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Mason v. Reyes

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[*1]

Mason v Reyes
2022 NY Slip Op 50458(U)
Decided on May 31, 2022
Civil Court Of The City Of New York, Kings County
Cohen, J.
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on May 31, 2022

Civil Court of the City of New York, Kings County

Stanley Mason, Petitioner

against

Tiffany Reyes John Doe & Jane Doe, Respondents.

Index No. LT No. 59783/20

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Hannah Cohen, J.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of

petitioners motion to vacate the ERAP stay and to proceed to trial and ensuing opposition and reply.

Papers Numbered

Notice of Motion 1

Opposition 2

Reply 3

Upon the foregoing cited papers, the Decision and Order on this motion is as follows:

Petitioner Stanley Mason commenced this nonpayment proceeding against Tiffany Reyes seeking rental arrears on or about September 2020. On October 29, 2020 respondent answered the petition. On January 04, 2022 respondent filed a hardship declaration which stayed the proceeding through January 15, 2022. On February 22, 2022 the court was notified that respondent filed for ERAP and the proceedings were stayed. Petitioner now with counsel moves [*2]by order to show cause dated March 31, 2022 seeking to restore the matter for hearing on whether the ERAP program provides a stay for this proceeding and upon a finding of non eligibility, seeks a final judgment and warrant. Petitioner argues that the ERAP stay should be lifted (1) as at the time of filing of the ERAP application, there were no funds available and as such, the application was not made in good faith; (2) respondent has no lease and has not paid rent since February 2019 in this two family house. Petitioner avers that there is over \$58,000 in rental arrears due. Petitioner also argues that the automatic stay violates petitioner's due process rights similar to the findings in *Chrysafis v Marks*, Sup Ct., U.S., S.Ct., L.Ed.2d 2021 WL 3560766 (8-12-21). Petitioner argues that continuing a stay would be futile, as the petitioner has no interest in continuing the landlord tenant relationship.

In opposition respondent argues that petitioner commenced a non payment proceeding and that she is entitled to the stay provided by the ERAP statute as her application is pending. Respondent argues that if petitioner completes the ERAP application, she would be eligible for ERAP arrears assistance and then would be able to apply to DSS/HRA to restore her FHEPS and pay any outstanding arrears.

The legislature enacted a statute to distribute funds to pay rental arrears and known as the COVID-19 Emergency Rental Assistance Program ("ERAP"), codified at L. 2021, c.56, part BB, amended by L. 2021, c 417, Part A. Section 8 of subpart A of part CC of chapter 56 of the laws of 2021 states:

"Except as provided in section nine-a of this act, eviction proceedings for a holdover or expired lease, or non-payment of rent or utilities that would be eligible

for coverage under this program shall not be commenced against a household who has applied for this program or any local program administering federal emergency rental assistance program funds unless or until a determination of ineligibility is made. Except as provided in section nine-a of this act, in any pending eviction proceeding, whether filed prior to, on, or after the effective date of this act, 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 claims be the petitioner, all proceedings shall be stayed pending a determination of eligibility."

The plain language of the statute clearly indicates that any pending ERAP application stays a proceedings until an eligibility determination is made. However, the court has inherent authority to determine eligibility for purposes of the stay, and any concerns when facts indicate a lack of fairness, credibility, fraud or bad faith. (See *Iisdoro v Team Properties LLC*, 2021 NY Slip Op 32626[U] [NY Sup Ct NY Co 2021]; *255 Skyline Drive Ventures v Ryant* [L & T 50014-20 [Civ Ct Richmond Co 2021]; [Harbor Tech LLC v Correa, 73 Misc 3d 1211](#)[A] [Civ Ct Kings co 2021]; *Grevitch v Robinson* L & T 72639-18 [Civ Ct Kings Co 2022]; [Sea Park LP v Foster, 74 Misc 3d 213](#) [Civ Ct Kings co 2021]; *560-566 Hudson LLC v Hillman*, NY Slip Op 30718(U) [Civ Ct NY co 2022]; *204 W. 55th St LLC v Mackler*, NY Slip Op 32901(u) [Civ Ct NY Co]; *Kristiansen v Serating* NY Slip Op 22097 [NY Dist CT Suffolk Co 2022; [Zheng v Guiseppone, 74 Misc 3d 1231](#)[A] [Richmond Co Civ Ct 2022]; *Papandrea-Zavaglia v Arroyave*, WL 1098889 [Civ Ct Kings Co 2022]). The court has inherent power, and indeed responsibility, to the administration of justice, to control their calendars and to supervise the course of litigation before them. See *Grisi v Shainswit*, 199 AD2d 418 [AD 1st Dept 1986]).

