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SHIMUNOV v. CARIAS

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART F
GAVIREL SHIMUNOV,

Petitioner,

Index No. L&T 318227/22

DECISION/ORDER

-against-

SULMA GILSA CARIAS, RUBIO CARIAS,
"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 to vacate the decision of the court.

PAPERS

NUMBERED

| | |
|--|---|
| ORDER TO SHOW CAUSE IN LIEU OF PETITION AND AFFIDAVITS & AFFIRMATION ANNEXED | 1 |
| NOTICE AND CROSS-MOTION AND AFFIRMATION ANNEXED ANSWER AFFIRMATION & AFFIDAVIT REPLYING AFFIDAVITS & AFFIRMATION EXHIBITS | 2 |

Petitioner commenced the instant lease expiration holdover proceeding by order to show cause in lieu of petition, arguing that the procedural device is a proper method to evade the application of the ERAP stay. Respondent opposes the motion arguing that the motion should be denied, and the petition dismissed.

Section 8 of the Covid-19 Emergency Rental Assistance Program, Part BB, Subpart A of

Chapter 56 of the Laws of 2021, as modified by Chapter 417 of the Laws of 2021 provides:


“Except as provided in section nine-a of this act, eviction proceedings for a holdover or expired lease, or non-payment of rent or utilities that would be eligible for coverage under this program shall be commenced against a household who has applied for this program...unless or until a determination of ineligibility is made.”

The statute expressly prohibits the commencement of this proceeding as there is no dispute that respondent had an ERAP application pending when the order to show cause was served commencing the proceeding. The statute expressly provides for one exception: a proceeding based on allegations of nuisance. The Court reviewed the affidavit in support of Gavirel Shimunov in which he swears that the proceeding is based solely on expiration of respondent's lease; it does not allege nuisance as a basis for commencement of the proceeding. He goes on to swear that the ERAP application is an exercise in futility as he will not participate in the ERAP process.

These facts do not constitute an exception to the prohibition against commencement of the instant proceeding. Without express statutory permission, petitioner's unique method of commencing the instant proceeding cannot obviate the express statutory prohibition.

Based on the foregoing, the Court hereby denies the motion and dismisses the petition.

Dated: December 13, 2022
Brooklyn, NY



Kevin C. McClanahan, J.H.C.

Hon. Kevin McClanahan