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Paul Assocs. v. Williams

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Paul Assocs. v. Williams

2022 N.Y. Slip Op. 22207 (N.Y. City Ct. 2022)
Decided Jun 15, 2022

Index Nos. LT-1340-20 LT-1098-21

06-15-2022

Paul Associates LLC, Petitioner v. Martina Williams and Mayra Sergrams, Respondent

James G. Dibbini & Associates Christopher Schweitzer, Esq. Legal Services of the Hudson Valley

ADA D. MEDINA, J.

James G. Dibbini & Associates

Christopher Schweitzer, Esq.

Legal Services of the Hudson Valley

ADA D. MEDINA, J.

Recitation, as required by [CPLR Rule 2219\(a\)](#) of the papers considered in determining the Petitioner's motion for an Order vacating the ERAP stay under L. 2021, c. 56, Part BB as amended by L. 2021, c 417, Part A.

Papers Numbered

Exhibits 1

Nonpayment Petition and Notice of Petition Holdover Petition and Notice of Petition 2

Holdover Petition and Notice of Petition 3

Respondent seeks an order staying the above-entitled proceedings. Respondent claimed her March 2022 filing of an Emergency Rental

Assistance Program application (hereinafter "ERAP") prevents any further action until a determination is made.

PROCEDURAL HISTORY

This summary nonpayment proceeding (LT 1340-20) was commenced in September 2020 wherein the petition claimed that \$7,583.40 was due for the period from April 2020 to September 2020 at a rate of \$1,263.90 per month pursuant to a lease agreement between the parties. Respondent appeared and filed a written answer denying the allegations of the petition and asserted affirmative defenses including financial hardship due to the COVID-19 pandemic, a breach of the warranty of habitability and alleged Petitioner refused to provide Respondent a Rent Stabilized Renewal Lease until after a rent increase was approved.

In January 2021, counsel for Respondent moved to withdraw. The application was granted by the Court in a Decision and Order dated January 13, 2021. In January 2021, Petitioner filed a motion to conduct discovery. Respondent retained Legal Services of the Hudson Valley and opposed the application. On May 13, 2021, Respondent filed a COVID-19 Hardship Declaration indicating that she was experiencing financial hardship and alleged that vacating the premises and moving into a new permanent housing would pose a significant health risk. Petitioner moved for discovery, which was denied by the court and the matter stayed until January 15, 2022, pursuant to the Respondent's Hardship Declaration.

On or about September 2021, Petitioner filed a holdover petition under Docket LT 1098-21. The Petition alleged that Respondents violated a substantial obligation of their lease and caused a nuisance by failing to provide access to Petitioner to make repairs to the apartment. The two cases tracked one another and appeared on the court's calendar for conference in March 2022. The nonpayment petition (LT 1340-20) was amended to reflect an outstanding balance of \$30,333.60 and the matter scheduled for a trial on May 17, 2022.

On May 17, 2022, the parties and their attorneys appeared for trial. Following a brief conference between the parties, Respondent notified the court and counsel that she had a pending Emergency Rental Assistance Payment ("ERAP") application. Petitioner requested a hearing to vacate the stay. Petitioner argued that Respondent acknowledged that she is not residing in the premises and accordingly ERAP does not apply.

HEARING

Paula Prusak, property manager for Petitioner, Paul Associates LLC was the sole witness for Petitioner. She stated that Respondent Martina Williams is employed by Child Protective Services and earns approximately \$66,000.00 per year. She indicated that prior to the COVID -19 pandemic, Respondent paid her rent in a timely manner.

Ms. Prusak testified that on or about May 5th or May 6th, 2022, she entered the Respondent's apartment and observed what she described as an "empty" apartment. She stated there were two mattresses which were still covered in plastic. The beds had no sheets, bedding or pillows. She testified that the closets were empty, and the living room furniture consisted of only two folding chairs. She stated that the bathroom and kitchen were completely empty and stated she found a pile of "garbage" in the entryway. She further stated the apartment had no electricity. Petitioner

admitted a series of fifteen photographs in support of Ms. Prusak's testimony without objection. (Petitioner's Exhibit 1).

On cross examination, counsel for Respondent inquired about how she gained access to apartment. Ms. Prusak testified that she e-mailed Ms. Williams and that Ms. Williams granted her access on one of the three dates she requested.

