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Valsac 908 LLC v. Crespo

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Grants motion to vacate ERAP stay in a super holdover finding that the super never paid rent and, given plain meaning to the language of the statute, that the super does not meet the definition of "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."

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Valsac 908 LLC v Crespo
2022 NY Slip Op 50484(U)
Decided on June 10, 2022
Civil Court Of The City Of New York, New York County
Bacdayan, 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This opinion is uncorrected and will not be published in the printed Official Reports.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 June 10, 2022

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

<p style="text-align:center">Valsac 908 LLC, Petitioner,</p> <p style="text-align:center">against</p> <p style="text-align:center">Santiago Crespo, Respondent, John Doe, Jane Doe, Respondents-undertenants.</p>

Index No. 307057/2021

Law Office of Allison M. Furman, PC (Allison M. Furman, Esq.), for the petitioner

New York Legal Assistance Group (Anthony Howden, Esq.), for respondent, Santiago Crespo

Karen May Bacdayan, J.

Recitation, as required by CPLR 2219 (a) of the papers considered in review of this motion by NYSCEF Doc No:

Papers

NYCEF Doc No.

Notice of motion, affirmation in support 16, 17

Affirmation in opposition to motion and exhibits thereto 18, 20, 21

After oral argument and on the foregoing cited papers, the decision and order of the court is as follows:

BACKGROUND, PROCEDURAL HISTORY AND FACTS

This is a holdover proceeding commenced by Valsac 908 LLC ("petitioner") against Santiago Crespo ("respondent"), and John Doe and Jane Doe, respondent-undertenants. John and Jane Doe have not appeared in this proceeding. Respondent has appeared by an attorney.

Undisputed is that respondent was the superintendent of the subject premises who came into possession of the subject apartment as an incident to his employment by petitioner in 2017. (NYSCEF Doc. No 1, petition ¶2; NYSCEF Doc No. 19, Crespo affidavit ¶ 3.) His employment as superintendent was terminated in October 2021. (*Id.* ¶ 5; NYSCEF Doc. No 17, petitioner's attorney's affirmation ¶ 3.) Respondent states that he "was wrongfully terminated" from his job. [*2](NYSCEF Doc No 19, Crespo affidavit ¶ 5.)

After the proceeding was commenced, Respondents filed a "hardship declaration" pursuant to the COVID Emergency Eviction and Foreclosure Prevention Act ("CEEFFPA") which had the effect of automatically staying the proceeding pending a determination of eligibility. (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]. On August 1, 2021, CEEFFPA was enjoined by the United States Supreme as violative of landlords' due process rights. (*Chrysaftis v Marks*, 594 US &mdash, 141 S Ct 2482 [2021] [". . . no man can be a judge in his own case . . ."].) CEEFFPA was modified three weeks later to address the Supreme Court's concerns by including a mechanism through which a landlord could challenge the automatic stay prompted by the filing of a hardship declaration. (L 2021, c 417, part C, subpart A.) The hardship declaration stay provisions expired January 15, 2022.

On April 7, 2022, the same day that petitioner moved to have this proceeding restored to the court's calendar as the stay occasioned by the filing of the hardship declaration had expired, Respondents filed an Emergency Rental Assistance Program ("ERAP") application. (NYSCEF Doc No. 14.) Like submission of a hardship declaration, submission of an application for ERAP, has the effect of staying "all proceedings pending a determination of eligibility." Thus, this proceeding was administratively stayed once the court was notified 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 as "[b]y virtue of his position as superintendent, Respondent is not a tenant or occupant of the [a]partment obligated to pay rent. Thus, [r]espondent does not meet the eligibility requirements of the ERAP statute." (NYSCEF Doc No. 17, petitioner's attorney's affirmation ¶ 26.)

