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GEM PAWNBROKERS CORP v. CHARMAINE PARRISH

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART G

GEM PAWNBROKERS CORP.	Petitioner(s),
vs.	
CHARMAINE PARRISH	Respondent-Tenant
JOHN DOE, JANE DOE	Respondents-Undertenants
Address: 1535 Flatbush Avenue, 2 nd Floor Brooklyn, NY 11210	

L&T Index No. 305670-21/KI

**DECISION/
INTERIM ORDER**

Hon. Kimberley Slade
Judge, Housing Court

Recitation, as required by CPLR 2219(a), of the papers considered in the review of Petitioner’s Order to Show Cause to restore the case to the calendar.

Papers	Numbered
Order to Show Cause.....	1
Affirmation in Opposition.....	2
Reply.....	3
Affirmation in Sur-Reply.....	4
Court file contained on NYSCEF.....	

Upon the foregoing cited papers, the Decision/Order on petitioner’s order to show cause to restore the case to the calendar and vacate the current ERAP stay under Section 8 of current ERAP law (Chapter 417, Laws of 2021 Part A) is as follows:

Petitioner challenges the automatic stay provision of Part BB of Chapter 56 of the Laws of 2021, as amended by Part A of Chapter 417 of the Laws of 2021 because it mirrors the previously invalidated automatic stay in the context of hardship declarations decided in *Chrysafis v. Marks*, 2021 WL 3560766 (8/12/21). Furthermore, petitioner argues that CPLR §2201 grants courts in a civil action inherent power to control their own proceedings and stay or suspend cases in its discretion. Finally, petitioner’s affidavit in support swears that even if ERAP monies were approved, they will not be accepted and that “no amount of money will make petitioner whole.” See, *Petitioner’s Affidavit paragraph 7*.

Among other arguments opposing this motion, respondent argues that petitioner’s constitutional challenge to the ERAP stay has not been properly placed before the Court. Specifically, respondent claims petitioner’s Order to Show Cause should have been served on the New York Attorney General’s Office as required by McKinney’s CPLR §1012(b). That section states “when the constitutionality of a statute of the state, or a rule and regulation adopted pursuant thereto is involved in an action to which the state is not a party, the attorney-general, shall be

notified and permitted to intervene in support of its constitutionality.” *McKinney's CPLR §1012(b)*. In reply, petitioner alleges that in an “inadvertent” oversight, their office omitted the proof of service of the instant motion on the Attorney General’s office. An affirmation of service was refiled on NYSCEF that showed the Office of the Attorney General was served at 28 Liberty Street New York, NY 10005, attention to Managing Attorney's Office/Personal Service. Respondent’s sur-reply alleges that the service alleged is improper because the attention should have been directed to: Division of Appeals and Opinions, albeit at the same address.

The Court finds no prejudice in granting petitioner an opportunity to re-serve a copy of the Order to Show Cause directed to the Division of Appeals and Opinions. Petitioner is directed to serve a copy of the Order to Show Cause by priority mail by no later than March 8, 2022. Proof of service to be uploaded to NYSCEF.

Consequently, petitioner’s motion is granted to the extent that the motion is adjourned to March 21 at 2:45pm in Part G, Room 509 for re-service upon the New York Attorney General’s Office as provided for above.

Date: March 4, 2022
Brooklyn, New York

Hon. Kimberley Slade, JHC