Petitioner then called Respondent Martina Williams. She testified she has been employed as a court liaison in the City of New York from 2014 to the present. She stated she was employed during the pandemic, from 2020-2022. She stated after taxes, she earns approximately \$3,000.00 per month.

Regarding her living situation, Ms. Williams testified her permanent address is the subject premises, 30 Post Street, 3M, Yonkers New York. She claimed to receive her mail at this address, and she visits approximately two to three times per week. However, she indicated she does not currently reside in the apartment, indicating she was forced out. Rather, she stated since on or about March 2022, she has been sleeping in different locations, depending on availability. She acknowledged she may contribute to household expenses but denied having any lease agreements or owning any property. Ms. Williams declined to provide the addresses for these locations, noting it depended on several factors and indicated that on at least one occasion she stayed in a hotel.

Ms. Williams testified her mother, Mayra Segrams is a co-tenant and member of her household. While she was unaware of her mother's income, she alleged the previous "gig work" her mother engaged in pre-pandemic, ceased in March 2020.

On cross examination, counsel for Respondent requested the court take judicial notice of a Division of Housing and Community Renewal ("DHCR") order issued June 29, 2021. The order indicates that Respondent filed a decrease in service complaint on December 31, 2020.

Following an inspection, DHCR issued a violation order, with twelve violations including inadequate temperatures in the refrigerator and a missing door handle, the oven was not self-lighting, the kitchen sink cabinet was crumbling, and the shelf supports defective. The inspector also indicated the kitchen floor was cracked, discolored and uneven. The bathroom ceiling was noted as cracked and sagging and stained from mold.

On cross examination the Respondent alleged that she incurred increased expenses in the form of COVID related personal protective equipment ("PPE"). She further stated her mother ceased working, resulting in Ms. Williams responsibility to cover her expenses. Further, due to certain underlying medical conditions, Ms. Williams stated she was advised by a health care professional to avoid mass transit. She stated public transportation such as the bus and the train which she relied on pre-COVID for work, grocery shopping or medical appointments were no longer an option. This, according to Ms. Williams, increased her expenses significantly. She indicated she applied for ERAP and believed she was eligible for benefits.

Regarding the conditions of the apartment, she stated she has a medical condition which is exacerbated by mold in the apartment, which has been an issue for years but has become progressively worse. She acknowledged she is not living in the apartment due to these conditions.

The Respondent could not recall how often she used car services to travel to work since the onset of the pandemic although she estimated between March and December 2020, she used a car service approximately four times. During this time, she worked primarily from home. The Respondent was unable to recall the number of times she traveled to her workplace in 2021 and she had used a car service to travel to work once in 2022. She noted she does not own a vehicle.

Counsel inquired as to her ERAP applications, and she testified she was screened for YERAP but never received any further information, so she re-applied for ERAP at the end of March 2022.

Petitioner called Paula Prusak to inquire about Petitioner's efforts to make repairs. She testified Respondent denied Petitioner access to the premises between 25 and 35 times including on dates ordered by the court. She further testified on some occasions she went to the subject premise three times, although no one was present inside the unit to provide Petitioner with access.

In closing Petitioner noted Respondent's continual employment which was primarily remote for the duration of the pandemic. Petitioner argued that Respondent's alleged PPE expenses were encountered by everyone and did not establish a loss of household income. Petitioner further argued that Respondent was not at risk of homelessness as Respondent was living in various locations and not the subject premises. Petitioner asserted if Respondent was truly facing homelessness, she would permit and arrange for Petitioner, access to enter the premises and make the necessary repairs.

Respondent contended in closing that this case fits ERAP. Counsel argued that Respondent testified to the loss of household income from her mother's lack of employment during the pandemic. He noted Respondent suffered a medical condition which required her to purchase excessive PPE. Counsel reiterated that this condition required Respondent to arrange for alternate means of transportation not only to work but also for grocery shopping and medical appointments.

Regarding the habitability, Respondent contends the conditions of the unit are documented by DHCR, an independent agency. Finally, Respondent claimed Petitioner cannot argue Respondent is not at risk of homelessness when it commenced not one, but two eviction proceedings against her and her mother.

