2022-04-14

Shi Gan Zheng v. Guiseppone

[*1]

Shi Gan Zheng v Guiseppone
2022 NY Slip Op 50271(U)
Decided on April 14, 2022
Civil Court Of The City Of New York, Richmond County
Ofshtein, J.
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Decided on April 14, 2022
Civil Court of the City of New York, Richmond County

Shi Gan Zheng, Petitioner,

against

John Guiseppone; LAUREN AUFERI, "JOHN DOE" AND "JANE DOE", Respondent(s)

L&T Index No. 052888/19

Petitioner's attorney: Law Offices of Rina Milos:
toirena@yahoo.com; benwong.lawoffice@gmail.com

Respondent's attorney: Staten Island Legal Services by Mr. Puleo, Esq:
mpuleo@lsnyc.org for Lauren Auferi/Auteri only.

Eleanora Ofshtein, J.

Recitation, as required by CPLR §2219(A), of the papers considered in the review of this motion:

Papers	**NYSCEF Document**
Respondent's Post-Eviction OSC w/Affirmation/Affidavit/Exhibits	No.29-37
Opposition	#39

Reply #40-43

Decision/Order upon cited papers and after argument, is as follows:

Respondents were evicted from this unregulated apartment after Petitioner executed its warrant. Five days before the eviction, Respondent Lauren Auferi, a/k/a Auteri ("Auferi"), applied for the COVID-19 Emergency Rental Assistance Program ("ERAP") but failed to notify Petitioner, Petitioner's attorney, the Court, or the Marshal's office.

Respondent Auferi filed this Post-Eviction Order to Show Cause ("OSC") by her attorney, seeking restoration of the tenancy, placement of the case on the ERAP calendar to await determination, or, in the alternative, restoration of the tenancy and a stay for Respondents to find new housing. Petitioner opposes the motion but agreed to limited interim access for removal of personal property. The issues raised in this case leave a number of unanswered [*2]questions, including whether the "ERAP statute"[FN1] allows for *any* assessment by this Court once an ERAP application is filed, whether the statute provides a mechanism by which to analyze whether a Respondent is covered by the statute, whether the stay provided by the statute begins at filing or upon notice (and notice to whom and by whom), and whether sufficient cause has been shown in this case to restore Respondents to possession.

This summary non-payment proceeding commenced in December 2019, wherein the petition claimed that $14,000 was due for the period from May 2019 through November 2019, at a rent of $2,000 per month. After Respondents John Guiseppone and Lauren Auferi filed their answer, the parties conferenced the case in court and entered into a settlement on January 10, 2020. The agreement, which was so-ordered by the Court and never contested by the parties, converted the proceeding from a nonpayment to a holdover, and Respondents agreed to vacate the premises by March 31, 2020. Petitioner was granted a judgment of possession and warrant forthwith, and agreed to waive arrears upon Respondents' timely vacatur. The agreement further noted that Respondents' failure to vacate will result in the Petitioner's withdrawal of its waiver of rent.

Although the warrant issued, the COVID-19 pandemic interrupted Petitioner's ability to evict when Respondents failed to vacate by March 31, 2020. Instead, a number of delays and procedural changes associated with the pandemic required Petitioner to file a motion, on notice, for permission to execute its warrant of eviction. Pursuant to Administrative Orders and Directives, Petitioner brought its motion on notice which was made returnable by the Court on December 15, 2020. Between December 15, 2020 and April 30, 2021, the case was

adjourned and notices were mailed to Respondents by the Court (see NYSCEF documents #12, 13 and 13-1). Staten Island Legal Services filed a Notice of Appearance for Auferi on April 7, 2021, but did not file opposition to Petitioner's motion to execute the warrant.

Pursuant to DRP requirements, the Court held a conference on April 30, 2021, and subsequently granted Petitioner's motion to execute the warrant after service of the Marshal's notice (decision dated May 4, 2021). This Court notes that Petitioner's motion, including the affidavit in support of its motion, sought only possession of the premises, not use or occupancy or arrears (see NYSCEF document #6).

In the afternoon of February 7, 2022, Respondents' attorney filed an OSC (via NYSCEF) seeking a stay of the eviction, stating that an ERAP application had been filed five days earlier. The eviction was completed before 9:15 the following morning, while the Court was reviewing the application. The OSC was denied without prejudice to the refiling of this Post-Evict OSC, which was filed February 22, 2022.