The court is aware that the legislature in enacting laws determines the public policy of a [*3]state and undoubtedly enacted the provisions of the COVED-19 Emergency Rental Assistance Program in order to meet the challenges of tenants and lawful occupants in remaining in their homes while attempting to meet their financial obligations in paying rent during and through the pandemic period. It is the courts role to interpret the laws and give appropriate effect to the legislative intent while ensuring the rights of all individuals. (See *Campaign for Fiscal Equity v State of New York*, 100 NY2d 893 [2003]). Previously in the case of *Chrysaftis v Marks*, Sup Ct., U.S., S.Ct., L.Ed.2d 2021 WL 3560766 (8-12-21) the United Stated Supreme Court found that the New York statute allowing a tenant's ability to self certify financial hardship which stayed a proceeding, without the ability to challenge such a declaration in the court violated due process. This led the New York State legislature to revise the statute to permit a legal challenge to the Hardship declaration. Here, similarly, when filing an ERAP application, any person may file an ERAP application, which stays a

proceeding until a determination is made, The mere act of filing the application, regardless of whether the person is a tenant, lawful occupant, squatter, family member, guest, licensee, former employee, would conceivably stay the proceeding. The statute had no mechanism if the application was not completed timely, and provides no time frame for a decision, evoking a stay of indefinite stature. The person filing the application evokes the automatic stay even if such application was not made in good faith or where rent or use and occupancy is not sought. These concerns are similar to the concerns raised in *Chrysafis*, supra which barred one party from participating and engaging in the process.

Here, however, petitioner in its petition acknowledges that respondent is a tenant that allegedly owes rental arrears. An approval by the ERAP program, although perhaps not satisfying the entire rental arrears owed by a respondent, would assist in preserving a tenancy.

The court is mindful that in appropriate circumstances, the court has the authority to lift the ERAP stay (See [*Abuelafiya v Orena*, 73 Misc 3d 576](#) [Dist Ct 3rd Dist Suffolk Co 2021] where court found it had inherent authority by statute to determine a household's eligibility under ERAP and found the respondents did not qualify as they were not experiencing housing instability as they owned another home; *Actie v Gregory*, 2022 NY Slip Op 501117[U] [Civ Ct Kings Co 2022] where court vacated the ERAP stay as petitioner sought to recover possession of the premises in a four or less unit building, for himself and the use of his family. The court went on to opine that an approval of an ERAP application would not result in the preservation or creation of a tenancy. See also *2986 Briggs LLC v Evans*, 2022 NY Slip Op 50215(U) [Civil Ct, Bronx County 2022] (where the court found an occupant licensee does not owe "rent" as contemplated by the ERAP statute and was therefore not eligible for the stay; *Kelly v Doe*, 2022 NY Slip Op 22077 [Civil Ct Kings Co 2022] where court found alleged squatters were presumably not tenants entitled to an ERAP stay as there was no "rent" sought or owed); *Ami v Ronen*, 2022 NY Slip Op 22098 [Civ Ct Kings Co] (where court found landlord was permitted to proceed with eviction despite possible success in tenant's ERAP application in a two family home); *Karen Realty Assoc LLC v Perez*, NY Slip Op 22093 [Civ Ct Queens Co 2022] (where court found lifting of ERAP stay appropriate as petitioner would not accept ERAP funds and such funds would not create a tenancy); *US Bank Trust NA v Alton*, NY Slip Op 22051 [Justice Ct Dutchess Co 2022] (where court found ERAP did not apply to individuals who have no obligation to pay rent).

Although statutes will ordinarily be accorded their plain meaning, courts should

construe then to avoid, objectionable or absurd consequences(See *Hibertz v City of New York*, 64 Misc 3d 697 [Supreme Ct, Kings Co 2019) . When constructing a statute, the court must conclude that [*4]the legislature deliberately placed wording to serve its intended purpose (See *Rodriguez v Perales*, 86 NY2d 361 [1955]; *Bitzarkis v Evans*, 2021 NY Slip Op 21280 [Civil Ct Kings Co November 2021]). The circumstances herein are similar in part, to the holding in [Sea Park East LP v Foster. 74 Misc 3d 213](#) [Civ Ct Kings Co 2021] where this court found respondent, a rent stabilized tenant's second application for ERAP to satisfy rent arrears, stayed the proceeding as respondent mistakenly did not apply for the full amount of the program and was entitled to the protections of the ERAP stay while her application as pending. The ERAP program was intended to assistant lawful tenants in remaining in their homes by assisting them in their financial obligations. Herein, petitioner did not commence a holdover proceeding, but instead commenced a non payment proceeding seeking rental arrears. As such, the proceedings are hereby stayed pending an outcome of eligibility under the ERAP program. Petitioner's motion is denied in all aspects.

This constitutes the decision and order of the court.

Dated: May 31, 2022
Brooklyn, New York
Hon. H. Cohen, J.H.C.

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