ANALYSIS

The question before the court is whether the ERAP "stay" of proceeding applies in cases where a tenant or occupant is not residing in the subject apartment.

The COVID-19 Emergency Rental Assistance Program ("ERAP") legislation (signed April 2021, L. 2021, c. 56, Part BB) created a program for the distribution of rent relief in the form of federal funding implemented and administered by the Office of Temporary and Disability Assistance (OTDA). In September 2021, noting due process concerns, challenges to the implementation of the program and low public awareness, the Legislature amended ERAP. The amendment included an automatic stay for any tenant who filed an ERAP application. This stay remains in place until a final determination of eligibility. The court notes that the Administrative Order of the Honorable Lawrence Marks, No. 34/22 dated January 16, 2022, also provides where there is a pending ERAP application, eviction matters shall be stayed until a final determination of eligibility for rental assistance is issued by the Office of Temporary and Disability Assistance, including appeals.

However, the legislation as written ignores the due process issues raised by the Supreme Court in August 2021 in *Chrysafis v. Marks*, [141 S.Ct. 2482](#) [2021], where the Court found a violation of the landlord's due process rights as they were precluded from requesting a hearing to challenge the tenant's self-certification of a Covid-related hardship under the COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020 ("CEEFPA"). (L. 2020, c. 281). In response, the Legislature modified the legislation to permit such a hearing.

While the automatic stay is directed in paragraph 8 of the legislation, paragraph 9 provides a mechanism for court review in cases where it is alleged the tenant is substantially infringing on other tenant's rights or where the tenant is

allegedly intentionally damaging the property. In that there is a mechanism for court review, this court finds it is not precluded from evaluating eligibility.

The legislation provides that "any pending eviction proceeding" including both nonpayment and holdover matters, "shall be stayed pending a determination of eligibility." Accordingly, once a tenant files an application, an automatic stay is imposed pending the determination of the ERAP application.

Notwithstanding the foregoing, several courts have recently found that due process mandates the court, upon petitioner's request, to conduct a hearing challenging the automatic ERAP stay following an application. *Harmony Mills W., LLC v. Constantine*, [2022 NY Slip Op 22123](#) [City Ct. Cohoes, 2022]; *Isidoro v. Team Properties LLC*, [2021 NY Slip Op 32626](#)[U] [NY Sup Ct, New York Co]; *Harbor Tech LLC v. Correa*, [73 Misc.3d 1211](#) [A][Civ Ct, Kings Co, 2021]; *Sea Park E L.P. v. Foster*, [74 Misc.3d 213](#) [Civ. Ct. New York Co, 2021]; *560-566 Hudson LLC v. Hillman*, [2022 NY Slip Op 30718](#)[U] [Civ Ct, New York Co], *204 West 55th Street, LLC v. Mackler*, [2021 NY Slip Op 32901](#)[U] [Civ Ct, New York Co]; *Kristiansen v. Serating*, [2022 NY Slip Op 22097](#) [NY Dist. Ct, Suffolk Co]; *Carousel Props v. Valle*, [74 Misc.3d 1217](#) [A] [NY Dist. Ct, Suffolk Co, 2022]; *Shi Gan Zheng v. Guiseppone*, [2022 NY Slip Op 50271](#)[U] [Civ Ct Richmond Co].

This Court agrees permitting a tenant to "self-certify" a hardship without permitting a good faith challenge to the stay, constitutes a violation of due process. This is especially so given the fact that the eviction moratorium which expired in January 2022 has been effectively extended through the ERAP application process. There is no indication at present of an expiration of the ERAP stay or even whether there are any funds remaining available for distribution. Further, as the court is obligated to interpret legislation to avoid a constitutional impairment and without objection,

as Petitioner's application alleged fraud on the part of Respondent, the Court granted Petitioner's application for a hearing to determine whether the ERAP stay should remain in effect while the Respondent's application is pending.

