2022-06-28

Griffith v. Guzman

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX: HOUSING PART I

_____x

ALEJANDRINA GRIFFITH,

L&T Index No. 47894/2019

Petitioner-Landlord

DECISION/ORDER

-against-

MOTION SEQ. 4, 5 & 6

YOLANDA GUZMAN
JOHN DOE & JANE DOE,

Respondents-Tenants,

_____x

Recitation, as required by C.P.L.R. § 2219(a), of the papers considered in r of this motion.

Papers Numbered

Notice of Motion [7/1/21] with Affidavit Annexed ..……..... 1
Notice of Motion [11/27/21] with Affidavit Annexed ..……... 2
Notice of [Cross]-Motion with Affirmation Annexed
[With Exhibits A-E] ….……...…… 3
Affidavit in Opposition to Cross-Motion..……..... 4

After oral argument held on May 12, 2022, and upon the foregoing cited papers, the decision and order on this motion is as follows:

FACTUAL AND PROCEDURAL HISTORY

For the purposes of the within motions and cross-motion, the relevant history of this case is as follows: pro-se Petitioner Alejandrina Griffith ("petitioner") commenced this proceeding against Respondent Yolanda Guzman ("respondent"), after expiration of a termination notice, to regain possession of Apartment 3, located at 2039 Hughes Ave, Bronx, NY 10457 (the subject premises), a cooperative apartment.

After several adjournments, and after respondent obtained counsel, the parties settled by stipulation dated January 10, 2020. Petitioner obtained a final judgment and a warrant of eviction, with execution of the warrant stayed through March 31, 2020 for respondent to vacate. Respondent also agreed to pay ongoing use and occupancy and petitioner reserved her right to any past use and occupancy.

On October 29, 2020, some nine (9) months after the judgment was entered and some seven (7) months after respondent was supposed to vacate, petitioner filed an Order to Show

Cause ("OSC") to allow issuance and execution of the warrant of eviction, as respondent had not yet vacated the subject premises. Respondent, by counsel, cross-moved for a stay of issuance and execution of the warrant, alleging financial hardship pursuant to the Tenant Safe Harbor Act ("TSHA").

After oral argument on November 5, 2020, the court [Hon. Jennings] issued a Decision and Order, dated November 9, 2020, finding that respondent failed to show a financial hardship so that she was not entitled to any stay under the TSHA. On the other hand, the court found that petitioner, the owner of the co-op apartment, was in danger of losing her home because she was unable to pay maintenance as respondent failed to pay use and occupancy as agreed upon in the January 2020 Stipulation. The court found no good cause to stay issuance and execution of the warrant eight (8) months after respondent agreed to vacate. The court granted petitioner's motion and held that the warrant shall issue forthwith, with execution stayed to November 30, 2020.

It appears petitioner's warrant application was rejected sometime in January 2021 and, in March 2021, the respondent filed a Hardship Declaration staying this proceeding. As a result, petitioner's subsequent warrant application was rejected in June 2021.

Petitioner filed a motion on or about July 1, 2021, seeking issuance of the warrant of eviction. In that motion, petitioner states that respondent had yet to vacate or pay use and occupancy. Furthermore, since the March 31, 2020 vacate date, petitioner's temporary home was placed on the market to be sold. Petitioner further states that respondents violated this court's November 9, 2020 Order wherein execution was stayed through November 30, 2020 for them to vacate. Petitioner concluded that if respondents do not vacate and she cannot move back into the subject premises by June 1, 2021 she could become homeless.

Although the motion was never decided, it appears a warrant of eviction issued on or about October 22, 2021. On November 3, 2021, the court [Hon. Jennings] issued a Decision and Order vacating the warrant due to respondent's pending Hardship Declaration.

On or about November 27, 2021, petitioner filed another motion seeking leave to proceed with the eviction. Petitioner's motion states that respondents have not paid use and occupancy since October 2019 and failed to move out of the subject premises after the initial March 31, 2020 move-out date, as well as after the subsequent order staying execution of the warrant of eviction through November 30, 2020 for respondents to vacate.

Petitioner also points out that respondent only filed a Hardship Declaration in February 2021, after the November 2020 Order finding that respondents had failed to prove they endured a hardship. Petitioner further alleges that ERAP will not cover co-operative apartment arrears.

