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Fulton Park Associates v. Butler

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Civil Court of the City of New York
County of Kings

Index # **LT-308181-22/KI**



Fulton Park Associates

Petitioner(s)

-against-

Andreah E. Butler; Mia Y. Butler

Respondent(s)

Decision / Order

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 8
Answering Affidavits/ Affirmations	NYSCEF 9-11
Reply Affidavits/ Affirmations	_____
Memoranda of Law	_____
Other	_____

Upon the foregoing cited papers, petitioner’s motion to vacate the ERAP stay is denied for the following reasons:

Petitioner commenced this nonpayment proceeding in April 2022 alleging that, at that time, respondent owed \$5,704.00 in rental arrears. The subject apartment is in a HUD-based Section 8 building. Respondent filed a pro-se answer on May 10, 2023, and subsequently retained counsel. Shortly thereafter, respondent informed the court that she 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 now moves to vacate the stay, arguing that ERAP is not paying the arrears of Section 8 tenants and that the stay is therefore futile.

The Office of Temporary and Disability Assistance (“OTDA”), charged with overseeing disbursement of ERAP funds, has heretofore prioritized the applications of tenants who do not receive rental subsidies over those who do. As a result, the applications of tenants such as Ms. Butler have remained pending for long periods of time. Because there is a finite amount of funds available to ERAP applicants, the common wisdom until recently had been that the ERAP coffers

would run dry before the applications of subsidized tenants were processed. Meanwhile, the arrears that these subsidized tenants allegedly owe continue to grow. In many instances, such as the one at bar, the arrears have allegedly ballooned to an amount much larger than the fifteen months that ERAP proposes to pay, and these matters cannot be resolved so long as the stay remains in effect.

Petitioner herein asks the court to vacate the ERAP stay, arguing that the prejudice suffered by the petitioner in waiting for the ERAP determination outweighs any benefit of the stay if there are substantial arrears owed after the stay is lifted.

The court denies petitioner's motion for two reasons. The first is that 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. Tyrells's application is decided or the legislature changes the terms of the stay.

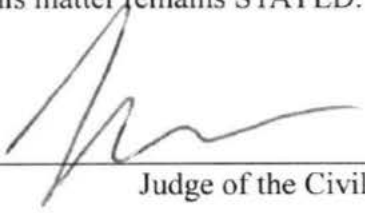
Recent budgetary developments also support the court's denial of petitioner's motion. The recently passed state budget allots \$391 million to support subsidized tenants with pending ERAP applications. ("Governor Hochul Announces Support for Homeowners, Tenants and Public housing Residents as Part of FY 2024 Budget", <https://www.governor.ny.gov/news/governor-hochul-announces-support-homeowners-tenants-and-public-housing-residents-part-fy-2024>, last retrieved on June 28, 2023.) As such, petitioner's claim that Ms.

Butler would likely not receive ERAP funding now appears mistaken. Absent that rationale, the

court lacks any justification to lift the ERAP stay.

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

Date: 7/10/23



Judge of the Civil Court

Civ-GP-85

Hon. Jason P. Vendzules
Judge, Housing Court