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### Emeagwali v. Burgos

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[\*1]

<b>Emeagwali v Burgos</b>
2024 NY Slip Op 50310(U)
Decided on February 16, 2024
Civil Court Of The City Of New York, Queens County
Sanchez, J.
Published by <a href="#">New York State Law Reporting Bureau</a> pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on February 16, 2024

Civil Court of the City of New York, Queens County

<p><b>Stella Emeagwali, Petitioner(s),</b></p> <p><b>against</b></p> <p><b>Maria Burgos, Respondent(s).</b></p>
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Index No. LT-301559-20/QU

Enedina Pilar Sanchez, J.

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

Papers Numbered

Order to show Cause/Notice of Motion and Affidavits/Affirmations Annexed 1

Answering Affidavits/Affirmations 2

Reply Affidavits/Affirmations

Memoranda of Law

Other

This is a holdover proceeding commenced during the height of the COVID-19 pandemic and predicated upon a 90-day termination of tenancy. Eviction proceedings were placed on pause due to the public health crisis created by the pandemic and the directive to shelter in place.

The parties, after motion practice regarding an ERAP stay, entered a 2-attorney stipulation of settlement. Pursuant to the stipulation, the rent/use and occupancy was waived through October 11, 2023. Respondent was to vacate the subject premises. This is respondent's 2nd Order to Show Cause seeking to stay the execution of the warrant of eviction.

Petitioner has discharged her attorney of record, Jack L. Glasser, Esq. Petitioner is now proceeding as a *pro-se* litigant with the assistance of her daughter who is an attorney.

Respondent's 1st Order to Show Cause was granted on November 16, 2023. The execution of the warrant of eviction was stayed through December 29, 2023, on the condition that respondent pay her portion of the rent (use and occupancy) for November 2023 and December 2023. There was no dispute that HRA had been paying a part of the rent/use and occupancy through the date of the November 16, 2023 Decision/Order.

#### Respondent's Order to Show Cause and Opposition

Respondent moved to stay the execution of the warrant of eviction based upon an alleged breach of the November 16, 2023 Decision/Order. Respondent argues that while she had paid her share of the rent and HRA was also paying, a notice of eviction dated December 12, 2023, was issued, although the stay of execution was through December 29, 2023.

Respondent also argues that she has resided in the subject premises for approximately 10 years, and that CityFHEPS has paid the rent, including during the pendency of this proceeding. [\*2] Respondent shows that her 5 minor children are enrolled in community schools, and an immediate vacatur will cause the children to be severely prejudiced. One child is a handicapped/disabled person. Respondent shows that she has visited numerous rental listings in her efforts to locate alternative housing in the area but to no avail.

On the day of argument, respondent's counsel informed the court that respondent's adult daughter, Clarissa Burgos, was fatally shot on December 27, 2023. The adult daughter while a passenger in an automobile became the victim of gun violence.

Petitioner argues that she is a small landlord and cannot financially carry respondent as a tenant. She argues that the current HRA payments do not cover the rent or her expenses. Petitioner shows expenses for the subject premises and for another address in Queens. The

court has examined the exhibits attached to the opposition papers. [\[EN1\]](#)

### Discussion and Conclusion of Law

The court is required to consider the hardship of each side in determining whether to stay the execution of the warrant of eviction. The 2-attorney agreement, however, is a binding agreement. See, [Shalimar Leasing, LP v. Medina, 73 Misc 3d 22](#) [App Term, 2d Dept 2021].

Petitioner's request for the court to examine missing CityPHEPS payments prior to the stipulation of settlement, the agreement, is misplaced. The 2-attorney agreement addressed the prior rent/use and occupancy which was either waived or paid. The ERAP funds were also waived. The rents/use and occupancy were waived through October 11, 2023, yet payments from HRA continued. The exhibits pertaining to HRA payments is confusing as there are references to waiver and then an acknowledgment of payments. The issue of use/occupancy, however, is addressed prospectively regarding the request to stay the execution of the warrant.