Over $30,000.00 in unpaid use and occupancy had accrued since October 2019 at the time of the November 2021 motion, and the cooperative board of the building commenced a non-payment case against petitioner as a result. Finally, petitioner states that a section 8 representative advised her that several transfer vouchers were issued to respondents, but they had not submitted any applications to move.

On or about December 29, 2021, respondent, by counsel, filed the instant cross-motion (i) seeking denial of the motion seeking issuance of the warrant as respondent qualifies for protection under the Covid-19 Emergency Eviction Foreclosure Protection Act ("CEEFPA"); (ii) staying execution of the warrant until a determination has been made on respondent's ERAP application; (iii) staying execution through January 15, 2022 pursuant to the Hardship Declaration; and (iv) staying execution for good cause.

After several adjournments, the motion was argued on May 12, 2022.

DISCUSSION

The court will render a decision on the respondent's cross-motion first.

CEEFPA and Hardship Declaration

Respondent, by counsel, alleges she is entitled to a stay pursuant to CEEFPA and the Hardship Declaration. However, respondent's own papers admit that a stay pursuant to either expired on January 15, 2022, many months ago.

The law is also clear that there are no stays in effect as the Hardship Declaration stay expired with CEEFPA's sunset after January 15, 2022. (*see Harbor Tech LLC v Correa*, 2021 NY Slip Op 50995[U], 2 [Civ Ct, Kings County 2021]). As such, respondent's application for a stay of eviction under CEEFPA or the Hardship Declaration is denied as moot, although respondent has clearly received the benefit of any stay she might have been entitled to under either.

Pending ERAP Application

Respondent next argues that the proceeding, and any eviction, should be stayed because there is an ERAP application pending. The application is "provisionally" approved as petitioner has not provided documents or information necessary to "fully evaluate" the ERAP application.

Petitioner herein does not seek arrears or use and occupancy and the petitioner will not participate in the ERAP program. Petitioner simply wants her single unit cooperative apartment back, for her own use, in order to avoid homelessness.

The plain language of the ERAP law bars the commencement of eviction proceedings until a determination has been made. (Part BB of Chapter 56, Laws of 2021). It similarly bars "any pending eviction proceeding…pending a determination of eligibility." (*see Zheng v Guiseppone*, 74 Misc. 3d 1231(A), 3, 2022 NY Slip Op 50271(U) [Civ Ct, Richmond County 2022]).

In *Park Tower South Company LLC v Simons*, (---NYS3d ---, 2022 NY Slip Op 22192 [Civ Ct, New York County 2022], the court [Hon. K. Bacdayan] held "that the effect of a provisional approval is the same as determination of approval in one important aspect: the stay is simply dissolved." (*id* at *2). Critically, unlike the landlord who *accepts* ERAP funds, the court held:

> "However, a landlord who declines to accept provisionally approved monies or whose occupant receives only a provisional approval because of the landlord's refusal to participate in the application process, faces different consequences under the statute. The provisionally approved applicant will, in that case, have a defense in any proceeding seeking a monetary judgment or eviction proceeding for nonpayment of rents accruing during the time period for which a grant was provisionally approved. This affirmative defense is available for a period of 12 months from the provisional approval. If after the twelve months since provisional approval, the landlord still has not accepted ERAP funds, then the landlord is deemed to have waived the rent covered by the provisional approval. These consequences are distinct from the 12-month bar on eviction after accepting ERAP payment. Importantly, nothing in the ERAP statute requires a landlord to participate in the process or accept approved monies." (*id* at *4 [internal citations omitted]).

Alternatively, numerous courts have vacated the ERAP stay to avoid inequity or fraud or absurd or futile results. Furthermore, "[w]hen deciding whether to vacate the stay, courts have been looking at the regulatory status of the premises, the relationship between the parties, the nature of the cause of action, and whether the applicant meets the basic criteria for ERAP assistance." (*Federal Natl. Mtge. Assn. v Godette*, 2022 N.Y. Misc. LEXIS 2056, *3-4, 2022 NY

Slip Op 22151, 2 [City Ct, Mt. Vernon 2022]), *citing Actie v Gregory*, 74 Misc 3d 1213 [A], 2022 NY Slip Op 50117 [U] [Civ Ct, Kings County 2022]).

