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EQR-Hudson Crossing, LLC v Magana
2022 NY Slip Op 22178
Decided on June 7, 2022
Civil Court Of The City Of New York, New York County
Bacdayan, J.
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Decided on June 7, 2022

Civil Court of the City of New York, New York County

<p>EQR-Hudson Crossing, LLC, Petitioner,</p> <p>against</p> <p>Leticia Magana, Respondent, JASEN KAPLAN A/K/A JASON S. KAPLAN JOHN DOE, JANE DOE Respondent-undertenants.</p>
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Index No. LT-300634-20/NY

Ingram Yuzek Gainen Carroll & Bertolotti LLC (Mollie Weiss, Esq.), for the petitioner

Housing Conversation Coordinators (Ashley Minnett, Esq.), for the respondent-undertenant Jason Kaplan

Karen May Bacdayan, J.

Recitation, as required by CPLR 2219 (a) of the papers considered in review of this motion by NYSCEF Doc No: 9, 10, 11, 12, 13, 14, 15,16, 17, 18, 19.

PROCEDURAL HISTORY AND FACTS

This is a holdover proceeding commenced by EQR-Hudson Crossing LLC against Leticia Magana, respondent, and Jasen Kaplan a/k/a Jason S. Kaplan ("Mr. Kaplan"), John Doe, and Jane Doe, respondent-undertenants. Leticia Magana ("Ms. Magana") has not appeared in this proceeding. Under-tenant, Mr. Kaplan, has appeared by an attorney.

The petition claims that Ms. Magana is illegally subletting the premises and that she is unlawfully profiteering by charging her undertenants in excess of the legal regulated rent. Mr. Kaplan states that he took possession of the apartment in 2011 under an oral rent agreement to pay rent to her each month. According to the notice of termination herein, Ms. Magana has been overcharging Mr. Kaplan in the amount of approximately \$500 per month, and on April 16, 2019 he filed an overcharge complaint against her at the Division of Housing and Community Renewal. (NYSCEF Doc No. 3 ¶¶ 3, 4)

In April 2022, Mr. Kaplan applied for the Emergency Rental Assistance Program ("ERAP") in the amount of \$1,750.00 per month for the months of March 2020 through April 2021. At oral argument respondent's attorney stated, and petitioner's attorney did not dispute, that Mr. Kaplan applied to have any approved ERAP funds payable to petitioner, EQR-Hudson Crossing, LLC. Petitioner's attorney was unable to say whether any approved funds would be rejected. Because an application for ERAP has the effect of staying "all proceedings . . . pending a determination of eligibility," this proceeding was administratively stayed by the court upon receiving notice of the application. (L 2021, c 56, part BB, subpart A, § 8, as amended by L 2021, c 417, part A, § 4; Admin Order of Chief Admin Judge of Cts AO/34/22.)

Petitioner has moved to vacate the ERAP stay on the basis that Mr. Kaplan is not an "intended beneficiary" of the program. (NYSCEF Doc No. 13, petitioner's memorandum of law in support at 5.) The statute, petitioner argues, does not apply to Mr. Kaplan, who is an undertenant, and has no obligation to pay rent to petitioner, EQR-Hudson Crossing LLC, only to the respondent, Ms. Magan. As such, "there is no tenancy to preserve because [u]ndertenant was never a tenant." (*Id.*)

Mr. Kaplan opposes petitioner's motion on that basis that the stay provisions apply to this proceeding as the plain language of the statute does not distinguish between holdover and nonpayment proceedings. (NYSCEF Doc No. 15, Minnett affirmation in opposition ¶¶ 20, 21.) Moreover, Mr. Kaplan is an "occupant" in possession of the premises in possession pursuant to an oral agreement with Ms. Magana to pay "rent" as defined by the statute. (*Id.* ¶¶ 35, 36). Finally, Mr. Kaplan's attorney notes that the Office of Temporary Disability and

Assistance website informs sublessees that they are eligible to apply for ERAP benefits. (*Id.* ¶¶ 37.)

