2022-05-06

350 CENTRAL PARK WEST ASSOCIATES, LLC v. Udo

CIVIL COURT OF THE CITY OF NEW YORK1
COUNTY OF NY: HOUSING PART G

---------- X

350 CENTRAL PARK WEST ASSOCIATES, LLC
Petitioner,

-against-

AUGUSTINE UDO
Respondent.

---------- X

Index No. LT 71196/18

DECISION/ORDER

Present: Hon. Daniele Chinea
Judge, Housing Court

Recitation, as required by CPLR 2219(A), of the papers considered in the review of this Motion to lift the stay pursuant to ERAP statute, part BB, Subpart A of Chap. 56 of the Laws of 2021, as modified by L.2021, c. 417 (the "ERAP Statute"):

PAPERS		NYSCEF NUMBER
Notice of Motion & Affirmation/Affidavits		19-20
Answering Affirmation/Affidavit		22-26
Replying Affirmation/Affidavit		27
Respondent's Supplemental Papers		28-31
Petitioner's Supplemental Papers		32

Upon the foregoing cited papers, the Decision/Order in this Motion is as follows:

Petitioner's motion is granted to the extent of lifting the stay pursuant to the ERAP Statute and restoring the proceeding to the Court's calendar to permit it to proceed in the ordinary course, without prejudice to Respondent's affirmative defense of financial hardship and the Tenant Safe Harbor Act.

History:

This non-payment proceeding commenced in August 2018 by petition seeking $29,950 in rental arrears for the period of June 2018 through August 2018 at a rate of $9,650.00 per month. After prolonged litigation regarding Respondent's defenses without an order for Respondent to pay rent during the pendency of the litigation, a stay pursuant to Respondent's Hardship Declaration filed February 2021 alleging significant health risk if forced to move, and this stay pursuant to Respondent's filing of an ERAP application on February 18, 2022; the debt has ballooned to $449,650.00 through March 2022. Respondent now also owes rent for April 2022, increasing the debt to $459,399.00.

Instant Motion:

Pursuant to §8 of the ERAP Statute, once a litigant seeks rental relief through ERAP there automatic restrictions on eviction, as follows: "If eviction proceedings are commenced against a household who has applied or subsequently applies for benefits under this program or any local program administering

federal emergency rental assistance program funds to cover all or part of the arrears claimed by the petitioner, all proceedings shall be stayed pending a determination of eligibility."

Petitioner moves the Court to vacate the ERAP stay pursuant to CPLR §2201, claiming that the stay is highly prejudicial to Petitioner because it is both futile and unjust. Even if Respondent is found eligible for ERAP funds, the maximum amount he would be awarded is $144,750 (15 months @ $9650 per month). That would leave $304,900 owed; $202,650 of which accrued between June 2018 and February 2020, before the Covid-19 pandemic was upon us. Moreover, Respondent's Hardship Declaration does not raise a financial hardship, but a hardship in relocating. If the stay is continued, the debt will continue to accrue at a rate of $9650 per month until the ERAP is determined, a period currently unknown as the ERAP fund is depleted. To require Petitioner to accrue a monthly unsecured debt while knowing it will not be made whole by the relief funds creates an unjust result not intended by the Legislature. Petitioner points to several recent cases where courts have seen fit to permit the ERAP stay to lift.

In opposition, Respondent points to the unequivocal language of the ERAP Statute, which provide for only one exception to the stay, that is in cases involving a persistent, on-going nuisance. *ERAP Statute §8.* Respondent also argues that the stay is not futile in this case, as it has the potential to satisfy a third of Respondent's debt. Respondent points out that Petitioner is cooperating with the application, thus they too believe Respondent may be entitled to ERAP funds. Respondent also argues that the ERAP Statue provides benefits beyond rental assistance and that the Respondent should not be denied these protections. Respondent also distinguishes the cases cited by Petitioner, correctly pointing out that in those cases the underlying proceeding was a holdover, not a non-payment proceeding. None of the cases cited by Petitioner take inability to pay on-going or future rent into account when considering whether to lift the stay.

