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### Elton Owner III LLC v. Vasquez

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**Elton Owner III LLC v Vasquez**

2023 NY Slip Op 31058(U)

March 29, 2023

Civil Court of the City of New York, Kings County

Docket Number: Index No. L&T 88152/19

Judge: Malikah Sherman

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This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF KINGS: HOUSING PART C

-----X

ELTON OWNER III LLC,

Petitioner,

INDEX NO. L&T 88152/19

**DECISION/ORDER**

-against-

Seq. No. 1

JENNIFER VASQUEZ

Respondents.

-----X

Present:

Hon. MALIKAH SHERMAN  
Judge, Housing Court

Recitation, as required by the CPLR § 2219(a), of the papers considered in review of this motion to vacate the stay of the proceeding imposed by Respondent’s application for rental assistance through the Emergency Rental Assistance Program

**PAPERS**

**NYSCEF DOC.**

Petitioner’s Notice of Motion & Affidavits Annexed

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Respondent’s Opposition

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The Decision/Order of the Court is as follows:

Petitioner commenced this nonpayment proceeding by counsel in December 2019 for rental arrears owed for the period of June 2019 to December 2019 at \$1,196.00 per month. Respondent filed an answer and the case first appeared on the Court’s calendar on January 9, 2020, when it was adjourned to February 20, 2020, per stipulation. On February 20, 2020, DC 37 Municipal Employees Legal Services filed their Notice of Appearance on behalf of Respondent and the parties entered into a final judgment stipulation for \$10,297.40 with issuance of the warrant forthwith with execution stayed until March 31, 2020, for respondent to pay. Thereafter,

on or about January 9, 2021, Respondent filed a Hardship Declaration due to the COVID-19 pandemic, invoking an automatic stay through January 15, 2022. On December 7, 2021, Respondent's attorney filed a notice of a pending Emergency Rental Assistance Program ("ERAP") application, confirmation number HBJ1X, leading the Court to stay the proceeding, as a determination of eligibility was pending for Respondent's application.

The case next appeared on the Court's calendar on July 25, 2022, in connection with Petitioner's motion for an order vacating Respondent's ERAP stay and restoring the proceeding to the Court's calendar. Respondent filed opposition to same.

Petitioner moves to vacate the automatic stay of the instant proceeding imposed by Respondent's ERAP application, arguing that Respondent owes more than fifteen months of rent in arrears, which is the maximum amount that would be covered by a potential ERAP payment. As such, Petitioner argues that this proceeding should not be stayed merely for payment of partial arrears. Petitioner further argues that the Court should follow the reasoning of *Kristiansen v. Serating*, where the Court retained the stay provided by ERAP for only the portion of arrears covered by ERAP, a total of fifteen months and vacated the stay as to the rest of the arrears sought in the petition and allowed the landlord to commence a new nonpayment case to collect the remaining arrears. 75 Misc 3d 331, 333 [NY Dist Ct 2022].

Petitioner also argues that the automatic stay violates petitioner's due process rights in a manner similar to the findings in *Chrysafis v Marks*, 141 S Ct 2482, 210 L Ed 2d 1006 [2021], and would be unjust in light of the particular facts herein. Petitioner argues that it is prejudiced a continuation of the stay while the arrears owed by Respondent continue to accrue, thus warranting vacatur of the ERAP stay.



Respondent, in opposition, argues that pursuant to the ERAP statute, the proceeding should be stayed pending a determination of her eligibility, regardless of whether the ERAP funds would cover all or part of the arrears owed. Respondent further argues that the plain language of the ERAP statute provides for a stay in this proceeding until a determination is made by the Office of Temporary and Disability Assistance (OTDA). Respondent further argues that Petitioner's due process rights are not being violated by the imposition of the ERAP stay, as ERAP is an assistance program meant to be mutually beneficial to both parties, and the financial benefit to Petitioner that ERAP assistance is designed to provide outweighs the amount of time necessary to make such a determination.

In general, the ERAP statute provides that a summary proceeding is automatically stayed upon an application for benefits pending an eligibility determination by OTDA. L 2021, ch 56, § 1, part BB, § 1, subpart A, sec 1, as amended by L 2021, ch 417, § 2, part A, § 4 ("ERAP statute").

Part A, Section 8 of the COVID-19 Emergency Eviction and Foreclosure Protection Act (CEEFPA), as amended, requires that proceedings be stayed when respondent households have applied for ERAP and certain conditions exist:

§ 8. Restrictions on eviction. 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. Except as provided in section nine-a of this act, *in any pending eviction proceeding* [emphasis added], 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* [emphasis added], all proceedings shall be stayed pending a determination of eligibility. Evidence of a payment received pursuant to this act or a local program administering federal emergency rental assistance program funds may be presented in such proceeding

and create a presumption that the tenant's or occupant's rent or utility obligation for the time period covered by the payment has been fully satisfied.

