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Crotona Holdings LLC v Santana
2022 NY Slip Op 50828(U)
Decided on August 29, 2022
Civil Court Of The City Of New York, Bronx County
Lutwak, J.
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on August 29, 2022

Civil Court of the City of New York, Bronx County

Crotona Holdings LLC, Petitioner/Landlord,

against

Desiree Santana, Respondent/Tenant.

L&T Index No. 52220/2019

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Diane E. Lutwak, J.

Recitation, as required by CPLR R 2219(A), of the papers considered in the review of Respondent's order to show cause to vacate default judgment (seq #2), Petitioner's motion for leave to execute warrant (mot seq #3) and Petitioner's motion to lift ERAP Stay (mot seq #4):

<u>Papers</u>	<u>NYSCEF DOC #</u>
Legacy File 3	
Respondent's Order to Show Cause & Supporting Affidavit 5	
Petitioner's Notice of Motion Dated 4/14/22 8	
Agent's Affidavit in Support Sworn to 4/7/22, Exhibits A & B 9, 10-11	
Petitioner's Notice of Motion Dated 5/27/22 13	
Agent's Affidavit in Support Sworn to 4/27/22, Exhibits A, B & C 14, 15-17	
Attorney's Affirmation in Opposition 19	
Memorandum of Law in Opposition 20	
Respondent's Affidavit in Opposition 21	
Respondent's Exhibits A - H 22-29	

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

This nonpayment eviction proceeding against a Rent Stabilized tenant was commenced by Notice of Petition and Petition dated November 25, 2019 seeking rent arrears of \$11,799.36, comprised of a balance of \$1872.66 for June 2019 plus \$1985.34 per month for July 2019 through November 2019. Upon Respondent's failure to answer the petition the court entered a default possessory judgment and issued a warrant of eviction on January 29, 2020. On March 2, 2020 Respondent filed an Order to Show Cause (OSC) seeking to calendar the case, vacate her default and permit her to file an answer. In her supporting affidavit Respondent asserted nonreceipt of the Notice of Petition and Petition, that receiving the City Marshal's eviction notice was how she first learned about this case and that she needed time to pay the arrears. [\[EN1\]](#) The court signed Respondent's OSC, made it returnable March 13, 2020 and then adjourned it to April 30, 2020. Due to the COVID-19 pandemic Respondent's OSC did not get re-calendared until it was scheduled for a virtual appearance on October 28, 2021, with notice to both sides. Respondent's OSC was adjourned three times, each time with notice mailed to Respondent, and tried to reach her by telephone at numbers provided by Petitioner. On February 14, 2022 Respondent's OSC was denied for failure to appear.

After receiving a City Marshal's eviction notice Respondent filed a second OSC, again asserting in her supporting affidavit that she did not receive the Notice of Petition and

Petitioner and first learned about the case by receiving the Marshal's notice. She also stated, "Citi FEPS and welfare are helping me. At least they were making payments as of 3/2020." The court signed the OSC and Respondent retained counsel who appeared on the return date, when Petitioner's counsel acknowledged that the City Marshal's notice was served on Respondent in error, as Petitioner had not yet served and filed a motion seeking permission to execute the pre-pandemic warrant as required by pandemic-era Administrative Judges' Orders and Directives. The case was adjourned, and Petitioner filed a motion for permission to execute the pre-pandemic warrant, supported by its managing agent's affidavit.

At the next conference on April 25, 2022 Respondent's counsel reported that Respondent had applied for ERAP (Emergency Rent Assistance Program). The court confirmed this information on the ERAP "Application Status" website, which listed an application filing date of March 16, 2022. Accordingly, pursuant to the ERAP Law, L. 2021, c. 56, Part BB, Subpart A, § 8, as amended by L. 2021, c. 417, Part A, § 4, the case was placed on the "ERAP Administrative Calendar."

