2022-03-23

Ami v. Ronen

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Ami v Ronen
2022 NY Slip Op 22098
Decided on March 23, 2022
Civil Court Of The City Of New York, Kings County
Barany, J.
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
This opinion is uncorrected and subject to revision before publication in the printed Official Reports.

Decided on March 23, 2022

Civil Court of the City of New York, Kings County

Amos Ben Ami, Petitioner-Landlord,

against

David Ronen, GILATE RONEN JOHN DOE AND JANE DOE, Respondents-Tenants.

L & T Index No. 59050/20

Kenneth T. Barany, J.

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of Petitioner's Order to Show Cause finding the ERAP stay inapplicable to this proceeding.

PAPERS
Petitioner's Order to Show Cause, Attorney Affirmation in Support, Affidavit in Support and Exhibits ("A"-"D") 1,2,3
Respondent's Attorney's Affirmation in Opposition & Exhibits ("1"-"2") 4
Reply Affirmation of Petitioner's Attorney 5

Upon the foregoing cited papers, the Decision and Order is as follows:

This is a holdover proceeding commenced after the expiration of a nonregulated lease. [FN1] The subject building is an owner occupied 2 family house that is currently under "defacto" multiple dwelling status due to occupancy of an additional area within the subject building. Petitioner asserts unrefuted that prior to even commencing this proceeding he advised respondent that he needed possession of the subject premises back for petitioner's wife to occupy (see paragraph "4" of Ben Ami Affidavit). Petitioner's wife is a disabled paraplegic currently in a "living facility" (see paragraph "11" of Loveless Affirmation; Paragraphs "2" and "12" of Ben [*2]Ami Affidavit).

Respondent first delayed this proceeding through the filing of a Hardship Declaration dated September 13, 2021. Thereafter petitioner moved to vacate the stay appurtenant to the Hardship Declaration, but that motion was rendered moot when the stay ended as a matter of law effective January 15, 2022. When that stay expired respondent then filed an ERAP application on or about March 7, 2022, as the proceeding was in the process of finally moving forward.

It is worthwhile noting that while automatic court Covid Stays and respondent's Hardship Declaration prevented petitioner from pursuing its rights in seeking possession of the subject premises, respondent was allowed to go forward with *a series* of HP proceedings against petitioner. The first (L & T Index 6074/20) was dismissed when the landlord's motion to dismiss was granted on default. The second (L & T 1119/20) was dismissed *after trial*. The third (Index 420/21) was dismissed on motion of the landlord and legal fees awarded to the landlord (see Exhibit "D" to the order to Show Cause. *Furthermore, at no time during the year and a half stay of this proceeding did respondent file an ERAP application that could have run concurrent with the Hardship Declaration stay when monies were readily available and would have been long ago received a "determination of eligibility".* Instead, it was only when all other delays of this proceeding had run their course that respondent chose to avail himself of this relief.

ERAP (Part BB of Chapter 56, Laws of 2021), in pertinent part states as follows:

> "Eviction proceedings for a holdover or expired lease, or nonpayment of rent or utilities that would be eligible for coverage under this program shall not be commenced against a household who has applied for this program unless or until a determination of ineligibility is made. If such eviction proceedings are commenced against a household who subsequently applies for benefits under this program, all proceedings shall be stayed pending a determination of eligibility... "[FN2]

ERAP, in pertinent part also states:

> Acceptance of a payment for rent or rental arrears under the ERAP program shall constitute agreement by the recipient landlord or property owner:
>
> .....(iv) not to evict for reason of expired lease or holdover tenancy any household on behalf of whom rental assistance payment is received for 12 months after the first rental assistance payment is received...."

In addressing the ramifications of the ERAP automatic stay Judge Kim Slade in *Actie v Gregory* 2022 NY Slip Op 50117(U) noted its inherent problem:

> "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 [*3]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."

