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DIEGO BEEKMAN M.H.A. HDFC v. BRITO

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

-----X		
DIEGO BEEKMAN M.H.A. HDFC,	:	L&T Index No.
Petitioner,	:	311364/21
-against-	:	Motion Seq. No. 1
JARELIS BRITO,	:	
Respondent.	:	DECISION/ORDER
-----X		

Present: Hon. HOWARD BAUM
Judge, Housing Court

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of the motion by Diego Beekman M.H.A. HDFC:

Papers	Numbered
Notice of Motion; Affirmation and Affidavit in Support, Exhibits 1 and 2; and Affirmation of service	<u>NYSCEF Doc. # 7 - 12</u>
Affirmation in Opposition; and Exhibits A through D; and Memorandum of Law	<u>NYSCEF Doc. # 16 - 22</u>
Reply	_____

After oral argument and upon the foregoing cited papers, the decision and order on this motion is as follows:

This is a summary non-payment proceeding commenced by Diego Beekman M.H.A. HDFC (“Petitioner”) against Jarelis Brito (“Respondent”) by notice of petition and petition dated September 30, 2021. The petition alleges that when the proceeding began Respondent owed \$1,067.76 in rent arrears covering the months of December 2020 through March 2021. Further, the petition alleges the parties participate in the Section 8 rent subsidy program administered by the New York City Housing Authority.

As relevant to this motion, the court was notified that, or about, October 19, 2021, Respondent filed an application for rental assistance from the Emergency Rental Assistance Program (“ERAP”). Based on the notification, and pursuant to Section 8 of the statute that established ERAP in New York State (“the ERAP Law”), this proceeding was placed on the court’s administrative stay calendar pending a determination of the application. *See*, L 2021, c 56, Part BB, Subpart A, § 8, as amended by L 2021, c 417, Part A, § 4; *see also* Admin Order of Chief Admin Judge, AO/34/22.¹ The stay was imposed subject to Petitioner’s right to move this court for an order lifting the stay upon demonstration that the stay provisions of the statute do not apply to the factual circumstances of this proceeding.

In this motion, Petitioner seeks such an order. Petitioner asserts Respondent’s rent arrears have increased to \$6,178.98 through December 2022. Further, Petitioner asserts that according to the New York State Office of Temporary and Disability Assistance (“NYS-OTDA”), the agency that administers ERAP, applicants like Respondent, who receive a rent subsidy, “are a low priority in the ERAP application pool, because state law requires that priority be given to applicants who do not receive rent subsidies.” Therefore, Petitioner argues it will be unfairly prejudiced if the stay on this proceeding continues asserting both, that it is “unlikely that a decision will be rendered [on Respondent’s application] or that...the rental arrears will be paid,” and that, according to the NYS-OTDA, Respondent’s application “will not be paid.”

¹ Administrative Order of Chief Admin Judge, AO/34/22, has since been superseded by AO/158/22.

Respondent opposes the motion. Respondent asserts that based on the language of the ERAP Law, the proceeding should continue to be stayed until a determination is made on the ERAP application.

Discussion

The determination of this motion requires the court to interpret the meaning of Section 8 of the ERAP Law, titled “Restrictions on eviction,” as amended by Chapter 417, Laws of 2021, Part A, § 4. Section 8 authorizes the imposition of a stay of Housing Court proceedings while an ERAP application is pending.²

Section 8 of the ERAP Law states, in pertinent part,

...[E]viction proceedings for...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...unless or until a determination of ineligibility is made...[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...all proceedings shall be stayed pending a determination of eligibility...

The starting point in the interpretation of a statute is the statutory text. *Walsh v New York State Comptroller*, 34 NY3d 520 (2019); *Smith v Donovan*, 61 AD3d 505 (1st Dept 2009). The court is required to give the statute a sensible and practical overall construction taking into consideration its intent and scheme and harmonizing its various provisions. *Estate of Youngjohn v. Berry Plastics Corporation*, 36 NY3d 595 (2021); *Long v. Adirondack Park Agency*, 76 NY2d 416 (1990).

² The statute exempts from the stay provision eviction proceedings in which the tenant and/or occupant of an apartment is alleged to have caused significant damage to the property or to be engaging in persistent and unreasonable “nuisance”-type behavior. L 2021, c 56, Part BB, Subpart A, § 8, as amended by L 2021, c 417, Part A, § 6.

