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1264 Flatbush LLC. v Robinson
2022 NY Slip Op 31006(U)
March 25, 2022
Civil Court of the City of New York, New York County
Docket Number: Index No. LT No. 73530/19
Judge: Hannah Cohen
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART S

-----X
1264 Flatbush LLC.,

Petitioner

Index No. LT # 73530/19

- against -

DECISION/ORDER

Tanisha Robinson
1264 Flatbush Avenue
Apt 1
Brooklyn, New York 11210

Respondent.

-----X

HON. HANNAH COHEN:

Recitation, as required by CPLR 2219(a), of the papers considered in the review of petitioners motion to execute upon the warrant.

<u>Papers</u>	<u>Numbered</u>
Notice of Motion	1
Opposition	2
Reply	3

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

Petitioner 1264 Flatbush LLC commenced this holdover proceeding in 2019. By stipulation dated September 14, 2019 respondent agreed to a final judgment of possession, warrant to issue forthwith and execution stayed through August 31, 2020 provided \$4,025.64 in arrears were paid plus ongoing use and occupancy. Respondent by order to show cause sought an extension which was granted by order dated November 7, 2019 which stayed through warrant through December 10, 2019 for \$8,125.64 to be paid plus December’s rent. Respondent then

sought another extension by order to show cause which was granted by order dated December 7, 2019 which stayed the warrant through January 24, 2020 for \$10,175.64 to be paid plus January 2020 rent.

The court subsequently closed on March 17, 2020 due to the health pandemic caused by COVID-19. As a result, a series of administrative orders (“AO’s”) and directives (“DRP’s”) were issued by the Chief Administrative Judge and the Supervising Judge of the Civil Court of New York. Petitioner in March 2021 sought to execute upon the warrant pursuant to requirements of DRP 213 and AO/160 and the Emergency Eviction & Foreclosure Prevention Act. Respondent obtained counsel and an ERAP application was submitted. The case was placed on the ERAP administrative calendar. It is undisputed that ERAP subsequently paid the petitioner \$30,750 for the time period of September 2020 through August 2021. Petitioner alleges that to date, after crediting the ERAP funds, respondent still owes \$36,303.14 through March 2022.

Petitioner now seeks to go forward with its initial motion dated March 5, 2021, finding that DRP 213 and AO 160/20 have been satisfied and seeking to execute upon the warrant. Petitioner argues that the court should treat its initial motion as a motion under DRP 221 which references back to DRP 217 and AO 245/21 because it is seeking to enforce a warrant issued before March 17, 2020.

Generally, courts in rendering decisions on motions, are not limited by the specific arguments raised by the parties in their submissions. CPLR 2214(a). However a court typically lacks the jurisdiction to grant relief that is not requested in the moving papers (See McGuire v McGuire, 29 AD3d 963 [A.D. 2nd Dept 2006]). In this instance, petitioner’s motion sought relief pursuant to DRP 213 and 217 as well as “such other and further relief as the court may deem just

and proper.” As such, the court has the jurisdiction to consider petitioner’s motion to execute the warrant pursuant to DRP 221, as the relief sought is supported by petitioner’s papers and no party is prejudiced (See Frankel v Stavosky, 40 AD3d 918 [2007]; HCE Assoc. v. 3000 Watermill Lane Realty Corp., 173 AD2d 774 [A.D. 2nd Dept 1991]; Siegel, Practice Commentaries, McKinney’s Cons. Laws of N.Y., Book 7B, CPLR c 2214:5). Here petitioner seeks similar relief, albeit under a different DRP statute and therefore the court may entertain petitioner’s motion under DRP 221.

Respondent opposes and argues that as petitioner accepted funds administered through ERAP, petitioner should not be permitted to execute upon its warrant. Respondent cites to COVID-19 ERAP of 2021 [L. 2021, N.Y. Ch. 56] which states that as a condition of accepting funds from the ERAP program, landlords can “not evict for reasons of expired lease or holdover tenancy any household on behalf of whom rental assistance is received for 12 months after the first rental assistance payments is received...”. Respondent opinions that the court should deny petitioner’s motion to execute upon the warrant based upon its acceptance of ERAP funds.

Petitioner in its reply acknowledges a stay through October 2022, but seeks to have such stay conditioned upon payment of use and occupancy within this holdover proceeding. Petitioner’s reply which now for the first time seeks use and occupancy as a condition of the stay is improperly before this court as it differs significantly from the relief sought in its original motion and is now only before the court pursuant to petitioner’s reply (See USA Federal Savings Bank v Calvin, 145 AD3d 704 [A.D. 2nd Dept 2016] where relief sought is dramatically different from what was originally sought in the motion, it is improper for the court to grant; Calderone v Esenova, 132 AD3d 711 [2015]; Evans v Argent Mtge Co LLC, 120 AD3d 618 [A.D. 2nd Dept

2016]).

Based upon the above, petitioner's motion is granted only to the extent of staying the warrant through October 2022. This is without prejudice to petitioner's claims for any other appropriate motion or proceeding in this or any other action, and respondent's defenses thereto.

This constitutes the decision and order of this Court.

Dated: Brooklyn, New York
March 25, 2022

HON. HANNAH COHEN, J.H.C.