The relevant parts of the Real Property Action and Proceedings Law (RPAPL) §749(3) and §753(1) and (2), direct the court to stay of the execution of the warrant upon showing good cause. Respondent shows that she made reasonable and diligent efforts to secure suitable housing like the one currently occupied. Respondent shows there are young school aged children, one who is disabled, whose education will be disrupted in the event of an eviction. They are enrolled in community schools.

Juxtaposed, and in consideration of petitioner's request to deny the stay of execution of the warrant of eviction, the court must consider any substantial hardship the stay may impose on the landlord. The hardships faced by the petitioner are to be considered in determining to grant a stay, the length of the stay or other terms of the stay.

Petitioner shows documents, although not clearly identified as connected to the subject premises, [\[EN2\]](#) that require monthly payments for a mortgage. There is an invoice for homeowners' policy including flood insurance which petitioner must maintain. There are invoices from the NYC Water Board for water usage and wastewater (sewer). There are two invoices from PSEG which seem to be connected to the basement of the subject property.

The invoices show that petitioner continues to carry the property and other properties as

well. The amount previously paid by CityFHEPS or HRA or what amount were waived or not waived, are accounting matters resolved by represented litigants. The court does not change or modify the terms of a 2-attorney stipulation of settlement. *Shalimar Leasing, LP v. Medina, supra*.

The court finds that petitioner must continue to carry the property and is granted "use and occupancy" at the last agreed rental amount of \$1,956.00, less any HRA payments. [\[FN3\]](#) It is acknowledged that HRA payments are being received and were reinstated every month from January 2022 through December 2023.

In balancing the competing interest between these two parties, the court is required to stay the execution of the warrant provided respondent pay the rent/use and occupancy of \$1,956.00. Whether the rents/use and occupancy are paid by HRA or CityFHEPS or a third party would not be a basis to deny the requested stay. The financial hardship, ameliorated by the requirement and actual payment of rent/use and occupancy calls for the continued stay of the execution of the warrant of eviction. The governing statute does not allow for the court to weigh whether the property has a good or poor investment return but only that the rent is paid during the stay of the execution of the warrant of eviction. The stay does not create a new tenancy, and it does not indefinitely stop the eviction. The stay is based upon a showing of good cause under the given circumstances and addressing the hardship presented by the petitioner. This is the law as passed in 2019 pursuant to the Housing Stability and Tenant Protection Act (HSTPA).

Accordingly, it is,

ORDERED that respondent's order to show cause is granted to the extent that execution of the warrant is stayed through February 29, 2024 provided respondent pays to petitioner the rent of \$1,956.00, less the HRA rent payments by February 26, 2024, and it is,

ORDERED that the execution of the warrant is further stayed though March 31, 2024, provided respondent pays to petitioner the rent of \$1,956.00, less the HRA payments by no later than March 6, 2024, and it is,

ORDERED that provided the rent is paid for February and March 2024, respondent is to vacate the subject premises by April 1, 2024 and upon default serve the notice of eviction by mail.

This Decision/Order will be filed to NYSCEF.

As petitioner is now appearing as a *pro-se* litigant, this Decision/Order will be mailed to the subject premises and to the address referenced in the Consent to Change Attorney dated January 17, 2024, attached to petitioner's order to show cause.

This constitutes the Decision/Order of the court.

Dated: February 16, 2024  
Queens, New York  
SO ORDERED,  
Hon. Enedina Pilar Sanchez  
JHC

### Footnotes

**Footnote 1:** The invoices and bills attached referenced another address in Queens described as 1430 Harbour Ct, Far Rockaway, NY 11691. The subject premises are described as 1425 Pearl Street, 1st Floor, Far Rockaway, NY 11691.

**Footnote 2:** Petitioner's residence is described as a different address, as per petitioner's order to show cause to discharge her attorney of record. Petitioner's request to discharge her attorney of record was granted per the January 30, 2024.

**Footnote 3:** The court looks at the lease provided by petitioner which shows a long-term tenancy with respondent for the First Floor Apartment.

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