2022-05-09

Edwards v. Chambers

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART H
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DUNSTON EDWARDS,

Petitioner Index No. LT # 52672/20

- against - **DECISION/ORDER**

CARLTON CHAMBERS AND
JANET LINTON CHERRY
817 HEGEMAN AVENUE
1ST FLOOR APARTMENT
BROOKLYN, NEW YORK 11207

Respondent-Tenants,

JAMARAH CHAMBER
"JOHN DOE & JANE DOE"

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

service of a 90 day notice of termination. The case appeared on the courts calendar on February 11, 2020 and was adjourned to March 19, 2020 for respondents to obtain/consult with an attorney. The Legal Aid Society submitted a notice of appearance for Carlton Chambers only and Janette Linton Cherry also appeared on that date and signed a stipulation to adjourn the case. The court subsequently closed on March 17, 2020 due to the Covid-19 health pandemic. Brooklyn Legal Services Corporation "A" put in a notice of appearance on September 1, 2021 for Janet Lipton Cherry. Petitioner by motion dated March 18, 2022 seeks vacatur of the ERAP stay asserting that the premises is located in an two family home and that respondent has no current lease and the premises are unregulated.

In opposition the Legal Aid Society on behalf on Carlton Chambers argues that Mr. Chambers has a current appeal of his denial and therefore is entitled to a stay of this proceeding. Mr. Carlton submits a copy of the ERAP status indicating an application submitted October 26, 2021 is under review.

Petitioner 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.

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 9:30 am, part H. Rm 507. Respondent(s) to file an answer by May 27, 2022.

This constitutes the decision and order of this court.

Dated: May 9, 2022
Brooklyn, New York

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Hannah Cohen, J.H.C.