2022-02-18

Actie v. Gregory

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Actie v Gregory
2022 NY Slip Op 50117(U)
Decided on February 18, 2022
Civil Court Of The City Of New York, Kings County
Slade, J.
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Decided on February 18, 2022

Civil Court of the City of New York, Kings County

Samuel Actie, Petitioner-Landlord,

against

Tawana Gregory, Respondent-Tenant. KAWAN MACK, JOHN DOE AND JANE DOE Respondents-Undertenants.

Index No. 300703-20/KI

Kimberley Slade, J.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of Petitioner's motion to restore the instant proceeding to the court's calendar.

Papers Numbered
Order to Show Cause 1
Affidavit or Affirmation in Opposition to Order to Show Cause 2
Respondent's Affidavit in Reply 3
Court file contained on NYSCEF

This is a holdover proceeding in an unregulated unit where Petitioner seeks possession of the premises. Respondent filed an ERAP application and Petitioner moves to vacate the

automatic ERAP stay imposed by Chapter 417 (A)(B3) of Chapter 56 of the laws of 2021. In this matter Petitioner was notified that an ERAP application was submitted by respondent Tawana Gregory, a tenant who has vacated since the filing of the application, and of the stay provided pursuant to the statute that remains in place pending a determination of the ERAP application. Kawan Mack, an undertenant named in the petition, remains in possession of the premises and opposes Petitioner's motion challenging the stay and seeking its vacatur. Mack [*2]asserts that "there is nothing in the four corners of the statute" that permits a challenge to the automatic stay that is triggered when an individual files an ERAP application and that petitioner's motion is somehow "inappropriate and thus should be automatically denied "

In support of his motion, Petitioner argues that the automatic ERAP stay is a due process violation akin to the stay discussed in *Chrysafis v. Marks*, Sup. Ct., U.S., S.Ct., L.Ed.2d, 2021 WL 3560766 (8-12-21), where the United States Supreme Court found that a tenant's ability to self-certify financial hardship and unilaterally stay a proceeding via the filing of a Hardship Declaration ultimately led to the decision that fully enjoined Part A of CEEFPA and prompted the legislature to revise that statute to permit a challenge to a Hardship Declaration Here, with ERAP, there is no substantive or meaningful distinction in the mechanics or logistics of how ERAP works and how CEFFPA worked prior to the *Chrysafis* decision.

Pursuant to Chapter 417 (A)(B3) of Chapter 56 of the laws of 2021, once a tenant or occupant files an ERAP application, the proceeding is stayed with limited exceptions enumerated by the statute and the case remains stayed until a determination of the application is made The statute provides no mechanism for a challenge to the stay and there appears to be either indefinite or inchoate timeframes within which an application must or may be processed. If a petitioner is precluded from challenging the stay, the outcome is the same as existed with CEEFPA prior to *Chrysafis, supra.* An occupant may file an ERAP application, whether eligible or not, an intended beneficiary of the program or not, in good faith or bad, and significantly where the outcome will not result in the preservation of a tenancy In this scenario the occupant will have unilaterally invoked a stay while precluding the petitioner in the action from engagement or participation in the process to which they are a party. This is the outcome that influenced the decision in *Chrysafis, supra,* where the Court enjoined the enforcement of Part A of CEEFPA.

CPLR Section 2201 provides "[e]xcept where otherwise proscribed by law, the court in which an action is pending may grant a stay of proceedings in a proper case, upon such terms

as are just." In the ordinary course of a proceeding a court has significant discretion as to whether, when and upon what terms this typically interim form of relief may be granted. Traditionally the individual seeking a stay has the burden of demonstrating why it should be granted and while it is commonly and permissibly sought *ex parte* and may in some instances be automatically triggered, the party opposing the application is entitled to a hearing on its merits. While the COVID-19 pandemic prompted the Legislature to enact the statute and provide this sweeping relief *en masse,* to deny a party-in-interest an opportunity to challenge a stay if it can demonstrate the futility of the stay in a particular context or that it should otherwise not apply, would contravene most of our legal framework and fundamental ideas of fairness.

In this matter, petitioner argues that even if the ERAP monies become available and respondents are approved, it would be a prejudicial exercise in futility to continue the stay as petitioner seeks to recover possession of the apartment for his use and for that of his immediate family. It is undisputed that the subject premises is in an unregulated residential building with four or fewer units. There is no current lease for the premises. Petitioner has notified respondents that he does not intend to and will not renew the lease. The remaining occupant, the undertenant, does not have succession rights to the premises nor any other independent possessory right or interest and resides in a unit where a termination notice has been served. Section 8(iv) of the Act provides that a landlord or property owner who accepts ERAP payment for rent or arrears "may decline to extend the lease or tenancy if the landlord intends to immediately occupy the unit for [*3]the landlord's personal use as a primary residence or the use of an immediate family member as a primary residence." This court finds it would be counterintuitive and prejudicial to preclude Petitioner from challenging an ERAP stay where approval of the application will not result in the preservation or creation of a tenancy.

In summary proceedings courts may examine the question of restoration to possession in the context of a lockout proceeding, even where a party may have been illegally locked out. The courts in the Second Department do not grant or require restoration in proceedings where restoration would be "futile." *See, eg. Bernstein v. Rozenbaum*, 20 Misc 3d 128(A), AT, 2nd Dept. 2008), *Parkash 2125 LLC v. Galan*, 61 Misc. 502, 84 NYS3d 724, 2018 NY Slip. Op. 28273 (Civ Ct. Bronx County 2018) and *Cordova v. 1217 Bedford Realty LLC*, 67 Misc 3d 1206(A) (Civ Ct Kings 2020). Here, under the specific facts of this case, even if respondents'

ERAP application is approved and petitioner accepted the funds, the payment of funds through the ERAP program would not reinstate the landlord-tenant relationship. Consequently, allowing the stay to continue is an exercise in futility and prejudicial to petitioner

Based on the foregoing, the Court grants petitioner's motion to the extent of vacating the ERAP stay. The matter will be restored to the Calendar for a conference on the merits. The clerk will notify the parties of the date and time.

Date: February 18, 2022
Brooklyn, New York

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Hon. Kimberley Slade, JHC

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