

**Jacob Cram Coop., Inc. v Ziolkowski**

2021 NY Slip Op 30174(U)

January 22, 2021

Supreme Court, New York County

Docket Number: 156980/2017

Judge: Debra A. James

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT:** HON. DEBRA A. JAMES PART IAS MOTION 59EFM

*Justice*

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JACOB CRAM COOPERATIVE, INC.,

Plaintiff,

- v -

THOMAS ZIOLKOWSKI,

Defendant.

-----X

INDEX NO. 156980/2017  
MOTION DATE 12/16/2020  
MOTION SEQ. NO. 013

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 013) 293, 294, 295, 296, 297, 298, 299, 300, 301, 307, 308

were read on this motion to/for

STAY

ORDER

Upon the foregoing documents, it is

ORDERED that defendant's motion for a stay of the enforcement of the warrant of eviction is GRANTED only to the extent that the stay is issued pursuant to the terms of the "COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020", which stays such enforcement of the warrant herein until May 1, 2021, and is otherwise denied as mooted by the Act.

DECISION

Defendant moved by Order to Show Cause for a stay of the warrant of eviction issued following judgment in this action. Plaintiff opposed the relief sought.

However, in the interim, the State of New York on December 28, 2020, enacted the "COVID-19 Emergency Eviction and

Foreclosure Prevention Act of 2020" (L 2020, Ch 381), (the "Act"). The Act begins in relevant part by providing a definition of its scope as relates to court matters by stating that an "'Eviction proceeding' means a summary proceeding to recover possession of real property under article seven of the real property actions and proceedings law relating to a residential dwelling unit or any other judicial or administrative proceeding to recover possession of real property relating to a residential dwelling unit." (Emphasis added.) Part A, § 8(a)(ii) of the Act further provides "In any eviction proceeding, if the tenant provides a hardship declaration to the petitioner, the court, or an agent of the petitioner or the court, prior to the execution of the warrant, the execution shall be stayed until at least May 1, 2021. If such hardship declaration is provided to the petitioner or agent of the petitioner, such petitioner or agent shall promptly file it with the court, advising the court in writing the index number of all relevant cases."

It is undisputed that defendant filed with the court in this matter the hardship declaration set forth in the Act on January 6, 2021 (NYSCEF Doc. No. 307).

The two-fold issue is first, whether the Act applies to the instant action and, second, what is the effect of the Act.

Plaintiff argues that the Act does not apply here because throughout the relevant sections of the Act only "proceedings" are referenced, not actions, and plaintiff therefore argues that the clear legislative intent was only to apply to evictions related to summary proceedings governed by Article 7 of the RPAPL, and to exclude plenary actions for ejection. Plaintiff further asserts that the CPLR makes clear delineations between actions and proceedings and the procedures applicable to one are not applicable to the other. Defendant, now currently represented at the time of the hardship filing, argues that the plain meaning of the statute applies to this case.

The court agrees with defendant that in spite of the failure of the Legislature to specifically use the term "action" as applied to landlord-tenant disputes, the term "eviction proceeding" as defined therein includes New York's current hybrid common law/statutory (RPAPL Art. 6) actions for ejection as applied to residential tenancies. Plaintiff's interpretation limiting the applicability of the statute is contrary to the Act's definition of "eviction proceeding" as including "any other judicial or administrative proceeding to recover possession of real property relating to a residential dwelling unit." Other than a plenary action for ejection, the court is unable to discern any other "proceeding" that the legislature could have intended. Additionally, the Act includes a specific

statement of legislative intent that its applicability is to be broadly construed stating:

"COVID-19 presents a historic threat to public health. Hundreds of thousands of residents are facing eviction or foreclosure due to necessary disease control measures that closed businesses and schools, and triggered mass-unemployment across the state. The pandemic has further interrupted court operations, the availability of counsel, the ability for parties to pay for counsel, and the ability to safely commute and enter a courtroom, settlement conference and the like.

Stabilizing the housing situation for tenants, landlords, and homeowners is to the mutual benefit of all New Yorkers and will help the state address the pandemic, protect public health, and set the stage for recovery. It is, therefore, the intent of this legislation to avoid as many evictions and foreclosures as possible for people experiencing a financial hardship during the COVID-19 pandemic or who cannot move due to an increased risk of severe illness or death from COVID-19."

(L. 2020, Ch. 381, Sec. 3). Finally, if the Legislature intended the Act to apply to summary proceedings only, it would have stated that clearly without the need to create and define a new and broadened term of "eviction proceedings."

Thus, as the statute is self-executing, upon defendant's filing of a hardship application, the warrant of eviction issued in this matter is stayed. The court notes that applicability of Part A, Section 9 of the Act has not been raised in any formal application of the parties and is not considered herein. That section provides in pertinent part that

"§ 9. Sections two, four, six and paragraph (ii) of subdivision a of section eight of this act shall not apply if the tenant is persistently and unreasonably engaging in

behavior that substantially infringes on the use and enjoyment of other tenants or occupants or causes a substantial safety hazard to others, provided:

1. If an eviction proceeding is pending on the effective date of this act, but the petitioner has not previously alleged that the tenant persistently and unreasonably engaged in such behavior, the petitioner shall be required to submit a new petition with such allegations and comply with all notice and service requirements under article 7 of the real property actions and proceedings law and this act.
2. If the court has awarded a judgment against a respondent prior to the effective date of this act on the basis of objectionable or nuisance behavior, the court shall hold a hearing to determine whether the tenant is continuing to persist in engaging in unreasonable behavior that substantially infringes on the use and enjoyment of other tenants or occupants or causes a substantial safety hazard to others.
3. For the purposes of this act, a mere allegation of the behavior by the petitioner or an agent of the petitioner alleging such behavior shall not be sufficient evidence to establish that the tenant has engaged in such behavior.
4. If the petitioner fails to establish that the tenant persistently and unreasonably engaged in such behavior and the tenant provides or has provided a hardship declaration to the petitioner, petitioner's agent or the court, the court shall stay or continue to stay any further proceedings until at least May 1, 2021.
5. If the petitioner establishes that the tenant persistently and unreasonably engaged in such behavior or the tenant fails to provide a hardship declaration to the petitioner, petitioner's agent or the court, the proceeding may continue pursuant to article 7 of the real property actions and proceedings law and this act."

As the defendant under the Act for now qualifies for the relief of a stay of the warrant the order to show cause has been mooted. Should further relief be sought, including claims

concerning the applicability of §9(2) above, it would have to be by separate application of the parties pursuant to the Act and any other common law or statutory requisites.

1/22/2021  
DATE

*Debra A. James*  
DEBRA A. JAMES, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE