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2023-07-10

Tse v. Nunez

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Civil Court of the City of New York
County of Kings

Index # **LT-311273-22/KI**



WING CHEUNG TSE; WINGWAH TSE AKA WING WAH
TSE

Decision / Order

Petitioner(s)

-against-

VILMA NUNEZ; LARRY NUNEZ; "John" "Doe"; "Jane"
"Doe"

Respondent(s)

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

Papers	Numbered
Order to show Cause/ Notice of Motion and Affidavits /Affirmations annexed	NYSCEF 7-9
Answering Affidavits/ Affirmations	NYSCEF 10-17
Reply Affidavits/ Affirmations	_____
Memoranda of Law	_____
Other	_____

Upon the foregoing cited papers, the motion is denied for the following reason(s):

Petitioner commenced this holdover proceeding in June 2022 seeking possession of the subject premises. Respondent appeared by counsel who informed the court that respondent had an application pending for arrears assistance with the COVID-19 Emergency Rental Assistance Program of 2021 (“ERAP”). As a result, the court stayed the proceedings until a determination was made about her ERAP application (as per L 2021, ch 56, § 1, part BB, § 1, subpart A, sec 1, § 8, as amended by L 2021, ch 417, § 2, part A, § 1).


Petitioner herein asks the court to vacate the ERAP stay, arguing that petitioner will not accept ERAP monies and that any ERAP payment would not preserve the tenancy. Petitioner argues that the stay is prejudicial in light of the fact that it will not accept the ERAP funds, even if respondent is approved.

The court denies petitioner's motion. The plain text of the ERAP statute requires that the stay remain in effect, and the court is required to follow the plain text of the statute. *Ami v. Ronen*, 2023 N.Y. Slip Op. 50456(U) (AT 2nd Dep't, Apr. 28, 2023). The statute requires that every nonpayment and holdover proceeding be stayed "until a determination of ineligibility is made." *Id.* (quoting L 2021, ch 56, § 1, part BB, § 1, subpart A, sec 1, § 8, as amended by L 2021, ch 417, § 2, part A, § 1). The petitioner may be entitled to vacate the stay if petitioner claims that the respondent engaged in nuisance behavior, but that is not applicable here. (L 2021, ch 56, § 1, part BB, § 1, subpart A, sec 1, § 9-a, as amended by L 2021, ch 417, § 2, part A, § 6). As such, the ERAP statute requires that the proceeding remain stayed until such time as Ms. Nunez's application is decided or the legislature changes the terms of the stay.

ORDERED: Petitioner's motion is denied. This matter remains STAYED.

This is the decision and order of the court, copies of which are being mailed and/or hand-delivered to the parties.

Dated: Brooklyn, NY
July 10, 2023



Jason P. Vendzules, JHC