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Bailey House, Inc. v. Framer

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Bailey House, Inc. v Framer

2023 NY Slip Op 30753(U)

March 16, 2023

Civil Court of the City of New York, Bronx County

Docket Number: Index No. LT-021239-19/BX

Judge: Diane E. Lutwak

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This opinion is uncorrected and not selected for official publication.

Civil Court of the City of New York
County of Bronx, Housing Part C/Room 590

Index #: **LT-021239-19/BX**

-----X
BAILEY HOUSE, INC,

Petitioner,

-against-

KAREN FRAMER, ERIC FRAMER, INA FRAMER,
AL'YASID JOHNSON, DESTINY JOHNSON, "JOHN
DOE" AND "JANE DOE",

Respondents.

DECISION/ORDER

-----X
Recitation, as required by CPLR R 2219(A), of the papers considered in the review of Respondent Ina Framer's Order to Show Cause for a Stay of Execution of the Warrant of Eviction:

PAPERS	NYSCEF DOC #
Order to Show Cause With Supporting Affirmation, Affidavit, Exs A-D	17-24
Affirmation & Exs A-E in Opposition	25-30

The petitioner in this licensee holdover eviction proceeding runs what its attorney describes as a "scatter-site program which provides supportive housing for homeless individuals who suffer from mental health issues and/or substance abuse." Affirmation in Opposition of Petitioner's Attorney at ¶ 2. The respondents are the current occupants of an apartment that petitioner previously had sublet to respondent Ina Framer's uncle, now deceased, who had been a participant in petitioner's program. It is undisputed that respondents have no legal right to remain in the subject apartment, and that respondent Ina Framer (hereinafter "respondent"), by counsel, settled the case on November 18, 2019 agreeing to a judgment of possession in petitioner's favor, warrant of eviction to issue forthwith, execution stayed through February 29, 2020. Petitioner thereafter secured a judgment of possession against the other respondents – for one of whom, respondent's adult son respondent Al'Yasid Johnson, the court appointed a guardian *ad litem*. Respondents did not move out by February 29, 2020 and, due to the COVID-19 pandemic, no warrant issued at that time and no further proceedings took place until March 2022 when petitioner moved to restore the case to the calendar for issuance of a warrant of eviction pursuant to pandemic-era directives and orders of the court system's Administrative Judges. That motion was settled by Stipulation dated June 7, 2022 which permitted the warrant of eviction to issue, execution stayed through September 6, 2022, with use and occupancy of \$215 per month. By stipulation dated December 6, 2022 execution of the warrant of eviction was further stayed through December 31, 2022.

Now before the Court is respondent's Order to Show Cause seeking a further stay of execution of the warrant of eviction. In her sworn supporting affidavit respondent

explains that she seeks an extension of the move-out date because, despite her diligent efforts, she has not yet found a new apartment to move to with her family, which consists of herself, her son respondent Al'Yasid Johnson and her ten-year-old daughter. Respondent describes her son as having "been diagnosed with an Autism Disorder with low average intellectual ability", with "significant behavioral and cognitive delays" and "entirely dependent on [his mother] for most activities of daily living." Respondent's Affidavit at ¶ 4. Respondent describes the "many obstacles" to finding a new apartment she has faced since the case settled in 2019, including COVID-19 pandemic barriers; a back injury that disabled her for a large part of 2020; learning in 2021 that her mother had used respondent's personal information to obtain an apartment only for herself; and, in 2022, developing several debilitating medical conditions including strokes resulting in hospitalization for almost two months, retinopathy and a significant curtailment of her physical activity. Despite these problems respondent has applied to numerous housing lotteries (she lists 23 by name in her affidavit) and apartments (she lists 26 addresses) and worked with many real estate brokers (she lists 13 by name). Despite her health issues, she is now back at work and has made the use and occupancy payments as agreed. Respondent asserts that she has nowhere to go if evicted, and eviction would be devastating to her and her family given the compromised condition of her and her son's health.

Respondent's attorney points out that petitioner is not a private landlord but is a "housing provider for individuals living with chronic illness whose mission statement notes that they 'believe housing and healthcare are human rights' and that stable housing is the foundation upon which they 'build ... to improve and sustain the health and well-being of our clients.'" Respondent's Attorney's Affirmation at ¶ 20. Respondent's attorney argues that the balance of the equities warrants this court exercising its discretion under CPLR § 2201, as extended to the Civil Court by NYCCCA § 212, to grant a further stay of execution of the warrant of eviction through the end of May 2023 on the facts presented and in the interests of justice.

In opposition, petitioner's attorney describes the long history of this proceeding and argues that, while petitioner is sympathetic to respondent's situation, at this juncture there is no basis in fact, law or equity to grant the relief requested; whereas respondents do not qualify for the supportive housing petitioner offers there are many others who do who have been denied such housing. Petitioner also points to the one-year limit in RPAPL § 753(1) for staying issuance of a warrant of eviction.

Petitioner certainly has demonstrated patience and restraint in its efforts to secure possession of the subject apartment over the past three years, given that Respondent originally consented to a judgment of possession on November 18, 2019, with execution of the warrant of eviction stayed through February 29, 2020. With equal certainty, during this time respondent has both undergone an excess of personal hardships and yet made diligent although as yet unsuccessful efforts to find a new home for herself and her family, all in the context of the detrimental effects on societal operations wrought by the COVID-19 pandemic over the past three years.

Having considered the competing legal arguments and on the facts and circumstances presented, it is this court's decision to grant respondent's order to show cause to the extent staying execution of the warrant of eviction through and including May 31, 2023. The court grants this relief in the interests of justice, irrespective of RPAPL § 753(1), and as an exercise of its discretion under CPLR § 2201. *See, generally, 326-330 E 35th St Assoc v Sofzade* (191 Misc2d 329, 741 NYS2d 380 [App Term 1st Dep't 2002]); *and see, e.g., 140 W End Ave Owners Corp v Dinah L* (66 Misc3d 555, 114 NYS3d 844 [Civ Ct NY Co 2019]); *Deutsche Bank Natl Trust Co v Oliver* (24 Misc3d 838, 879 NYS2d 674 [Dist Ct, 1st Dist Nassau Co 2009]); *Errigo v Diomedea* (14 Misc3d 988, 829 NYS2d 873 [Civ Ct Kings Co 2007]).

Accordingly, it is hereby ORDERED that respondent's Order to Show Cause is granted to the extent of staying execution of the warrant of eviction through May 31, 2023. The City Marshal may pre-serve the 14-day Notice of Eviction and may do so by first-class mail. This constitutes the Decision and Order of the Court, which the Court is uploading on NYSCEF.



DIANE E LUTWAK, HCJ

Dated: Bronx, New York
March 16, 2023