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Audubon 27, LLC v Serrata
2023 NY Slip Op 23170
Decided on May 31, 2023
Civil Court Of The City Of New York, New York County
Bacdayan, J.
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Decided on May 31, 2023

Civil Court of the City of New York, New York County

<p style="text-align: center;">Audubon 27, LLC, Petitioner,</p> <p style="text-align: center;">against</p> <p style="text-align: center;">Jose Leonardo Serrata, Respondent.</p>

Index No. 056366-19

Horing, Welikson, Rosen & Digrugilliers PC (David Burton, Esq.), for petitioner

New York Legal Assistance Group (Nicolas Shump, Esq.), for respondent

Paula Campbell, guardian ad litem for respondent

Karen May Bacdayan, J.

Recitation, as required by CPLR 2219 (a) of the papers considered in review of this motion by NYSCEF Doc No: 10.

Background

This is a nonpayment proceeding commenced by Audubon 27, LLC ("petitioner")

against Jose Serrata ("respondent"). Respondent is a vulnerable individual who is not able to effectively defend his rights or protect his interests in his apartment; as such, the court has appointed a guardian *ad litem*. Currently, almost \$75,000 in arrears is owed; however, to settle the proceeding and in order for respondent to obtain City Family Homelessness and Eviction Prevention Supplement ("CityFHEPS"),^[FN1] the landlord agreed to accept a generously reduced amount of arrears in full payment. The parties entered into an agreement to waive 50% (fifty per cent) of the arrears then owing. (NYSCEF Doc No. 10.) All necessary documents were marshaled with the assistance of Adult Protective Services ("APS"), respondent's attorney, and respondent's guardian *ad litem*. According to respondent's guardian and APS, the completed CityFHEPS application was submitted *three* months ago in early March 2023.

The application is being processed through Homebase. Homebase is the appellation for non-profit community organizations who assist tenants with, *inter alia*, applying for CityFHEPS. The New York City Human Resources Administration ("HRA") website advertises Homebase locations as providing "[d]edicated . . . staff across the five boroughs . . . to evaluate households' specific needs, offering a variety of services to help New Yorkers achieve housing stability. . . ." ^[FN2] Unfortunately, as with the instant proceeding, notwithstanding the stated dedication of DSS/HRA and Homebase, the court is aware of numerous instances where delays and inaccessibility on the part of the relevant branches of DSS have forced vulnerable families who are presumptively eligible for CityFHEPS to the brink of displacement;^[FN3] or actual eviction.^[FN4]

On November 14, 2022, three weeks before this proceeding was settled with a 50% reduction in rent arrears, Mayor Adams announced "*significant improvements* to the City Family Homelessness and Eviction Prevention Supplement (CityFHEPS) housing voucher program that will ensure more New Yorkers are eligible for the program and make the voucher more flexible and easier to use (emphasis added)."^[FN5] Since the Mayor's announcement, news articles have been published expressing concern about the administration of the CityFHEPS program,^[FN6] New York [*2] City Council hearings have been held, lawsuits have been filed,^[FN7] and judges have found themselves in the position of allowing evictions to go forward as tenants seemingly flounder in a bureaucratic abyss outside of their control. Most recently, on May 25, 2023, the New York City Council passed a legislative package of four bills intended to remove barriers to approval for CityFHEPS. In a statement published by the council, Speaker Adrienne Adams acknowledged that "the City's

arcane policies in administering [CityFHEPS vouchers] are counterproductive. Our legislation to remove these arbitrary obstacles will help reduce homelessness, stabilize communities. . . ." [\[FN8\]](#) The legislation has yet to be signed by the Mayor.

Sua Sponte Joinder of DSS

Amidst this inscrutable milieu, another significant recent legislative development empowers a judge to, when appropriate, sua sponte join DSS in eviction proceedings when a tenant is being evicted for nonpayment of rent. The New York City Civil Court Act Section 110 (d) states in relevant part:

"In addition to any other application of its powers under this subdivision, the court may, on the application of any party or *on its own motion*, join as a party the department of social services of the city of New York in any action or proceeding in which the payment or non-payment of rent by a recipient of or applicant for public assistance pursuant to the social services law is at issue (emphasis added)" (L 2019, ch 397, § 1, eff October 23, 2019.)

This newly created mechanism, rarely employed, promises to be an important procedural means for judges who are inundated with eviction proceedings against tenants seeking some form of assistance from DSS to prevent their displacement into the shelter system. These cases, shrouded in mystery, most often require numerous adjournments, and/or numerous orders to stay an eviction that stretch the bounds of judicial discretion. Here, the proceeding is based on nonpayment of rent, and the delays in processing respondent's CityFHEPS application have put the CityFHEPS program "at issue." (*Id.*) Respondent, has the support of an attorney, APS, and a guardian *ad litem*, the trifecta of resources for the successful defense of an eviction proceeding in Housing Court. Even so, it has been three months since respondent's application was submitted to Homebase. "[W]here the bureaucracy has apparently stumbled and where the presence of the Commissioner might avert a miscarriage of justice in the Housing Court, joinder should be ordered." (*Trinity Holy Church of Christ v Frazier*, 88 Misc 2d 351, 352 (Civ Ct, New York County 1976].)

