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R. WEBER REALTY LLC v. RAMJITSINGH

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS HOUSING PART E

-----X
R. WEBER REALTY LLC,

Petitioner,

INDEX # 56444/20

-against-

DECISION / ORDER

ROGER R. RAMJITSINGH,

Respondent-Tenant.

“JOHN DOE” & “JANE DOE”

Respondents-Undertenants

-----X
Present: Kimon C. Thermos, JHC

Recitation, as required by CPLR 2219(a), of the papers considered in the review of the instant moving papers.

Papers	Numbered
Notice of Motion, Affidavits and exhibits (NYSCEF #30-42).....	1
Affidavit or Affirmation in Opposition (NYSCEF #44).....	2

Appearing for the Petitioner: Gregory Bougopolous, Esq., Novick Edelstein Pomerantz P.C.

Appearing for the Respondent: Michael Goldfarb Maskin, Esq., The Legal Aid Society

Upon the foregoing cited papers, the Decision/Order on this Motion is as follows:

Petitioner commenced this holdover proceeding in August 2020 seeking possession of the subject premises. The proceeding was initially stayed and placed on the administrative calendar based upon a COVID 19 Hardship Declaration. Respondent subsequently filed with the court a notification that Respondent had filed an Emergency Rental Assistance Program (“ERAP”) application on February 25, 2022. The case remained on the court’s administrative calendar while the Office of Temporary Disability Assistance (“OTDA”) determines whether Respondent is

eligible for ERAP. Petitioner then filed a motion on October 10, 2022, seeking to lift the ERAP stay. That motion was denied by Decision/Order dated April 6, 2023¹.

Petitioner has filed the instant motion seeking: 1) renewal of its request to lift the ERAP stay pursuant to CPLR 2221(e); and 2) summary judgment pursuant to CPLR §409 and RPAPL §745(1).

Pursuant to CPLR 2221(e), a motion for leave to renew:

1. Shall be identified specifically as such;
2. Shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination; and
3. Shall contain reasonable justification for the failure to present such facts on the prior motion.

A motion for leave to renew must be based upon new or additional facts which were in existence at the time of the prior motion but were not known to the party seeking renewal and thus not made known to the court. *Progressive Northeastern Ins. Co. v. Frenkel*, 8 A.D.3d 390 (App. Div. 2nd Dept. 2004); *see also Tishman Constr. Corp. v. City of New York*, App. Div. 1st Dept. 2001). Petitioner’s motion does not meet this requirement. This court’s April 6, 2023 Decision/Order denied Petitioner’s first motion seeking to lift the ERAP stay because Petitioner had failed to notify OTDA that it did not wish to participate in the ERAP program. Petitioner then notified OTDA that it did not wish to participate before filing the instant motion. The letter provided as an exhibit to the instant motion is dated May 2, 2023.² Because those facts were not in existence at the time of the prior motion, this motion is not properly brought as a motion to renew pursuant to CPLR 2221(e).

¹ NYSCEF #27
² NYSCEF #37

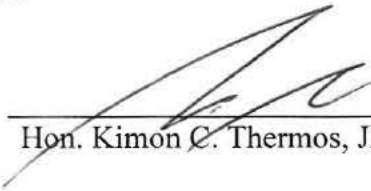
However, Petitioner has simply failed to file the proper motion³. Petitioner is seeking the same relief as in the original motion but is basing the motion on a new set of facts that were not presented and had not occurred at the time of this court's April 6, 2023 Decision/Order. Where a different set of facts "has arisen since the first motion, a new motion based on these facts, but seeking the same relief as that sought in the first motion, may be made as a matter of right." *Goldberg v. Fischer*, 2014 N.Y. Misc. LEXIS 6321 (Supr. Ct., Kings Cty. 2014) citing *First Nationwide Bank v. Brookhaven Realty Assocs.*, 223 A.D.2d 618, 621 (App. Div., 2nd Dept. 1996).

Even if the court was presented with the proper motion, the court would be unable to lift the stay based on the evidence presented. The April 6, 2023 Decision/Order indicated that Petitioner should submit proof that it notified OTDA "through the appropriate means of communication" that it declined to participate in the ERAP program along with "OTDA's acknowledgement of receipt of said rejection notification." Petitioner submits a letter that was mailed and emailed to OTDA, but shows no proof that OTDA received the letter. OTDA created an online portal for landlords and tenants to use to communicate with and provide documents to OTDA. Petitioner has provided no information regarding where it obtained the address/email for OTDA and whether OTDA has provided those addresses as an "appropriate means of communication." However, OTDA has clearly indicated on its website that the online portal can and should be used to communicate with OTDA. Communication made by landlords via the portal receive an acknowledgment that the communication was received by OTDA that can then be provided to the court to prove that OTDA received the communication.

Petitioner's motion is denied in its entirety without prejudice to making a motion for the proper relief. The proceeding will remain on the administrative calendar pending a new motion or resolution of the ERAP application by OTDA.

This constitutes the decision and order of the court.

Dated August 3, 2023
Queens, New York



Hon. Kimon C. Thermos, JHC

³ The court acknowledges that it used the word renew in its April 6, 2023 Decision/Order but did not intend to suggest that Petitioner make a motion pursuant to CPLR 2221(e) as that type of motion is very specific as to the limited circumstances in which it is appropriate to bring such motion.