The ERAP Law was enacted to facilitate the distribution of federal funds allocated to the state to assist eligible applicants to the program who fell into rent and utility arrears due to the COVID-19 pandemic. *2986 Briggs LLC v. Evans*, 74 Misc 3d 1224(A) (Civ Ct Bronx County 2022). The legislative intent of the stay provision within the ERAP Law is to provide eligible applicants for assistance a temporary stay of an eviction proceeding, such as this non-payment proceeding, to give the NYS-OTDA time to determine their applications thereby affording the eligible applicants “an opportunity to preserve and manage their tenancies with the disbursement of funds if they are determined to be eligible for the program.” *Elliot Place Props. Inc. v. Jaquez*, 77 Misc 3d 1230(A) (Civ Ct Bronx County 2023).

Section 5(1)(a) of the ERAP Law, titled “Eligibility,” states, in pertinent part,

A household, regardless of immigration status, shall be eligible for emergency rental assistance, or both rental assistance and utility assistance...if it: (i) is a tenant or occupant obligated to pay rent in their primary residence in the state of New York...provided however that occupants of federal or state funded...subsidized housing that limits the household’s share of the rent to a set percentage of income shall only be eligible to the extent that funds are remaining after serving all other eligible populations.

This court lacks the authority to approve or deny an ERAP application. According to Section 3 of the ERAP Law, that authority rests with the NYS-OTDA. Nevertheless, this court has the authority to lift a stay placed on an eviction proceeding where a filed ERAP application is under review, where the applicant does not meet the eligibility requirements of the statute. *Valsac 908 LLC v Crespo*, 75 Misc 3d 1213(A) (Civ Ct NY County 2022); *Mason v. Reyes*, 2022 WL 1763746 (Civ Ct Kings County 2022); *Zheng v. Guiseppone*, 74 Misc 3d 1231(A) (Civ Ct Richmond County 2022); *2986 Briggs LLC v. Evans*, 74 Misc 3d 1224(A) (Civ Ct Bronx County 2022); *U.S. Bank Trust, NA v. Alston*, 74 Misc 3d 1068 (Justice Ct Town of Pleasant Valley 2022); *c.f.*, *560-566 Hudson LLC v. Hillman*, 2022 WL 1003480 (Civ Ct NY County); *204 West*

55th Street, LLC v. Mackler, 2021 WL 6805121 (Civ Ct NY County 2021). Based on the legislative scheme of the statute, there is no reason to conclude the legislature intended for an eviction proceeding to be stayed if the respondent in the eviction proceeding, who has filed a pending ERAP application that has been accepted for review by NYS-OTDA, does not meet the criteria for eligibility stated in the statute.

On the record presented on this motion, Petitioner does not argue Respondent fails to meet the eligibility criteria set forth in the statute. As alleged in the petition, Respondent is the tenant of the apartment that is the subject of this proceeding and has an obligation to pay rent pursuant to a rental agreement. *See*, Petition, paragraph 2; Section 5(1)(a)(i) of the ERAP Law. Moreover, Petitioner is not contesting that a non-payment proceeding such as this is a type of eviction proceeding that is stayed, pursuant to the statute, when there is an application for assistance from ERAP that is pending with the NYS-OTDA. *See*, Section 8 of the ERAP Law.

The fact that Respondent's ERAP application has not been determined by NYS-OTDA³ although it has been pending with the agency for more than nineteen (19) months is not a basis to vacate the stay placed on the proceeding where, as here, it has not been contested that Respondent meets the eligibility criteria for an award of ERAP funds. Under these circumstances, pursuant to Section 8 of the ERAP Law, the stay of this proceeding is required to remain in place until the NYS-OTDA makes its determination as to whether Respondent is entitled to the disbursement of ERAP funds to pay rent arrears on her behalf.

³ The website provided by NYS-OTDA to check the status of ERAP applications states, as of today, that Respondent's application (under application number QHVBH) continues to be "Under Review."

