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Gem Pawnbrokers Corp. v. Parrish

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART G

GEM PAWNBROKERS CORP.	Petitioner(s),
vs.	
CHARMAINE PARRISH	Respondent-Tenant
JOHN DOE, JANE DOE	Respondents-Undertenants
Address: 1535 Flatbush Avenue, 2 nd Floor Brooklyn, NY 11210	

L&T Index No. 305670-21/KI

DECISION

Hon. Kimberley Slade
Judge, Housing Court

Recitation, as required by CPLR 2219(a), of the papers considered in the review of Petitioner’s Order to Show Cause to restore the case to the calendar.

Papers	Numbered
Order to Show Cause.....	1
Affirmation in Opposition.....	2
Reply.....	3
Affirmation in Sur-Reply.....	4
Court file contained on NYSCEF.....	

Upon the foregoing cited papers, the Decision/Order on petitioner’s order to show cause to restore the case to the calendar and vacate the current ERAP stay under Section 8 of current ERAP law (Chapter 417, Laws of 2021 Part A) is as follows:

Petitioner challenges the stay provision of Part BB of Chapter 56 of the Laws of 2021, as amended by Part A of Chapter 417 of the Laws of 2021, arguing that it mirrors the previously invalidated automatic stay in the context of hardship declarations decided in *Chrysafis v. Marks*, 2021 WL 3560766 (8/12/21), and that CPLR §2201 grants courts in a civil action inherent power to control their own proceedings and stay or suspend cases in its discretion. In response to respondent’s argument that petitioner’s constitutional challenge to the ERAP stay has not been properly placed before the Court , this Court issued an Interim Order dated March 4, 2022. Finding that there was no prejudice, petitioner was directed to serve an additional copy of the Order to Show Cause on the office of the Attorney General, with attention to the Division of Appeals and Opinions.

Proof of service of which was uploaded to NYSCEF and the case was scheduled to be heard on March 21, 2022 at 2:45pm. Despite proof of service, no one from the office of the Attorney General appeared. As such, the Court is now deciding petitioner’s fully briefed motion. This holdover proceeding was commenced by Notice of Petition and Petition in June 2021 seeking

to recover possession of the subject unregulated premises located at 1535 Flatbush Avenue, Second Floor, Brooklyn NY 11210. Respondent was served with a 60 Day Notice which terminated her tenancy on April 30, 2021. As was required at the time, petitioner filed a motion sometime in August 2021 to place this case on the court's calendar and ultimately set the matter down for a hearing/inquest. Respondent retained The Legal Aid Society in December 2021 and with the assistance of counsel, filed an ERAP Application (Application Number 0YBBH). The case was placed on the ERAP Administrative Calendar pending a determination prompting petition to file the instant motion.

As will be discussed below, this Court need not reach the constitutional question petitioner raises and, accordingly, this is a moot point. Respondent argues that the ERAP statute does not contain "any provision providing for a means to vacate the stay prior to its expiration" and that this Court does not have the inherent powder to modify or vacate the stay. However, many courts, including this one have invalidated ERAP stays based on the facts and circumstances of a particular case. In *2986 Briggs LLC v. Robert Evans*, the court concluded that it does have the authority to lift an ERAP stay in an appropriate case otherwise, as held in *Chrysafis v. Marks*, it would "violate the Court's longstanding teaching that ordinarily 'no man can be a judge in his own case' consistent with the Due Process Clause." See, *2986 Briggs LLC v. Evans*, 74 Misc.3d 1224(A) (Civ Ct Bronx Co, 2022) and *Chrysafis v Marks* 141 SCt 2482, 210 LE2d 1006 (2021).

This Court relied on the legal principal of futility discussed in *Actie v. Gregory*. See, *Actie v. Gregory*, 2022 NY Slip Op 501117[U] [Civ Ct Kings Co 2022]. In *Actie*, the ERAP stay was vacated in the context of a holdover where the landlord sought possession of an apartment for his own personal use in a building with less than four units. *Id.* Because the landlord in *Actie* was not going to accept ERAP money, approval of the pending application would not have resulted in the protection or creation of a tenancy. Like the facts in *2986 Briggs LLC*, what is before the Court is a holdover in a non-regulated tenancy, not a nonpayment case where a landlord's receipt of money would resolve litigation. See, *2986 Briggs LLC v. Evans*, 74 Misc.3d 1224(A) (Civ Ct Bronx Co, 2022) and *Harbor Tech LLC v Correa*, 73 Misc.3d 1211(A) (Civ. Ct. Kings Co. 2021). In fact, petitioner's affidavit in support swears that even if ERAP monies were approved, they will not be accepted and that "no amount of money will make petitioner whole." See, *Petitioner's Affidavit paragraph 7*. Consequently, as in *Actie*, "allowing the stay to continue is an exercise in futility and prejudicial to petitioner." *Actie v. Gregory*, 2022 NY Slip Op 501117[U] [Civ Ct Kings Co 2022].

In sum, petitioner's motion is granted to the extent of vacating the ERAP stay and scheduling the matter for a conference in anticipation of trial. Respondent is directed to file an answer by no later than May 16, 2022 on NYSCEF. This case will be heard on May 23 at 9:30am in Part G, Room 509. This constitutes the Decision/Order of the court.

Date: May 6, 2022
Brooklyn, New York


Hon. Kimberley Slade, JHC
Kimberley Slade
Judge, Housing Court