2022-08-08

New Abraham Corp. v. Estrada

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

NEW ABRAHAM CORP.,		
Petitioner,	:	L&T Index No. 309259/20
-against-	:	
CESAR ESTRADA,	:	
Respondent-Tenant,	:	Motion Seq. No. 1 & 2
"JOHN DOE", "JANE DOE"	:	**DECISION/ORDER**
Respondent-Undertenants.	:	

Present:

Hon. HOWARD BAUM
Judge, Housing Court

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of the motion by Petitioner New Abraham Corp. and cross-motion by Respondent Cesar Estrada:

Papers	**Numbered**
Notice of Motion, Affirmation and Affidavit in Support; and Exhibits A through G annexed…….	NYSCEF Doc. # 9 – 18
Notice of Cross-Motion; Affirmation in Support of Cross-Motion and in Opposition to Motion; and Exhibits A through C annexed…..……..……..…….	NYSCEF Doc. # 20 – 24
Affirmation in Reply/Opposition ……..……..	NYSCEF Doc. # 25

After oral argument and upon the foregoing cited papers, the decision and order on this motion and cross-motion is as follows:

This summary holdover proceeding was commenced by New Abraham Corp. ("Petitioner") against Cesar Estrada ("Respondent") seeking possession of the apartment that is the subject of this proceeding. The petition also names "John Doe" and "Jane Doe," as undertenants of Respondent, but they have not appeared in the proceeding.

Petitioner alleges in its petition that it is the owner to the subject premises, that Respondent is the tenant of record of the subject apartment, that the tenancy is not subject to rent regulation because the premises is a two-family house, and that Respondent is holding over after his tenancy was terminated pursuant to a "90 Day Notice of Termination." Respondent has not yet interposed an answer.

At an earlier conference conducted with the parties, Respondent, who is represented by counsel, informed the court that he filed an application with the Emergency Rental Assistance Program ("ERAP") that was under review with the New York State Office of Temporary and Disability Assistance, the agency that determines such applications. This was at least the second ERAP application filed by Respondent. The first ERAP application had already been approved, resulting in the payment of $30,000 to Petitioner. Accordingly, pursuant to Section 8 of the statute that established ERAP in New York State ("the ERAP Law"), this proceeding was stayed pending a determination of the application. *See*, L 2021, c 56, Part BB, Subpart A, § 8, as amended by L 2021, c 417, Part A, § 4; *see also* Admin Order of Chief Admin Judge, AO/158/22. The stay was imposed subject to Petitioner's right to move this court for an order lifting the stay upon demonstration that the stay provisions of the statute do not apply to the factual circumstances of this proceeding.

In its motion, Petitioner seeks an order entering a default judgment or requiring Respondent to file an answer and permitting the proceeding to move forward notwithstanding the acknowledgement of having accepted $30,000 in funds from ERAP that were issued on behalf of Respondent pursuant to the earlier ERAP application. Petitioner argues the proceeding should proceed because it falls into an exception to the general twelve-month bar against holdover

proceedings to evict a tenant, on whose behalf a landlord has accepted ERAP funds, in that Petitioner's sole shareholder, Abrahim Alsofari, intends to move into the subject apartment and reside there with his elderly mother and three children aged 17, 19 and 20. Petitioner also asserts that the ERAP application that was mentioned to the court at the March 7, 2022, conference "will certainly be denied."

Respondent opposes Petitioner's motion. In his cross-motion, Respondent seeks an order dismissing this proceeding because of Petitioner's acceptance of the $30,000 in ERAP funds. Respondent asserts Petitioner, as a corporate entity, is not entitled to utilize the exception written into the ERAP Law that allows holdover proceedings, such as this, to move forward where a landlord is seeking possession of an apartment for their own personal use. Additionally, Respondent argues this proceeding should be dismissed because Petitioner is a dissolved corporation and, as such, lacks standing to maintain this proceeding.

In reply, Petitioner opposes Respondent's cross-motion. Petitioner argues that the plain language of the ERAP Law, that creates an exception to the 12-month bar to evicting a tenant from whom ERAP funds have been accepted based on a holdover proceeding, encompasses corporate and individual landlords alike.