This court has the jurisdiction to consider whether or not to vacate an ERAP stay. (*See e.g. Laporte v Garcia*, 2022 NY Slip Op 22126, *1 [Civ Ct, Bronx County 2022], *citing 2986 Briggs LLC v Evans*, 2022 NY Slip Op. 50215 [U] [Civ Ct, Bronx County 2022].)

DISCUSSION

To be eligible for ERAP funds an applicant must be "a tenant or occupant obligated to pay rent." (L 2021, c 56, part BB, subpart A, § 5 [1] [a] [i].) Definitions in the original ERAP statute, relevant here, remained unchanged when the statute was amended by L 2021, ch 417. "Occupant" has the same meaning as under Real Property Law (RPL) Section 235-f. (L 2021, c 56, part BB, subpart A, § 2 [7].) RPL 235-f defines "occupant" 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" is as defined under Real Property Actions and Proceedings Law (RPAPL) Section 702. (L 2021, c 56, part BB, subpart A, § 2 [9].) RPAPL 702 defines "rent" as "the monthly or weekly amount charged in consideration for the use and occupation of a dwelling pursuant to a written or oral rental agreement."

As an application for ERAP funds has the effect of staying "all proceedings...pending a [*2]determination of eligibility," this proceeding was administratively stayed by the court upon receiving notice of the application. (L 2021, c 56, part BB, subpart A, § 8, as amended by L 2021, c 417, part A, § 4.) The automatic stay provision applies to occupants when the occupant has applied, or subsequently applies, for ERAP benefits. (L 2021, c 56, part BB, subpart A, § 8, as amended by L 2021, c 417, part A, § 4.)^[FN1] While the language of the statute providing for an automatic stay in both holdover and nonpayment proceedings is absolute, many courts have found that the statute does not apply to licensees as such would lead to an absurd result. (*2986 Briggs LLC v Evans*, 2022 NY Slip Op 50215 [U] [Civ Ct, Bronx County 2022]; *Papadrea-Zavaglia v Arroyave*, 2022 NY Slip Op 22109 [Civ Ct, Kings County 2022]; *Silverstein v Huebner, et al.*, Civ Ct, Kings County, March 29, 2022, Stoller, J., index no. 94101/18.)^[FN2]

Be that as it may, neither attorney cited, nor was the court able to locate, any decisions granting or denying a landlord's motion to vacate an ERAP stay in an illegal sublet holdover context.

A sublease and a sublessee are substantively distinct from a license and a licensee. "A license is the authority to do a particular act or series of acts upon another's land, which would amount to a trespass without such permission." (*Ark Bryant Park Corp. v. Bryant Park Restoration Corp.*, 285 AD2d 143, 150—51 [1st Dept 2001] [internal quotations and citations omitted]; [see also *Roman Catholic Church of Our Lady of Sorrows v Prince Realty Mgt., LLC*, 47 AD3d 909](#) [2d Dept 2008] ["A license, within the context of real property law, grants the licensee a . . . privilege to do one or more acts upon, the land of the licensor, without granting possession of any interest therein"] [internal quotations and citations omitted].) By contrast, "[a] sublease is a transfer by a tenant of only part of his estate or interest in the whole, or in a part, of the demised premises, with the reservation unto himself of a reversionary interest in the leasehold estate." (*520 E. 81st St. Assocs. v Roughton-Hester*, 157 AD2d 199, 201 [internal citations omitted].)

In the context of this proceeding, the plain language of the statute cannot be ignored. (*See Beekman Hill Ass'n, Inc. v Chin*, 274 AD2d 161 [1st Dept 2000].) There is no dispute that Mr. Kaplan is a subtenant who is charged a monthly *rent* as defined by the ERAP statute in consideration for the exclusive use and occupation of the subject premises pursuant to an *agreement* that obligated him to pay *rent*. (NYSCEF Doc No. 1, petition ¶7; RPAPL 712; L 2021, c 56, part BB, subpart A, § 2 [9].) Nor is there any dispute that Mr. Kaplan is "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." (RPL235-f; L 2021, c 56, part BB, subpart A, § 2 [7].) "Where the statutory language is clear and unambiguous, the court should construe it so as to give effect to the plain meaning of the words used." (*Id.* at 166—67 [internal quotations and [*3] citations omitted].) As such, Mr. Kaplan, the sublessee and undertenant of the premises who is obligated to Ms. Magana for the payment of monthly *rent*, is entitled to the protections of the statute.

