2023-04-05

4325 Hunter Affordable Lessee L.L.C. v. Johnson

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43-25 Hunter Affordable Lessee L.L.C. v Johnson
2023 NY Slip Op 50264(U) [78 Misc 3d 1219(A)]
Decided on April 5, 2023
Civil Court Of The City Of New York, Queens County
Schiff, J.
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Decided on April 5, 2023

Civil Court of the City of New York, Queens County

43-25 Hunter Affordable Lessee L.L.C., Petitioner-Landlord,

against

Carla Johnson, Respondent-Tenant

Index No. L&T 301461/20

Logan J. Schiff, J.

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of Petitioner's motion by order to show cause to vacate the automatic stay imposed by Respondent's pending Emergency Rental Assistance Program application:

Papers NYSCEF DOC.
Order to Show Cause & Affirmation/Affidavits/Exhibits Annexed 7-22
Affirmation in Opposition N/A

Upon the foregoing cited papers, the decision and order on Petitioner's motion is as follows:

The subject nonpayment proceeding was commenced by Notice of Petition and Petition dated October 28, 2020, seeking $1,064.85 in rental arrears in connection with Respondent's

rent-stabilized apartment. After Respondent answered, she retained counsel and applied for rental assistance through the Emergency Rental Assistance Program ("ERAP") in September 2021, thereby effectuating a statutory stay of this proceeding pending a determination of eligibility (L. 2021, c. 56, Part BB, Subpart A, § 8, as amended by L. 2021, c. 417, Part A, § 4). Petitioner now moves to vacate the stay and to restore the proceeding to the calendar, notwithstanding the fact that Respondent's application remains in "pending" status. The court heard argument on the motion on March 30, 2023, and reserved decision.

Petitioner posits several arguments in support of its request to lift the ERAP stay. First, Petitioner asserts that because Respondent is a recipient of a voucher through the CityFHEPS rental assistance program, she is unlikely to be approved for ERAP assistance, as the statute has explicitly deprioritized government-subsidized tenants (L. 2021, c. 56, Part BB, Subpart A, § 5(1)(a)(i)), and the ERAP administrator, the Office of Temporary and Disability Assistance ("OTDA"), has issued guidance on its website stating that it currently lacks funds to approve such applications. Petitioner argues that given the likelihood ERAP funds will never be paid to Respondent it would be unjust, inequitable, and futile to maintain a stay that has only resulted in the rental arrears increasing from $1,064.85 to $21,310.85, benefiting neither Petitioner nor Respondent, who could likely access other public rental assistance benefits if the matter proceeded to trial or settlement. Petitioner further argues that OTDA's online portal indicates that [*2]while Petitioner has submitted all its required documents, Respondent has not done so during the eighteen-month period the application has been pending, further frustrating the purpose of the stay. Lastly, Petitioner argues that imposing an indefinite stay under these circumstances contravenes the United State Supreme Court's admonition in *Chrysafis v Marks*, 594 U.S. — [2021] that "no man may be a judge in his own case," and which enjoined a portion of the COVID Emergency Eviction and Foreclosure Act (New York's eviction moratorium statute during the height of the pandemic), which allowed tenants to self-certify to COVID-related hardship so as to obtain an automatic stay of eviction.

Respondent's counsel did not submit written opposition and appeared virtually to request an adjournment on the return date. The court denied the request and instead exercised its discretion to allow Respondent's counsel to oppose the motion orally (*see Messam v Omeally*, 46 N.Y.S.3d 475 [App Term, 2d, 11th &13th Jud Dists]) without objection from Petitioner, as the parties do not have a factual disagreement. Respondent argues that the plain language of the statute does not permit lifting the automatic stay in a nonpayment proceeding. While Respondent concedes the arrears have increased significantly since this proceeding was commenced, and now exceed more than maximum 15-month award

allowable under ERAP, Respondent's counsel stated that this is a function of Respondent's CityFHEPS subsidy having "dropped off" last year, which Respondent is in the process of restoring retroactively through her local HomeBase office and may result in payment of the majority of the arrears.

DISCUSSION

In matters of statutory interpretation, the court's fundamental role is to effectuate legislative intent (*Matter of Mestecky* 30 NY3d 239, 243 [2017]; *Matter of Sedacca v Mangano* 18 NY3d 609, 615 [2012]). In this endeavor the court must first look to the statutory "language itself, giving effect to the plain meaning thereof" (*Majewski v Broadalbin-Perth Cent. Sch. Dist.*, 91 NY2d 577, 583 [1998] [internal citations and quotation marks omitted]; *see also Kosmider v Whitney*, 34 NY3d 48, 55 [2019]).

The plain language of the statute at issue here is unambiguous in imposing a stay of eviction proceedings pending a determination of eligibility. It provides that:

> "... 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 [by the Office of Temporary and Disability Assistance]."

