2022-07-19

Hassan v. Ramkumar

CIVIL COURT OF THE CITY OF NEW YORK

COUNTY OF QUEENS - HOUSING PART P

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Fazil Hassan, Petitioner INDEX NO. L&T-64501/19

-against- DECISION/ORDER

Cyril Ramkumar, Respondent

_____X

JOHN S. LANSDEN, JHC

Recitation, as required by CPLR §2219(a), of the papers considered in the review of this Motion to lift a Stay and Order to appoint a Guardian Ad Litem for Cyril Ramkumar.

PAPERS	NUMBERED
NOTICE OF MOTION	1
NOTICE OF CROSS MOTION	2
AFFIDAVIT OR AFFIRMATION IN SUPPORT	3
AFFIDAVIT OR AFFIRMATION IN REPLY	4

Upon the foregoing cited papers, the Decision/Order in these motions are as follows:

Presently before the Court is Petitioner's Motion to vacate an ERAP stay as well as Respondent's Cross Motion for the appointment of a Guardian Ad Litem (GAL) for Cyril Ramkumar. Oral argument was heard on June 15, 2022, and the Court reserved decision.

BACKGROUND

The subject premises of this holdover proceeding is a basement apartment. The parties entered a stipulation on December 13, 2019, which provided that in exchange for a judgment of possession and a warrant of eviction, Respondent was given until March 31, 2020, to vacate without any obligation to pay use and occupancy.

The Covid-19 pandemic began, the Governor's moratorium stayed all evictions, and the Court administratively established safeguards to protect against evictions. In compliance with one of those safeguards, Petitioner made a motion for an order to execute on the warrant of

eviction, which was granted by the Court on March 31, 2021, but execution was stayed until May 4, 2021. Respondent was served with the Marshal's Notice of Eviction on February 8, 2022. During this proceeding, Respondent filed an Emergency Rental Assistance Program (ERAP) application twice, one on August 26, 2021, which was denied, and a second during February 2022, the second of which is still under review. The submission of the second ERAP application has stayed the current eviction proceeding. Petitioner now moves to vacate the stay.

MOTION TO VACATE ERAP STAY

Petitioner argues that the stay of eviction should be vacated for several reasons. Petitioner argues first that in appropriate circumstances this Court has the authority to lift an ERAP stay. *See Abuelafiya v Orena*, 73 Misc 3d 576, 579 Nassau Dist Ct 2021. Petitioner states that it would be unfair to preclude a petitioner from challenging an ERAP stay when the approval cannot result in a tenancy. *See Actie v Gregory*, 2022 NY Slip Op 501117[U] (Civ Ct Kings Co 2022). Petitioner also argued that permitting an individual to cause a stay to be triggered without any further recourse by an affected party would violate due process. *See Chrysafis v. Marks*, 141 S. Ct. 2482, 2482 (2021). Petitioner argues that this proceeding is like *Chrysafis* because the issue was the tenant's ability to unilaterally stay a hearing by filling for ERAP and that there is no substantive distinction between how ERAP works today and how a hardship declaration under the COVID Emergency Eviction and Foreclosure Prevention Act worked before the decision in *Chrysafis*. Petitioner further argues that Chapter 417(A)(B3) of the laws of 2021 create an untenable situation in this proceeding where a petitioner is summarily precluded from challenging an ERAP stay and the outcome of the ERAP decision would not create or continue a tenancy. Finally, Petitioner argues that the denial of a party-in-interest an opportunity to challenge a stay would go against fundamental ideas of fairness.

Respondent argues in opposition that the ERAP stay is constitutional. Respondent cites CPLR §1012(b) which states "[w]hen the constitutionality of a statute of the state, or a rule and regulation adopted pursuant thereto is involved in an action to which the state is not a party, the attorney-general, shall be notified and permitted to intervene in support of its constitutionality." as evidence that Petitioner's motion is improper as no notice has been given to the Attorney General. Respondent also argues that courts have rejected the argument that

ERAP stay is unconstitutional and distinguished the constitutional argument raised in Chrysafis from the legal question here. Respondent cites *560 Hudson LLC v. Hillman*, 2022 NY Slip Op 30718(U) NY Co. Civ. Ct., where the court denied landlord's motion to vacate an ERAP stay noting that it applies to occupants, not only tenants, and that the narrow ruling In Chrysafis on the unconstitutionality of the hardship declaration does not apply to a pending ERAP application. Respondent argues that courts have noted that there is no statutorily permissible challenge to an ERAP stay. *See Gibbons Realty Corp v. Latney*, NY Co. Civ. Ct. L&T 52132/20.

While Petitioner argues that ERAP stays are unconstitutional, this Court needs only to construe statutes to avoid constitutional impairment. *See Abuelafiya v Orena*, 73 Misc 3d 576, 579 Nassau Dist Ct 2021. Thus, no arguments on the grounds of constitutionality need to be heard. The Court rejects Petitioner's argument that ERAP stays are unconstitutional.

Petitioner also argues that the ERAP stay should have ended once the first application was denied and that the warrant of eviction should have been executed. Petitioner further argues that Respondent's filing of a second application to further stay an eviction is an abuse of the purpose of ERAP and has resulted in stalling the case.

Respondent argues in opposition that Petitioner failed to cite case law to substantiate the argument that reapplying for ERAP after an initial application has been denied is an abuse of process. Respondent states that all guidelines were followed, and that according to the Office of Temporary and Disability Assistance's (OTDA) Frequently Asked Questions section, the only scenario in which a new application may not be submitted is if an applicant has received 15 months of assistance. Respondent also states that the reason for the denial of the first ERAP application was due to missing documents, that the time to appeal the decision had passed, and that the only way to obtain a proper stay would be to reapply.

