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2022-08-30

### SANZ ADAR LLC v. DILLARD

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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF KINGS: HOUSING PART J

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SANZ ADAR LLC

L &amp; T Index # 311720/21 KI

Petitioner-Landlord,

-against-

DECISION/ORDER

JERMAINE DILLARD and SHANIKQUA WILLIAMS

Respondents-Undertenants.

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**HON. JULIET P. HOWARD, J.H.C.:**

Recitation, as required by CPLR 2219 (a), of the papers considered in the review of Petitioner's Motion to Stay pursuant to ERAP.

<b>Papers</b>	<b>Numbered</b>
Notice of Motion and Affirmation/Affidavit Annexed .....	1, 2,3
Opposition Papers.....	7
Replying Affidavit .....	
Sur-Reply.....	
Exhibits .....	4-6, 8-11

In December 2021, Petitioner commenced the underlying nonpayment proceeding to collect \$45,636.20 in rent allegedly owed by Respondents Jermaine Dillard and Shanikqua Williams from March 2019 through and including December 2021 based on a monthly rent of \$1,332.50. Respondent Shanikqua Williams interposed a pro se Answer to the Petition alleging conditions and general denial. Thereafter, on February 9, 2022, the court received notice that Respondent Jermaine Dillard applied for Emergency Rental Assistance Program ("ERAP") under application # 00KJB. Pending a determination of eligibility of the application, the underlying summary proceeding was statutorily stayed pursuant to Part BB, Subpart A, Section 8, of Chapter 56 of the Laws of 2021 as amended by Chapter 417 of the Laws of 2021 ("ERAP"). Also see Section 5 of AO/158/22, dated June 29, 2022. ERAP was enacted to provide rental assistance to eligible households, who lost income, as defined by the statute, as a result of COVID-19 during the covered period.

Thereafter, Petitioner moved to vacate the stay arguing that due to the lack of funding, ERAP applications submitted by most New York State and City residents after September 21,

2021 will not be paid and therefore an act of futility. (NYSCEF # 6-11). Petitioner did not set forth any other basis for seeking the relief requested herein. The Legal Aid Society, attorney for Respondent Jermaine Dillard, submitted an Affirmation in Opposition asserting that Petitioner's futility argument was baseless since recently in April 2022, New York State received additional allocation from the federal government to fund the ERAP program. Petitioner declined to submit reply papers. (NYSCEF # 13-18). On May 20, 2022, Petitioner discontinued the proceeding solely against Shanikqua Williams. (NYSCEF # 20).

After argument and upon review of the papers, Petitioner's motion is denied. The court takes judicial notice that OTDA recently updated its website to indicate that the 2022-2023 budget includes additional funds to support ERAP and that, as a result, the Office of Temporary and Disability Assistance ("OTDA") was actively reviewing and processing eligible ERAP applications submitted through June 30, 2022, which is several months after Respondent submitted her application in February 2022, thereby debunking Petitioner's argument. See Attachment.

Moreover, the ERAP statute states in pertinent part that "[e]xcept as provided in section nine-a of this act, eviction proceedings for a holdover or expired lease, or nonpayment 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." See Section 8 of ERAP as amended.

The court has inherent authority to determine eligibility for the purpose of applying the stay pursuant to ERAP and may address any concern when facts indicate a lack of fairness, credibility, allegations of fraud, or bad faith. See e.g., *Zheng v. Guiseppone*, 74 Misc.3d 1231, 165 N.Y.s.3d 274 (N.Y. Civ. Ct., 2022); *Mason v. Reyes*, 75 Misc.3d 1210(A) (N.Y. Civ. Ct., 2022). However, Petitioner herein did not present any facts or allegations warranting this court exercising its inherent authority to examine Respondent's eligibility of a stay or protection under ERAP. The pending motion was merely based on the allegation that the application was an exercise of futility.

Compare, e.g., *Actie v. Gregory*, 74 Misc.3d 1213(N.Y. Civ. Ct., 2022) where the court therein held that it was counterintuitive and prejudicial to stay a holdover proceeding where the approval of ERAP funds would not result in the preservation or creation of a tenancy. The landlord therein sought to recover an unregulated dwelling within a building with four or fewer units for his primary residence, and ERAP statute provides that a landlord who accepts ERAP payment “may decline to extend the lease or tenancy if the landlord intends to immediately occupy the unit for the landlord’s personal residence or the use of an immediate family member as a primary residence;” *Zheng v. Guiseppone*, *supra.*, where the nonpayment proceeding was converted to a holdover and the landlord therein waived use and occupancy on the condition that the occupants vacated timely. After COVID-19 disrupted court proceedings, pursuant to Administrative Orders and Directives, the landlord sought permission to execute the warrant of eviction, which was issued prior to COVID-19, but not use and occupancy. After eviction was completed, the occupants filed a post eviction Order to Show Cause indicating that an ERAP application was filed five days prior to the eviction. The court declined, however, to restore the occupants to possession under the facts of the case, including the fact that there was no threat of eviction due an obligation to pay use and occupancy.

Unlike the cases cited herein, Petitioner commenced a nonpayment proceeding seeking unpaid rent. By the very nature of a nonpayment proceeding, there is a threat of eviction if Respondent defaults in their obligation to pay outstanding rental arrears, and the ERAP program was implemented to give financial assistance to eligible occupants, who were adversely affected, avoid homelessness and to make a landlord whole or partially so. If ERAP does not satisfy the outstanding arrears in full, Respondent may be eligible to apply for DSS/HRA, other relief programs or a loan.

Accordingly, Petitioner’s motion is denied in its entirety, and the proceeding remains on the court’s administrative calendar pending a determination on Respondent’s ERAP application.

This constitutes the Decision and Order of this Court. Court Clerk to upload to NYSCEF and mail copy to the parties.

Dated: Brooklyn, New York  
August 30, 2022



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HON. JULIET P. HOWARD, J.H.C