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Papandrea-Zavaglia v Arroyave
2022 NY Slip Op 22109
Decided on April 7, 2022
Civil Court Of The City Of New York, Kings County
Scheckowitz, J.
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Decided on April 7, 2022

Civil Court of the City of New York, Kings County

<p>Immacolata Papandrea-Zavaglia, Petitioner,</p> <p>against</p> <p>Jose Arroyave, KRYSTAL HERNANDEZ-ARROYAVE, "JOHN DOE" and/or "JANE DOE", Respondent(s).</p>
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Index No. 303636/21

Petitioner: Andrea Balsamo, Esq.

Respondent Hernandez-Arroyave: RiseBoro/LEAP by Dane Marrow, Esq.

Bruce E. Scheckowitz, J.

Recitation, as required by the CPLR § 2219(a), of the papers considered in the review of this motion to vacating the automatic stay imposed by Respondent's ERAP filing, granting summary judgment pursuant to CPLR § 3212, and awarding Petitioner reasonable attorneys' fees.

PAPERS

NUMBERED

Notice of Motion & Affidavits Annexed 1
Notice of Cross-Motion & Affidavits Annexed
Answering Affidavits 2
Replying Affidavits 3
Exhibits
Memorandum of law

In this holdover proceeding, the petitioner, Immacolata Papandrea-Zavaglia ("Petitioner") seeks to recover possession of the unregulated premises located at 1316 72nd Street, Apt. 1., Brooklyn, New York 11228 ("Premises") from Jose Arroyave, Krystal Hernandez-Arroyave, John Doe, and Jane Doe (collectively "Respondents") on the grounds that Petitioner has terminated Respondents' tenancy. *See Notice of Petition, Petition, 90 Day Notice of Termination and Affidavits of Service for the 90 Day Notice of Termination and the Notice of Petition and Petition.* This proceeding first appeared on the court's Intake Part calendar on January 3, 2022 and was referred to a resolution part. On January 24, 2022, the proceeding was transferred to the newly created Small Property Part ("SPP") and adjourned to February 3, 2022. On the return date, Petitioner appeared by counsel, Andrea Balsamo, Esq., and Respondent Hernandez-Arroyave appeared by counsel, RiseBoro LEAP by Dane Marrow, Esq. On the [*2] record, counsel for Respondent Hernandez-Arroyave represented that his client had filed an application for emergency rental assistance through ERAP and asserted the instant proceeding should be stayed until a final determination was made on her application by the Office of Temporary and Disability Assistance ("OTDA"). Petitioner opposed the application for the stay and stated Respondent had been provisionally approved for ERAP, but Petitioner did not intend to accept any funds from ERAP, so the stay was unnecessary. This court adjourned the proceeding to March 3, 2022 and directed Respondent Hernandez-Arroyave to file an answer and for Petitioner to move to vacate the stay. Upon letter application to the court, and consent by Respondent, the instant proceeding was adjourned to March 10, 2022.

Petitioner now moves to vacate the automatic stay imposed by Respondent Hernandez-Arroyave's application for rental assistance through ERAP, for summary judgment pursuant to CPLR § 3212, and for attorney's fees. Related to her prayer for relief to lift the automatic stay, Petitioner asserts that she has elected not to participate in the ERAP program and is willing to waive the one hundred and eighty (180) day period allowed under the program for the submission of necessary documents. She further argues that the stay imposed by ERAP is a violation of Petitioner's due process rights similar to that of the COVID-19 Emergency

Eviction and Foreclosure Prevention Act of 2020 (hereinafter "CEEFPFA"), as adjudged by the United States Supreme Court. Landlord represents Respondent Hernandez-Arroyave was notified that Petitioner intended to waive any rights to collect ERAP funds so that holdover may proceed. Further, Petitioner asserts she is entitled to summary judgment, as the premises is a two-family house, not subject the NYC Rent Control laws or governed by the Rent Stabilizations Laws of 1969, 1974, and 2019, and since the tenancy has been terminated, Respondents do not have any statutory right to remain in the Premises. Respondent opposes and avers it is outside the Housing Court's jurisdiction to consider Petitioner's argument, as landlord seeks to challenge the constitutionality of Section 7 of Subpart A of Part BB of chapter 56 of the laws of 2021, as amended by Section 4 of Part A of the Chapter 417 of the laws of 2021 ("ERAP statute"), which stays evictions upon the filing of an ERAP application until OTDA makes a final determination about Respondent's eligibility. Respondent posits Petitioner, in effect, is seeking a declaratory judgment as to the rights of the parties, and the Housing Court does not have the jurisdiction to render a decision, which Petitioner can only seek in Supreme Court. Respondent also represents such a constitutional challenge requires Petitioner to serve the New York State Attorney General's Office. Finally, during oral argument Respondent asserted the instant proceeding should be dismissed as Petitioner failed to exercise the requisite due diligence as required by section 4 of Subpart A of Part C of Chapter 417 of the laws of 2021 when serving the Ninety (90) Day Notice of Termination.