Respondent opposes petitioner's motion on that basis that the ERAP stay provisions apply to this proceeding as the plain language of the statute is explicit and does not distinguish between holdover and nonpayment proceedings. (NYSCEF Doc No. 18, respondent's attorney's affirmation ¶¶ 16-17.) Moreover, respondent argues, eligibility determinations for ERAP are in the sole discretion of the commissioner of the Office of Temporary and Disability Assistance ("OTDA"). (*Id.*) Finally, respondent argues that there is only one exception when a holdover is permitted to proceed in the normal course after an ERAP application is filed, and that is where the tenant is engaging in ongoing nuisance behavior. (*Id.*)

DISCUSSION

At the outset, this court holds that it has the authority 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].) Indeed, to find otherwise would raise constitutional issues analogous to those at issue in *Chrysafis v Marks*. In *Chrysafis*, CEEFPA was enjoined because it did not allow a landlord to challenge a tenant's self-certified experience of a hardship which resulted in the stay. The L 2021, ch 417 allowed for a hearing before the court to determine whether the tenant was, in fact, suffering from a hardship, thereby warranting a continued stay. Similarly, in the context of ERAP, the tenant "self-attest[s]" to eligibility for ERAP funding. (L 2021, c 56, part BB, subpart A, § 6 [6].) Thus, when a landlord challenges the automatic ERAP stay, the court must determine whether the tenant has made a showing that it is so entitled, or risk infringing on petitioner's due process rights.

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."

While the language of the statute provides for an automatic stay in both holdover and nonpayment proceedings, many courts have found that the statute does not apply to licensees as to do so 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.) Other courts have held that licensees may benefit from the stay. *See e.g. 24 W 55th St LLC v Mackler*, NYLJ, Jan 12, 2022 at 17, c 2, 2021 NYLJ LEXIS 1276 (Civ Ct, New York County 2021). *560-566 Hudson LLC v Hillman*, NYLJ, Mar 9, 2022 at 17, c 2., 2022 NYLJ LEXI 189 [Civ Ct, Kings County 2022].)

The court is aware of only two decisions regarding a motion to vacate an ERAP stay in the context of a superintendent holdover. Both of those decisions granted the landlord's motion. (*Karan Realty Assoc. LLC v Perez*, 2022 NY Slip Op 22093 [Civ Ct, Queens County 2022] [motion to lift ERAP stay granted as superintendent is not eligible and therefore it would be futile to maintain the stay]; *LSG 365 Bond Street LLC v Christopher Cusumano et al*, Civ Ct, Kings County, April 8, 2022, Donoghue, J., index no 311058/21 [superintendent "is not covered by the express language of the statute"].) Respondent does not distinguish these cases. Neither does respondent point the court to any decision where a stay was upheld in a holdover proceeding based on a superintendent's termination of employment.

Most recently, this court *denied* a petitioner's motion to vacate an ERAP stay in the context of an illegal sublet holdover. (*EQR-Hudson Crossing, LLC v Magana*, 2022 NY Slip Op 22178 [Civ Ct, New York County 2022].) That ruling was based on the plain language of the statute which, as set forth above, applies to *tenants* with an obligation to pay *rent* as specifically defined in the statute. The subtenant therein was undisputedly in possession of the subject premises with the "consent of the tenant" pursuant to an agreement to pay "a monthly amount in consideration for the use and occupation of the premises." (L 2021, c 56, part BB, subpart A, § 2 [7], [9].)

Here, the court's ultimate determination is distinct from its recent ruling in *EQR-Hudson*

Crossing, but the holding is constructed from the same reasoning. The definitions section of the ERAP statute, which informs the eligibility criteria, is unambiguous. ([Commonwealth of N. Mariana Islands v Canadian Imperial Bank of Com., 21 NY3d 55](#), 60 [2013] ["[W]here 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".].)

Respondent may be an occupant of the premises, but respondent is not "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." (L 2021, c 56, part BB, subpart A, § 2 [7]; RPL § 235-f.) Moreover, it [*3] is not disputed that respondent has never paid a weekly or monthly amount of rent *in consideration for the use and occupancy* of the apartment. In fact, respondent does *not pay rent* for the premises *in consideration for his job* as superintendent.

Accordingly, it is

ORDERED that petitioner's motion to vacate the ERAP stay is GRANTED, and case is adjourned for all purposes to July 11, 2022 at 3:30. The parties are to appear in person in Part F, Room 523 at 111 Centre Street, New York, NY.

Dated: June 10, 2022

New York, NY

HON. KAREN MAY BACDAYAN

Judge, Housing Part

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