Finally, while not dispositive, the court acknowledges Mr. Kaplan's argument that the Office of Temporary and Disability Assistance (OTDA) has taken the position that sublessees are eligible for ERAP, and the court agrees for the reasons previously espoused. The Frequently Asked Questions page of the OTDA website page addressing ERAP eligibility states: "Yes. Sublettors are eligible to apply for ERAP assuming they meet other *eligibility* requirements . . . However, arrears must be owed to the landlord to qualify for ERAP (emphasis added)." (NYSCEF Doc No, 15, ¶ 37; Frequently Asked Questions | Emergency Rental Assistance Program | OTDA [ny.gov] [last visited June 7, 2022].) [\[FN3\]](#) The determination of eligibility factors rests with OTDA who, pursuant to the statute, is tasked with this duty. (L 2021, c 56, part BB, subpart A, § 5 ["Eligibility. The commissioner shall

establish standards for determining eligibility for such program . . ."].) And "courts must defer to an administrative agency's rational interpretation of its own regulations." ([Peckham v Calogero](#), 12 NY3d 424, 431 [2009]).

While petitioner is correct that acceptance of rent arrears issued from approval of Mr. Kaplan's ERAP application would confer no tenancy rights on him vis-à-vis petitioner, unlike in *2986 Briggs LLC v Evans*, 2022 NY Slip Op 50215 (U),*2, and *Papadrea-Zavaglia v Arroyave*, 2022 NY Slip Op 22109, *2, petitioner has not provided an affidavit averring that it will not accept any approved monies. At oral argument, petitioner did not argue this point. Thus, petitioner does potentially stand to benefit in part from an ERAP approval. In this case, the plain language of the statute, bolstered by OTDA's interpretation that he is eligible for ERAP benefits, and the fact that payment of ERAP funds may inure to petitioner's benefit, places Mr. Kaplan under the protective umbrella of the automatic ERAP stay. If this result is undesirable, it is for the legislature to remedy. [Chazon LLC v Maugenest](#), 19 NY3d 410, 416 (2012).

Accordingly, it is

ORDERED that petitioner's motion to vacate the ERAP stay is DENIED, and the proceeding shall remain stayed until there is a final determination of eligibility.

Dated: June 7, 2022
New York, NY
HON. KAREN MAY BACDAYAN
Judge, Housing Part

Footnotes

Footnote 1: See Admin Order of Chief Admin Judge of Cts AO/34/22, ¶ 5 which advises that "[e]viction matters where there is a pending ERAP application shall be stayed until a final determination of eligibility for rental assistance is issued by the Office of Temporary and Disability Assistance . . . including appeals." See also *Gurevitch v Robinson*, Civ Ct, New York County, May 31, 2022, Stoller, J., index No 72639/2018 (construing AO/34/22 and giving effect to its plain meaning).

Footnote 2: Other courts have held that licensees may benefit from the stay. See e.g. *24 W 55th St LLC v Mackler*, 2021 NYLJ LEXIS 1276 (Civ Ct, New York County 2021).

Footnote 3: Whether "landlord" means the person with whom the applicant has a sublease to pay rent, or "landlord" means the landlord of the sublessor, it is of no moment as it is not disputed that both are true in this case. Mr. Kaplan's application for ERAP states that he is in

rent arrears, and petitioner's prayer for relief in its petition states that it seeks a money judgment against the respondent, Ms. Magana, for rent in the amount of \$2,410.80 through May 25, 2020."

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