CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART Q

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MENACHEM GUREVITCH,

Petitioner,

Index No. 72639/2018

-against-

IDA ROBINSON, et al.,

DECISION/ORDER

Respondents.

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Present: Hon. Jack Stoller
Judge, Housing Court

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

Pages	numbered
Order To Show Cause (motion sequence #11) and Supplemental Affidavit and Affirmation Annexed	1, 2, 3
Affirmations and Affidavit In Opposition	4, 5, 6

Upon the foregoing papers, the Decision and Order on this motion are as follows:

Menachem Gurevitch, the petitioner in this proceeding ("Petitioner"), commenced this holdover proceeding against Ida Robinson ("Respondent"), Helen Robinson, Ali Torain, and Sherease Torain, who the petition designates as "Sherease Robinson" ("Co-Respondent"), the respondents in this proceeding (collectively, "Respondents"), seeking possession of 964 Park Place, Brooklyn, New York ("the subject premises") on the basis of a termination of an unregulated tenancy. Petitioner obtained a judgment of possession after trial and a warrant of eviction executed. The Court subsequently ordered Respondents restored to possession. Petitioner now moves to reinstate the warrant, vacate all stays, and permit a re-execution of the warrant.

Background

Petitioner commenced this proceeding against Respondents according to a predicate notice dated April 27, 2018 that characterized all four Respondents, including Co-Respondent, as tenants. By an order dated January 15, 2020, the Court awarded Petitioner a final judgment of possession and a money judgment for $279,000 against Respondents. A warrant of eviction issued on February 19, 2020. Various stays occasioned by the COVID-19 pandemic ensued. After the expiration of the stays, the warrant executed on February 8, 2022. The Court then granted Respondents' motion to be restored to possession of the subject premises on the ground that Petitioner had not notified the Court of the pendency of Co-Respondent's application for benefits pursuant to the Emergency Rent Assistance Program ("ERAP").

Co-Respondent applied for ERAP on or about August of 2021. At some point the Office of Temporary and Disability Assistance ("OTDA") denied the application. Co-Respondent represents that she attempted to appeal the denial by phone in December of 2021 and shows a document from OTDA confirming the pendency of the appeal.[1] Co-Respondent, with the assistance of her new counsel, also filed a second ERAP application.

Respondents have also raised a dispute over whether Petitioner is the proper party to commence this proceeding, alleging that Petitioner engaged in deed theft to remove title to the subject premises from them. All parties acknowledge that the Housing Court does not have the subject matter jurisdiction resolve such a dispute. Gouverneur Gardens Hous. Corp. v. Silverman, 26 Misc.3d 133(A)(App. Term 1st Dept. 2010), Mattis v. Brockington, 19 Misc.3d 133(A)(App. Term 1st Dept. 2008), Ferber v. Salon Moderne, Inc., 174 Misc. 2d 945, 946 (App.

[1] The exhibit has the same application reference number as an earlier exhibit memorializing the first denial.

Term 1st Dept. 1997). Respondent, by counsel for her Article 81 guardian, filed a motion in Supreme Court seeking relief on Respondents' allegation but then withdrew the motion. Co-Respondent represents in her opposition that another motion will be forthcoming in Supreme Court.

Discussion

Section 8 of subpart A of part BB of chapter 56 of the laws of 2021, as amended by Section 4 of part A of chapter 417 of the laws of 2021 ("the ERAP statute"), stays both holdover and nonpayment proceedings upon an ERAP application for all or part of arrears claimed by a petitioner pending a determination of eligibility. On January 16, 2022, Chief Administrative Judge Lawrence Marks promulgated Administrative Order 34/22 ("AO 34/22").[2] AO 34/22 provides, *inter alia*, that "[e]viction matters where there is a pending ERAP application shall be stayed until a final determination of eligibility for rental assistance is issued by [OTDA] including appeals." Petitioner argues that the record does not show that Co-Respondent has a pending appeal of OTDA's initial denial, an argument belied by an exhibit that Co-Respondent annexes to her opposition to the motion.

While an administrative order is not a regulation, the Court finds instructive that regulations are generally subject to same canons of construction as statutes, ATM One, LLC v. Landaverde, 2 N.Y.3d 472, 477 (2004), Matter of Cty. of Oneida v. Zucker, 147 A.D.3d 1338 (4th Dept. 2017), and applies those canons to AO 34/22. The Court must construe a statute so as to give effect to every word therein to the extent possible, Matter of Mestecky v. City of N.Y., 30 N.Y.3d 239, 243 (2017), Kamchi v. Weissman, 125 A.D.3d 142, 153 (2nd Dept. 2014), Matter of

[2] The order and all attached orders can be found here: https://nycourts.gov/whatsnew/pdf/ExhibitA-AO34-22.pdf .

