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Zheng v. Choudhary

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART T
YUTING ZHENG,

Petitioner-Landlord,

Index No. L&T 77424/2019

ORDER

-against-

MUHAMMAD CHOUDHARY,
Respondent-Tenant,

NASTEEN BEGUM, REHMAT CHOUDHARY,
RIZWAN MUHAMMAD, JOHN DOE & JANE DOE,

Respondent(s)-Undertenant(s).

Hon. Jeannine Baer Kuzniewski

Recitation, as required by CPLR 2219(A), of the papers considered in the review of this Notice of Motion:

PAPERS	NUMBERED
NOTICE OF MOTION, AFFIDAVITS & AFFIRMATION ANNEXED	
ORDER TO SHOW CAUSE, AFFIRMATION & AFFIDAVIT ANNEXED	___1
ANSWERING AFFIRMATION & AFFIDAVIT REPLYING AFFIDAVITS & AFFIRMATION	___2
EXHIBITS COVID-19 Notices and Hardship Declaration	___1
STIPULATIONS	
OTHER	

Upon the foregoing cited papers, the Decision/Order in this Order To Show Cause seeking an order finding the Hardship Declaration invalid or in the alternative setting the matter down for a hearing is as follows:

In response to the ruling in *Chrysafts v. Marks*, 021) the New York State legislature amended the COVID 19 Emergency Eviction Foreclosure Prevention Act, and it was signed by The Governor on September 2, 2021. Specifically, in relation to the argument before the Court, Section 10(a) provides:

“Notwithstanding any other provision of this act, a stay under this act shall be granted or continued unless the court finds the respondent’s hardship claim invalid. A motion may be made by the petitioner, **attesting a good faith belief that the respondent has not experienced a hardship**, with notice to the respondent, and the court shall grant a hearing to determine whether to find the respondent’s hardship claim invalid.”¹

¹ CEEFPA as amended Section 10(a). Emphasis added.

The drafters of the bill specifically sought to address the due process claims that were raised by the United States Supreme Court in *Chrysafris v Marks*² by adding in Section 10.³ In doing so, they determined that a petitioner must attest to a “good faith belief” that the declarant is not suffering a COVID related hardship.

The petitioner here moves alleging that:

“6. The Petitioner has a good faith belief that the Respondent has not experienced a hardship.

7. The facts present to form my good faith belief are the following:

- a. The occupant has a construction company named ‘Unique Restoration and Construction Inc.’
- b. The occupant owns three to four vehicles.”⁴

“Courts have scheduled hearings based on casual observation of a tenant’s activities, social media posts by the tenant suggesting absence of COVID-related hardship, the presence of government-sourced rent payments and, in the business context, change in corporate structure.”⁵

The current affidavit in support of the motion for a hearing to determine the Hardship Declaration to be invalid offers no “casual observations” concerning the respondents’ activities. Simply stating that respondents have cars and a construction company with no further observations does not sustain petitioner’s initial burden.

The mere fact that people owned cars prior to the COVID-19 epidemic is not suggestive of the lack of a COVID related hardship. Had respondents been observed leaving on a regular basis as though there was a work schedule may provide a greater support for a belief as to whether the declarants have suffered a pandemic related hardship. The affidavit makes no attempt to address Option B that has been checked off by Mr. Choudhary.

“The legislature’s requirement for landlords to assert a good faith basis for a ‘validity’ hearing is a low bar to obtaining the hearing. Landlords must ‘show a ‘belief,’ albeit one that has a good-faith basis’ (*Harbor Tech LLC v. Correa*, 73 Misc. 3d 1211(A), 2021 WL 4945158 [Kings Cty., Civ. Ct. 2021, Oct. 25, 2021]).”⁶

Asserting that the declarant has a business and cars without more, such as whether these were new purchases or corporate formations during COVID, is insufficient to sustain petitioner’s

² 594 ____ (2021)

³ It is noted that this is not the only amendment to the Bill.

⁴ Affidavit In Support.


⁵ *Chrysafris Et Al v Marks*, Case 2:21-cv-02516-GRB-AYS Document 134 Filed 11/29/21

⁶ *Lahijani v. Madison Glob. LLC*, No. LT-306321-21/NY, 2021 WL 5272384, at *2 (N.Y. Civ. Ct. Nov. 10, 2021)

initial burden of a good faith belief. Consequently, the Court is not weighing the facts and circumstances presented in opposition.

Accordingly, the motion is denied.

Dated: November 30, 2021


Hon. Jeannine Baer Kuzniewski, J.H.C.

So Ordered
Hon. Jeannine Baer Kuzniewski, J.H.C.