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### MICHELANGELO PRESERVATION LLC v. GIORDANO

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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF BRONX: HOUSING PART B

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MICHELANGELO PRESERVATION LLC,

L&T Index No. 049406/19

Petitioner,

-against-

**DECISION/ORDER**

CRYSTAL GIORDANO,

Respondents.

-----X

Present: Hon. OMER SHAHID  
Judge, Housing Court

Recitation, as required by C.P.L.R. § 2219(a), of the papers considered in the review of  
Petitioner’s Motion to Vacate the E.R.A.P. Stay (Motion #4 on N.Y.S.C.E.F.):

<b>Papers</b>	<b>Numbered</b>
Notice of Motion (Motion #4 on N.Y.S.C.E.F.).....	<u>1</u>
Affirmation in Opposition (Entries #20-23 on N.Y.S.C.E.F.).....	<u>2</u>
Affirmation in Reply (Entry #24 on N.Y.S.C.E.F.)...	<u>3</u>

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Petitioner commenced this nonpayment proceeding alleging that Respondent is indebted to Petitioner in the amount of \$2,568.00, representing all rent due and owing through November 30, 2019, for the letting of 235 East 149th Street, Apartment #6C, Bronx, N.Y. 10451 (the “subject premises”). The subject premises is not subject to the Rent Stabilization Law because it is owned by a limited liability profit housing company pursuant to Article 2 of the P.H.F.L. and the subject building is supervised by D.H.C.R.

The Notice of Petition and Petition were filed with the court on November 12, 2019. Respondent filed a written pro se answer with the court on November 27, 2019. The parties settled the instant proceeding on December 16, 2019 pursuant to a stipulation where Respondent acknowledged being indebted to Petitioner in the amount of \$3,411.00, representing all rent due and owing through December 31, 2019. This stipulation also provides that Respondent was to pay this amount, along with January 2020 rent, by January 10, 2020. In the event of default, Petitioner may move to enter judgment upon notice to Respondent. Petitioner thereafter filed such a motion and the parties settled the motion on February 20, 2020 whereby Petitioner was awarded a final judgment in the amount of \$5,097.00, representing all rent due and owing through February 29, 2020. Respondent was to pay this amount plus April 2020 rent by April 10, 2020 as long as Respondent paid March’s rent by March 31, 2020. Due to the onset of the pandemic, the warrant of eviction did not issue. On November 18, 2020, Petitioner filed a motion (Motion #3 on N.Y.S.C.E.F.) for the issuance/execution of the warrant of eviction based

upon Respondent's breach of the February 20, 2020 stipulation. The motion was calendared by the court on January 29, 2021. The motion was then adjourned to April 7, 2021, May 6, 2021, and June 23, 2021. On June 14, 2021, Respondent retained the Legal Aid Society as counsel. The matter was stayed because Respondent filed a hardship declaration on N.Y.S.C.E.F. on June 23, 2021. Thereafter, Respondent filed an E.R.A.P. application (#AUKJE) on July 6, 2021. The matter was placed on the E.R.A.P. administrative calendar pending determination of the application. Petitioner filed the instant motion to vacate the E.R.A.P. stay on N.Y.S.C.E.F. on May 18, 2022. After conference, the fully briefed motion was marked submitted for decision on September 15, 2022. As of the date of this decision and order, the application is still under review.

In its motion, Petitioner makes several arguments to lift the stay associated with Respondent's application. These arguments are as follows: 1) subsidized tenants, like Respondent, are not eligible for E.R.A.P. funds; 2) even if Respondent is eligible for the program, the funds are not available to address applications of subsidized tenants; 3) Respondent owes more than 15 months of rent and any E.R.A.P. payment will not cover all the arrears owed; 4) the Petition has a claim for arrears which date prior to March 2020; and 5) continuing the stay would be unconstitutional as it would violate Petitioner's due process rights. Upon the vacatur of the stay, Petitioner seeks an order amending the Petition to date and permitting Petitioner to execute upon the warrant of eviction. In the alternative, Petitioner seeks an order allowing Petitioner to permit execution of the warrant based upon arrears not accrued or covered during the COVID months.