In reply, Petitioner argues that the issue of on-going rent and the amount of debt owed even after payment of the maximum amount of ERAP funds are relevant here because they are evidence that the stay is unjust. Petitioner is not going to accept the ERAP funds in full satisfaction of the debt it believes it is owed. Moreover, tax return information supplied in support of Respondent' Opposition show that Respondent currently had an annual income of approximately $40,000 in 2020. His annual rental obligation under the lease is $115,800. Under these circumstances, it is unjust to Petitioner to continue a stay without some form of undertaking or collateral.

The parties argued the Motion on April 19, 2022. After argument, the Court asked the parties to try to settle on the issue of collateral so that the Court might continue the stay on just terms. The parties submitted documents to this effect on April 22nd and April 25th. Petitioner did not accept Respondent's offer of collateral and this motion was fully submitted.

DECISION AND ORDER:

The facts of this case are peculiar. This is a high rent apartment, though it remains rent stabilized. This case began long before Covid was an issue. Respondent accrued half of what was owed prior to the Covid period and shows no ability to pay rent to Petitioner; either past, current, or future.

The Legislative Intent stated in the passage of the ERAP Statute was to prevent unnecessary eviction resulting from non-payment of rent based upon financial or personal hardship caused by Covid. Though Respondent presents a tax return demonstrating he currently has a low income; Respondent did not

raise financial hardship in his initial request for a stay under the now invalidated Covid Emergency Eviction and Foreclosure Protection Act (CEEFPA) and cannot articulate how the stay is just under the circumstances.

CEEFPA was invalidated by the US Supreme Court in its ruling in *Chrysafis v Marks, 141 S.Ct. 2482 (2021).* The Supreme Court invalidated the stay created by the CEEFPA statute because it did not permit challenge, saying *"[t]his scheme violates the Court's longstanding teaching that ordinarily 'no man can be the judge in his own case' consistent with the Due Process Clause." See 2986 Briggs LLC v Evans, 74 Misc.3d 1224(A).* A court must "construe New York State statutes so as to avoid constitutional impairment." *Abuelafiya v Orena, 73 Misc 3d 576 (Dist Ct 3rd Dist Suffolk Co 2021).*

To construe the ERAP stay as unchallengeable would be to create another scheme by which one party completely controls the progress and determination of a dispute. Such a result is unacceptable after *Chrysafis v Marks, supra.* Moreover, unlike the invalidated CEEFPA statute, nothing in the ERAP Statute deprives a party of the ability to challenge the stay. *See Evans (supra) at *4.*

Finally, lifting the stay does not result in eviction but allows the case to proceed in the ordinary course and permits Respondent to raise any and all defenses to the proceeding, including financial hardship caused by COVID or qualification for TSHA, which precludes an award of a possessory judgment for amounts accrued due to financial hardship. Moreover, the Housing Stability and Tenant Protection Act (HSTPA) permits Respondents to seek a stay of up to one year on terms that may be just even after issuance of a judgment and warrant.

Despite lifting the stay, Respondent's application remains pending and, if funds are awarded, Respondent would remain eligible for any and all additional benefits of the ERAP Statute. Continuing the stay on these specific facts would not serve the cause of justice; to allow the stay to remain would require Petitioner to continue to accrue unsecured debt at a rate of $9650 per month indefinitely with little additional benefit provided to Respondent. A balancing of the equities under these facts warrants lifting of the stay.

The Court also grants Petitioner's request to amend the Petition to date subject to an amended answer for the amounts that have come due since the petition was served. Amended answer to be filed and served within three weeks of this Order, no later than May 27, 2022. Petitioner may renew its application for U&O *pendente lite* upon filing of the amended answer.

Case restored to the Court's calendar for all purposes, including trial assignment, on June 1, 2022 at 3:30, Part G – Room 581. Parties are expected to appear in person to be sent to Part X, if settlement cannot be reached.

DATED: May 6, 2022

SO ORDERED

APPROVED
DCHINEA , 5/6/2022, 11:11:18 AM

Hon. Daniele Chinea, JHC

HON. DANIELE CHINEA
JUDGE, HOUSING COURT