Here, respondents are unregulated tenants of a cooperative apartment owned by an individual petitioner who seeks to move back into her apartment to avoid homelessness. Respondents have no right to renewal leases and petitioner properly commenced this holdover action to recover possession of her cooperative unit after expiration of respondents' lease several years ago.

Respondents may meet basic criteria for ERAP assistance, however, "when an ERAP application has no relevance to the resolution of the dispute before the Court or when the equities are so out of balance as to warrant an exception to the statute, Courts have vacated stays occasioned by ERAP applications." *Silverstein v Huebner*, 2022 NY Misc. LEXIS 1558, *2-3, 2022 NY Slip Op 31051(U), 2 [Civ Ct, Kings County 2022]).

Here, whether respondents receive ERAP is irrelevant, as the dispute between the parties would clearly remain unresolved. Petitioner has indicated she does not want to participate in ERAP or receive ERAP funds, she merely wants the return of her single cooperative unit in order to reside therein.

In *Actie v Gregory*, (74 Misc. 3d 1213(A), 2022 NY Slip Op 50117(U) [Civ Ct, Kings County 2022]), the court vacated the stay because it was an unregulated unit in a private house and the landlord would not renew the lease because he wanted it for family use. The court reasoned that even if ERAP funds were paid, the landlord-tenant relationship would not be reinstated and, as such, a stay was futile and prejudicial to the petitioner. Similarly, the court in *Ami v Ronen* vacated the stay where the landlord of an unregulated unit sought the unit for family use. (2022 NY Slip Op 22098, ---NYS3d--- [Civ Ct, Kings County 2022]); (*see also*, *Silverstein v Huebner*, 2022 NY Slip Op 31051(U) [Civ Ct, Kings County 2022] (unregulated unit sought for personal use)).

In another case with similar facts to those here, the court vacated the stay noting that the ERAP statute was not "designed to create a barrier preventing small property owners from advancing litigation involving residential properties, where the tenancy is not subject to statutory control, landlord expresses its intent not to seek use and occupancy, and desires to pursue litigation where the tenancy has been properly terminated." (*see Papandrea-Zavaglia v Arroyave*, ---NYS3d---, 2022 NY Slip Op 22109 [Civ Ct, Kings County 2022]).

Similarly, the court vacated an ERAP stay articulating that such stay was futile and irrelevant, as well as prejudicial to the petitioner. "Where a landlord or owner of a non-regulated tenancy elects not to participate, agrees to forego the ERAP monies where required, articulates this in an appropriate context and moves to vacate the stay its blanket continuance will overly prejudice a landlord or owner while providing a tenant, occupant or applicant with a stay that does not further the legislative or policy goals of ERAP, has no individual merit and serves no end other than to prolong a case from being heard on its merits. ERAP only proves to be helpful in those circumstances where the landlord's participation and acceptance of its payment creates, prolongs or maintains a tenancy." (*178 Broadway Realty Corp. v Charles*, (2022 NY Misc. LEXIS 2184, 2022 NY Slip Op 22164 [Civ Ct, Kings County 2022]), *see also Joute v Hinds*, 2022 NY Misc. LEXIS 2057, *8, 2022 NY Slip Op 22150, 3 [Civ Ct, Kings County 2022] ("to allow individuals in an unregulated tenancy, the benefit of a stay provision of ERAP would be futile and would lead to an absurd result, not contemplated by the statute").

From these holdings a general rule has emerged: where an unregulated tenancy will not be maintained by payment of ERAP funds and the landlord refuses to participate or accepting said funds, the ERAP stay should not remain in place, especially where the landlord intends to use the premises for herself. This case falls within these parameters.

Based on the above, respondents' cross motion for a stay pursuant to the pending ERAP application is denied and any ERAP stay is hereby vacated.

Good Cause

Respondent argues she is entitled to a stay for one year and for good cause pursuant to RPAPL §753 and 749.

Respondent's argument must fail. RPAPL §753(1) is clear that the court can only stay issuance or execution of the warrant "for a period of not more than one year."

Here, respondents have far exceeded the one-year deadline. Petitioner obtained a final judgment on January 10, 2020, two and a half years ago. Moreover, respondents have received the benefit of numerous stays, both by application to the court, due to the coronavirus pandemic, CEEFPA, and the Hardship Declaration.