Preliminarily, though Petitioner challenges the constitutionality of the automatic stay imposed as a result of an ERAP application on due process grounds, Respondent correctly avers that Petitioner's failure to serve the New York State Attorney General's Office precludes this court from considering this argument. However, the court is not required to consider the constitutionality of the ERAP statute in order to determine whether that provision of the statute is applicable to the facts herein. *2986 Briggs LLC v. Evans, et al.*, 2022 NY Slip Op. 50215(U), *3-5 (Civ. Ct. Bronx Co., J. Lutwak).

Relating to applications for a stay, in general, CPLR 2201 provides that "[e]xcept where otherwise prescribed by law, the court in which an action [or proceeding] is pending may grant a stay of proceedings in a proper case, upon such terms as may be just." This section authorizes [*3] courts of original civil jurisdiction to grant a stay of proceedings. *See Schwartz v. New York City Housing Authority*, 219 AD2d 47, 47 (A.D. 2nd Dept. 1996). A determination as to whether to grant a stay of a proceeding is a discretionary one as "courts have the inherent power, and indeed responsibility, so essential to the proper administration of justice, to control their calendars and to supervise the course of litigation before them." *See Grisi v. Shainswit*, 119 AD2d 418 (A.D. 1st Dept. 1986); *See also Catalane v. Plaza 400*

Owners Corp., 124 AD2d 478, 480 (A.D. 1st Dept. 1986).

Since March 2020, the New York state legislature and the governor's office have promulgated legislation and executive orders to protect tenants who have been impacted by the pandemic from being evicted. The initial measures, including the COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020 (hereinafter "CEEPPA") and Section 4 of Subpart A of Part C of Chapter 417 of the laws of 2021, were prophylactic rules which blanketly stayed those proceedings which were not objectionable conduct/nuisance holdovers, HP proceedings, and illegal lockout proceedings, for tenants and occupants who faced financial hardship due to Covid-19, or whose health has been or could be negatively affected by an eviction or moving during the pandemic. Unlike previous statutes, the ERAP statute provides a benefit to tenants and landlords in the form of payment of accrued rental arrears and prospective rent and stays an eviction proceeding upon an ERAP application pending an eligibility determination by OTDA.

After the instant motion was made, numerous courts of concurrent jurisdiction have ruled on whether the automatic stay imposed by the filing of an ERAP application can be lifted by the court, and, if so, under what circumstances. The considerations for vacating the stay include, the regulatory status of the premises, the nature of the cause of action, the relationship between the applicant and the landlord, does the applicant meet the basic criterion for assistance as outlined in the statute, and whether the equities favor the landlord. *See e.g. Actie v. Gregory*, 2022 NY Slip Op 50117(U)(Civ. Ct. Kings Co, J. Slade) (court vacated an ERAP stay in a holdover proceeding where Petitioner sought to recover possession of an apartment in a building with less than four units for his own personal use and applicant had already vacated the premises), *Kelly v. Doe*, 2022 NY Slip Op. 22077 (Civ. Ct. Kings Co, J., Cohen) (court vacated a stay in a post-foreclosure holdover proceeding finding that Respondent had no contractual obligation to pay rent to landlord), [*Abuelafiya v. Orena*, 73 Misc 3d 576](#) (Dist. Ct. 3rd Dist, Suffolk Co., 2021) (court vacated stay when it was determined that applicant had second home), *2986 Briggs LLC v. Evans, et al.*, 2022 NY Slip Op. 50215(U)(Civ. Ct. Bronx Co., J. Lutwak)(court vacated ERAP stay in a licensee holdover proceeding where there was no contractual obligation for Respondent to pay rent or use and occupancy), *Ben Ami v. Ronen, et al.*, Civ. Ct. Kings Co., March 23, 2022, Barany, J., index no. 59050/20 (court vacated ERAP stay in a holdover proceeding where Petitioner sought to recover the premises, an unregulated apartment, for his personal use), *Silverstein v Huebner, et al.*, Civ. Ct. Kings Co., March 29, 2022, Stoller, J., index no. 94101/18 (court vacated an ERAP stay in a holdover proceeding where remaining occupant was licensee in an unregulated apartment and Petitioner sought to recover the apartment for his personal use);

