

Fordham Law School

## FLASH: The Fordham Law Archive of Scholarship and History

---

[All Decisions](#)

[Housing Court Decisions Project](#)

---

2021-07-09

### 2115 Washington Realty v. Braxton

Follow this and additional works at: [https://ir.lawnet.fordham.edu/housing\\_court\\_all](https://ir.lawnet.fordham.edu/housing_court_all)

---

#### Recommended Citation

"2115 Washington Realty v. Braxton" (2021). *All Decisions*. 298.  
[https://ir.lawnet.fordham.edu/housing\\_court\\_all/298](https://ir.lawnet.fordham.edu/housing_court_all/298)

This Housing Court Decision is brought to you for free and open access by the Housing Court Decisions Project at FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in All Decisions by an authorized administrator of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact [tmelnick@law.fordham.edu](mailto:tmelnick@law.fordham.edu).

[\*1]

|   |
|---|
| <b>2115 Wash. Realty, LLC v Braxton</b>   |
| 2021 NY Slip Op 21183   |
| Decided on July 9, 2021   |
| Civil Court Of The City Of New York, Bronx County   |
| Tovar, J.   |
| Published by <a href="#">New York State Law Reporting Bureau</a> pursuant to Judiciary Law § 431.       |
| This opinion is uncorrected and subject to revision before publication in the printed Official Reports. |

Decided on July 9, 2021

Civil Court of the City of New York, Bronx County

|  |
|--|
| <p><b>2115 Washington Realty, LLC, Petitioner,</b></p> <p><b>against</b></p> <p><b>Johnathan Braxton, Respondents.</b></p> |
|--|

36719/19

For Petitioner:

Novick Edelstein Pomerantz PC

733 Yonkers Avenue

Yonkers, New York 10704

For Respondent:

Mobilization for Justice, Inc

100 William Street, 6th Floor

New York, NY 10038

Bryant Tovar, J.

Recitation, as required by C.P.L.R. § 2219(a), of the papers considered in review of this motion.

Papers Numbered

Notice of Motion and Affidavits Annexed

Order to Show Cause and Affidavits Annexed

Answering Affidavits

Replying Affidavits 1

Exhibits

## Other 2-6

After oral argument and upon the foregoing cited papers, the decision and order on this motion is as follows:

### **BACKGROUND & PROCEDURAL POSTURE**

2115 Washington Realty ("Petitioner"), commenced this summary nonpayment proceeding against Johnathan Braxton ("Respondent"), in August of 2019. The Petition sought unpaid rent in the amount of \$3,233.20 and alleged that the subject premises are subject to the Rent Stabilization Law. Both sides are represented by counsel.

Respondent failed to answer, and Petitioner obtained a default judgment on or about October 3, 2019. A warrant of eviction issued on or about October 13, 2019. Respondent obtained an Order to Show Cause seeking to vacate the default judgment, returnable on November 14, 2019. On that date, the Respondent, represented by counsel, entered into a stipulation, which, rather than vacating the default judgment, merely stayed execution of the warrant of eviction to December 31, 2019, for payment of \$4,037.90 and current rent.

[\*2] Respondent filed a second Order to Show Cause, returnable on January 31, 2020, seeking a further stay of execution of the warrant, but not seeking to vacate the default judgment. On that date, the parties entered into a stipulation staying execution of the warrant of eviction to February 28, 2020, for payment of \$1,071.88 and February's rent. Respondent defaulted on that stipulation and Petitioner alleges a notice of eviction was mailed to the Respondent on or about March 6, 2020.

On March 16, 2020, the New York courts closed due to the COVID-19 pandemic, temporarily ceasing all in-person operations, except in emergency essential operations. After several months, the court resumed hearing cases that had been commenced prior to the start of the pandemic and Petitioner filed a DRP-213 motion seeking leave to execute on the issued warrant. The motion was calendared for November 13, 2020 and was adjourned several times for opposition. Respondent invoked the Tenant Safe Harbor defense [\[FN1\]](#) and the matter was set down for a hearing to April 13, 2021. On April 13, 2021, pursuant to the COVID-19

Emergency and Foreclosure Prevention Act of 2020 ("CEEFFPA"), Respondent made an oral application seeking the vacatur of the default judgment.

## The Law and Its Application

Part A, § 7 of CEEFFPA entitled Default Judgments states the following:

"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."

