2023-04-20

Rutledge Apts. LLC v. Rodriguez

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Rutledge Apts. LLC v Rodriguez

2023 NY Slip Op 23118

Decided on April 20, 2023

Civil Court Of The City Of New York, Queens County

Ressos, J.

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Civil Court of the City of New York, Queens County

Rutledge Apartments LLC, Petitioner(s)

against

Juan Rodriguez; Ana Sanchez, Respondent(s)

Index No. LT-055710-20/QU

Maria Ressos, J.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion.

Papers/Numbered
Notice of Motion (Seq. 01), Affirmation and Affidavit in Support 1
NYSCEF Doc. No. 4, 5, 6
Notice of Motion (Seq. 02), Affirmation and Affidavit in Support 2
NYSCEF Doc. No. 12, 13, 14
Affirmation in Opposition to Motion 3
NYSCEF Doc. No. 18
Exhibits 4

NYSCEF Doc. No. 7, 8, 15, 16, 19, 20, 21
Court File, *NYSCEF Doc. No. 1 through 21*

Upon the foregoing cited papers, the Decision/ Order on this motion vacate the ERAP stay (Seq. 02) and motion for a default judgment (Seq. 01) is as follows:

This summary nonpayment proceeding was commenced by Notice of Petition and Petition dated July 21, 2020 seeking a monetary and possessory judgment of the subject premises located at 89-31 Rutledge Avenue, Apt. A, Glendale New York 11385. At the time, petitioner was seeking a total of $6,960.60 in arrears from April 2020 through and including July 2020. Respondent failed to interpose an answer and as directed by DRP 217/222 and AO/34/33, petitioner filed a motion (Seq. 01) for a default judgment on March 25, 2022. The motion was scheduled to be heard in the Housing Motion Part ("HMP") on June 14, 2022 where respondent, Juan Rodriguez, appeared for the first time and was referred to counsel, Queens Legal Services ("QLS"). The case was assigned to resolution Part D and adjourned two more times in the part.

By Notice of Appearance, QLS appeared on behalf of respondent Rodriguez. An attorney answer was filed on NYSCEF on September 15, 2022. On October 6, 2022, the matter was stayed and placed on the COVID-19 Emergency Rental Assistance Program ("CERAP" or "ERAP") Administrative Calendar due to the pendency of Application No. 1NKYQ. Petitioner filed the instant motion (Seq. 02) to vacate the stay and remove the matter off the Administrative Calendar on October 26, 2022. At the time petitioner's motion was filed, the ERAP application status was "under review." However, by the time the motion was heard, the application was [*2]denied and an appeal was allegedly pending. The court does not find the change in application status, largely due to the delay between the filing of the motion and when it was calendared, detrimental to the relief petitioner is seeking. Respondent's counsel did not object or raise it as an issue. After conference of the motion on January 23, 2023, the court reserved decision on the papers.

Petitioner asks that this court vacate the stay imposed by The COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2021, Chapter 56 of the laws of 2021 ("CEEPFA"), specifically, subpart A of part BB of Chapter 56 of the Laws of 2021 establishing a COVID-19

emergency rental assistance program. Petitioner alleged that respondent owed $63,170.37 in rental arrears through October 31, 2022. The court notes that this balance only reflected what was owed at the time petitioner's papers were drafted and more months might have come due as of the date of this decision. Petitioner argues that even if respondent's ERAP application were to be approved at the maximum amount of $33,750.00 (15 months at a rate of $2,250.00 per month), respondent would still owe just as much or more in arrears. Therefore, maintaining the stay under these facts, would be "counterintuitive and prejudicial... [because] ( ) approval of the application will not result in the preservation or creation of a tenancy." See, *Actie v. Gregory*, 2022 NY Slip Op 501117[U] (Civ. Ct. Kings Co. 2022). Petitioner argues that despite the statutory language imposing a stay in nonpayment proceedings, various Appellate and Court of Appeals courts discuss the pitfalls with literal applications of statutory language when, such as here, equity demands vacating the stay. (See, *In re Folsom's Petition*, 56 NY 60, 11 Sickels 60 (1874), *Willis v. McKinnon*, 178 NY 451, 16 Bedell 451 (1904), *People v. Santi*, 818 N.E.2d 1146, 785 N.Y.S.2d 405, 3 NY3d 234 (2004)) and *89 Christopher Inc., v. Joy*, 35 NY2d 213, 360 N.Y.S.2d 612 (1974). Lastly, petitioner touches upon due process concerns involving automatic stays like those addressed by the Supreme Court in *Chrysafis v. Marks*, 141 S. Ct. 2482 (2021).