Thus, pursuant to CCA 110 (d), the court on its own motion hereby joins the New York City Department of Social Services, in this proceeding, in order to explicate the issues surrounding the difficulties encountered obtaining respondent a CityFHEPS voucher. Joinder is warranted not only for resolution of respondent's eviction proceeding, but also to control the court's calendar. The Housing Court Docket is congested with motions for possessory judgments and stays of eviction due to the incongruous inaccessibility of the city agency

which recently announced, with the appointment of a new commissioner in April 2023, an "integrated mission" [*3] to "seamlessly and efficiently" provide homelessness prevention services. [\[FN9\]](#)

Accordingly, it is

ORDERED that the Department of Social Service is hereby joined in this proceeding on the court's own motion and shall be present at all subsequent court appearances; and it is further

ORDERED that respondent/New York Legal Assistance Group shall serve the Department of Social Services, Attention Legal Department, at 150 Greenwich Street, 38th Floor, New York, New York 10007 with a copy of this decision and order with notice of entry in person, and by email at ServiceDSS@dss.nyc.gov, and file proof of service by both methods on NYSCEF.

The parties, including a knowledgeable representative from DSS, are to appear in Part F, 111 Centre Street, Room 523, New York, NY 10013 at 9:15 a.m. on August 3, 2023.

Dated: May 31, 2023

New York, NY

HON. KAREN MAY BACDAYAN

Judge, Housing Part

Footnotes

[Footnote 1:](#) CityFHEPS is a rental assistance supplement to help individuals and families find and keep housing through the issuance of vouchers and payment of arrears. It is administered the Human Resources and the Division of Homeless services, which together comprise the administrative units of the Department of Social Services.

[Footnote 2:](#) Available at <https://www.nyc.gov/site/hra/help/homebase.page> (last accessed May 31, 2023).

[Footnote 3:](#) For example, in a case before this judge, a tenant with three small children, one of who was disabled, advised the court that he was not able to obtain an appointment to apply for CityFHEPS for almost three months. When he tried to call for an appointment or a status date on when an appointment would be scheduled, no one ever answered. When he emailed various workers or the main email for Homebase, his emails went unanswered, or were returned as undeliverable. When he traveled to his assigned Homebase location to seek information, he was told he would not be allowed into the building without an appointment, or a marshal's notice. In Housing Court, narratives like this are commonplace.

Footnote 4: In *Errol Smith v D'nestra-Celeste Artis*, Index No. 310306/22 (Civ Ct, NY County 2022, NYSCEF Doc No. 34, decision and order), on the seventh appearance of the proceeding in court, respondent's order to show cause seeking yet another stay on the execution of the warrant was denied. Ms. Artis applied for cash assistance from HRA in early November 3, 2022. She was finally approved on January 27, 2023, three months later. This was the first requirement to be eligible for CityFHEPS. The entire process for CityFHEPS approval ultimately took almost five months. Ms. Artis was evicted by a marshal on May 9, 2023 while trying to place her long-awaited voucher, and currently resides in a shelter with her two children, 9 and 11 years old.

Footnote 5: See The Official Website of the City of New York, Office of the Mayor, available at <https://www.nyc.gov/office-of-the-mayor/news/835-22/mayor-adams-takes-major-steps-help-new-yorkers-access-high-quality-housing-more-quickly-move#/0>, last accessed May 12, 2023.

Footnote 6: See, e.g. Mihir Zaveri, *Program That Fights Homelessness Is Mired in Dysfunction, Advocates Say*, NY Times, Apr 5, 2023, available at <https://www.nytimes.com/2023/04/05/nyregion/ny-housing-voucher-program-problems.html>, (last accessed May 31, 2023); Michael Gartland, *Tenants Suing NYC Dept. of Social Services for Cutting Them Off From Rental Assistance*, NY Daily News, Apr 6, 2023, available at <https://www.nydailynews.com/news/politics/new-york-elections-government/ny-tenants-sue-nyc-over-rental-vouchers-20230406-w4y6q2hvwja4tdixiyd6i2yyti-story.html> (last accessed May 31, 2023).

Footnote 7: See n 6, *supra*.

Footnote 8: New York City Council website, Press Releases, available at <https://council.nyc.gov/press/2023/05/25/2411/> (last accessed May 31, 2023).

Footnote 9: Available at <https://www.nyc.gov/site/dss/about/about.page> (last accessed May 31, 2023).

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