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27 BEDSTUY, LLC v. HENDLEY

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: PART S

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27 BEDSTUY, LLC,

Petitioner,

Index No. 300887/22

-against-

DECISION/ORDER

Remy Smith, J.H.C.

DAMIAN HENDLEY, GLENARDA BRELAND, et al.,

Respondents.

-----X

Hon. Remy Smith

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion to impose ERAP stay:

Papers:	Numbered
Respondent Breland’s Motion and supporting papers.	1
Petitioner’s Memorandum of Law in Opposition	2
Respondent Hendley’s Affirmation in Support.....	3

Respondent’s motion seeking to impose an ERAP stay is denied. The court finds that, based on the facts and law as discussed below, the ERAP stay does not apply to the circumstances at bar and was not triggered by submission of the ERAP application.

The statute defines eligibility as follows:

§ 5. Eligibility. The commissioner shall establish standards for determining eligibility for such program, consistent with the following:

1. (a) A household, regardless of immigration status, shall be eligible for emergency rental assistance, or both rental assistance and utility assistance. Such household shall be eligible if it:

(I) is a tenant or occupant obligated to pay rent in their primary residence in the state of New York

The statute defines rent as:

9. "Rent" shall mean rent as defined by section 702 of the real property actions and proceedings law.

10. "Rental arrears" shall mean unpaid rent owed to the landlord that accrued on or after March 13, 2020.

RPAPL §702 defines rent as “a monthly or weekly amount charged in consideration for the use of a dwelling pursuant to an oral or written rental agreement.”

This is licensee holdover proceeding wherein Mr. Hendley joined issue by filing an Answer which alleges that he is a subtenant of the tenant of record. It is undisputed, as far as the record presents thus far, that respondents do not enjoy a landlord/tenant or any relationship in connection with respondents’ occupancy. There is no evidence in the record as to rents that respondents may have paid to anyone in connection with their occupancy. It is undisputed that the landlord neither charged nor received rent from the respondents such that would support an application for any amount from ERAP. As there are no “arrears” as per RPAPL §702, respondents do not qualify for ERAP or its stay.

Moreover, the ERAP statute provides that acceptance of ERAP funds indeed results in a situation, barring a few exceptions that have not yet been presented here, requiring a petitioner to refrain from evicting the respondent for a period of a year from acceptance of funds notwithstanding that the petitioner clearly seeks to terminate same by service of a notice of termination and commencing a proceeding. Simply put, acceptance of funds forces parties into a relationship that does not exist, thus creating a contract that ordinarily requires a meeting of the minds, which, based on the pleadings, has not happened in this case. The statute’s language regarding arrears coupled with the awareness of the legislative intent to preserve tenancies when possible cannot countenance the imposition of a stay under the circumstances at bar.

the courts guided by recent decisional law when in the discussion of applicability of the RAP stay makes mention of petitioner's name. In Papandrea-Zaiglia v. Hernandez-Arriave, 2022 N.Y.S.P. Op. 210 (Civ. Ct. Kings Cty. 2/22), the court stated that the ERAP statute in a landlord-tenant proceeding ought to be applied to an apartment in an unregulated part of the city after a 90-day termination notice. Petitioner waived her right to a mediated settlement conference and upon motion that she should not be compensated for her time. The court set forth considerations for vacating the stay, for example, the nature of her cause of action, the regulatory status of the building¹, the relationships between the applicant and landlord whether the applicant meets the basic criterion for ERA protection, and whether the equities favor petitioner. The court did not find the factor decisive. The Papandrea court also noted that a payment order would resolve the case.

The court in Shiyan Zheng v. Applicant, 2022 NY Slip Op. 571(U) (Civ. Ct. Richmond County 10/2) relied on similar logic in granting an ERA stay in a case involving an evicting respondent in a non-payment proceeding which had been converted to a landlord-tenant proceeding. The court noted that the respondent had been denied a demand for possession & occupancy, and she for payment of RA funds, which a landlord had shown to be true, would not be a result of the case. The court also noted that the ERA application was filed very late in the litigation and the petitioner's support for the application was weak. The court noted that "no explanation [was] provided as to why the respondent believed that an additional assistance program would be helpful where an assistance was sought by the petitioner" in showing that they were not

¹The cases cited in this Decision substantially involve unregulated buildings while petitioner in the instant proceeding seeks recovery of a rent stabilized apartment. The court does not consider this distinction to require a different analysis, however, as vacatur of the stay does not mean that petitioner will succeed on her underlying cause of action, but only that she not be delayed from seeking its adjudication and resolution.

covered by the ER statute in this simple four party proceeding, not
 ER P payment two day "trespass" controversy

A party's use & occupancy in the partition is not a date difference. The
 court has held previously that use & occupancy is not "enforceable" as per APL §702. The
 court decided that this injunction is usually applied to successions where the successor's
 enrollment is not a tenancy in fee simple and that the mortgage is for the entire period
 created as "usufructuary." Roehl v. In. v. C. A. Wick 2021 NY Slip Op
 505 (U) 73 Misc. 2d 131(A) 15 N.Y. 3d 74 (App. Term). Therefore, petitioner's request
 for a market use of the property of \$100,000 per month does not create an
 obligation on the part of the respondent.

In this case, the court so stresses that the taking of the property is not equivalent to the petitioner's
 request. Vacating the judgment allows the parties to proceed with the case in chief,
 which is the burden of the respondent to prove even though the petitioner's request is the
 cause of action, the respondent's liability of continuing, in the words of the court in the
 ER P funds, and as appropriate by the law and the direct language of the ER P statute,
 the court is responsible for a statement that the case may proceed.

All parties appear for reference in Room 602, 41 Livingston Street,
 Brooklyn, New York on June 15, 2022 at 11:00 a.m.

The foregoing is the decision of the court.

Dated: Brooklyn, New York
 May 18, 2022

BY: 
 Remy Smith, J.H.C.