CEEFPFA Part A, § 8 requires that most existing proceedings be stayed pending an ERAP determination of eligibility. An exception to this stay exists for petitions containing allegations of significant nuisance behavior, which does not apply here. *See* CEEFPFA Part A, § 9-A.

The plain language of the statute, as cited above, clearly indicates that any pending ERAP application stays a proceeding until an eligibility determination is made. Although the determination of eligibility for ERAP funds rests with the OTDA, the Court has inherent authority to determine whether a stay applies or should be lifted, based on the circumstances of each case. *Mason v. Reyes*, 75 Misc 3d 1210(A) [Civ Ct, Kings County 2022]; *2986 Briggs LLC v. Evans*, 74 Misc 3d 1224(A) [Civ Ct, Bronx County 2022].

In this case, the Court has confirmed that a determination of eligibility is still pending for respondent's ERAP application. This is a nonpayment proceeding where Respondent has an obligation to pay rent to Petitioner, and she has applied for ERAP to address the rental arrears owed to Petitioner. Therefore, Respondent is entitled to continuance of the stay pursuant to the ERAP statute even if she owes more than fifteen months in rental arrears and the ERAP funds would not cover all outstanding arrears. *See Mason v. Reyes*, 75 Misc 3d 1210(A) [Civ Ct, Kings County 2022]; *Elliot Place Props. Inc. v. Jaquez*, 2023 NY Misc LEXIS 346, 2023 NY Slip Op 50067(U) [Civ Ct, Bronx County 2023]. The plain reading of the statute supports that finding. The statute states that if a respondent applies for the program to cover "all or part of the arrears claimed by the petitioner" then the proceeding shall be stayed pending OTDA's determination of eligibility. L. 2021, Ch. 56, Part BB, Subpart A, § 8 as amended by L. 2021, Ch. 417, Part A, § 4. Petitioner, in commencing this non-payment proceeding, acknowledges



that Respondent is a tenant that allegedly owes rental arrears. An approval by the ERAP program would assist Respondent in paying her arrears and would assist in preserving a tenancy as explicitly contemplated in the legislative intent prefacing the statute.

The ERAP statute was drafted by the legislators to address the needs of people who were financially impacted by the COVID-19 pandemic, by temporarily freezing the court proceedings for applicants who are eligible for financial assistance through the program. The ERAP statute's goals are to allow New Yorkers to stay in their homes, to "cover[] the cost of rent arrears and provid[e] widespread eviction protections." See L. 2021, Ch. 417, §2. In enacting laws, the legislature determines the public policy of a state. "Public policy determined by the legislature is not to be altered by a court by reason of its notion of what the public policy ought to be."

*Desrosiers v Perry Ellis Menswear, LLC*, 30 NY3d 488, 497 [2017] [internal citations omitted].

It is not the role of the court to "second-guess" the determination of the legislature; the court may not substitute its own determination therefor *Savy Props. 26 Corp. v. James*, 76 Misc 3d 1214(A), 2022 NY Slip Op 50942(U) [Civ Ct, Kings County 2022] citing *Cohen v. State of New York*, 94 NY2d 1, 14-15 [1999].

The Court does not agree with Petitioner's argument that the automatic stay violates its due process rights in the manner described in *Chrysafis v. Marks*, 141 S Ct 2482, 210 L Ed 2d 1006 (2021) . The issue in the *Chrysafis v. Marks* case was that the landlords were unable to challenge the hardship declarations filed by their tenants, thereby making the tenant a "judge in his own case." *Id.* However, the tenant's ERAP application is not reviewed by the tenant, but is explicitly subject to an eligibility determination by OTDA. See *Savy Props. 26 Corp. v. James*, 76 Misc 3d 1214(A), 2022 NY Slip Op 50942(U) [Civ Ct, Kings County 2022]. In addition, the landlords can challenge the stay imposed by the tenant's filing of an ERAP application by

making motions to the court to vacate the stay, which can be, and have been granted in appropriate circumstances. *See Actie v Gregory*, 74 Misc 3d 1213(A), 2022 NY Slip Op 50117[U] [Civ Ct, Kings County 2022] (ERAP stay was vacated where the petitioner sought to recover possession of the premises in a four or less unit building, for himself and the use of his family); *Kelly v Doe*, 2022 NY Slip Op 22077 [Civil Ct Kings Co 2022] where court found alleged squatters were presumably not tenants entitled to an ERAP stay as there was no rent sought or owed).

Based on the above, the proceeding is stayed pending a determination of eligibility under the ERAP program. Petitioner's motion is denied in all aspects. This decision will be uploaded to the New York State Courts Electronic Filing system.

So Ordered,

March 29, 2023



Hon. Malikah Sherman, J.H.C.