(L. 2021, c. 56, Part BB, Subpart A, § 8, as amended by L. 2021, c. 417, Part A, § 4).

Petitioner does not dispute that Respondent meets the definition of a "household," or that the underlying application seeks eligible "arrears," the types of threshold determinations this court may make in connection with the imposition of the stay, and which suffice to comply with the Supreme Court's mandate in *Chrysafis* for meaningful judicial review (*see Bank of NY Trust Co v Courtney*, 2023 NY Slip Op 23075 [App Term,1st Dept 2023] [former owner was not liable for rent in post-foreclosure holdover and therefore did not meet definition of household in the statute]; *2986 Briggs LLC v Evans*, 74 Misc 3d 1224(A)[Civ Ct, Bronx Co 2022] [licensee ineligible for rental assistance under the statute so as to invoke stay]). Instead, Petitioner asks the court to read in an implied exception for a presumptively eligible application because [*3]Respondent's rental obligations are government-subsidized, and she is therefore unlikely to be approved for ERAP assistance in the absence of additional federal funding.

Notwithstanding the pragmatic appeal of Petitioner's argument — indeed the court notes that the continued imposition of the stay here has arguably been prejudicial to both parties, as the arrears have ballooned with no end in sight while Respondent's rental subsidy remains suspended — this court sees no basis in law for disregarding the plain language of the statute and reaches the same conclusion as other courts on this precise issue (*see Clinton Arms Assoc. v De Gonzalez*, 2023 NY Slip Op 23079 [Civ Ct, Bronx Co 2023]; *Elliot Place Properties v Jaquez*, 77 Misc 3d 1230(A)[Civ Ct, Bronx Co 2023]; *1661 Topping Realty LLC v. Goodwin*, 2023 NYLJ LEXIS 737 [Civ Ct, Bronx Co 2023]).

If anything, a review of the legislative intent surrounding ERAP supports a broad imposition of the stay in nonpayment proceedings, as the statute's preamble states that the legislature "is especially cognizant of the ongoing risks posed by *residential evictions stemming from non-payment of rent* during the height of the public health emergency, and its recovery period, such as the potential to exacerbate the resurgence of COVID-19, the damage significant numbers of evictions would cause to the state's economic recovery, and the deleterious social and public health effects of homelessness and housing instability." (L. 2021, c. 417, § 2 [emphasis added]). Furthermore, in amending the statute following the Supreme Court's *Chrysafis* holding, the legislature created an exception to the ERAP stay in instances of nuisance-like conduct (L. 2021, c. 417, Part A, § 6 [adding a new section 9-a to L. 2021, c. 56, Part BB, Subpart A]). "Where a statute creates provisos or exceptions as to certain matters the inclusion of such provisos or exceptions is generally considered to deny the existence of others not mentioned," as to rule otherwise "would give effect to an assumed legislative intent by judicial construction" (*Kimmel v. State of New York*, 29 NY3d 386, 394 [2017] [internal citation omitted]).

In the absence of evidence of legislative intent, equitable and policy-based considerations do not endow this court with the discretion to reject a statute's unequivocal mandate (*see Desrosiers v Perry Ellis Menswear, LLC*, 30 NY3d 488, 497 [2017] ["[P]ublic 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."] [internal citations omitted]; *Chazon, LLC v Maugenest*, 19 NY3d 410 [2012] [Rejecting judicially-crafted exceptions to Multiple Dwelling Law § 302(1)(b) and noting that "If that is an undesirable result, the problem is one to be addressed by the Legislature."] [internal quotation marks omitted]; *Savy Properties 26 Corp. v. James*, 174 N.Y.S.3d 824 [Civ Ct, Kings Co 2022] ["Neither the statutory text [of ERAP], nor in this court's opinion, an examination of the spirit, purpose, or history of the legislation, allow for any other conclusion as to the legislative intent except that ... proceedings are stayed until

there is a determination of eligibility from [OTDA]. ... The court does not agree that a determination as to an applicant's eligibility for ERAP may be made by the court."]).

Lastly, the court rejects Petitioner's argument that the failure of Respondent to timely submit her required documents, as potentially indicated on the OTDA website, is a basis for lifting the stay. The statute delegates all decision-making authority to OTDA (L. 2021, c. 56, Part BB, Subpart A, §§ 2(1), 3, 5; *Harbor Tech v Correa*, 73 Misc 3d 1211(A) [Civ Ct, Kings Co 2021]). It is therefore up to OTDA to determine whether Respondent's failure to submit a complete application is grounds for a denial. To the extent Petitioner believes OTDA has unreasonably delayed in making a final determination, its remedy is with the administrative [*4]agency.

Accordingly, based on the above findings, this court denies Petitioner's motion in its entirety. This constitutes the decision and order of the court.

Dated: April 5, 2023
Queens, New York
HON. LOGAN J. SCHIFF, J.H.C.