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2023-09-13

Third Hous. Co. Inc. v. Gomez

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"Third Hous. Co. Inc. v. Gomez" (2023). *All Decisions*. 1225.
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[*1]

Third Hous. Co. Inc. v Gomez
2023 NY Slip Op 51057(U)
Decided on September 13, 2023
Civil Court Of The City Of New York, Queens County
Sanchez, J.
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on September 13, 2023

Civil Court of the City of New York, Queens County

Third Housing Company Inc., Petitioner,
against
Mayeerlyn Gomez, "JOHN DOE" & "JANE DOE", Respondents.

Index No. LT-309212/22

Sontag & Hyman, PC
Attorneys for Petitioner
bsontag@sontag-hyman.com

Legal Aid Society
Attorneys for Respondent
adiazfigueroa@legal-aid.org

Enedina Pilar Sanchez, J.

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

Papers/Numbered/NYSCEF

Notice of Motion, Affirmation, Affidavits 1 Doc No. 7-11
and Attached Exhibits 1-2
Affirmation, Affidavit in Opposition 2 Doc No. 14-15
and Attached Exhibits
Affirmation in Reply 3 Doc No. 16-17

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

Background

The underlying nonpayment proceeding was commenced against respondent in or about June 2022, to recover rent arrears for May 2021, through May 2022, totaling \$6,939.63. The subject premises are a cooperative unit constructed under the provisions of the Mitchell-Lama Law. It is organized under Article 4 of the Private Housing Finance Law and under the jurisdiction of the New York State Division of Housing and Community Renewal "DHCR".

[*2] Respondent is a shareholder.

Respondent applied for funds under the Emergency Rental Assistance Program "ERAP" on September 27, 2021. The application stayed this proceeding. Thereafter petitioner filed the instant motion seeking an order to vacate the ERAP stay, and/or determine that the ERAP statute does not provide for a stay in this proceeding and setting the matter down for trial.

Petitioner's motion states that the stay imposed by respondent's ERAP filing (see L 2021, ch 56, § 1, Part BB, § 1, Subpart A, Sec 1, § 8, as amended by L 2021, ch 417, Part A, Sec. 4), should be vacated as respondent will not be eligible for ERAP funds because she is a cooperative shareholder. In support of its argument, petitioner cites to FAQs on the (New York State Office of Temporary and Disability Assistance), hereinafter (OTDA). The website states that shareholders of low-income cooperatives are not eligible for ERAP. [\[FN1\]](#)

In opposition to petitioner's motion, respondent argues that she has been provisionally approved for ERAP, NYSCEF Doc. No. 15. Respondent argues that she has been determined to be eligible for ERAP. Respondent asserts that the stay should continue since the petitioner has not waived its participation in the ERAP program, and it has 180 days to accept ERAP funds.

Discussion

The OTDA website which, as of January 23, 2023, stated:

Applications from subsidized housing tenants whose rent is limited to a certain percentage of income (including public housing, Section 8 and FHEPS etc.) are not currently able to be paid. State law requires that these applications be paid after all other eligible applicants have been reviewed and paid. Therefore, at this time, none of the subsidized housing applications can be paid regardless of the date their application was submitted.

This statement has been updated, however. As of May 15, 2023, the website now states:

Applications submitted before the application portal closed on January 20, 2023, including applications from subsidized housing tenants whose rent is limited to certain percentage of income (including public housing, Section 8 and FHEPS etc.), are being reviewed and processed in the order received, consistent with State law and program rules.

It is clear from the update that OTDA has changed its position with respect to applications from rent subsidized tenants. This would appear to include Mitchell-Lama housing [*3] which is state, or city supervised subsidized housing with income restrictions, 9 NYCRR § 1727-4.2(d). It is therefore a possibility that an applicant such as respondent may qualify for ERAP assistance. In *Levitt v. Tietz*, 2023 NY Slip Op 23266, [Sup Ct Albany County] the court found that the ERAP statute clearly made cooperative shareholders eligible for ERAP funds. Maintenance fees are considered rent as provided in Real Property Action and Proceedings Law §702.

Moreover, upon reviewing respondent's application status on the OTDA website, it reflects that respondent's application is currently "Under Review." As such, given OTDA's current position and plain language of the ERAP statute which provides that "all proceedings shall be stayed pending a determination of eligibility", the Court finds no basis to vacate the stay. *See*, L 2021, § 8 of subpart A of § 1 of chapter 56 of the Laws of 2021 as amended by L 2021, ch 417, § 2, part A, § 4. Further, current case law also supports this stance. *See*, *Ami v. Ronen*, NY Slip Op 50456(U) [App Term, 2nd Dept 2023]; [*Avalonbay Communities, Inc. v. Dukes*, 78 Misc 3d 134\(A\)](#) [App Term, 2nd Dept 2023].

In *Ami v. Ronen*, the Second Department, Appellate Term held, "*while tenant's ERAP application is pending, the proceeding is stayed by operation of law.*"

Conclusion

Accordingly, based upon the foregoing, the motion is denied, and it is

ORDERED that the proceeding remain on the Administrative Calendar pending a final determination on respondent's ERAP application.

This Decision/Order will be filed to NYSCEF.

This constitutes the Decision/Order of the Court.

Date: September 13, 2023

Queens, New York

SO ORDERED,

HON. ENEDINA PILAR SANCHEZ

J.H.C.

Footnotes

Footnote 1:FAQ #46 under the "Benefits Available and Who is Eligible" heading on the ERAP website states as follows:

"Are shareholders in low-income co-ops eligible for ERAP? No. Co-op shareholders are not eligible for ERAP to cover monthly co-op/maintenance fees. However, if you rent a co-op from a shareholder, you may be eligible for ERAP assistance."

(<https://otda.ny.gov/program/mergency-rental-assistance/faq.asp#faq-benefits-q46>)

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