Any entitlement to a stay pursuant to RPAPL §753(1) has long since expired, on or about January 11, 2021. In any case, RPAPL §753(2) is abundantly clear that, in order for the court to consider even a stay of up to one year, "[s]uch stay shall be granted and continue effective *only*

upon the condition that the person against whom the judgment is entered shall make a deposit in court of the entire amount, or such installments thereof from time to time as the court may direct, for the occupation of the premises for the period of the stay, at the rate for which the applicant was liable as rent for the month immediately prior to the expiration of the applicant's term or tenancy, plus such additional amount, if any, as the court may determine to be the difference between such rent and the reasonable rent or value of the use and occupation of the premises; such deposit may also include all rent unpaid by the occupant prior to the period of the stay." (emphasis added).

Respondent cannot show an entitlement to a stay under RPAPL §753 even if the one year had not expired. Respondent agreed to pay ongoing use and occupancy in the January 2020 Stipulation of Settlement. However, the court found in the November 2020 decision and order that respondent failed to pay same. Petitioner also states in both the July 2021 and November 2021 motions that respondents have failed to pay such use as occupancy.

Respondent does not dispute her continued failure to pay use and occupancy in her cross-motion, which includes only an affirmation in support from her attorney who has no personal knowledge.

As such, respondent cannot show she is entitled to a stay pursuant to RPAPL §753 as she has far exceeded the one-year limit *and* she has no ability to pay use and occupancy (despite this court's finding in the November 2020 Order after hearing that respondent failed to show she endured a hardship). There is no indication that respondent is in the position to pay *all* the outstanding use and occupancy, even if petitioner were to accept ERAP funds.

Respondent urges this court to use its discretion and extend the stay beyond the one-year limitation pursuant to RPAPL§749, alleging good cause shown.

However, respondent fails to show good cause for any further stay. There is no affidavit in support of respondent's cross-motion attesting to any efforts to find alternate housing and move out of the subject apartment in the two and a half years since the Stipulation of Settlement was entered into by the parties. There is no evidence that respondent has expended any effort during these intervening years to find alternate housing, including prior to the covid-19 pandemic. (s*ee Thelen LLP v Omni Contracting Co.,* 79 AD3d 605, 606 [1st Dept 2010]; *Onewest Bank, FSB v Michel*, 143 AD3d 869, 871 [2nd Dept 2016] (attorney affirmation afforded

no probative value)). The court notes that even respondent's counsel's affirmation fails to allege "due and reasonable efforts to secure such other premises." (*see* RPAPL §753).

Indeed, in the November 2020 Order, the court found that respondent failed to show a financial hardship *and* did not show good cause to stay issuance and execution of the warrant. Respondent has not provided any new information for the court to consider since that time, nor any compelling reason to further stay issuance and execution of the warrant of eviction.

On the other hand, as the court found in the November 2020 Order, *petitioner has* provided compelling reasons that she is entitled to immediate possession of her apartment: petitioner is in danger of losing her home because she is unable to pay maintenance due to respondent's sustained failure to pay use and occupancy as agreed upon in the January 2020 Stipulation.

This reason has become even more compelling in the intervening months and years since the November 2020 Order. Not only has respondent continuously failed to pay use and occupancy since that Order, but petitioner now states that the cooperative corporation has commenced a non-payment proceeding against her as a result.

Furthermore, petitioner attests that she needs to recover possession of the cooperative unit for her own personal use, as her temporary home was placed on the market to be sold and if she is unable to move back to the subject premises, she could become homeless. None of these statements are disputed by respondent's counsel in the cross-motion.

Given the foregoing, respondent's request for a stay pursuant to §749 is denied as respondent fails to show good cause for a further stay of issuance and execution of the warrant two and a half years after she agreed to vacate.

Petitioner's Motion for Issuance and Execution of the Warrant of Eviction

Based on the foregoing, petitioner's motion is granted in its entirety. The warrant of eviction shall issue forthwith. Execution is stayed thirty (30) days to allow respondent to vacate with dignity. Petitioner may pre-serve the marshal's notice after fifteen (15) days. The earliest eviction date ("EED") is July 29, 2022.

CONCLUSION

Based on the foregoing, the petitioner's motions are granted in their entirety and respondent's cross-motion is denied in all respects.

This constitutes the Decision of the court. It will be posted on NYSCEF and emailed to the parties.

Dated: June 28, 2022

Bronx, NY

SO ORDERED,

/S/

SHORAB IBRAHIM, JHC