Petitioner then filed a second motion, seeking to lift the ERAP stay, supported by its managing agent's affidavit asserting receipt of \$24,058.80 on February 22, 2022 in "LRAP" (Landlord Rental Assistance Program) funds, as reflected on an accompanying rent ledger (Exhibit A) and in an "LRAP Payment Notification" email from the New York State Office of Temporary and Disability Assistance (OTDA)(Exhibit B), which explains that the payment covered twelve months of rent, from March 2020 through February 2021, at \$2004.90 per month. Aside from the LRAP payment, and a payment of \$225 on July 11, 2019, the rent ledger reflects receipt of no other payments since July 2018, when a payment of \$21,167 was credited, covering rent due through May 2019. The rent ledger also reflects rent arrears due through June [*2]2022 of \$49,895.70 (total arrears of \$50,298.94 minus \$325 in late fees and "security charges" of \$29.34 and \$48.90). Petitioner argues that the ERAP stay should be lifted because the LRAP payment covering twelve months of rent arrears is the maximum amount permitted.

In her affidavit in opposition to Petitioner's motion, Respondent asserts that she has lived in this apartment since July 2018 with her four children; is on public assistance and moved in with a City "FHEPS" (Family Homelessness and Eviction Prevention) rent subsidy; was not aware that those rent payments had stopped; is in the process of applying again for FHEPS; and she and her children will be homeless if evicted. Respondent further asserts that she never received the rent demand or Petition in this case, which she only learned about when she received a City Marshal's notice in February 2020, prompting her to file her first

OSC. After that, Respondent "kept receiving letters from the court stating that the landlord could not evict me during the pandemic in 2020 and 2021," and was not aware that her OS had been re-calendared. Further, Respondent asserts that since moving into the apartment she has "had severe repair issues", which she reported to Petitioner, and currently has a "rodent and roach infestation". Regarding her ERAP application, Respondent asserts that she filed an appeal on July 28, 2022, implicitly acknowledging that her application had been denied. [\[FN2\]](#)

In her attorney's Memorandum of Law in opposition to Petitioner's motion Respondent argues that the court has no authority to lift the ERAP stay, that Petitioner failed to cite any authority for the proposition that an LRAP payment for twelve months of rent arrears precludes Respondent from receiving a determination on her ERAP application and that, under the ERAP Law and Chief Administrative Judge Marks' Administrative Order 34/22, she should get the benefit of the ERAP stay until OTDA decides her appeal.

DISCUSSION

As described above, there currently are three outstanding motions. Petitioner's motion to lift the ERAP stay will be addressed first; if that motion is denied, the other two motions will remain held in abeyance until the ERAP stay is lifted at some future point.

New York State's COVID-19 emergency rental assistance program of 2021 (ERAP) was established by the State Legislature to allow for the distribution by the New York State Office of Temporary and Disability Assistance (OTDA) of federal and state funds made available to eligible applicants to pay rent and utility arrears. Under New York State's "ERAP Law", both tenants and landlords can apply for assistance, L. 2021, c. 56, Part BB, Subpart A, § 6, as amended by L. 2021, c. 417, Part A, § 2, to pay rent "accrued on or after March 13, 2020" in the amount of no more than twelve months of arrears and three months of prospective rent, L. 2021, c. 56, Part BB, Subpart A, § 9, as amended by L. 2021, c. 417, Part A, § 5.

There is no separate "LRAP" statute; OTDA set up two programs for the distribution of pandemic-era rent arrears assistance: LRAP and ERAP. ERAP is still accepting applications; LRAP is not. According to OTDA's website, LRAP provides rental assistance for landlords [\[*3\]](#) whose tenants were unwilling to apply for ERAP, including where the tenant left the rental property. LRAP pays a maximum of twelve months of arrears and no prospective rent; ERA pays a maximum of twelve months of arrears plus three months of prospective rent.

