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2986 BRIGGS LLC v. EVANS

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CIVIL COURT OF THE CITY OF NEW YORK
BRONX COUNTY: HOUSING PART C/Room 590
---X L&T Index # 308118/21
2986 BRIGGS LLC

Petitioner-Landlord,

-against-

DECISION & ORDER

ROBERT EVANS; "J. DOE #1"; "J. DOE #2"

Respondent(s)-Occupant(s).

Address: 2986 Briggs Ave, Apt 4A, Bronx, NY 10458
---X
Hon. Diane Lutwak, HCJ:

Recitation, as required by CPLR Rule 2219(a), of the papers considered in determining Respondent's order to show cause (seq #3):

Papers	NYSCEF Doc #
Respondent's Order to Show Cause With Supporting Affirmation	34
Petitioner's Memorandum of Law in Opposition	36

In this licensee holdover proceeding, Respondent-Occupant Robert Evans, by counsel, moves for leave to reargue Petitioner's motion for an order vacating the stay under the ERAP Law, L. 2021, ch. 56, Part BB, Subpart A, as amended by L. 2021, ch. 417, Part A, which this court granted by Decision and Order dated March 22, 2022 (Prior Decision). Leave to reargue is granted and, upon reargument, the court adheres to its Prior Decision and the matter is set down for an in-person pre-trial conference on **May 12, 2022 at 12:30 p.m.**

CPLR R 2221(d)(2) states, in pertinent part, that a motion for leave to reargue "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion". A motion for reargument is addressed to the discretion of the court and "is designed to afford a party an opportunity to establish that the court overlooked or misapprehended the relevant facts, or misapplied any controlling principle of law. Its purpose is not to serve as a vehicle to permit the unsuccessful party to argue once again the very questions previously decided." *Mangine v Keller* (182 AD2d 476, 477, 581 NYS2d 793, 795 [1st Dep't 1992]).

Respondent quotes the last sentence of the "Discussion" section of the court's Prior Decision and argues that the court overlooked or misinterpreted the ERAP Law because, "focusing on a lack of a lease or rental agreement, would remove *all* holdovers from under the

purview of the law because in holdover proceedings any money owed following service of the notice of termination is deemed use and occupancy, not 'rent,' even if the occupant was originally a tenant, not a licensee." Respondent also argues that because the Petition includes a request for payment of use and occupancy, and because Petitioner has "never in the course of this proceeding stated that they are waiving use and occupancy, either in this case or in a potential plenary case", allowing the ERAP stay to be lifted at this juncture would "subject Respondent to an eviction and subsequent collection in a plenary action" and result in Petitioner being able to "evict Respondent and then decide to comply with the program and accept funding."

In opposition, Petitioner argues that the Prior Decision was decided correctly and that Respondent fails to cite to any binding authority that warrants a different outcome. Petitioner notes the "court's decision to invoke the canon of constitutional avoidance", asserts its position that it will not to accept ERAP funds and highlights the absence of any factual allegations by Respondent to support a claim of ERAP eligibility.

After having reviewed the parties' arguments and the Prior Decision, which found there to be a sufficient showing to grant Petitioner's motion and lift the ERAP stay "on the facts and circumstances of this case," the court rejects Respondent's "slippery slope" arguments and adheres to its original determination.

There is nothing in the court's Prior Decision that warrants the removal of all holdovers from the scope of the ERAP Law's stay provision. Not to create an exhaustive list but to name a few where it might be appropriate for a court to deny a landlord's motion to lift an ERAP stay, are those holdover eviction proceedings based upon such grounds as a curable violation of a substantial obligation of a tenancy, expiration of a lease, or chronic rent delinquency; others might include those brought against a licensee-occupant with a colorable succession or waiver claim. The facts and circumstances presented to the court in a particular case would have to be analyzed and examined to see where they fall on the continuum created by the recent spate of case law, from *Harbor Tech LLC v Correa* (73 Mis3d 1211[A], 154 NYS3d 411 [Civ Ct Kings Co 2021]), to *Kelly v Doe* (2022 NY Misc LEXIS 937, 2022 NY Slip Op 22077 [Civ Ct Kings Co 2022]).