In opposition to Respondent's request for vacatur of the default judgment, Petitioner notes that Respondent's counsel entered into two separate agreements after the entry of the default judgment. Petitioner argues that these agreements incorporated the default judgment by reference, and that by entering into these agreements Respondent has ratified the judgment, which should no longer be viewed as a default judgment subject to vacatur under CEEFFPA. Petitioner argues any vacatur of these stipulations must instead fall under the traditional standards and analysis.

In support of their application, Respondent argues that statutory text in question is unambiguous and that the vacatur of default judgments is meant to apply to all proceedings [\*3] without exception. In support, Respondent cites *Ketcham Assoc LLC v Gil* (2021 NY Slip Op 30780[U] [Civ Ct, Queens County 2021]). In *Ketcham*, Petitioner obtained a default judgment after inquest prior to the COVID-19 pandemic. The court in *Ketcham* found that removal of the default judgment was appropriate. The instant proceeding, however, has several notable differences that distinguish it from the procedural posture of *Ketcham*. In *Ketcham*, while there was litigation prior to the entry of the default judgment against Respondent, it appears that no litigation took place subsequent to the entry of the default judgment but prior to the COVID-19 pandemic. In the matter at bar, Petitioner also obtained a

default judgment and a warrant of eviction had issued prior to the commencement of the COVID-19 pandemic. In contrast, however, Respondent filed an Order to Show Cause to vacate the default judgment prior to the commencement of the COVID-19 pandemic, and settled that Order to Show Cause as well as another - both with the benefit of counsel, choosing to leave the default judgment in place and intact, and merely staying execution of the warrant of eviction.

Similarly, Respondent also cites *Webster Ave Affordable LLC v James* (Civ Ct, Bronx County, March 30, 2021, Jennings J., Index No. L & T 048791/19). In *Webster Ave*, Petitioner also obtained a default judgment after inquest and no litigation took place after entry of the judgment. Further, the court found Respondent was in need of a guardian *ad litem*. This matter again differs from the case at bar in that while a default judgment was obtained, there was no subsequent litigation that occurred after the issuance of the default judgment and warrant of eviction but prior to the start of the COVID-19 pandemic. Lastly, Respondent cites *Jenkins Portfolio Cos LLC v Grant* (Civ Ct, New York County, May 5, 2021, Schneider J., Index No L & T 73223/19). The facts of *Jenkins* are consistent with those previously cited where Petitioner obtained a default judgment with no litigation after the issuance of the judgment but before the commencement of the pandemic and inapposite to the matter at hand.

### **COVID-19 Emergency and Foreclosure Prevention Act of 2020 Analysis**

The intent of the legislation as stated in the CEEFPA 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 of COVID-19." Consistent with this intent are the layers of protection in obtaining and executing on a default judgment during this pandemic period, such as the motion required by Part A, §7, alerting Respondent to the time and date default would be sought, the service of hardship declaration, and the ease in which such default may be "removed." *Jenkins Portfolio Cos LLC v Grant* (Civ Ct, New York County, May 5, 2021, Schneider J., Index No L & T 73223/19), as cited in support by Respondent, expresses this intent, as it states, "[t]he Legislature's intent to insure that tenants are not evicted on *default* (emphasis added) during the pandemic period."

At the onset of its statutory analysis this court guides itself on the principle that "all parts of the statute are to be read and construed together to determine the legislative intent." (*Gaden*

*v Gaden*, 29 NY2d 80, 86 [1971]). Accordingly, this court follows the analysis of the recent decision from Hon. Slade in *Stuyvesant Manor Inc v Francisco Zayas* (72 Misc 3d 1203[A], 2021 NY Slip Op 50607[U][Civ Ct, Kings County 2021). In *Zayas*, Hon. Slade opined the COVID-19 Emergency and Foreclosure Prevention Act of 2020 should have each section read to track the various stages of a proceeding as is delineated in the RPAPL. Essentially, the procedural posture of each case dictates what relief is available. Accordingly, the oral application to remove a default judgment is only available where Petitioner seeks a default judgment or seeks authorization to enforce one pursuant to CEEFPA, Part A, §7. This [\*4] analysis is consistent with other parts of CEEFPA. For example, the effect of a hardship declaration differs depending on the procedural posture of each specific matter. If no warrant has issued, CEEFPA Part A, §6 applies, and the proceeding is stayed from any further litigation until the expiration of the statute, currently slated to expire on August 31, 2021. If a warrant has issued, on the other hand, Part A, §8 entitled "Post warrant of eviction" provides guidance and permits litigation to proceed but stays execution of the warrant until the expiration of the statute. As such, the provisions of CEEFPA, Part A should be read as guideposts as to what is permissible under the Act depending on the procedural posture of the proceeding and how to address cases in various stages of litigation.