The ERAP Law imposes a stay of eviction proceedings when an ERAP application is filed, "pending a determination of eligibility." L. 2021, c. 56, Part BB, Subpart A, § 8, as amended by L. 2021, c. 417, Part A, § 4. By Administrative Order 34/22 of Chief Administrative Judge Lawrence Marks, an ERAP stay is to continue "until a final determination of eligibility for rental assistance is issued by [OTDA], including appeals." AO 34/22 § 5 ("COVID-19 Emergency Rental Assistance Program Protections"). This stay provision is not absolute; courts have the authority to lift the ERAP stay in appropriate cases, depending on the specific facts and circumstances presented. *See Silverstein v Huebner* (2022 NY Slip Op 31051[U], ¶ 5 [Civ Ct Kings Co 2022]) (lifting ERAP stay in holdover proceeding against licensee where to do otherwise "would visit an unreasonable and absurd application of the statute upon Petitioner"); *and compare Harbor Tech LLC v Correa* [73 Misc 3d 1211[A], 154 NYS3d 411 [Civ Ct Kings Co 2021]] (declining to lift ERAP stay in nonpayment proceeding, where landlord's receipt of ERAP payment, "could naturally and foreseeably resolve the nonpayment litigation"). *See also, e.g., 5th & 106th Assocs LP v Hunt* (2022 NY Slip Op 22205 [Civ Ct NY Co 2022]) (lifting ERAP stay in nonpayment proceeding where it was undisputed that respondent's income exceeded the ERAP Law's maximum limit and that she had paid her rent in full throughout the pandemic).

Here, in this nonpayment proceeding, the court is constrained to allow the ERAP stay to remain in place. *See, e.g., Robo LLC v Matos* (75 Misc 3d 1211[A], 168 NYS3d 676 [Civ Ct Bx Co 2022]); *Harbor Tech LLC v Correa* [73 Misc 3d 1211(A), 154 NYS3d 411 [Civ Ct Kings Co 2021]]; *Sea Park E LP v Foster* (74 Misc 3d 213, 160 NYS3d 792 [Civ Ct Kings Co 2021]). As in *Mason v Reyes* (75 Misc 3d 1210[A], 168 NYS3d 299 [Civ Ct Kings Co 2022]), "An approval by the ERAP program, although perhaps not satisfying the entire rental arrears owed by a respondent, would assist in preserving a tenancy."

In declining to lift the ERAP stay the court notes that this is a close case, as the facts here include that LRAP paid Respondent's rent for March 2020 through February 2021 and Respondent still owes both nine months of pre-pandemic rent and eighteen months of post-LRAP rent. Further, Respondent moved into the subject apartment in July 2018 with assistance from the City's FHEPS rental assistance program, FHEPS made no payments for rent due after May 2019 for reasons that have not been explained and Respondent is "in the process of also applying for FHEPS", Respondent's Affidavit, sworn to August 2, 2022, at ¶ 26, which her attorney states "[s]he is eligible for", Respondent's Attorney's Affirmation, dated July 29, 2022, at ¶ 15. In other words, reinstatement of Respondent's FHEPS subsidy—which is what permitted her to move in to this apartment in the first place, and then ceased nine months later—may very well resolve this case. Nevertheless, it is evident that

Respondent meets the ERAP Law's eligibility standards of being "a tenant obligated to pay rent in their primary residence in the state of New York", L. 2021, c. 56, Part BB, Subpart A, § 5[1][a][i], as well as someone who has demonstrated a risk of homelessness and, as a public assistance recipient, someone whose income meets the ERAP criteria, *id* at § 5[1][a][iii] & [iv]. While Respondent makes no assertions about how she experienced "financial hardship due, directly or indirectly, to the COVID-19 outbreak," *id* at § 5[1][a][ii], under the facts and circumstances of this case that determination will be left to OTDA. *Compare, e.g., 5th & 106th St Assocs LP v Hunt, supra.*

As Petitioner's motion to lift the ERAP stay is denied, the other two pending motions will remain held in abeyance and undecided at this juncture.

CONCLUSION

Accordingly, it is hereby ORDERED that Petitioner's motion to lift the ERAP stay is denied and this case will remain on the ERAP Administrative Calendar. This constitutes the court's Decision and Order, which is being uploaded to NYSCEF.

Dated: August 29, 2022
Bronx, New York
Hon. Diane E. Lutwak, HCJ

Footnotes

Footnote 1: Additional hand-written allegations in the affidavit are illegible.

Footnote 2: Respondent's statement that "Petitioner has refused to comply with the ERAP application," Respondent's Affidavit at ¶ 24, does not appear to be correct. OTDA's ERAP "Application Status" website, which the court checked to confirm the status of Respondent's application, includes - in addition to the fact that Respondent's application was denied - "Status Details", which state that "all landlord information and documentation" was verified, although the tenant's information and documentation was not.

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