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2022-08-12

241 COLUMBUS, LLC v. MADERA

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART F

241 COLUMBUS, LLC

Petitioner,

-against-

RAFAEL A. MADERA

Respondent,

JANE DOE, JOHN DOE

Respondents-undertenants.

Index No. 307499-21

DECISION/ORDER

Motion Sequence No. 3¹

HON KAREN MAY BACDAYAN, JHC

Lazarus Karp Erlich McCourt LLP, for the petitioner
Manhattan Legal Services, for the respondent-Rafael Madera

Recitation, as required by CPLR 2219 (a) of the papers considered in review of this motion by
NYSCEF Doc No: 21-32

PROCEDURAL HISTORY AND BACKGROUND

This is a licensee holdover proceeding brought after the death of the rent stabilized tenant of record. The last renewal lease expired on September 30, 2021. Respondent applied for the Emergency Rental Assistance Program and petitioner has moved to vacate the statutory automatic stay.² (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.) Respondent argues that the stay should remain in effect because respondent is an occupant as defined by the statute who is entitled protection of the stay. Respondent cites to two cases of concurrent jurisdiction which hold that licensees with a viable claim of succession rights are eligible for the automatic stay, and distinguishes cases holding that licensees are with no claim of succession are ineligible for the stay. For the following reasons, the Court holds that the ERAP stay should not apply herein, and

¹ All prior motions are deemed disposed as moot or withdrawn.

² At oral argument, any dispute that the parties may have as to whether the court has the authority to determine the applicability of the ERAP statute appeared to be moot. In any case, the court has determined that it does have such authority.

that the parties should proceed with the litigation in the normal course. The court declines to follow those courts which have denied a petitioner’s motion to lift an ERAP stay where a licensee has asserted a claim of succession and instead follows the reasoning in this court’s July 12, 2022 decision in West 49th St, LLC v O’Neill, 2022 NY Slip Op 22222 (Civ Ct, New York County 2022).

DISCUSSION

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." The court disagrees that it should look to RPAPL 711 for the definition of “tenant,” which includes “an occupant of one or more rooms in a rooming house or a resident . . . who has been in possession for thirty consecutive days or longer” is not how occupants eligible for the automatic ERAP stay is defined in the ERAP statute.

"Rent" is as defined under Real Property Actions and Proceedings Law (RPAPL) Section 702. (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."

Respondent’s argument that petitioner’s motion must be denied rests on the proposition that he is not a licensee, rather he is entitled to possession of the premises, and a rent stabilized renewal lease, because he is an immediate family member of the deceased tenant of record. (*Braschi v Stahl Assocs. Co.*, 74 NY2d 201 [1989].)

However, respondent’s succession claim has yet to be adjudicated, and, for now, respondent remains a licensee, whose license has expired with the death of the last lease holder. Respondent has no obligation to pay rent as there is no lease between respondent and petitioner prior to a favorable determination by this court that he is entitled to be the rent paying tenant of record. “[A] successor in interest is not a tenant until he or she becomes a party to a lease or rental agreement.” (*Strand Hill Assocs. v Gassenbauer*, 41 Misc 3d 53 [App Term. 2d Dept 2013]; *see also E. Harlem Pilot Block Bldg. IV HDFC Inc. v Diaz*, 46 Misc 3d 150 [A], 2022

NY Slip Op 50529 [U] [App Term, 1st Dept 2015]; *W. 152nd Assocs., LP v Gassama*, 65 Misc 3d 155 [A], 2022 NY Slip Op. 50529 [U] [App Term, 1st Dept 2019].)

Respondent is not now a tenant or occupant obligated to pay rent pursuant to an agreement, written or oral, although he may be once this litigation concludes. Payment of “rental arrears” for up to 12 months prior to respondent’s application and potential additional three months of prospective arrears could, *practically* speaking, go some way towards settling this proceeding; and petitioner may yet decide to participate in ERAP. And nothing in the statute requires petitioner to accept approved ERAP funds. Notwithstanding respondent’s succession claim, payment of approved ERAP funds would not preserve an existing tenancy or create one. Ironically, even if respondent prevails on his succession claim, he will not owe rent that came due prior to the filing of this proceeding. Payment of the ERAP funds for which respondent has applied will not result in the preservation or creation of a tenancy. What *will* preserve respondent’s home and create a tenancy is a determination on the merits of his succession claim.

This court sees no reason why Respondent should not continue with this litigation in the normal course, and obtain a determination on the merits.

CONCLUSION


Accordingly it is

ORDERED that petitioner’s motion to vacate the ERAP stay is GRANTED.

The parties are to appear in Part F, Room 523 of the Civil Court of the City of New York, Housing Part, on October 18, 2022 at 11:30 in person for a settlement conference. Any further motions, e.g. for discovery, shall be served and filed by September 18, 2022. However, the parties are encouraged to exchange document demands, limited to two years prior to the death of the tenant of record, in order to settle any discovery disputes more expeditiously.

This constitutes the decision and order of this court.

Dated: August 12, 2022
New York, NY

So Ordered. 
Hon. Karen May Bacdayan
Judge, Housing Part