Respondent opposes the motion. Respondent argues that a determination of eligibility is to be made by the Office of Temporary and Disability Assistance ("O.T.D.A.") and not by the court and that the E.R.A.P. Statute does not state that subsidized tenants are ineligible for the program. Furthermore, Respondent argues that funds have become available to support the program. Respondent maintains that the plain reading of the statute permits a stay even if all the arrears would not be covered. Lastly, Respondent argues that constitutional considerations are not implicated by continuing the stay since Petitioner is not prevented from challenging the stay.

The court disagrees with Petitioner that it should vacate the stay because Respondent is ineligible for the stay since she is a subsidized tenant. As decided by this court in LaPorte v. Garcia, 75 Misc. 3d 557 (Civ. Ct., Bronx Co. 2022), "the determination of eligibility rests with...[O.T.D.A.], determining whether a stay applies or should be lifted, based upon the particular circumstances of a proceedings, is in the court's realm." LaPorte, 75 Misc. 3d at 559, citing 2986 Briggs L.L.C. v. Evans, 74 Misc. 3d 1224(A) (Civ. Ct, Bronx Co. 2022). Hence, whether Respondent would or not be entitled to receive E.R.A.P. funds as a subsidized tenant is left for O.T.D.A. to determine as that agency is the one that reviews the application. Not this court.

Petitioner also argues that the E.R.A.P. program does not have funding to pay pursuant to Respondent's application. However, the O.T.D.A. website states the following: "The 2022-23 State budget includes additional funds to support [E.R.A.P.]. As a result of the additional funding, OTDA is actively reviewing and processing eligible ERAP applications submitted through August 31, 2022." New York State Office of Temporary and Disability Assistance, "Emergency Rental Assistance Program (ERAP)," last visited on 10/13/22, <https://otda.ny.gov/programs/emergency-rental-assitance/>. Respondent's application was submitted prior to August 31, 2022 and may be reviewed and processed due to the new funding.

The court agrees with Respondent that the subsidized tenants are not deemed to be ineligible for the program. O.T.D.A. states on its website that "[a]pplications from subsidized housing tenants whose rent is limited to a certain percentage of income...are not currently able to

be paid. State law requires that these applications be paid after all other eligible applicants have been reviewed and paid. Therefore, at this time, none of the subsidized housing applications can be paid regardless of the date their application was submitted.” Id. Although other applications will be considered prior to those submitted by subsidized tenants, their applications will be considered, reviewed, and processed once the funds satisfy the applications of non-subsidized tenants. “Whatever the wisdom of this choice, this is the policy choice the legislature has made” and it is not for this court to question the wisdom of the legislature on its policy decision. Robo L.L.C. v. Matos, 75 Misc. 3d 1211(A), \*2 (Civ. Ct., Bronx Co. 2022), citing Hope v. Perales, 83 N.Y.2d 563 (1994).

As stated above, determination of whether Respondent is eligible for E.R.A.P. funds rests with O.T.D.A. and whether the stay should continue pursuant to the application is for this court to determine. Section 8 of Part BB, Subpart A of the E.R.A.P. Statute provides in pertinent part: “[I]n 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.” L. 2021, Ch. 56, Part BB, Subpart A, § 8 as amended by L. 2021, Ch. 417, Part A, § 4. The language “any pending eviction proceeding” incorporates both nonpayment and holdover proceedings and does not make a distinction between them when it concerns the stay. The exception to this language appears in Section 9-A of the E.R.A.P. Statute which concerns proceedings where respondents are committing nuisance or objectionable conduct, which is not the case here.

Section 2(9) of the E.R.A.P. Statute defines “rent” the same as R.P.A.P.L. § 702 which defines it, in pertinent part, as: “the monthly or weekly amount charged in consideration for the use and occupation of a dwelling pursuant to a written or oral rental agreement.” And Section 2(10) of the E.R.A.P. Statute defines “rental arrears” as unpaid rent accruing on or after March 13, 2020.

