2022-05-09

Deas v. Battle

Deas v Battle
2022 NY Slip Op 31299(U)
May 9, 2022
Supreme Court, Kings County
Docket Number: Index No. LT # 309889/21
Judge: Hannah Cohen

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART H
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BEVERLY DEAS,

Petitioner — Index No. LT # 309889/21

- against - — **DECISION/ORDER**

JEREMY BATTLE
MICHAEL CREIGHTON
639 E. 86TH STREET
APARTMENT 1ST FLOOR
BROOKLYN, NEW YORK 11236

Respondent-Tenants,

"JOHN DOE" 1-2
"JANE DOE" 1-3

Respondent-Undertenant(s).

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HON. HANNAH COHEN:

Recitation, as required by CPLR 2219(a), of the papers considered in review of petitioner's motion seeking an order to vacate stay based upon an application for ERAP, and upon such lifting scheduling the case for a trial, and ensuing opposition and reply.

.	**Papers**	**Numbered**
	Motion	1
	Opposition	2
	Reply	3

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

Petitioner commenced this holdover proceeding seeking possession of the premises by a ten

day notice to quit on or about October 2021. Respondent Jeremy Battle filed a hardship declaration in September and October 2021. In February 2022 respondent filed for the Emergency Rental Assistance Program which stayed the proceeding. Petitioner by motion seeks to vacate the stay asserting that the premises is located in an owner occupied one family home, that respondent is not a tenant of the premises and entered as a guest of petitioner's son and that petitioner does not seek any rental arrears and will not participate in the ERAP program.

In opposition respondent with counsel asserts that he has resided at the premises since 2019 as a tenant and offers receipts from June, July 2019, August 2020 and May and June 2021. In reply petitioner disputes the authenticity of all the receipts and acknowledges the June 2021 receipt which is the only signed receipt presented by the respondent.

Petitioner seeks to further lift any stay based upon the ERAP application arguing that respondent does not currently qualify as a"tenant" as defined by the COVID-19 Emergency Rental Assistance Program (ERAP) under part BB, Subpart A, section 8 of Chapter 56 of the Laws of 2021, as modified by L. 2021, c. 417 and seeks restoration of the case for trial against the respondent. Petitioner further argues that as the court placed the matter on the administrative ERAP calendar, which places a stay of the proceedings, the court has the inherent power, as have many other courts have found to modify, vacate such decrees or orders where continued enforcement of the injuctive process is inequitable, oppressive and unjust or in contravention of the policy of the law (See Dictograph Products Inc., v Empire State Hearing Aid Bureau Inc., 4 AD2d 508 [1st Dept 1957]).

The court is aware that the legislature in enacting laws determines the public policy of a state and undoubtedly enacted the provisions of the COVID-19 Emergency Rental Assistance Program in order to meet the challenges of tenants and lawful occupants in remaining in their homes while attempting to meet their financial obligations in paying rent during and through the pandemic period.

It is the courts role to interpret the laws and give appropriate effect to the legislative intent while ensuring the rights of all individuals. (See Campaign for Fiscal Equity v State of New York, 100 NY2d 893 [2003]). Previously in the case of Chrysafis v Marks, Sup Ct., U.S., S.Ct., L.Ed.2d 2021 WL 3560766 (8-12-21) the United Stated Supreme Court found that the New York statute allowing a tenant's ability to self certify financial hardship which stayed a proceeding, without the ability to challenge such a declaration in the court violated due process. This led the New York State legislature to revise the statute to permit a legal challenge to the Hardship declaration. Here, similarly, when filing an ERAP application, any person may file an ERAP application, which stays a proceeding until a determination is made, The mere act of filing the application, regardless of whether the person is a tenant, lawful occupant, squatter, family member, guest, licensee, former employee, would conceivably stay the proceeding. The statute had no mechanism if the application was not completed timely, and provides no time frame for a decision, evoking an stay of indefinite stature. The person filing the application evokes the automatic stay even if such application was not made in good faith. These concerns are similar to the concerns raised in Chrysafis, supra which barred one party from participating and engaging in the process.

Here, although petitioner has sought use or occupancy in the original petition, said request is based upon the theory of unjust enrichment and its effect is not to create a tenancy that would automatically trigger the provisions of an ERAP stay. In this instance, petitioner affirms that they will not participate in the ERAP application that was submitted in February 2022 and seeks possession of this unregulated unit.

Courts have adjudicated that in appropriate circumstances, the court has the authority to lift the ERAP stay (See Abuelafiya v Orena, 73 Misc3d 576 [Dist Ct 3rd Dist Suffolk co 2021] where court found it had inherent authority by statute to determine a households eligibility under ERAP and

found the respondents did not qualify as they were not experiencing housing instability as they owned another home; Actie v Gregory, 2022 NY Slip Op 501117[U] [Civ Ct Kings Co 2022] where court vacated the ERAP stay as petitioner sought to recover possession of the premises in a four or less unit building, for himself and the use of his family. The court went on to opine that an approval of an ERAP application would not result in the preservation of creation of a tenancy. See also 2986 Briggs LLC v Evans, 2022 NY Slip Op 50215(U) [Civil Ct, Bronx County 2022] (where the court found an occupant licensee does not owe "rent" as contemplated by the ERAP statute and was therefore not eligible for the stay; Kelly v Doe, 2022 NY Slip Op 22077 [Civil Ct Kings Co 2022] where court found alleged squatters were presumably not tenants entitled to an ERAP stay as there was no "rent" sought or owed).

Furthermore, to allow an individual in an unregulated tenancy, the benefit of a stay provision of ERAP would be futile and would lead to an absurd result, not contemplated by the statute. (See Hibertz v City of New York, 64 Misc.3d 697 [Supreme Ct, Kings Co 2019) (Although statutes will ordinarily be accorded their plain meaning, courts should construe then to avoid, objectionable or absurd consequences). Further when constructing a statute, the court must conclude that the legislature deliberately placed wording to serve its intended purpose (See Rodriguez v Perales, 86 NY2d 361 [1955]; Bitzarkis v Evans, 2021 NY Slip Op 21280 [Civil Ct Kings Co November 2021]). The circumstances herein differ from the holding in Sea Park East LP v Foster, 74 Misc.3d 213 [Civ Ct Kings Co 2021] where this court found respondent, a rent stabilized tenant's second application for ERAP to satisfy rent arrears, stayed the proceeding as respondent mistakenly did not apply for the full amount of the program and was entitled to the protections of the ERAP stay while her application as pending. Herein, the court must interpret the ERAP statute in a different light, as an absurd result, is certainly not contemplated by the legislature. (See Hibert v City of New York, 64

Misc.3d 697 [S.C. Kings Co April 11, 2019] (statutes will ordinarily be accorded their plain meaning however courts should construe them to avoid objectionable, unreasonable or absurd results); Maiello v City of New York, 103 Misc2d 1064 [Civ Ct Queens Co April 24, 1980] (Court need not follow the literal word of a statute where to do so would produce a result that legislature clearly did not intend)].

Based upon the particular facts enumerate above, petitioner's motion is granted and the ERAP stay is hereby lifted. The case is adjourned for all purposes to May 31, 2022 at 11:30 am, part H. Rm 507. Respondent to file an answer by May 27, 2022.

This constitutes the decision and order of this court.

APPROVED
HACOHEN , 5/9/2022, 9 50 42 AM

Dated: May 9, 2022
Brooklyn, New York

Hannah Cohen, J.H.C.