In the case at bar, removal of the judgment under Part A, §7 of CEEFPA would be inconsistent with the posture of this proceeding. Petitioner is not moving to obtain a default judgment or the authority to enforce one. The distinction, albeit a fine one, is material. While the underlying judgment in the instant proceeding *is* a default judgment, Petitioner's DRP-213 motion, seeks to execute an existing warrant where litigation has already contemplated the possibility of vacatur of the default judgment, as evidenced by Respondent's prior request to the court. The parties, however, agreed to abandon said relief in favor allowing the default judgment to remain in place and instead agreed simply to a stay in the execution of the warrant of eviction for a payment of arrears. The basis of Petitioner's DRP motion is that Petitioner should be allowed to execute the warrant based on a default of Respondent's obligations where Respondent, with the benefit of counsel, had ample opportunity to vacate the default judgment but instead agreed to leave it in place. Essentially, Petitioner seeks to execute on the warrant of eviction based on a default in obligations under a pre-pandemic two-attorney stipulation. As such, the procedural posture of this proceeding more appropriately falls under CEEFPA Part A, §8 entitled "Post warrant of eviction."

Part A, §8(a)(i) of CEEFPA in relevant part states the following

"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."

This section of CEEFPA does not provide the relief of seeking the removal of a default judgment by merely oral or written application. However, nothing in this section of CEEFPA precludes Respondent from seeking the vacatur of a default judgment and/or subsequent stipulations under the traditional framework either.

An overview of the Court's treatment of default judgments during the COVID-19 pandemic supports this analysis. DRP-205, effective March 13, 2020, instructed the clerks not to enter default judgments in any residential proceeding until the directive was rescinded. The directive was rescinded on October 12, 2020. AO 68/20, issued March 16, 2020, provided that "[a]ll eviction proceedings and pending eviction orders shall be suspended statewide," and further stated that "the New York City Housing Court has been directed not to issue new eviction warrants when a party has not appeared in court." AO 127/20, issued June 18, 2020, further suspended eviction proceedings commenced on or before March 16, 2020. DRP 213, effective August 12, 2020, stated "[c]onsistent with Administrative Orders 160/20 and 115/20, no adverse action (i.e., no defaults) shall be taken based upon the failure to file an answer in an eviction proceeding, or based upon the failure of a party to submit responsive papers to a motion [\*5] submitted through EDDS, absent specific order of the Court." Prior to the passing of CEEFPA, no mechanism was available to seek default judgments or enforce them. Thus, only through CEEFPA, Part A, §7 could a petitioner seek or enforce a default judgment. This triggers the aforementioned relief of "removing" a default judgment by an oral or written application and dispenses with the requirement that a formal Order to Show Cause be filed to request such relief. Where, however, as here, the parties have had ample opportunity to litigate the propriety of the default judgment prior to the COVID-19 pandemic, the proceeding remains in a different procedural posture, and would fall under CEEFPA Part A, §8.

## Conclusion



Respondent's application to remove the default judgment is denied. Respondent entered into two stipulations after the entry of the default judgment, and Petitioner has not moved this court under CEEFPA, Part A, §7. Accordingly, this proceeding cannot be viewed in the procedural posture that would afford it relief under Part A, §7 of CEEFPA. This application is denied without prejudice. The matter is adjourned to August 31, 2021 at 2:30pm for a hearing pursuant to the Tenant Safe Harbor Act. This constitutes the Decision and Order of this Court.

Dated: July 9, 2021

---

Hon. Bryant Tovar

Judge, Housing Part C

### Footnotes

**Footnote 1:** On June 30, 2020, New York State Governor Cuomo signed into law the Tenant Safe Harbor Act (S.8192B), or Chapter 127 of the laws of 2020. The Act prevents courts from issuing possessory judgments or warrants of eviction during the COVID-19 covered period for the non-payment of rent that accrues or becomes due during the COVID-19 period for those who have suffered financial hardship due to the COVID-19 pandemic. 2020 NY Law ch 127 § 2(2)(b)(i)-(iv).

[Return to Decision List](#)