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940-950 GATES LLC v. BANKS

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART F
940-950 GATES LLC,

Petitioner,

Index No. L&T 88831/19
DECISION/ORDER

-against-

JOBIE BANKS
MELISSA SANABRIA,
"JOHN DOE" and "JANE DOE",

Respondents.

Hon. Kevin C. McClanahan

Recitation, as required by CPLR 2219(A), of the papers considered in the review of this motion for partial summary judgment/stay and cross-motion to dismiss.

PAPERS	NUMBERED
NOTICE OF MOTION AND AFFIDAVITS & AFFIRMATION ANNEXED	___ 1-2 ___
NOTICE AND CROSS-MOTION AND AFFIRMATION ANNEXED	___ 6 ___
ANSWER AFFIRMATION & AFFIDAVIT	
REPLYING AFFIDAVITS & AFFIRMATION	___ 10 ___
EXHIBITS	___ 3-5,7-9,11 ___

Upon the foregoing cited papers, the Decision/Order on these motions is as follows:

This summary holdover proceeding for chronic rent delinquency was commenced on or about December 23, 2019. On the March 12, 2020 court date, the parties entered into a Stipulation of Settlement (hereinafter "March Stipulation"). The March Stipulation provided for a final judgment of possession and a warrant was issued but execution was stayed through May 31, 2020. On March 9, 2022, Ms. Sanabria filed a New York State Emergency Rental Assistance Program ("ERAP") application through her attorney. However, the Office for Temporary and Disability Assistance ("OTDA") denied her ERAP application because "there was already an

application made for the above tenant and unit address through the Landlord Rental Assistance Program (“LRAP”) and an LRAP payment was already issued. Duplicate assistance cannot be provided so your ERAP application has been denied.” See Sanabria Affidavit.

Respondent now moves to dismiss the proceeding based on petitioner’s acceptance of LRAP funds. Petitioner opposes the motion.

The LRAP fund provides owners with a mechanism for receiving arrears payments on behalf of tenants that have accrued during the COVID-19 pandemic where tenants have vacated the unit or allegedly failed to participate in the ERAP program. Receipt of LRAP funds comes with program prescriptions based on statute which are unnegotiable conditions of participation. Owners are required to sign a certification memorializing these rules as part of the application process and are bound by them. The applicable program rule is that upon acceptance of LRAP payments, the landlord “may not evict the household on behalf of whom the LRAP payment is made for reason of expired lease or holdover tenancy for one year from the receipt of the LRAP payment.”

Petitioner’s counsel concedes that petitioner accepted an LRAP payment of \$18,112.32 on June 28, 2022. Currently, respondent owes over \$34,622 in use and occupancy.

Contrary to respondent’s contention, dismissal is not expressly required by the applicable statute and/or program rules. Instead, the stated consequence of accepting LRAP funds is a stay of eviction for a 12-month period from the date LRAP is accepted. Had the legislature intended, it could have provided for dismissal of the proceeding as it did for nuisance holdover proceedings. See *Feurman v. Hugo*, 2022 NY Slip Op 22229 decided July 22, 2022 (Civ Ct NY Co).

The Court further finds no factual basis to find waiver and/or vitiation of the proceeding.


The rule regarding waiver is intended to protect a tenant from being misled by an owner's conduct inconsistent with the parties' agreement. *Jenkins Hudsonview Co. v. Jenkins*, 169 Misc2d 389 (Civ Ct NY 1996).

The instant proceeding had concluded with a final judgment of possession and issuance of the warrant. Respondent agreed to vacate in the March Stipulation. Petitioner's application for payment of use and occupancy to limit its economic losses via a third-party program cannot be found to be an expression of intent to recreate the landlord/tenant relationship. Furthermore, respondent concedes that she didn't not know about the LRAP application until her ERAP application was denied. Nothing in the record suggests that she was misled regarding the landlord's intention to take back the apartment.

Based on the foregoing, the Court grants the motion solely to the extent of staying the execution of the warrant 12 months from the date petitioner received the LRAP funds or June 27, 2023. After this date, the warrant may execute after reservice of the marshal's notice.

This constitutes the decision and order of the court copy to be uploaded to NYCEF.

Dated: October 19, 2022
Brooklyn, NY

Kevin C. McClanahan 
Hon. Kevin McClanahan