The Post-Evict OSC seeks restoration of Respondents to possession, arguing that since an ERAP application had been filed prior to the eviction, restoration was necessary and appropriate.[FN2] Petitioner opposes, arguing that after the conversion of the case to a holdover, no rent or use and occupancy had been sought, and that Respondents were acting in bad faith by submitting an ERAP application at the last possible moment. Petitioner states that they had not been notified of an ERAP filing until after the eviction, and reiterates that they would reject any [*3]ERAP funds since their sole interest is to retain possession of the apartment. Additionally, Petitioner argues that the execution of the warrant severed any relationship between Petitioner and Respondents, and that since Respondents had no obligation to pay rent or use and occupancy, they do not fall under the class of occupants that would qualify for the stay provisions of the ERAP statute. The Court's analysis, therefore, must begin with the ERAP statute.[FN3]

The ERAP Law (signed April 2021, L. 2021, c. 56, Part BB) established a program for the distribution of federal funds for rent relief, implemented and administered by the Office of Temporary and Disability Assistance (OTDA). The ERAP statute was amended September 2, 2021 (L. 2021, c. 417, Part A) with the following sections [FN4] , as relevant to this motion:

> **Restrictions on eviction:** (Subpart A, §8, amended by L. 2021, c. 417, Part A, §4) Except as provided in 9-a, as added by the amendments, "any pending eviction

proceeding", which includes holdover or nonpayment cases, "all proceedings shall bestayed pending a determination of eligibility."

Eligibility: (L. 2021, c. 56, Part BB, Subpart A, §5)

ERAP eligibility standards and priorities to be established by OTDA, including fouritemized eligibility criteria, including the requirement that a household be found eligibleif it is a "tenant or occupant obligated to pay rent in their primary residence in the State of New York including both tenants and occupants of dwelling units".

Definitions: (L. 2021, c. 56, Part BB, Subpart A, §2[7])"Occupant": as defined in Real Property Law (RPL) §235-f as "a person, other than a tenant or a member of a tenant's immediate family, occupying a premises with the consent of the tenant or tenants";

"Rent": as defined in Real Property Actions and Proceedings Law (RPAPL) §702 as "themonthly or weekly amount charged in consideration for the use and occupation of adwelling pursuant to a written or oral rental agreement".

The ERAP statute stays "any pending eviction proceeding", which includes holdover or nonpayment cases, since it states that "all proceedings shall be stayed pending a determination of eligibility". However, the Court's interpretation of the ERAP statute must include its plain language as well as its intent since "it is appropriate to examine the legislative history even though the language of (the statute) is clear". *Riley v County of Broome,* 95 NY2d 455 (2000). As cited by New York State Bankers Assn v Albright, 38 NY2d 430, 436 (1975), the Supreme Court stated, in United States v American Trucking Assns, 310 US 534, 543 (1940), as follows:

There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes. Often these words are sufficient in and of themselves to determine the purpose of the legislation. In such cases we have followed their plain meaning. When that meaning has led to absurd or futile results, however, this Court has looked beyond the words to the purpose of the act. Frequently, however, even when the plain meaning did not produce absurd results but merely an unreasonable one 'plainly at variance with the policy of the legislation as a whole' this Court has followed that purpose, rather than the literal words. When aid to construction of the meaning of words, as used in the statute, is available, there certainly [*4]can be no 'rule of law' which forbids its use, however clear the words may appear on 'superficial examination'. The interpretation of the meaning of statutes, as applied to justiciable controversies, is exclusively a judicial function. This duty requires one body of public servants, the judges, to construe the meaning of what another body, the legislators, has said. Obviously there is danger that the courts' conclusion as to

> legislative purpose will be unconsciously influenced by the judges' own views or by factors not considered by the enacting body. A lively appreciation of the danger is the best assurance of escape from its threat but hardly justifies an acceptance of a literal interpretation dogma which withholds from the courts available information for reaching a correct conclusion.

The original ERAP statute stated that its purpose was "to establish a COVID-19 emergency rental assistance program". The September 2021 amendment, as it relates to ERAP, states the Legislative Intent as follows:

> To date, technical and administrative challenges, low public awareness of the program, and the slow pace of implementation have hampered the program's effectiveness ***in covering the cost of rent arrears and providing widespread eviction protection***. (Emphasis added)
>
> (The Legislature was) especially cognizant of the ongoing risks posed by residential***evictions stemming from non-payment of rent*** during the height of the public healthemergency, and its recovery period (Emphasis added)

A further example of the intent of the Legislature is the language in the amended bill:

> This legislation also extends eviction protections, ***subject to certain limitations***...It will also ensure that applicants for assistance are protected by permitting OTDA to share data with the court system ***to help courts determine whether litigants applied and are entitled to eviction protections.***(Emphasis added)