Further, Petitioner argues Respondent misconstrues BCL §§ 1005, 1006. Petitioner argues this proceeding is a form of collecting its assets which a corporation is permitted to do after dissolution. Therefore, Petitioner asserts it has standing to maintain this proceeding.

Discussion

Preliminarily, although the relief requested by Petitioner in its notice of motion implies, but does not specifically include, the lifting of the stay placed on this proceeding based on the

filing by Respondent of a second ERAP application, the court considers the lifting of the stay as part of the relief sought by Petitioner considering the papers submitted in support of the motion argue the second ERAP application "must be deemed a nullity." Respondent's papers make no mention of the second ERAP application and it is noted that the NYS-OTDA database for the status of ERAP application indicates the application reported to the court has been denied. Hence, there is no basis to stay this proceeding, pursuant to Section 8 of the ERAP Law and the stay of the proceeding based on the filing of the second ERAP application is lifted.

Cross-Motion to Dismiss the Proceeding Based on Petitioner's Acceptance of ERAP Funds

Section 9(d)(iv) of the ERAP Law states, in pertinent part,

> "Acceptance of payment for rent or rental arrears from this program or any local program administering federal emergency rental assistance program funds shall constitute agreement by the recipient landlord or property owner…not to evict for reason of expired lease or holdover tenancy any household on behalf of whom rental assistance is received for 12 months after the first rental assistance payment is received, unless the dwelling unit that is the subject of the lease or rental agreement is located in a building that contains 4 or fewer units, in which case the landlord may decline to extend the lease or tenancy if the landlord intends to immediately occupy the unit for the landlord's personal use as a primary residence or the use of an immediate family member as a primary residence… L 2021, c 56, Part BB, Subpart A, § 9(d)(iv), as amended by L 2021, c 417, Part A, § 5.

Respondent is correct that Petitioner, as a corporation, is unable to personally use the subject apartment as a primary residence. Only a natural person can recover an apartment for personal use. *Henrock Realty Corp. v. Tuck*, 52 AD2d 871 (2d Dept 1976); *Matter of Colin v Altman*, 39 AD2d 200 (1st Dept 1972); *1077 Manhattan Associates, LLC v. Mendez*, 5 Misc 3d 130(A) (App Term 2d and 11th Jud Dist 2004). "A corporation has no compelling necessity to occupy housing accommodations, nor does it have a family, immediate or otherwise." *Matter of*

Colin v Altman, 39 AD2d 200 (1st Dept 1972) *citing Reconstruction Syndicate v. Sharpe*, 186 Misc 897 (Municipal Ct Borough of Manhattan 1946). The fact that a single person, Abrahim Alsofari, is the sole shareholder of the corporation (*Henrock Realty Corp. v. Tuck*, 52 AD2d 871 [2d Dept 1976]; *Matter of Colin v Altman*, 39 AD2d 200 [1st Dept 1972]) or even that the corporation has been dissolved (*Fanelli v New York City Conciliation and Appeals Bd.*, 90 AD2d 756 [1st Dept 1982]) does not change this result.

Petitioner's argument, made at oral argument, that the line of cases ruling that a corporation's need to personally use an apartment cannot be the basis to evict a tenant is distinguishable from the circumstances here in that this apartment is not subject to rent regulation, is mistaken. The statutes and regulations governing rent regulated apartments as well as the ERAP Law have provisions allowing a landlord to evict a tenant where the landlord seek to "personally use" an apartment. However, the prohibition on a corporation asserting its need to "personally use" an apartment as the basis to evict a tenant is not based on the regulatory status of the apartment sought to be recovered. Rather, it is based on the nature and characteristics of a corporation.