Here, Respondent has a rental obligation to Petitioner and has applied for the program to address the rental arrears that she owes to Petitioner. Accordingly, the stay associated with Respondent’s application shall continue.

Respondent is still entitled to the continuance of the stay even though she owes more than 15 months in rental arrears and the E.R.A.P. funds would not cover all the arrears outstanding. See Mason v. Reyes, 75 Misc. 3d 1210(A) (Civ. Ct., Kings Co. 2022). The plain reading of the statute supports that finding. The statute, as recited above, states that if a respondent applies for the program to cover “part of the arrears claimed by the petitioner” then the proceeding shall be stayed pending O.T.D.A.’s determination of eligibility. L. 2021, Ch. 56, Part BB, Subpart A, § 8 as amended by L. 2021, Ch. 417, Part A, § 4. Since Respondent owes arrears during the covered period, Respondent is entitled to the stay.

Although Petitioner’s claim for rental arrears in the Petition date prior to March 13, 2020, Respondent is still entitled to the stay. The February 20, 2020 stipulation between the parties has a current rent provision and for Respondent to satisfy the judgment entered pursuant to that agreement, Respondent would have to pay all the rental arrears that have accrued to date since February 20, 2020 which includes arrears accrued during the period covered by the program. Furthermore, the motion seeks an amendment of the Petition to reflect all rent that is outstanding to date which includes the arrears during the covered period. Hence, Petitioner’s “claim” for rental arrears is covered by the statute.

The court also finds that Petitioner’s constitutional argument has no merit. Unlike the situation in Chrysafis v. Marks, 141 S. Ct. 2482 (2021), where landlords were unable to

challenge the hardship declarations filed by their tenants, the housing courts, including the court in this decision, have entertained motions by landlords to vacate the stay and have even granted such a relief if the circumstances warrant the vitiation of the stay. See 2986 Briggs, 74 Misc. 3d 1224(A) (citing to various decisions where E.R.A.P. stays have been vacated). See also Shi Gan Zheng v. Guiseppone, 74 Misc. 3d 1231(A) (Civ. Ct., Richmond Co. 2022) (citing decisions that have vacated E.R.A.P. stays as well).

Petitioner argues, in the alternative, that it should be permitted to execute upon the warrant of eviction for arrears prior to March 13, 2020. Such a relief, although creative, is not appropriate and contravenes the plain reading of the E.R.A.P. Statute. The statute clearly provides that if Respondent applies for part of the rental arrears claimed by Petitioner, then the matter shall be fully stayed pending O.T.D.A.'s determination of eligibility if the exceptions in Section 9-A do not apply. See L. 2021, Ch. 56, Part BB, Subpart A, § 8 as amended by L. 2021, Ch. 417, Part A, § 4. Such a stay would not permit the relief Petitioner requests in the alternative. Allowing Petitioner to execute upon the warrant of eviction for the portion of the arrears not covered by the program, and allow an eviction on that basis, would conflict with the legislative intent behind the statute which seeks to aid applicants negatively impacted by COVID-19 by providing a temporary stay on evictions to afford affected households an opportunity to preserve and manage their tenancies with the disbursement of funds if they are determined to be eligible for the program. See L. 2021, Ch. 417, § 2 (stating that the E.R.A.P. Statute's goals are to "cover[] the cost of rent arrears and provid[e] widespread eviction protections.") Accordingly, the matter shall continue to be stayed pending determination of eligibility.

Based upon the foregoing, Petitioner's motion is denied in its entirety. The matter will remain on the E.R.A.P. administrative calendar pending determination of Respondent's application. Once a determination has been made, either party may reach out to the Part and request that the matter be placed back on the court's active calendar.

The foregoing constitutes the decision and order of the court.

Dated: October 14, 2022  
Bronx, N.Y.

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Omer Shahid, J.H.C.