The amended statute, written under exigent and emergency circumstances to provide needed rental assistance during a crisis, has been soundly analyzed in a number of recent decisions. Some of these decisions found that the Court must leave the determination of eligibility to OTDA. Others, finding Respondents eligible for ERAP coverage, left the stay in place. Many noted the Court's inherent authority to determine eligibility for purposes of the stay, and their concern when factors indicated a lack of fairness, credible allegations of fraud, or bad faith. (See *Isidoro v Team Props LLC,* 2021 NY Slip Op 32626[U] [NY Sup Ct, New York Co]; *255 Skyline Drive Ventures LLC v Ryant,* L & T# 50014-20 [Civ Ct, Richmond Co, Oct 13, 2021]; *Harbor Tech LLC v Correa,* 73 Misc 3d 1211[A] [Civ Ct, Kings Co, 2021]; *Gurevitch v Robinson,* L & T# 72639-18 [Civ Ct, Kings Co, Feb 28, 2022]; *Sea Park E LP v Foster,* 74 Misc 3d 213 [Civ Ct, New York Co, 2021]; *560-566 Hudson LLC v Hillman*, 2022 NY Slip Op 30718[U] [Civ Ct, New York Co]; *204 W 55th St LLC v Mackler*, 2021 NY Slip Op 32901[U] [Civ Ct, New York Co]; *Kristiansen v Serating*, 2022 NY Slip Op 22097 [NY Dist Ct, Suffolk Co]; *Carousel Props v Valle*, 74 Misc 3d 1217[A] [NY Dist Ct, Suffolk Co, 2022]; and *Hudson Avenue Housing Assoc LLC v Howard,* 2022 NY Slip Op 22078 [NY

City Ct, Warren Co].

Other Courts have recently found Respondents ineligible for the stay and have allowed the vacatur of the ERAP stay to avoid inequity, fraud, and a result which may be absurd or futile. (See, *Ami v Ronen,* 2022 NY Slip Op 22098 [Civ Ct, Kings Co]; *Actie v Gregory,* 74 Misc 3d 1213[A] [Civ Ct, Kings Co, 2022]; *Kelly v Doe No 1,* 2022 NY Slip Op 22077 [Civ Ct, Kings [*5]Co]; *Papandrea-Zavaglia v Arroyave,* L & T# 303636-21 [Civ Ct, Kings Co, April 7, 2022]; *2986 Briggs LLC v Evans,* 74 Misc 3d 1224[A] [Civ Ct, Bronx Co, 2022]; *Karen Realty Assoc LLC v Perez,* 2022 NY Slip Op 22093 [Civ Ct, Queens Co]; *US Bank Trust, NA v Alston,* 2022 NY Slip Op 22051 [Justice Ct, Dutchess Co]; and *Abuelafiya v Orena,* 73 Misc 3d 576 [NY Dist Ct, Suffolk Co, 2021].

A distinction must first be made between the statute's authorization of an agency (OTDA) to dig through the weeds of each application to determine whether Respondents meet the criteria set up for the granting or denial of the application for rental assistance funds, and the Court's inherent and overarching analysis as to whether the statute, and its protective umbrella, covers the person seeking its protections. This Court agrees that in accordance with the ERAP statute and its intent, the Housing Court has the inherent power to review the circumstances of each case to assess whether the Respondent is covered by the statute and entitled to its protections.

The Emergency ***Rental***Assistance Program provides that the intent of the protections is to reduce ***'evictions stemming from non-payment of rent'*** and provides restrictions on eviction for holdover or expired lease, or non-payment of rent, ***'that would be eligible for coverage under this program'***. In specifying that the intent of the statute stems from evictions caused by non-payment of rent, or other rental or financial obligations which could result in an eviction, a result the Legislature clearly sought to avoid, the Court has the inherent authority to analyze its cases and decide whether that condition precedent exists, thereby triggering the protective stay. Otherwise, the statute would not have specified coverage of a specific category of tenants/occupants, ones that are under the threat of eviction due to an obligation to pay rent, and provided specific definitions for such coverage. Once triggered, the only exception to the stay is in cases where Respondents' conduct was objectionable, as delineated and defined by the ERAP statute.[FN5]

The OTDA website corroborates this analysis and unequivocally states that "(t)enants in New York State may be eligible for ERAP ***if all the following apply***", and lists the criteria used for finding eligibility, including household income; the receipt of unemployment

benefits, reduction of income, or financial hardship due to the pandemic; ***the applicant's obligation to pay rent***at their primary residence for rent owed on or after March 13, 2020; and the ***risk of homelessness or housing instability demonstrated by having rental arrears.*** (Emphasis added) Additionally, the first topic under 'Frequently Asked Questions' states as follows:

> Benefits Available and Who is Eligible:
>
> What is the Emergency Rental Assistance Program and what help does it provide? The Emergency Rental Assistance Program (ERAP) is an ***economic relief program developed to help eligible households residing in at their primary residence in New York State request assistance for rental and utility arrears accumulated during the COVID-19 crisis***. The program will provide significant economic relief to low- and moderate-income tenants and will help landlords ***obtain rents due...***(Emphasis added)

The Court may, therefore, analyze each case to determine whether coverage by the ERAP statute is appropriate. In this case, an analysis of Petitioner's intent as to use and occupancy indicates that after Respondents failed to timely vacate, Petitioner would have had standing to seek use and occupancy for the monies waived in accordance with the stipulation. Nevertheless, [*6]Petitioner's DRP motion for permission to execute its warrant sought only possession, which was the only relief granted by the Court. Additionally, although this limited record prevents the Court from a finding of bad faith, Respondent's own affidavit indicates that her only intent in filing the ERAP application was to invoke the stay provision because Respondents were unable to secure a new apartment despite having had over two years to vacate. (See NYSCEF documents #21, paragraphs 6 and 11; #30, paragraph 6, and document #31, paragraph 30, respectively: "Ms. Auteri and her family have made diligent efforts to seek a new home." "Ms. Auteri has contacted at least seven landlords and brokers about apartment listings, but she has not been able to secure a new apartment." "Respondent does not currently have a use and occupancy obligation to Petitioner because use and occupancy was not set in the January 10, 2020 stipulation."). No explanation is provided as to why Respondents believed that a rental assistance program would be helpful where rental assistance was not sought by Petitioner. Therefore, this Court finds that Respondents are not covered by the ERAP statute and cannot seek the protections of its stay.

Additionally, Respondents provide no explanation as to why they failed to give notice of the ERAP application to Petitioner, Petitioner's attorney, the Court, or the Marshal's office. Since the statute does not specifically state that notice of the filing triggers the stay, and, instead, provides the stay for 'a household who has applied or subsequently applies for

benefits under this program', the filing of the ERAP application, and not the notice, creates a presumption that the case is stayed. Of course, the presumption itself cannot stop an eviction if no one in a position to stop it has been notified of the ERAP filing. In this case, however, neither the presumption, nor the lack of notice, results in a change of the outcome since the Court finds that Respondents do not qualify for the protections of the ERAP statute.

Under the circumstances of this case, where the stipulation initially removed Respondents' obligation to pay rent or use and occupancy because the case was converted to a holdover proceeding and the arrears were waived; and where Petitioner has made no attempt to amend the agreement or seek the monies due; and where there existed no threat of eviction due to an obligation to pay rent, arrears or use and occupancy, this Court finds that Petitioner has sufficiently demonstrated that there was no such obligation, and that any such payment would have failed to resolve the case and controversy. Furthermore, whereas the relationship between the parties has been severed by the execution of the warrant and Respondents have failed to show sufficient merit to justify restoration, this Court declines to restore Respondents to possession. Any restoration under these facts would be an act of futility and would further prejudice Petitioner.[FN6] Therefore, Respondents' motion is denied it its entirety and all stays are vacated.

This constitutes the decision and order of this Court.

Dated: April 14, 2022
Richmond, New York

_____
HON. ELEANORA OFSHTEIN
JHC

Footnotes

Footnote 1:L. 2021, c. 56, Part BB, Subpart A, Section 8, as amended by L. 2021, c. 417, Part A, Section 4. See also, Administrative Order # AO 34/22, dated January 16, 2022, of New York State Chief Administrative Judge Lawrence K. Marks.

Footnote 2: Although a confirmation code was provided for Auferi/Auteri (confirmation code: 0BHAE), the Court has not been able to find the application in the OTDA database.

Footnote 3: This Court does not attempt a constitutional analysis of the statute since one has not been raised in the papers.

Footnote 4: See, *Briggs LLC v Evans*, 74 Misc 3d 1224(A) (Civ Ct, Bronx Co, 2022).

Footnote 5: See ERAP Section 9-a, not otherwise described herein since no such facts or allegations were raised in this proceeding.

Footnote 6: See, *789 St. Marks Realty Corp v Waldron*, 46 Misc 3d 138(A) (App Term, 2d Dept 2015); *Bernstein v Rozenbaum*, 20 Misc 3d 138(A) (App Term, 2d Dept 2008); and Soukouna v 365 Canal Corp, 48 AD3d 359 (1st Dept 2008).

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