Petitioner argument that Respondent's filing of multiple ERAP applications during this proceeding constitutes an abuse of this system, and that this current application should be deemed ineligible is not valid. Only the OTDA has the authority to determine the eligibility of an application, and by no means is it an abuse of the system to file another application when, according to Respondent's affidavit, the first application was rejected on procedural grounds. A

rejection not on the merits of the application does not preclude Respondent from seeking relief. The Court rejects Petitioner's argument that tenants may only file one ERAP application.

Petitioner argues that the previously signed stipulation waived all use and occupancy so there is no money that is owed. Petitioner argues that this is an alleged basement apartment and there is no obligation to pay rent. If ERAP had approved Respondent's application, the acceptance of the ERAP funds would create a dilemma for the Petitioner. If the payment is accepted but later rents are not paid, then there is no basis to sue the Respondent for the next twelve months because the premises in question is an illegal basement unit, and the Petitioner would be unable to prevail on a nonpayment eviction matter.

Respondent argues in opposition that a landlord's refusal to accept ERAP funds does not render a stay futile as Petitioner did not waive the alleged $8,100 rent that was already due, and thus established an unsatisfied rental agreement which would fall under ERAP. Respondent also argues that the legality of a premises is not relevant to OTDA's eligibility requirements, that there is no evidence of the illegality of the premises, and that even if the premises was illegally rented Petitioner's unclean hands in the situation should disallow them from trying to deprive Respondent of a legal protection. Respondent also argues that the Court should follow other similar decisions and should adhere to the plain language of the statute regarding ERAP stays. Respondent cites several cases to argue that the fact that the refusal to accept ERAP funds does not destroy the protections afforded by the statute, nor is that refusal fatal to an ERAP stay. *See 560 Hudson LLC v. Hillman*; *Harbor Tech LLC v Correa*, 2021 NY Slip Op 50995(U) [Civ Ct, Kings County, Stoller, J.]; *Sea Park E. L.P. v Foster*, 2021 NY Slip Op 21347 [Civ Ct, NY County, Cohen, J.] Ct. The difference between the cases cited by Respondent and the circumstance of the present case is that all the respondent-tenants in the cases cited by Respondent had a rental obligation that was neglected, and arrears were sought by petitioners, whereas Petitioner in this case has already waived future use and occupancy and acknowledged an inability to collect past due rents in the stipulation signed by both parties.

Recently, several courts have found it necessary to lift ERAP stays on pending applications which would result in "individuals who have no rental obligation [having] the benefit of [a] stay pending their request for funds to pay an amount, that was not and is not

sought." *Joute v Hinds*, Misc 3d, 2022 NY Slip Op 22150, *4 (2022); *see also Karan Realty Assoc. LLC v Perez*, Misc 3d, 166 NYS3d 492, 496-497 2022 NY Slip Op 22093 (2022) (noting that it was not in the legislative intent to allow a stay when its purpose was not "to allow time for the ERAP application to be processed.") This is not an outcome that legislatures intended, and courts have tried to rectify the issue by lifting stays when necessary.

The Court agrees with Petitioner's argument that the prior stipulation agreed to by both parties explicitly states that Petitioner does not seek use or occupancy and acknowledges that Petitioner cannot collect any rents due to the premises being an illegal basement apartment. The purpose of ERAP is to maintain landlord-tenant relationships by providing relief funding. Both parties, in agreeing to the stipulation, conceded that the basement apartment was illegal, and the stipulation did not preserve any of Petitioner's financial claims or create any financial obligations on Respondent's behalf. The Court notes that Respondent was fully aware there was no financial obligation between himself and Petitioner but represented to OTDA that a familial obligation existed. This is not the solution the legislature or the statute intended for this situation.

The ERAP stay is lifted, and the Marshal's warrant of eviction may execute after service of a Marshal's notice of eviction. Adult Protective Services (APS) is to be notified prior to any eviction.

CROSS MOTION FOR GUARDIAN AD LITEM

Respondent made a Cross Motion to have a GAL appointed for Cyril Ramkumar due to his deteriorating health, or if the motion is not granted, to have APS conduct an evaluation and appoint a GAL. Respondent argues that Cyril Ramkumar is homebound, suffers from severe medical conditions including knee and back pain that has caused difficulty walking. Respondent also argues that Cyril Ramkumar is a vulnerable adult and that, according to a doctor's report, is totally disabled. Petitioner objected to the Cross Motion on the grounds that it was submitted late and should not be considered by this Court, lacks an affidavit by Respondent, and failed to contain any documentation to support the claims of health problems suffered by Respondent.

To determine whether a GAL should be appointed, the Court must determine that the person is unable to assist in presenting their case or is unable to appreciate the consequences

of not prevailing in the proceeding. A GAL can be appointed for physical, mental, and even emotional reasons. Appointing a GAL is justified if, based on a preponderance of the evidence, the Court concludes that the potential ward is incapable of protecting their own rights. *See N.Y. Life Ins. Co. v. V.K.*, 711 N.Y.S.2d 90, 92 (Civ. Ct. 1999).

Statements made by Respondent's counsel as to his client's physical condition do not constitute sufficient evidence to grant the relief requested. There was no doctor's report submitted, nor was an affidavit from a medical professional submitted. This Cross Motion is denied without prejudice to renewal on proper documentation.

This constitutes the Motion and Order of the Court.

Dated: Queens, New York
July 19, 2022

JOHN S. LANSDEN, JHC

HON. JOHN S. LANSDEN