In opposition, respondent alleges that what petitioner is asking the court to do is determine respondent's eligibility for funds, which is something that has been left within the Office of Temporary and Disability Assistance's ("OTDA") discretion. See, *Harbor Tech LLc v. Correa*, 73 Misc 3d 1211(A) (Civ. Ct. Kings 2021). As to any due process concerns, there cannot be a violation where petitioner has and is *currently* exercising their right to challenge an ERAP stay. The Court agrees with respondent's latter point. Respondent goes on to attack petitioner's primary argument of futility by distinguishing this case from the facts in *Samuel Actie v. Tawana Gregory, 2*022 NY Slip Op 501117[U] (Civ. Ct. Kings Co. 2022). *Actie* was a holdover proceeding where an ERAP stay was vacated because petitioner was seeking to recover possession of the premises for their personal use, and under those facts, petitioner's right to proceed with the holdover was unfettered. Whereas the instant proceeding is a nonpayment and an award from ERAP would cover part of the arrears accrued, directly addressing some of the

relief sought in the petition. Respondent alludes that petitioner's unwillingness to simply "wait" any longer is not a basis for a stay. In support, respondent cites to a Bronx decision where the Hon. Hahn refused to vacate an ERAP stay declaring that "impatience is not a sufficient basis." See, *Exhibit 1 — Mangan Realty LLC v. Rodney Barzey*, NYSCEF Doc No. 20.

Moreover, despite the denial of the ERAP application, respondent maintains that a stay should continue pending its appeal as instructed in the June 29, 2022 Administrative Order ("AO") 158/22 issued by then Chief Administrative Judge Marks. In support, respondent cites to *Frischer v. Goldner*, a Kings County case where the court lifted an ERAP stay only because [*3]respondent failed to proffer proof of the appeal. Respondent asks this court to deduce that had there been proof of the appeal, that proceeding would have been stayed. 2022 NY Slip Op 51060(U) (Civ. Ct. Kings Co. 2022). The court notes that petitioner did not file an affirmation in reply.

Contrary to respondent's contention, the court does not surmise that petitioner is asking this court to determine whether respondent would be "eligible" to receive funds. In fact, petitioner concedes that respondent is a tenant with rental arrears but takes the position that an ERAP award *alone* would not resolve this case and therefore a stay at this juncture is futile. Although OTDA determines *fund eligibility*, precedent reiterates that courts have the "inherent power, and indeed responsibility, to the administration of justice, to control their calendars and to supervise the course of litigation before them" which includes *stay eligibility*. *Mason v. Reyes*, 2022 NY Slip Op 50458(U), 75 Misc 3d 1210(A) (Civ. Ct. Kings Co. 2022), citing, *Grisi v. Shainswit*, 199 AD2d 418 (AD 1st Dept 1986). *See also*, *Buddy Associates LLC v. Ahart*, 2023 NY Slip Op. 50173(U) (Civ. Ct. Bronx Co. 2023), and *Laporte v. Garcia*, 75 Misc 3d 557, 559 (Civ Ct., Bronx Co. 2022). CPLR 2201 grants courts in a civil action inherent power to control their own proceedings and stay cases in their discretion. In *2986 Briggs LLC v. Evans*, 74 Misc 3d 1224(A) (Civ. Ct. Bronx Co. 2022), the Hon. Lutwak, upon reviewing the ERAP statute and its legislative intent determined that the court "does have the authority to lift an ERAP stay in an appropriate case " *Id*. See, also *Abuelafiya v. Orena*, 73 Misc 3d 576 (Dist. Ct. 3rd Dist., Suffolk Co. 2021); *Kelly v. Doe*, 2022 NY Slip Op. 22077 (Civ. Ct. Kings Co. 2022). As correctly recounted