Petitioner's Order to Show Cause, seeks to invalidate the ERAP stay on a specific ground to wit: " as the premises are less than 4 units, and the petitioner seeks to recover the premises for his disabled wife as her primary residence".[FN3] ERAP normally requires a landlord accepting ERAP money to forego for a year from evicting a tenant based on expiration of lease or holdover. Nevertheless it specifically exempts from this restriction a " .dwelling unit that contains 4 or fewer units, in which case the landlord intends to immediately occupy the unit for the landlord's use as a primary residence or the use of an immediate family member as a primary residence ".

Respondent relies upon the maxim *expressio unius est exclusio alterius*. That reliance asserts that the motion must be denied absent a specific expression of an exemption within the automatic ERAP stay itself pertaining to landlords of buildings with 4 or less units seeking owner or family member occupancy as a primary residence. This court is fully familiar with that maxim and has applied it when appropriate within its own decisions. As to ERAP, however, the Court chooses to apply a more apropos maxim to wit: in *pari materia*. This maxim applies here not in the sense of comparative statutes but looking at ERAP as a whole and the legislative intent behind it.

Particularly as to nonpayment proceedings, ERAP generally had potential to provide assistance that could end litigation premised upon nonpayment of arrears accruing during the now waned covid pandemic. The payment of such monies would also give monetary relief to

landlords whose proceedings were stayed at various times during the pandemic.[FN4] It also provided the landlord in the context of expiration of lease proceedings and holdovers the option to decide whether the receipt of monies and extension of a tenancy outweighed the landlord's need for repossession. ERAP, however, clearly intended on allowing the small owner to proceed pursuing litigation *without restriction* while simultaneously obtaining needed funds from the program.

ERAP was intended as a potential shield to assist tenants to obtain financial assistance with the possibility of maintaining their tenancy. It was never intended as a sword to be used by a nonregulated tenant to remain in occupancy ad infinitum where the landlord clearly seeks to end the tenancy so a disabled relative can return back home. For all of the foregoing reasons the motion is granted. Any stay resulting from the filing of any ERAP in connection with this [*4]proceeding is hereby vacated.[FN5] The proceeding is restored to the Small Owner Part Calendar on April 7, 2022, at 12:00 AM. In the event respondents have not yet served and filed an Answer to this proceeding they are directed to do so no later than April 5, 2022. This constitutes theDecision and Order of the Court.

SO- ORDERED
March 23, 2022
KENNETH T. BARANY
J.H.C

Footnotes

Footnote 1: While petitioner claims in support of the Order to Show Cause that an amended petition was served and filed containing additional allegations of Nuisance no such exhibit was annexed to the Order to Show Cause. The court does not dispute its existence as it was discussed during the court conference. As will be demonstrated hereafter the Nuisance exception is not the ground upon which petitioner seeks to vacate the ERAP stay.

Footnote 2: This proceeding is a glaring example of why ERAP should neither be rubber stamped as to the stay applicability nor applied with a never-ending broad stroke. When does the issue of rent payment take priority with a small landlord who is trying to end a tenancy so a disabled or elderly relative can move in and be taken care of? When does the issue of rent take priority when a small landlord is trying to end a tenancy so a family member that just graduated college can move back home?

Footnote 3: Petitioner does not challenge ERAP on constitutional grounds (which would have required notification of the NYS Attorney General under CPLR §1012(b)(3), (see *97-101 Realty, LLC v Sanchez*, 66 Misc 3d 30 (App. Term, 2nd Dept. 2019). Nevertheless, the

Court notes that such an issue exists. In *Pantelis Chrysafis, et al v Lawrence K. Marks*, 594 U.S. — (2021); 2021 US LEXIS 3635, 2021 WL 3560766 [August 12, 2021], in addressing the automatic stay appurtenant to a Hardship Declaration, the Supreme Court of the United States enjoined enforcement of the provision Part A of the CEEFPA upon a finding that it deprived Owners/landlords of Due Process.

Footnote 4: Currently, however, even those situations appear to be akin to the proverbial "ice in the winter" as there is no money left in the system and only repeated representations from New York State that more large sums of money are continually requested to no avail.

Footnote 5: This Court limits this holding to the ground upon which the motion relies as well as the factual allegations underlying this proceeding. The Court need not address to what extent this holding would be applicable to other proceedings or upon a different ground for vacating the stay e.g. constitutionality.

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