction as to how far back in time the

default occurred, and the motion must have been made after December 28, 2020, the effective date of CEEFPA. Under the former scenario the warrant has not yet issued and under the latter it presumably has. Thus, the overlap with Section 8 and apparent ambiguity.

When these default scenarios exist, the Court will be required to have a hearing on a petitioner's motion. Correspondingly, only where the petitioner's motion is made pursuant to Section 7 and its requirements are met, will a respondent be entitled to make a written or oral request, *either before or during such hearing*, to remove the judgment and restore the matter to the court calendar, dispensing with the need for an order to show cause to vacate the default judgment. In any other scenario, a respondent would be required to move to vacate a default judgment. Essentially, a petitioner's CEEFPA motion triggers a respondent's ability to invoke the written or oral request to remove the judgment, but it is neither a free-standing right, nor is it a vacatur.

In this matter Petitioner filed a DRP 213 motion prior to December 28, 2020, which does [*4]not satisfy the statute's mandate. Accordingly, Respondent here is ineligible, even in theory, to dispense with a motion to vacate the default judgment in this matter, as there is no CEEFPA Section 7 enforcement motion and Respondent may not simply ask for its removal in this procedural context. Additionally, as Respondent has already moved to vacate the judgment and warrant in this proceeding and received a decision and order in March 2021, any request to remove/vacate the default is barred by the doctrine of *res judicata*. In a nutshell, had Petitioner moved to enforce the default at some point after the passage of CEEFPA, and the earlier order of this Court not existed, then Respondent would have been eligible to have the default removed at the hearing on Petitioner's motion via the simple process provided for in Section 7, but that is not the situation in this case.

The legislature recognized that the pandemic "interrupted court operations, the availability of counsel, the ability of parties to pay for counsel, and the ability to safely commute and enter a courtroom, settlement conference and the like" and sought to avert as many evictions as possible and to accomplish this goal, sought to streamline the process for litigants and in doing so built in multiple protections for tenants at risk of an eviction due to the pandemic in passing CEEFPA. However, CEEFPA neither discusses nor requires the vacatur of the previously entered default judgment in this section or elsewhere. Rather, it specifically states that the default judgment shall be "removed" and requires a hearing before a petitioner be permitted to "enforce an eviction." While CEEFPA is silent as to what one

does with a "removed" judgment, the legislature presumably knows the distinction between a vacatur and a removal, and by not requiring the vacatur of a judgment in this context and speaking instead to a removal it can be inferred that it did not intend or require vacatur as the only possible outcome.

While the argument that Section 7 applies to this case, and *assuming arguendo* that is the controlling statute, the letter request to remove would be premature and contextually inappropriate as discussed. In this matter, as the default has already been decided on Respondent's motion this case is more suitably viewed as a Section 8 case as the warrant has issued and the matter subsequently litigated pursuant to Respondent's CPLR 5015 order to show cause. Although CEEFPA passed after that motion was submitted, the decision was rendered on March 1, 2021 and from the time that CEEFPA passed through the date of decision the motion was not withdrawn in favor of proceeding under a Section 7 theory. Nevertheless, had Respondent hypothetically pursued this path, the letter request would have been denied, as Petitioner's motion was made pre-CEEFPA. Therefore, Respondent would not be permitted to make a letter or oral application under Section 7. Rather, Respondent would be required to independently move for vacatur of the default via motion or order to show cause in the absence of a post-CEEFPA Section 7 motion by Petitioner. Thus, Respondent is bound by the earlier decision of this Court.

In this case, as the only motion made by Petitioner was pursuant to DRP 213 and made prior to the enactment of CEEFPA, the letter request to remove the judgment is improperly filed with the Court, assuming the matter were to be treated as a Section 7 and not a Section 8 case. As the letter request to remove a judgment is effectively a shield provided to Petitioner's sword, it is only viable when a Petitioner utilizes that sword. As such, the letter request in this matter is deemed a nullity and of no legal consequence and is to be removed by the clerk's office.

Any remaining arguments are not reached as they are rendered moot by the foregoing or are not properly raised before this Court as, while the issues have been briefed, there is no motion before the Court upon which relief may be granted. Finally, this Court's obligation to [*5] have a status conference with the parties under Section 8 was accomplished when this matter was discussed prior to submission for decision.

Dated: June 25, 2021

Kimberley Slade, JHC

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