by petitioner, courts have found a basis to vacate an ERAP stay relying on the legal principle of futility. See, *Actie v. Gregory*, 2022 NY Slip Op 501117[U] (Civ. Ct. Kings Co. 2022), *Silverstein v. Huebner* 72 Misc 3d 1212(A), 2021 NY Slip Op. 50702(U) (Civ Ct. Kings Co. 2021).

The principle of futility enables a court to utilize its equitable authority to refuse to grant specific relief when it is expected to have little to no practical impact. To rely *solely* on the plain reading of a statute, as respondent did in their opposition, is to ignore the very essence of the Supreme Court's holding in *Chrysafis v. Marks*, 141 S. Ct. 2482 (2021). The Supreme Court's holding that Part A of CEEPFA, self-certification of a financial hardship, "violates the Court's longstanding teaching that ordinarily no man can be a judge in his own case," is a prime example of how the plain reading of a statute cannot be applied blindly or in a vacuum where "real-life" implications are ignored. *Id*. In response to *Chrysafis*, courts heard challenges to the filing of COVID-19 hardship declarations on notice of motion accompanied by an attestation to a good faith belief that a party was not experiencing hardship. See, *115 Spring, Inc. v Augustine*, 2021 NY Slip Op 51133(U), 73 Misc 3d 1226(A) (2021). Hardship declarations were readily filed in holdover *and* nonpayment proceedings. Logically, if a party has the right to challenge another's right to a hardship stay on a good faith factual basis, the same must be true for an ERAP stay, even in a nonpayment case.

Here, petitioner's *prima facie* showing of futility shifts the burden to respondent to overcome it, which respondent failed to do. To start, respondent did not submit an affidavit in support of the opposition to lift the stay. Absent from respondent's attorney's affirmation is any explanation as to how respondent plans on *preserving his tenancy* and meeting his rental obligations *if* his appeal is successful. An ERAP award may be helpful to reduce arrears, but it is not an ultimate solution since it does not resolve the entirety of petitioner's claim. Furthermore, the Appellate Term, First Department in *Bank of eN.Y. Trust Co., N.A. v Courtney*, 2023 NY Slip [*4]Op 23075, recently vacated an ERAP stay finding that respondent was not a "tenant or occupant obligated to pay rent" where respondent "*neither alleges nor submits proof* [emphasis added] of a rental agreement." This holding is in opposition to how some lower courts

maintained ERAP stays in "in *any* pending eviction proceeding [emphasis added]". *Id*. Similarly, here, respondent did not allege or submit anything that directly addresses petitioner's concerns surrounding how this tenancy will be preserved. Additionally, although the ERAP statute does not state an applicant must pay ongoing rent during a stay, the frequently asked questions ("FAQ") section of the OTDA website advises that an applicant "remains responsible" for paying rent. While the arrears continue to climb in this 2020 nonpayment case, respondent has not alleged any attempt to tender rent payments for months that would not be covered by a full 15-month ERAP award. See, *CPM Tudor Vill., LLC v. Atkinson*, 77 Misc 3d 1214(A), 178 N.Y.S.3d 430 (NY Dist. Ct. 2022) (ERAP stay is limited to 15 months and failure to pay rent after 15 months, even while awaiting an ERAP decision, is grounds to issue a warrant of eviction). The Court finds that respondent's failure to address petitioner's futility argument did not even establish grounds for a hearing on the issue.

