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2022-03-10

### Pacheco v. Gilkes

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**Pacheco v Gilkes**

2022 NY Slip Op 31050(U)

March 10, 2022

Civil Court of the City of New York, Kings County

Docket Number: Index No. 300063/20

Judge: Bruce E. Scheckowitz

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

-----X  
PATRICIA PACHECO and MICHAEL A. PACHECO,

Index No.: 300063/20

Petitioner,

Motion Seq. 001

-against-

**DECISION/ORDER**

LISA GILKES,  
"JOHN DOE" and/or "JANE DOE",

Respondent(s).

-----X

Present:

Hon. BRUCE E. SCHECKOWITZ  
Judge, Housing Court

Recitation, as required by the CPLR § 2219(a), of the papers considered in the review of this motion to restore the instant proceeding to the calendar and for a default judgment.

<b>PAPERS</b>	<b>NUMBERED</b>
Notice of Motion & Affidavits Annexed.....	NYSCEF Doc. 7,8,9
Notice of Cross-Motion & Affidavits Annexed .....	
Answering Affidavits .....	
Replying Affidavits.....	
Exhibits .....	NYSCEF Doc. 10
Memorandum of law.....	

In this holdover proceeding, Patricia Pacheco and Michael Pacheco ("Petitioner") seek to recover possession of the premises located at 2461 Bedford Ave, Fl. 2, Brooklyn, New York 11226 ("Premises") from Lisa Gilkes, John Doe, and Jane Doe ("Respondents). Petitioners commenced the instant proceeding by service of Notice of Petition and Petition dated August 4, 2020, after the expiration of a Notice Terminating Tenancy dated February 20, 2020. Pursuant to Administrative Orders 68/20, 160/20, and 231/20 upon the filing of the petition, this proceeding was suspended until October 9, 2020. On December 28, 2020, the COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020 (hereinafter "CEEFPFA") was signed into law. The CEEFPFA,

in part, stayed those proceedings in housing court which were not objectionable conduct/nuisance holdovers, HP proceedings, and illegal lockout proceedings, for sixty (60) days to give tenants who have faced financial hardship due to Covid-19 or whose health has been or could be negatively affected by an eviction or moving during the pandemic to file a hardship declaration. On March 19, 2021 Respondent filed a COVID-19 Hardship Declaration pursuant to CEEFPA. On August 12, 2021, the United States Supreme Court, enjoined the enforcement of all of Part A of the CEEFPA. *Chrysfis v. Marks*, 594 U.S. \_\_\_\_ (2021). On September 5, 2021, a modification to the statute establishing the COVID-19 Emergency Rental Assistance Program (“ERAP”), that included similar protections that were codified in CEEFPA, was signed into law. *See* Chapter 417 (A) (BB) The protections under that statute expired on January 15, 2022.

On February 3, 2022, Petitioners filed the instant motion which seeks to restore the instant proceeding to the calendar, the entry of a default judgment of possession, and issuance and execution of a warrant of eviction. On the same day, Petitioners also filed a request for the proceeding to be heard in the Small Property Part (“SPP”). Petitioner appears by Joseph Yau, Esq. over MS Teams. Respondent appears *pro se* from the courthouse. In support of the instant motion, Petitioners attached a notice indicating that they had received ERAP funds on behalf of Respondent for the period of October 1, 2020 through December 31, 2021. The court notes that section 9 of subpart A of part BB of chapter 56 of the laws of 2021, amended by subsection iv of Section 5 of part A of chapter 417 of the laws of 2021, precludes a landlord who has received ERAP funds from evicting the tenant in a holdover based upon an expired lease or termination of a month to month tenancy for twelve (12) months after receipt of the first rental assistance payment, except in limited circumstances, which are not present herein. Here, Petitioners’

acceptance of the ERAP funds vitiates the notice of termination and restores Respondent's tenancy.

Accordingly, the branch of Petitioners' motion seeking to restore the instant proceeding to the calendar is denied. The court does not reach the balance of the motion. The instant proceeding is dismissed, *sua sponte*, without prejudice.

This constitutes the decision and order of the court.

Dated: Brooklyn, New York  
March 10, 2022



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HON. BRUCE E. SCHECKOWITZ  
J.H.C.