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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART
---X
HUGH WILLIAMS,

Petitioner,

-against-

LATOYA WILSON, ET AL.,

Respondents.
---X

Index No. 300356/20

DECISION/ORDER

Mot. seq. no. 2

The following e-filed documents, listed by NYSCEF document numbers 14; 16-17 (motion no. 2), were read on this motion to vacate the stay effectuate by the ERAP statute.

This is a holdover summary eviction proceeding predicated on termination of an unregulated tenancy. Respondent applied for relief under the Emergency Rental Assistance Program, resulting in a stay of the proceeding. Petitioner has moved to vacate the stay. For the reasons below, the motion is denied.

"Public policy determined by the legislature is not to be altered by a court by reason of its notion of what the public policy ought to be" (*Desrosiers v Perry Ellis Menswear, LLC*, 30 NY3d 488, 497 [2017] [internal citations omitted]). It is not the role of the court to "second-guess" the determination of the legislature; the court may not substitute its own determination therefor (*Cohen v State of New York*, 94 NY2d 1, 14-15 [1999]). "A statute must be read and given effect as it is written by the legislature, not as the court may think it should or would have been written if the legislature had envisaged all of the problems and complications which might arise in the course of its administration; and no matter what disastrous consequences may result from following the expressed intent of the legislature, the judiciary cannot avoid its duty" (McKinney's Cons Law of NY, Statutes § 73, Comment).

The COVID-19 Emergency Rental Assistance Program of 2021 (L 2021, ch 56, part BB, subpart A, § 8) mandates a stay of nonpayment and holdover eviction proceedings where the household subsequently applies for ERAP benefits, until it is determined whether the household is eligible for those benefits. One may question the wisdom or fairness of a policy that stays an eviction proceeding predicated on, for example, expiration of an unregulated lease, pending an agency's determination of application for rent arrears. It may be that the statute, in certain

instances, has turned out to be a "disaster." But is not for the court to deviate from the intent of the legislature to ameliorate the statute's unexpected effects. Neither the statutory text, nor in this court's opinion, an examination of the spirit, purpose, or history of the legislation, allow for any other conclusion as to the legislative intent except that both nonpayment and holdover proceedings are stayed until there is a determination of eligibility from the Office of Temporary and Disability Assistance.[1] [2]

The statute does not run afoul of the Due Process Clause or otherwise implicate due process concerns. Unlike the COVID-19 Emergency Eviction and Foreclosure Prevention Act, the statute at issue in *Chrysafis v Marks* (--- US ---, 141 S Ct 2482 [2021]), the ERAP statute does not permit a tenant to "be a judge in his own case." In stark contrast to the "hardship declaration" in CEEFPA, a tenant's ERAP application is explicitly subject to an eligibility determination. In other words, the tenant is not the judge of his own case, OTDA is.[3]

The court does not agree that a determination as to an applicant's eligibility for ERAP may be made by the court. The statute itself is conspicuously bereft of any language permitting the interpretation that the court may determine ERAP eligibility. Moreover, the statute specifically refers to OTDA when discussing eligibility determinations: "Prior to making an eligibility determination, the commissioner or the commissioner's designee shall undertake reasonable efforts to obtain the cooperation of landlords and utility providers to accept payments

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[1] As it happens, the legislature revisited the ERAP statute almost five months after its enactment, amending it to exempt from the stay of proceedings those cases involving what could be colloquially referred to as "nuisance conduct" (L 2021, ch 417, part A, § 6). That the legislature amended the ERAP statute to include a "nuisance" exception but did not create an exception for other holdover proceedings, even where payment of arrears would not resolve the proceeding, is indicative of its intent that those proceedings should be stayed.

[2] As this court held in *22 Hawthorn Street LLC v Lendor*, 308930/21 [Civ Ct, Kings County 2022], proceedings under RPAPL 713 are not "holdover" proceedings, strictly speaking, and thus the stay does not apply to proceedings based on allegations that the occupants are licensees, squatters, in possession incidental to employment, etc.

[3] On this point it should be remembered that summary eviction proceedings are creatures of statute. There is no constitutional right to a summary eviction remedy. It cannot be doubted that Article 7 of the Real Property Actions and Proceedings Law could be repealed without any constitutional impediments. One could even go so far as to surmise that, because of the existence of a common law ejectment remedy, such a repeal could be made to apply to pending summary eviction proceedings without raising constitutional concerns (*cf. Landgraf v USI Film Products*, 511 US 244, 275 [1994] ["Changes in procedural rules may often be applied in suits arising before their enactment without raising concerns about retroactivity"] [internal citations omitted]). Thus, what offended the constitution in *Chrysafis* was not the stay of proceedings itself but that the tenant's assertions were not subject to any form of review. A tenant's ERAP application is not similarly free from question.

from this program" (L 2021, ch 56, part BB, subpart A, § 9[2][b]). The court is not empowered to make determinations as to eligibility.[4]

The court has considered arguments concerning "futility" and "absurdity" and finds them unavailing.

Accordingly, it is ORDERED that the motion is denied; and it is further

ORDERED that upon a determination of eligibility by OTDA, Petitioner may request restoration of the proceeding by letter/correspondence uploaded to NYSCEF, with supporting documentation, and courtesy email notification to the court.

This is the court's decision and order.

Dated: September 25, 2022

Michael L. Weisberg, JHC

[4] It is not that the court can never assess "eligibility" for a rental assistance program. In matters committed to the court's discretion, such as determining whether good cause exists to stay execution of a warrant beyond that date contemplated by the parties in an agreement, the court may determine, in the absence of evidence to the contrary, that a tenant is not eligible for a "one shot deal" because of the absence of future ability to pay rent, and that a tenant is not eligible for FHEPS because there is no open public assistance case or minor child in the household.