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### Robo LLC v. Matos

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[\*1]

<b>Robo LLC v Matos</b>
2022 NY Slip Op 50468(U)
Decided on June 2, 2022
Civil Court Of The City Of New York, Bronx County
Ibrahim, J.
Published by <a href="#">New York State Law Reporting Bureau</a> pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on June 2, 2022

Civil Court of the City of New York, Bronx County

<p><b>Robo LLC, Petitioner,</b></p> <p><b>against</b></p> <p><b>Maria Matos, Respondent-Tenant,</b> <b>"JOHN DOE," &amp; "JANE DOE,"</b> <b>Respondents-Undertenants.</b></p>
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L&T Index No. 308767-2021

For Petitioner: Sidrane, Schwartz-Sidrane, Perinbasekar & Littman, LLP

For Respondent: NAICA, by Phaleya Burnside, ESQ.

Shorab Ibrahim, J.

RECITATION, AS REQUIRED BY CPLR 2219(A), OF THE PAPERS CONSIDERED IN THE REVIEW OF THIS MOTION BY THE PETITIONER TO VACATE "ERAP" STAY: NYSCEF Documents #. 9 through 17, 20 & 21.

UPON THE FOREGOING CITED PAPERS, THE DECISION/ORDER IN THIS MOTION IS AS FOLLOWS:

## RELEVANT FACTS & PROCEDURAL POSTURE

The respondent in this summary non-payment proceeding, Maria Matos (respondent), owes, according to petitioner, north of \$28,000.00 in unpaid rent through April 2022. Respondent is the beneficiary of a Section-8 rent subsidy. The arrears, according to petitioner, started accruing in the latter half of 2018, and result from non-payment of respondent's "share."

Petitioner concedes that upon filing of an Emergency Rent Assistance Program (ERAP) application, this case is stayed. (*see* L 2021, c 56, Part BB, Sub. A). However, petitioner now moves to vacate the stay arguing that the ERAP was/is not approving applications made by tenants in subsidized housing. Petitioner also argues that this case will not be resolved even if ERAP pays the maximum amount allowed by law since it seeks arrears prior to the ERAP covered period and arrears are accruing after the covered period. Respondent opposes the application by arguing that it is frivolous and made in bad faith because, according to respondent, petitioner does not demonstrate it is prejudiced by the stay.

## THE LAW & ITS APPLICATION

Respondent's argument that petitioner is not injured by the stay is disingenuous. Respondent does not deny that arrears continue to accrue each month. This encroaches upon petitioner's property rights and petitioner is prejudiced in not being able to seek redress in this court. (*see Harmony Mills W., LLC v Constantine*, 2022 NY Slip Op 22135, 5 [City Ct, Cohoes 2022] (This scenario (long delays and depleted funds) presents a significant risk of erroneous deprivation of a landlord's property right.)). Furthermore, respondent's reliance on 22 NYCRR § 212.14(a) is misplaced. That section of the Uniform Rules has no bearing on the ERAP stay.

ERAP is administered by the New York State Office of Temporary and Disability Assistance [\*2](OTDA). As of May 31, 2022, the OTDA website continues to state, "Applications from subsidized housing tenants whose rent is limited to a certain percentage of income (including public housing, section 8 and FHEPS) are not *currently* able to be paid. State law requires that these applications be paid after all other eligible applicants have been reviewed and paid. Therefore, at this time, *none of the subsidized housing applications can be paid regardless of the date their application was submitted.*"[\[EN1\]](#) (emphasis added).

In other words, respondent's application, which has been pending for almost a full calendar year, was, is, and *will* continue to be at the back of the line, behind all other eligible applicants, no matter when they apply. [\[FN2\]](#)

Whatever the wisdom of this choice, this is the policy choice the legislature has made. (*see Xiang Fu He v Troon Management, Inc.*, 34 NY3d 167, 172, 114 NYS3d 14 [2019]; *Hope v Perales*, 83 NY2d 563, 575, 611 NYS2d 811 [1994] ("It is not the role of the courts to pass upon the wisdom of the Legislature's policy choice.")).

At the time petitioner made its motion, ERAP was essentially unfunded. (*see Hidalgo v New York State Office of Temporary and Disability Assistance*, 2022 NY Slip Op 31258(U) at 1. From that fact one might argue that the stay was futile. However, some \$800,000,000 was added in the 2022-2023 state budget. Thus, it is possible that respondent's application will be approved...eventually. [\[FN3\]](#)

Petitioner further argues that the case should move forward because it seeks arrears accruing outside of ERAP covered periods. This argument must also fail. ERAP § 8 unambiguously states: "Except as provided in section nine-a of this act, in any pending eviction proceeding, against a household who has applied or subsequently applies for benefits under this program to cover all or part of the arrears claimed by the petitioner, all proceedings shall be stayed pending a determination of eligibility."

Even if ERAP ultimately pays nothing or just a portion of what is owed, while pending, the application stays the proceeding. Recently, the Hon. Jack Stoller considered a similar application. In *Gurevitch v Robinson*, (Civ Ct, Kings County, May 31, 2022, index No. 72639/18), a long pending holdover, the court denied a motion to vacate ERAP stay even though there was up to \$487,500 in rental obligations due and ERAP might only pay up to \$97,500. (*see also Mason v Reyes*, 2022 NY Slip Op 50458(U) [Civ Ct, Kings County 2022] (In non-payment, stay remains even if ERAP approval would not satisfy the entire rental arrears); *compare Kristiansen v Serating*, 165 NYS3d 828, 2022 NY Slip Op 22097 [Dist Ct, Suffolk County 2022] (in *holdover*, stay vacated only for those rent obligations ERAP would not cover)).

It is noteworthy that petitioner fails to identify any case where the ERAP stay was vacated when the tenant in a non-payment case has/had a pending application.

For the above stated reasons, petitioner's motion is denied. This constitutes the Decision of the court. It will be posted on NYSCEF and emailed to the parties.

June 2, 2022  
SO ORDERED,  
Bronx, NY  
SHORAB IBRAHIM, JHC

### Footnotes

**Footnote 1:** [Emergency Rental Assistance Program | OTDA \(ny.gov\)](#). Last accessed on May 31, 2022.

**Footnote 2:** One of the reasons given by the Supreme Court in ordering reopening of the ERAP portal for new applications was that "they should have the benefit of being able to apply for ERAP now and obtain their rightful place on a de facto waitlist rather than wait and join the onslaught of applications respondent may receive if it reopens the ERAP portal upon obtaining sufficient funding after March." (*see Hidalgo v New York State Office of Temporary and Disability Assistance*, 2022 NY Slip Op 31258(U), 2 [Sup Ct, New York County 2022]).

**Footnote 3:** There is no argument made that respondent is ineligible for assistance.

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