Petitioner's argument that the stay on the proceeding should be vacated because of an advisory statement posted on the NYS-OTDA website, stating that applications filed by tenants who receive a governmental rent subsidy are currently not being paid and will not be paid until after all other eligible applicants have had their applications reviewed and paid, is unavailing. The advisory essentially re-states the language of the ERAP Law. *See*, Section 5(1)(a)(i) of the ERAP Law. As a recipient of a rent subsidy, Respondent's ERAP application will not be determined until all the applications filed by tenants who are not rent subsidized are determined and to the extent funds remain available in the program. Based on the plain language of Section 5(1)(a)(i) of the ERAP Law, quoted above, it was the legislature's statutory scheme to place rent subsidized tenants at the back of the line in terms of the order in which NYS-OTDA was directed to evaluate applications for assistance from ERAP.

Considering the ERAP Law refers to rent subsidized tenants within Section 5(1)(a)(i) yet places no limitation on the application of Section 8 of the statute, regarding stays of eviction proceedings, to rent subsidized tenants, there is no basis to believe the legislature intended to exclude such tenants, from the broad stay provisions within Section 8 of the statute.⁴

Although Petitioner may question the wisdom of the legislature to broadly mandate the stay of non-payment proceedings to include households receiving a rent subsidy that meet the other eligibility requirements of the ERAP Law, it is not the court's role to override the determination of the legislature. *Elliot Place Props. Inc. v. Jaquez*, 77 Misc 3d 1230(A) (Civ Ct Bronx County 2023); *Robo LLC v. Matos*, 75 Misc 3d 1211(A) (Civ Ct Bronx County 2022)

⁴ The legislature amended the ERAP Law approximately five months after its enactment but the only change it made in relation to stays of Housing Court proceedings was to exempt holdover proceedings based on "nuisance" type behavior (*see*, footnote 3, above). *Savy Properties 26 Corp. v. James*, 76 Misc 3d 1214(A) (Civ Ct Kings County 2022).

citing *Xiang Fu He v. Troon*, 34 NY3d 167 (2019) and *Hope v. Perales*, 83 NY2d 563 (1994); *14 N Highstreet, LLC v. Clowney*, 76 Misc 3d 768. *C.f. Bay Park Two-LLC v. Pearson*, 2022 WL 16912279 (Civ Ct Kings County 2022).

Petitioner has not provided any authority for its assertion that “[R]espondent’s application will not be paid, according to [NYS-OTDA].” As stated in the ERAP Law, it is possible ERAP will run out of funds before reaching Respondent’s application. It is noted, the NYS-OTDA website currently displays a “March 17, 2023 Important Update for ERAP Applicants” that states, in pertinent part, that “Applications submitted before the application portal closed on January 20, 2023 will continue to be processed in the order received, consistent with State law and program rules. OTDA is currently reviewing and processing eligible ERAP applications submitted through December 15, 2022. Additional applications are expected to be reviewed and processed in the future as funds become available. This notification will be updated if additional funding is available to pay eligible applications submitted after December 15, 2022.” However, as stated by the court in *1661 Topping Realty LLC v. Goodwin*, 2023 NY Slip Op 30881(U) (Civ Ct Bronx County 2023), citing *Harmony Mills W, LLC v. Constantine*, 76 Misc 3d 768 (City Ct Cohoes 2022), this is not the first time NYS-OTDA has issued a statement that due to a limitation on funding it would only consider applications submitted through a specified date only to have that date extended. Moreover, on this record, it has not been demonstrated, based on the NYS-OTDA website statement, that applications submitted by rent subsidized tenants by December 15, 2022, such as Respondent’s, will not be included among those that NYS-OTDA is currently reviewing and processing. *1661 Topping Realty LLC v. Goodwin*, id. Accordingly, the statement on the NYS-OTDA website is not a

determination that ERAP will not pay the request made in Respondent's application or that her application is denied.

For these reasons, Petitioner's motion is denied. Under these circumstances, it is appropriate to leave in place the stay of this non-payment proceeding, pending the determination by NYS-OTDA of Respondent's application, as required by Section 8 of the ERAP Law.

This constitutes the decision and order of the court.

Dated: Bronx, New York
April 3, 2023

APPROVED
HBAUM, 4/3/2023, 1 06 55 PM

**HON. HOWARD BAUM,
J.H.C.**