Petitioner has not stated a legally cognizable basis as to why the prohibition on a corporation evicting a tenant for personal use should not be applied to Section 9(d)(iv) of the ERAP Law, particularly in light of the legislative intent of the statute to provide tenants with some protections from eviction to prevent a "resurgence of COVID-19." L 2021, c 417, Part A, § 2; *2986 Briggs LLC v Evans*, 74 Misc 3d 1224(A) (Civ Ct Bronx County 2022). Petitioner's equitable argument, that the apartment is urgently needed by Mr. Alsofari and his family is unavailing. "The corporate method of doing business or holding property has long been

recognized as a legitimate exercise of business discretion. A sole stockholder receives the same protection and immunities that stockholders of multi-owned corporations enjoy. He is also subject to the same disadvantages." *Matter of Colin v Altman*, 39 AD2d 200 (1st Dept 1972).

Therefore, this proceeding does not fall under the exception provided by Section 9(d)(iv) of the ERAP Law allowing a landlord to evict a tenant, pursuant to a holdover proceeding, sooner than 12 months after accepting ERAP funds.

However, based on the plain language of this statutory section, there is no basis to dismiss this proceeding. The statute only bars a landlord who has accepted ERAP funds from evicting a tenant. *Feuerman v. Hugo*, 2022 WL 2922353 (Civ Ct NY County); *c.f. Pacheco v. Gilkes*, 2022 WL 1243193 (Civ Ct Kings County). If Petitioner is otherwise entitled to a judgment of possession against Respondent, Section 9(d)(iv) of the ERAP Law only prevents a landlord from eviction (i.e., executing a warrant of eviction) less than 12 months after accepting ERAP funds. Section 9(d)(iv). *1264 Flatbush LLC. v. Robinson*, 2022 WL 1243192 (Civ Ct NY County).

Consequently, Respondent's cross-motion is denied to the extent it seeks the dismissal of this proceeding because Petitioner, a corporation, cannot personally use the subject premises.

Cross-Motion to Dismiss the Proceeding Based on Petitioner's Status as a Dissolved Corporation

Respondent also moves to dismiss this proceeding because, as a dissolved corporation, Petitioner lacks standing to maintain this proceeding. Respondent asserts Petitioner is a dissolved corporation and has provided, as an exhibit to his cross-motion, a screenshot of a page from the New York State, Department of State, Division of Corporations website, stating Petitioner was "Dissolved by Proclamation." Petitioner has not disputed it is a dissolved

corporation. However, it asserts, in an affirmation submitted by its attorney, that this proceeding represents lawful activity by Petitioner to wind down its business and "collect an asset."

After a corporation is dissolved it is prohibited from conducting any business "except for the purpose of winding up its affairs. BCL § 105(a)(1). A dissolved corporation retains the power to "fulfill or discharge its contracts, collect its assets, sell its assets for cash at public or private sale, discharge or pay its liabilities, and do all other acts appropriate to liquidate its business." BCL § 105(a)(2). Further, as pertinent to this proceeding, the dissolution of a corporation shall not affect any remedy available to or against such corporation, its directors, officers, or shareholders for any right or claim…incurred before dissolution… BCL § 106(b).

On the record presently before the court, Respondent's motion is denied, to the extent it seeks dismissal of this proceeding, based on Petitioner's status as a dissolved corporation, without prejudice to Respondent's right to present such a defense at trial, to the extent raised in an answer. Moreover, under these circumstances, Petitioner should be given the opportunity to respond to such a defense at trial to demonstrate that this proceeding represents the type of activity that a dissolved corporation is permitted to conduct.

For all the reasons stated above, it is ordered that Petitioner's motion is granted to the extent this proceeding is placed back on the court's calendar and may move forward in accordance with this Decision/Order. Petitioner's motion for a default judgment is denied.

Further, it is ordered Respondent's cross-motion for the dismissal of this proceeding is denied. Respondent is required to file his answer by August 18, 2022, at 5:00 p.m. If an answer is not filed by that time, his answer will be deemed a general denial.

This proceeding is placed on the court's calendar and the parties are to appear "in-person" in Part G (Room 560), at the courthouse located at 1118 Grand Concourse, Bronx, New York, 10456, on August 29, 2022, at 9:30 a.m., for a conference for the settlement of this proceeding or the transfer of this proceeding to a trial part.

This constitutes the decision and order of the court.

Dated: Bronx, New York
August 8, 2022

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HON. HOWARD BAUM,
J.H.C.