As to the concern that without the ERAP stay Petitioner could seek use and occupancy (U&O), then move to evict Respondent for nonpayment and then accept ERAP funds after Respondent is evicted, these are unfounded concerns. First, if Petitioner were to move for U&O the court certainly would take into consideration the fact that it had previously successfully moved to have the ERAP stay lifted and asserted its refusal to participate in ERAP. Second, under RPAPL § 745 as amended by the Housing Stability and Tenant Protection Act of 2019, even if the court were to order U&O it would be prospective only, the monthly rate would be subject to the various affordability-based limitations found in the statute and, in the event of Respondent's failure to pay, Petitioner's remedy would be limited to "an immediate trial of the issues raised in the respondent's answer". Third, based on program eligibility criteria, it appears that ERAP funds are not payable to a landlord after a tenant is evicted.

As already stated in the court's Prior Decision, to avoid constitutional problems, it is necessary to read the ERAP Law's stay provision to be non-absolute, and subject to challenge as appropriate. It bears noting that the ERAP Law is not simply another version of the COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020, and its successor statute L. 2021, Ch. 417, Part C, Subpart A ("CEEFPA"), which broadly imposed a residential eviction moratorium. *See, e.g., Casey v Whitehouse Estates Inc* (73 Misc3d 562, 567, 154 NYS3d 738, 742 [Sup Ct NY Co 2011]). In fact, the "Legislative intent" section of L. 2021, Ch. 417, enacted by the New York State Legislature on September 2, 2021 in response to the US Supreme Court's decision in *Chrysafis v Marks* (141 SCt 2482, 210 LEd2d 1006 [2021]), describes "a series of statutes" enacted generally "to protect the public health, safety, and general welfare of the people of New York". And while CEEFPA, the Tenant Safe Harbor Act (TSHA) and the COVID-19 Emergency Protect Our Small Businesses Act (CEPOSBA) are listed here, the ERAP Law is not included, even though it is one of the statutes amended by the September 2, 2021 Act. The ERAP Law is mentioned in a different paragraph describing problems that "have hampered the program's effectiveness in covering the cost of rent arrears and providing widespread eviction protections." Clearly, the ERAP Law authorizes something different from CEEFPA, TSHA and CEPOSBA: A program designed to distribute federal monies earmarked to pay rent arrears for "a tenant or occupant obligated to pay rent in their primary residence in the state of New York." ERAP Law § 5(1)(a)(i). And while it makes sense for the statute to include a provision allowing for a stay of eviction proceedings whose outcome is likely to be affected by a pending ERAP application, on the other side of that coin it also makes sense that such a stay should be lifted and the case allowed to proceed where it is shown that the outcome will not be affected by a pending ERAP application. Here, where Respondent has made no attempt to refute Petitioner's claim that he is not "a tenant or occupant obligated to pay rent in their primary residence in the state of New York," ERAP Law § 5(1)(a)(i), or that the outcome of this proceeding might be altered by an approval of his ERAP application, it is appropriate to lift the ERAP stay.

CONCLUSION

For the reasons stated above, and on the facts and circumstances of this case, it is hereby ORDERED that Respondent Evans' order to show cause for leave to reargue is granted and, upon reargument, the court adheres to its decision and order dated March 22, 2022. This proceeding is restored to the Resolution Part C virtual calendar for an in-person, pre-trial conference on **May 12, 2022 at 12:30 p.m.** This constitutes the Decision and Order of the Court, copies of which are being uploaded on NYSCEF and mailed to the non-appearing Respondents "J. Doe #1" and "J. Doe #2" at the premises.

Diane E. Lutwak, HCJ

Dated: Bronx, New York
April 11, 2022

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