The Court finds another basis to vacate the ERAP stay in that where a statute describes the situations to which it is to apply, an "irrefutable inference must be drawn that what is omitted or not included was intended to be omitted or excluded." See, *Bank of NY Trust Co., N.A. v Courtney*, 2023 NY Slip Op 23075 (Appellate Term, 1st Dep't 2023), citing McKinney's Cons Laws of NY Book 1, [*2]Statutes, § 240. See e.g, *United Sav'n Ass'n of Texas v. Timbers of Inwood Forest*, 484 U.S. 365, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988) (Statutory construction is a "holistic endeavor"). The statute does not specify that an appeal of an ERAP application is a basis for a stay. Surely had the legislature intended to include appeals, it "could have chosen to do so through appropriately worded legislation." *Bank of NY Trust Co., N.A. v Courtney*, 2023 NY Slip Op 23075 (Appellate Term, 1st Dep't 2023). Instead, the amended Section 8 of subpart A of part BB of chapter 56 of the law of 2021, titled "restrictions of eviction" states:

"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 not be commenced against a household who has applied for this program or any local program administering federal emergency rental assistance program funds *unless or until a determination of ineligibility is made* [emphasis added]. Except as provided in section nine-a of this act, in 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* [emphasis added]." *Part BB, Subpart A, section 8 of Chapter 56 of the Laws of 2021, as modified by L. 2021, c 417).aa*

The Court interprets this part of the statute to mean that a denial of an ERAP application, notwithstanding an appeal, is a determination of *ineligibility*. This is keeping in line with cases that deduced a "provisional approval" equates to a "determination" under the ERAP statute and "just as the stay is triggered by an application, it is dissolved by a determination." See, *653 LLC v. Rosa-Blano*, 2023 NY Slip Op. 50033(U) (Civ. Ct. Bronx Co. 2023), citing, *Park Tower South Company LLC v. Simons*, 75 Misc 3d 1067, 1071, 171 NYS3d 342 (Civ. Ct., New York Co. 2022).

Even if the court were to find an appeal warrants a stay, respondent has not met their burden of proving an appeal is pending. In paragraph 13 of the affirmation in opposition, respondent's counsel affirms that "an appeal request was submitted, and the appeal number is AE0006145." See, NYSCEF Doc. No. 18. However, no documentary proof was submitted in support. Unlike the initial filing of an ERAP application, where upon furnishing a five-digit application number and date of birth, a third party can check the status, no such mechanism exists for an appeal. Moreover, OTDA's website provides little information on the process. What the OTDA website does indicate is that an applicant has thirty (30) days form the date of an ERAP determination notification to request an appeal. Here, respondent has not alleged or submitted proof that the appeal was submitted timely, within the thirty (30) day period. OTDA's website also states that after an appeal is filed, an applicant will get written a Confirmation Notice by email or regular mail, which confirms receipt of the appeal and explains that additional documents or information must be submitted within ten (10) days from the date of the notice. Respondent has not provided proof of any such confirmation notice. In conclusion, what seems to be a lackadaisical appeals process cannot turn into an indefinite stay because it would create an "absurd result [ ] to be avoided." *United States v. Turkette*, 452 U.S. 576, 580, 101 S. Ct. 2524, 2527, 69 L. Ed. 2d 246 (1981), see also, *United States v. Dauray*, 215 F.3d 257, 264 (2d Cir. 2000).

To summarize, the objective of the ERAP program should not be overlooked. The intent has consistently been to assist renters who accumulated arrears during the height of the COVID-19

pandemic and to compensate landlords for past rent. Nonetheless, an ERAP stay must not be applied so broadly that it is ostensibly used as a sword instead of a shield. Although impatience alone is not sufficient to justify lifting an ERAP stay, the Court is obliged to address the presented facts appropriately, and for the reasons mentioned above, the stay must be lifted. Petitioner's motion (Seq. 02) is granted. Petitioner's motion for a default judgment (Seq. 01) is denied as moot. Respondent interposed an answer to this proceeding in September 2022 that was never challenged by petitioner. See, NYSCEF Doc. No. 11.

This matter is adjourned for trial or settlement on June 8, 2023 at 2:30pm in Part D, Room 406. This constitutes the Decision/Order of the Court. A copy of this Decision/Order to be uploaded to NYSCEF.

Date: April 20, 2023

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Judge of the Housing Court
Maria Ressos

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