Regarding the eligibility, Section 5 of ERAP sets forth the criteria for eligibility and provides:

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, including both tenants and occupants of dwelling units and manufactured home tenants, provided however that occupants of federal or state funded subsidized public housing authorities or other federal or state funded subsidized housing that limits the household's share of the rent to a set percentage of income shall only be eligible for the extent that funds are remaining after serving all other eligible populations;

(ii) includes an individual who has qualified for unemployment or experienced a reduction in household income, incurred significant costs, or experienced other financial hardship due, directly or indirectly, to the COVID-19 outbreak;

(iii) demonstrates a risk of experiencing homelessness or housing instability and

(iv) has a household income at or below 80% of the area median income, adjusted for household size. (L. 2021, c. 56, Part BB §5).

ERAP defines "rent" by reference to Real Property and Proceedings Law §702 which states:

In a proceeding relating to a residential dwelling or housing accommodation, the term "rent" shall mean the monthly or weekly amount charged in consideration for the use and occupation of a dwelling pursuant to a written or oral rental agreement. No fees, charges or penalties other than rent may be sought in a summary proceeding pursuant to this article, notwithstanding any language to the contrary in any lease or rental agreement.

The crux of Petitioner's argument is Respondent is ineligible for a stay as she is not presently occupying the apartment. The first eligibility criteria is the applicant must be a "tenant or occupant obligated to pay rent in their primary residence." (L. 2021, c. 56, Part BB §5). ERAP incorporates RPL §235-f's definition of "Tenant" which is defined as "a person occupying *or entitled to occupy* a residential rental premises who is [] a party to the lease or rental agreement for such premises" (*emphasis added*). In fact, Petitioner has commenced a non-payment petition against Respondents including this very allegation. Thus, while Respondent acknowledged she is not currently occupying or residing in the premises, the reasons she cited sound in a breach of warranty of habitability. Respondent referred to her answer which included these allegations as well as the DHCR violation notice. There is no dispute that Respondent is obligated to pay rent to Petitioner as consideration for the use and occupancy of the subject premises.

The Court's primary consideration when interpreting legislation "is to ascertain and give effect to the intention of the Legislature." *Riley v. County of Broome*, 95 N.Y.2d 455, 463 [2000]. There is no requirement that the tenant or occupant physically occupy the premises, only *entitlement* to occupy the premises, which is the case here. Accordingly, the issue as to the

legitimacy of Respondent's breach of habitability may not be properly raised before the Court at this hearing.

The second prong of the eligibility criteria provides that the individual "experienced a reduction of household income, incurred significant costs, or expended other financial hardship due, directly or indirectly, to the COVID-19 outbreak." Respondent testified during the pandemic, her mother, who is a member of her household and Co-Respondent in the above-entitled action, Mayra Sergrams, was not employed. She further testified under the recommendation of medical professionals, she ceased public transportation which was her pre-pandemic usual and preferred method of transportation. This, she alleged, created significant increase in expenses. Simple trips such as medical appointments and grocery shopping were allegedly significantly increased as a result. She also testified she has a medical condition which requires what she described as "excessive PPE". The Court accordingly finds, for the purposes of the hearing, that Respondent sufficiently demonstrated she and a household member were financially affected by the COVID-19 pandemic.

The third prong for eligibility is a demonstrated risk of experiencing homelessness or housing instability. Petitioner argued as Respondent has a source of income, and has not occupied the apartment, she is no at risk of homelessness or

housing instability. This generalization of equating income to housing, is too broad especially when no testimony was elicited from Respondent that she has an alternate residence or a second home. Furthermore, Petitioner has commenced not one but two eviction proceedings against Respondents, thereby placing them at risk of housing instability.

Finally, it appears based on Respondent's testimony that her household is at or below 80% of the area's median income as required by the fourth eligibility requirement. For a household of two, such as the case at bar, 80% of the area's median income is \$72,540.00. Counsel for Petitioner elicited testimony from Respondent and petitioner's witness establishing Petitioner that she earns approximately \$66,000.00 per year.

Accordingly, after hearing and considering the testimony, and for the foregoing reasons, the Court finds the Petitioner failed to meet its burden to vacate the ERAP stay. As Respondent's ERAP application is pending, the proceeding is hereby stayed pending the outcome of eligibility.

It is accordingly

ORDERED, that Petitioner's application to lift the stay is denied; and it is further

ORDERED, that the above-entitled matters will appear on the court's calendar on July 21, 2022, at 9:30 A.M. in Part IV for the status of Respondent's ERAP application. Appearances required.
