2022-02-24

560-566 Hudson LLC v. Hillman

CIVIL COURT CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART D
560-566 HUDSON LLC,

Index No.: LT-300446-21/NY

Petitioner.

Motion Seq. No.: 004
DECISION/ORDER

-against-

JAMES DAVID HILLMAN,

"JOHN DOE" &
"JANE DOE",

Respondents [Occupants].

Recitation, pursuant to CPLR § 2219(a), of the papers considered in review of this Order to Show Cause

PAPERS	NUMBERED
Notice of Motion & Affidavits Annexed	
Order to Show Cause and Affirmation Annexed	#1 [NYSCEF # 50]
Answering Affidavits	##2&3 [NYSCEF ##52;56]
Replying Affidavits	##4&5 [NYSCEF ##62;63]
Exhibits	
Stipulations	
Other	

FERDINAND. J.:

Upon the foregoing cited papers, the Decision/Order on this Order to Show Cause to vacate the stay of this proceeding is as follows:

This summary holdover proceeding was commenced seeking possession of the rent stabilized premises known as 564 Hudson Street, New York, New York 10014 (the "Building") apartment 7 (the "Apartment"). The Notice to Quit and/or Terminate (the "Notice") dated November 22, 2019, alleged that respondents were licensees of the deceased tenant of record, or in the alternative, squatters.

Respondents have not answered the Petition. Instead, in or about July 2021, respondent Hillman filed a hardship declaration, and the proceeding was stayed pursuant to Ch. 417 of the Laws of 2021 (the "Act").

After the expiration of the hardship declaration stay, on or about November 17, 2021, Christopher Cook, s/h/a "John Doe" filed an application with the Emergency Rental Assistance Program ("ERAP") and the proceeding was again stayed pending a determination of eligibility.[1]

Petitioner moves by Order to Show Cause to vacate the ERAP stay on the grounds that same is inapplicable to this proceeding and/or these respondents.

After argument and upon a review of the papers the motion is denied.

Petitioner concedes that a portion of its argument was based upon an earlier, proposed version of what eventually became Ch. 56 of the Laws of 2021, Part BB, Subpart A, and as amended by the Act.

The original proposed Senate Bill S2742C, cited by petitioner and primarily relied upon in its moving papers, omitted any reference to holdovers or pending proceedings. This changed in the final legislation. The statute currently in effect contemplates that the stay should apply to "proceedings for holdover or expired lease" in addition to "non-payment of rent or utilities." Further, the amended language in sec. 8 of the Act clearly applies to eviction proceedings "whether filed prior to, on or after the effective date of this act." To the extent that petitioner argues for vacatur of the stay based upon the language in the original Senate Bill, that part of the motion is denied.

In its reply petitioner acknowledges the current statute and concedes that holdovers may be covered by the Act. It argues however, that the stay only applies to holdovers based upon a default in payment of rent and/or where rent arrears are claimed due by a petitioner. These arguments, raised for the first time in reply, are not properly before this court and are not being considered. *Fetahu v New Jersey Tr. Corp.*, 197 AD3d 1065 [1st Dept 2021].

[1] It appears that in or about January 2022 respondent Hillman filed his own ERAP application which was not addressed in the moving papers.

Regarding Mr. Cook's ERAP application, petitioner argues that Mr. Cook is not a tenant and therefore should not benefit from the stay.

Respondent Cook opposes, asserting that occupants are included as persons who may qualify for assistance, citing sec. 5 of the Act which sets forth eligibility standard guidelines and provides in pertinent part:

> 1. (a) A household...shall be eligible for emergency rental assistance...if it:
>
> (i) is a tenant or occupant obligated to pay rent in their primary residence in the state of New York, including both tenants and occupants of dwelling units and manufactured home tenants..."

The plain language of sec. 5 contemplates an occupant, as defined in Real Property Law sec. 235-f, as potentially eligible for emergency assistance. Further, the restrictions on evictions do not exclude a proceeding based upon the status of the applicant as a "tenant" or "occupant" and the Court is not persuaded that the legislature intended a selective application of the stay on this basis.

The Court notes again that an answer has not been interposed and while Mr. Cook fails to elaborate in his opposition how exactly he is an *occupant obligated to pay rent,* the explanation, or lack thereof, does not bear on the validity of the stay but to his eligibility for assistance, a determination that rests with the Office of Temporary and Disability Services ("OTDA") and not this Court.

Petitioner's argument, advanced in counsel's affirmation, that given its intention not to participate in Mr. Cook's application, the ERAP stay should be lifted as violative of the Supreme Court's reasoning in *Chrysafis v Marks,* 141 S. Ct. 242 [2021] is similarly rejected.

Chrysafis enjoined Part A of Covid-19 Emergency Eviction and Foreclosure Prevention Act ("CEEFPA"), which precluded a landlord from challenging a tenant's self-certification of hardship, as violative of the Due Process Clause.[2] The Supreme Court's narrow ruling on the constitutionality of CEEPFA has no bearing

[2] Petitioner concedes that it is not seeking to invalidate the ERAP statute, but merely is challenging its application to the facts of this case.

on the stay of this proceeding pending a determination of respondents ERAP application.

Accordingly, the petitioner's Order to Show Cause is denied. The proceeding remains stayed on the ERAP Administrative calendar.

This constitutes the Decision and Order of this Court.

Dated: New York, New York
February 24, 2022

TF

TRACY FERDINAND, J.H.C.