

Fordham Law School

FLASH: The Fordham Law Archive of Scholarship and History

[All Decisions](#)

[Housing Court Decisions Project](#)

2022-08-12

SIRAGUSA v. SANTIAGO

Follow this and additional works at: https://ir.lawnet.fordham.edu/housing_court_all

Recommended Citation

"SIRAGUSA v. SANTIAGO" (2022). *All Decisions*. 557.
https://ir.lawnet.fordham.edu/housing_court_all/557

This Housing Court Decision is brought to you for free and open access by the Housing Court Decisions Project at FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in All Decisions by an authorized administrator of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS: HOUSING PART B

EVELYN SIRAGUSA

Petitioner-Landlord

-against-

JOSE SANTIAGO

58-66 Maspeth Avenue, 1st Floor
Maspeth, New York 11378

Respondent-Tenant

L&T Index # 68705/19

DECISION/ORDER

Hon. Clifton A. Nembhard

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of petitioner’s order to show cause and respondent’s cross-motion.

Papers	Numbered
Notice of Motion and Affidavits Annexed	
Order to Show Cause and Affidavits Annexed	1
Answering Affidavits (Cross-Motion).....	2, 3
Replying Affidavits	
Exhibits	
Other	

Upon the foregoing cited papers, the order to show cause and cross-motion is as follows:

Background

Petitioner commenced the instant holdover proceeding to recover possession of the first-floor apartment located at 58-66 Maspeth Avenue, Maspeth. Prior to commencement petitioner served a 30 Day Notice terminating respondent’s monthly tenancy effective September 30, 2019. On January 13, 2020 the parties entered into a stipulation of settlement in which respondent consented to a final judgment of possession and warrant of eviction in favor of petitioner. Respondent also agreed to vacate by June 1, 2020 and petitioner agreed to waive rent arrears from June 2019 to June 2020 totaling \$20,800.00. Respondent filed an Emergency Rental Assistance Application (“ERAP”) on August 2021 and a Hardship Declaration the following

month. Petitioner now moves, inter alia, for an order vacating the ERAP stay. Respondent opposes the order to show cause and cross-moves to vacate the stipulation.

Discussion

Petitioner argues that the ERAP stay is not appropriate under the facts here because he has no intention of accepting ERAP payments and reinstating respondent's tenancy should his application be approved. Therefore, to allow the stay to continue would be an unnecessary exercise in futility. In addition, petitioner argues that the stay afforded by the statute is unconstitutional. Respondent, in opposition, argues that case must remain on the Administrative Calendar pending a decision on his application because the statute is not unconstitutional and the landlord's intent not to accept the payments does not render the stay futile.

Petitioner likens the ERAP stay to that of the Hardship Declaration and raises the same constitutional argument raised in *Chrysafis v. Marks*, 141 S. Ct. 242 [2021]. Specifically, petitioner argues that a landlord has no means of challenging the automatic stay once a respondent files an ERAP application. The instant order to show cause belies this argument. In *560-566 Hudson LLC v. Hillman*, 2022 NYLJ LEXIS 189 [Civ Ct NY 2022] the petitioner also cited to *Chrysafis* while arguing that the ERAP stay should be lifted given his intention not to participate in the program. In rejecting the argument, the court held that "[t]he Supreme Court's narrow ruling on the constitutionality of CEEPFA has no bearing on the stay of this proceeding pending a determination of respondents ERAP application."

Petitioner also notes that the courts in *296 Briggs LLC v. Evans*, 2022 NY Slip OP 50215(U) [Civ Ct Bx] and *Papandrea-Zavaglia v. Hernandez-Arroyave*, 168 NYS3d 789 [Civ Ct Kings 2022] both ruled in favor of the petitioner and lifted the ERAP stay. Those rulings are not binding on this Court. Moreover, the facts in *296 Briggs LLC v. Evans* are distinguishable from the case at bar. There the applicant who sought protection under the ERAP statute was not a tenant but a licensee with no obligation to pay rent. In *Papandrea-Zavaglia v. Hernandez-Arroyave* the court opined that "[t]he ERAP legislation was not intended to act as prophylactic statute nor was it 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 property terminated." As the Hon. Jack Stoller aptly noted however, "[w]hatever support there is in the case law for [this] position, Petitioner is still asking the Court to ignore the plain language of the ERAP statute". *Gurevitch v. Robinson*, 2022 NY Misc LEXS 2510 [Civ Ct Kings 2022].

Section 8 of Subpart A of Part CC of chapter 56 of the Laws of 2021 states:

Except as provided in section nine-a of this act, eviction proceedings for a holdover or expired lease, or non-payment of rent or utilities that would be eligible for coverage under this program shall not be commenced against a household who has applied for this program or any local program administering federal emergency rental assistance program funds unless or until a determination of ineligibility is made.

Except as provided in section nine-a of this act, in any pending eviction proceeding, whether filed prior to, on, or after the effective date of this act, against a household who has applied or subsequently applies for benefits under this program or any local program administering federal emergency rental assistance program funds to cover all or part of the arrears claims be the petitioner, all proceedings shall be stayed pending a determination of eligibility.

The plain language of the statute states that all holdover proceedings in which the petitioner seeks arrears are subject to an automatic stay pending a determination of the applicant's eligibility for rental assistance. *Sea Park E. L.P. v. Foster*, 74 Misc3d 213 [Civ Ct NY 2021]. Moreover, the statute does not provide for lifting the stay when the landlord expresses a desire to reject the program or refuses to provide the required input to complete the application. 255 *Skyline Drive Ventures, LLC, v. Ryant*, 2021 NY Misc LEXIS 9455 [Civ Ct Rich 2021]; *Carousel Props.v. Valle*, 74 Misc3d 1217(A) [Dist Ct Suff 2022]. Therefore, as the court in *Laporte v. Garcia*, 168 NYS3d 794 [Civ Ct Bx 2022] noted, "[t]o hold that the ERAP stay would be vitiated solely upon Petitioner's representation that he is only interested in possession would potentially make an ERAP stay inapplicable to almost all holdover proceedings where possession is the desired outcome for petitioners. That result is unsupported by the plain reading of the statute". Additionally, the petition here sought a judgment for rent arrears and use and occupancy in addition to possession. The parties' stipulation also provides that petitioner shall be entitled to move for entry of a money judgment in the event that respondent failed to vacate by June 2, 2020. Since respondent did not vacate as agreed, he has a monetary obligation as contemplated by the ERAP statute. Petitioner's expressed desire to reject the program does not change this fact nor does it not form a basis ignore the plain meaning of the statute.

Conclusion

Based on the foregoing the order to show cause is denied. The case shall remain on the Administrative Calendar pending a determination of respondent's ERAP application. Respondent's cross-motion is held in abeyance pending said determination.

This constitutes the decision and order of the Court.

SO ORDERED
HON. CLIFTON A. NEMBHARD

Date: August 12, 2022
Queens, New York

Hon. Clifton A. Nembhard, JHC