see cf. 204 W. 55th Street, LLC v Mackler, 2021 NY Slip Op. 32901(U) (Civ. Ct. NY Co., J. Fang) (ERAP stay upheld in a licensee holdover proceeding, where respondents allege succession to the subject rent regulated premises), *560-566 Hudson LLC v Hillman, et al.*, NYLJ 1646709605NY30044621 (Civ. Ct. NY Co., 2022, J. Ferdinand) (upholding the ERAP stay in a licensee proceeding in a rent regulated building).

In the instant proceeding, this court finds that Petitioner has demonstrated that payment of rental arrears will not resolve the instant matter, and that the equities strongly favor Petitioner. In consideration of the arguments made in support and opposition of the motion, the court finds that Petitioner has demonstrated grounds to advance this proceeding by vacating the stay. The automatic stay under ERAP triggers when respondent seeks "funds to cover all or part of the arrears claimed by the petitioner." The ERAP statute, unlike CEEFPA, is not a measure designed to protect litigants where rent is not the basis for seeking possession. A stay under the ERAP statute is appropriate only when the benefit provided could potentially resolve litigation. Acceptance of payment of "benefits" from ERAP prior to issue being joined would have the effect of vitiating the predicate notice and constitute grounds for dismissal because the statute requires landlord, upon receipt of payment, to ratify the lease term or period of possession for an additional twelve (12) months before owner could commence a new holdover proceeding. L. 2021, c. 56, Part BB, Subpart A §9(2)(d) (iv); *see also Pacheco, Pacheco v. Gilkes, et al.*, Civ. Ct. Kings Co., March 10, 2022, Scheckowitz, J., index no. 300063/20; *see c.f. 1264 Flatbush LLC v. Robinson*, Civ. Ct. Kings Co., March 25, 2022, Cohen, J., index no. 73530/19 (court stayed execution of the warrant of eviction for a period of one year after Petitioner accepted ERAP funds).

The court must avoid an unreasonable or absurd application of a law when interpreting a statute. [*People v. Schneider*, 37 NY3d 187](#), 196 (2021). The ERAP legislation was not intended to act as prophylactic statute and nor was it designed to create a barrier preventing small property owners from advancing litigation involving residential properties, where the tenancy is not subject to statutory control, landlord expresses its intent not to seek use and occupancy, and desires to pursue litigation where the tenancy has been property terminated. Here, the proceeding was commenced prior to the enactment of the ERAP statute and the petition initially sought use and occupancy, which the landlord was permitted to do. However, Petitioner represents that upon the passage of the ERAP statute, landlord informed Respondent that she would no longer be seeking use and occupancy and is only interested in regaining possession of this unregulated apartment so that the building may be sold. Requiring landlord to wait 180 days to receive an approval from ERAP is an unnecessary exercise in futility where landlord has no intention of accepting such payment and reinstating

the terminated tenancy.

Accordingly, the branch of Petitioner's motion seeking to vacate the ERAP stay is granted. The branch of petitioner's motion seeking summary judgment is denied without prejudice. Here, though issue is now joined, an answer was not served prior to Petitioner moving for this relief. Therefore, the request for summary judgment is premature. Also, though Respondent challenged the sufficiency of service of the predicate notice during oral argument on this motion, CPLR § 2214(a) limits the jurisdiction of the court to grant relief that is not contained within moving papers. [McGuire v. McGuire, 29 AD3d 963](#) (2d Dept 2006). As Respondent did not raise this issue in its cross-motion to dismiss, this court will not entertain Respondent's application for dismissal.

The instant proceeding is adjourned to April 28, 2022 at 12:00 P.M. for control purposes.

This constitutes the decision and order of the court.

Dated: April 7, 2022
Brooklyn, New York
HON. BRUCE E. SCHECKOWITZ
J.H.C.

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