2022-08-31

Emeagwali v. Burgos

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS: HOUSING PART A
STELLA EMEAGWALI,

Petitioner-Landlord Index No. L&T 301559/20

DECISION/ORDER

-against-

MARIA BURGOS,
JOHN DOE & JANE DOE,
Respondent-Tenants.

Hon. Jeannine Baer Kuzniewski

Recitation, as required by CPLR 2219(A), of the papers considered in the review of this Notice of Motion:

PAPERS	NUMBERED
NOTICE OF MOTION AND AFFIDAVITS ANNEXED	1
NOTICE OF CROSS-MOTION, AFFIDAVITS & AFFIRMATION ANNEXED	2
ANSWER AFFIRMATION	2, 3
REPLYING AFFIRMATION	3
EXHIBITS	
STIPULATIONS	
OTHER	

Upon the foregoing cited papers, the Decision/Order on the petitioner's motion in this holdover proceeding is as follows:

The petitioner commenced this holdover proceeding seeking possession of the premises at 1425 Pearl Street, 1st floor, Far Rockaway. The petitioner purported to terminate the tenancy after service of a Ninety Day Notice of Termination which alleged that the respondents were occupying the premises after the expiration of the lease agreement between the parties. Both sides are represented by counsel.

On March 12, 2022 the respondent applied for the Emergency Rent Assistance Program (ERAP). As of the date of this writing it is still in pending status.

The petitioner moves to lift the ERAP stay and for entry of a final judgment of possession. The Affidavit in Support of the motion asks "the Court to sever my rent claim at this time"[1] and further states "I do not want ERAP money from this tenant. I want nothing from this tenant other than evicting them as soon as possible."[2] The affidavit

1 See paragraph 6, Affidavit In Support.
2 Id. paragraph 9.

continues with requesting summary judgment alleging that the respondent cannot offer opposition that would create an issue of fact necessitating a trial.

The respondent opposes the motion and cross-motions for dismissal for lack of personal jurisdiction or in the alternative leave to file an answer. In opposition to the motion to lift the ERAP stay, the respondent argues that the legislature intended to include holdover proceedings and in this case the petitioner is demanding a judgment for unpaid rent and fair use and occupancy. "Respondent fits precisely within the terms of CEEFPA's automatic stay-she is a tenant with a rental obligation, and the Petition seeks rent and use & occupancy for a period which would be covered by ERAP."[3] It is further argued that as the petitioner seeks a severance of the rent, it is not an unconditional waiver, therefore, "Respondent would still have an outstanding obligation for rent and use & occupancy that would be covered by ERAP."[4]

In the reply to the respondent's opposition, the affirmation represents that "the petitioner doesn't want money, they want possession."[5]

The statute provides that while an ERAP application is pending the proceeding is stayed:

> "§ 8. Restrictions on eviction. [**Eviction**] **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. [**If such eviction proceedings are commenced**] **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 claimed by the petitioner**, all proceedings shall be stayed pending a determination of eligibility."[6]

The movant argues that as they will not accept the funds from ERAP, and this being a holdover proceeding, the Court should vacate the stay.

---

3 Affirmation In Opposition paragraph 18.
4 Id. at paragraph 22.
5 Reply Affirmation paragraph 2.
6 L. 2021, c.56, part BB, amended by L. 2021, c 417, Part A

> "2(c)the tenant may use such provisional determination as an affirmative defense in any proceeding seeking a monetary judgment or eviction brought by a landlord for the non-payment of rent accrued during the same time period covered by the provisional payment for a period of twelve months from the determination of provisional eligibility. If the landlord has not accepted such provisional payment within twelve months of the determination the landlord shall be deemed to have waived the amount of rent covered by such provisional payment, and shall be prevented from initiating a monetary action or proceeding, or collecting a judgment premised on the nonpayment of the amount of rent covered by such provisional payment." (L 2021, ch 56, Part BB, Sec. 9(1)(c).

Based on the facts before the Court the motion is denied.

> " 'It is fundamental that a court, in interpreting a statute, should attempt to effectuate the intent of the Legislature' (*Patrolmen's Benevolent Assn. v City of New York,* 41 NY2d 205, 208; *see also, Longines-Wittnauer v Barnes & Reinecke,* 15 NY2d 443, 453, 261 N.Y.S.2d 8, 209 N.E.2d 68). As the clearest indicator of legislative intent is the statutory text, the starting point in any case of interpretation must always be the language itself, giving effect to the plain meaning thereof. As we have stated:
> 'In construing statutes, it is a well-established rule that resort must be had to the natural signification of the words employed, and if they have a definite meaning, which involves no absurdity or contradiction, there is no room for construction and courts have no right to add to or take away from that meaning' (*Tompkins v Hunter,* 149 NY 117, 122-123; 43 N.E. 532; *see also, Matter of Raritan Dev. Corp. v Silva,* 91 NY2d 98, 667 N.Y.S.2d 327, 689 N.E.2d 1373)."[7]

The statute specifically provided for a stay until there is a determination of the ERAP application. It further states that upon a "provisional approval" the applicant has an affirmative defense in the event the landlord seeks a monetary judgment. The language is not limited to seeking an eviction. The Court recognizes that the affirmation in Reply alleges that the petitioner "doesn't want money" however, this is in contradiction to the affidavit of the petitioner herself that asks this Court to sever the rent claim. She states that she does not want the ERAP money, but, severing the rent claim indicates that she wants to preserve her right to pursue a monetary judgment for the rent arrears. This Court will afford more weight to the petitioner's affidavit than to her attorney's affirmation.

The statute provides for an affirmative defense in the event a landlord seeks a monetary judgment. The petitioner seeking to sever the rent claims supports a

7 Majewski v Broadalbin-Perth Cent. Sch. Dist., 91 NY2d 577, 583 [1998]

determination that the ERAP application must be allowed to proceed to a determination. In the event the petitioner does not participate in the application process, which is her right, then a determination will be made on the information provided by the tenant. If the respondent is provisionally approved on their information alone, then the affirmative defense will be triggered. This Court will not lift the stay until there is some determination, whether it be denial or a provisional approval.

The proceeding will stay on the administrative calendar.

Dated: August 31, 2022

Hon. Jeannine Baer Kuzniewski, J.H.C.

So Ordered

Hon. Jeannine Baer Kuzniewski, J.H.C.