Tristram K., 36 A.D.3d 147, 151 (1st Dept. 2006). The Court must therefore give effect to that part of AO 34/22 that requires a stay pending an appeal in the process of an ERAP application.

ERAP being a new program, OTDA has not yet promulgated regulations in the New York Code of Rules and Regulations about the application process. It is not clear whether an appeal of a second application would take more time than a new application. At this posture, then, the Court cannot hold that Co-Respondent's second ERAP application, filed by counsel, is abusive. Maybe the appeal will be denied before OTDA rules on the second ERAP application, in which case the Court may evaluate how appropriate a stay is based on serial applications, but that issue is not ripe as of this writing.

Even if the pendency of the ERAP application and/or the appeal of OTDA's denial of Co-Respondent's first ERAP application would stay an eviction as per the statute, Petitioner urges this Court to vacate the stay. Petitioner argues that amounts that Co-Respondent is conceivably eligible for would not cover the total amount of arrears Respondents owe, as ERAP only covers arrears which accrued on or after March 13, 2020. L. 2021, c. 56, Part BB, Subpart A, §2(10). However, the plain language of the ERAP statute specifically provides for stays of eviction proceedings upon the pendency of an application for, *inter alia*, "part of" the arrears.

Petitioner argues that an application of the stay from the ERAP statute to this matter would lead to results that are absurd or futile, citing cases in support of its position. Whatever support there is in the case law for Petitioner's position, Petitioner still is asking the Court to ignore the plain language of the ERAP statute. While the number of cases vacating stays may convey the impression that disregarding the plain language of a statute is a cavalier occurrence, the proposition that legislative intent is the great and controlling principle of statutory

interpretation remains good law. Matter of Sedacca v. Mangano, 18 N.Y.3d 609, 615 (2012). The Court therefore considers the law that Petitioner cites.

Petitioner cites 2986 Briggs LLC v. Evans, 74 Misc.3d 1224(A)(Civ. Ct. Bronx Co. 2022) and Silverstein v. Huebner, 72 Misc.3d 1212(A)(Civ. Ct. Kings Co. 2022), both of which parse the ERAP statute to conclude that licensees are not eligible for avail themselves of the statutory stay. Insofar as those cases interpret the statute as such, the result does not actually contradict the statute. As noted above, however, Petitioner designated Respondents, including Co-Respondent, whose application for ERAP is pending, as tenants.

Petitioner also cites Actie v. Gregory, 74 Misc.3d 1213(A)(Civ. Ct. Kings Co. 2022) and Abuelafiya v. Orena, 73 Misc.3d 576 (Dist. Ct. Suffolk Co. 2021), both cases in where the ERAP applicant had a home other than the premises for which the tenants submitted an ERAP application. Aside from the equitable considerations raised by such facts, the ERAP statute requires tenants applying for assistance to do so for the premises which is their primary residence. L. 2021, c. 56, Part BB, Subpart A, §5(1)(a)(i). While Petitioner argues that some of Respondents do not live in the subject premises, he makes no such argument with regard to Co-Respondent, the applicant for ERAP benefits.

Petitioner also cites Zheng v. Guiseppone, 2022 N.Y. Slip Op. 50271(U), ¶ 6 (Civ. Ct. Richmond Co.), where the petitioner therein obtained a judgment against the respondents therein by a stipulation that converted a nonpayment proceeding to a holdover proceeding according to which the petitioner therein waived rent arrears. By contrast, Petitioner in this matter obtained a judgment against Respondents after trial which included a substantial money judgment.

The plain language of the ERAP statute provides for stays of holdover proceedings as well as nonpayment proceedings, so a holdover proceeding by itself is not grounds upon which

to vacate a stay. Rather, the more attenuated payment of arrears is to a resolution of the proceeding, the more receptive Courts have been to a vacatur of a stay, whether because the ERAP applicant is a licensee, because the ERAP applicant has another home, or where a landlord has waived a cause of action for use and occupancy. In this matter, by contrast, Petitioner characterized Respondents as tenants, obtained a money judgment against them, and Co-Respondent lives at the subject premises. Petitioner argument that payment of arrears is disconnected from the resolution of the case sits uncomfortably with the repeated grievances that Petitioner expresses about the nonpayment of the judgment amount.

To be fair, Petitioner cites Kristiansen v. Serating, 2022 N.Y. Slip Op. 22097 (Dist. Ct. Suffolk Co.), which has facts apposite to this matter: where a tenant owed rent arrears and applied for ERAP, which would not have covered the entirety of the arrears. While maintaining in place the stay for nonpayment of the amount that was the subject of the ERAP application, the Court vacated the stay for nonpayment of arrears not covered by ERAP. In light of the departure from the statutory stay that this authority supports without the kind of exceptions the facts of the other cases presented, the Court respectfully declines to follow this authority on this point.

Accordingly, it is ordered that the Court denies Petitioner's motion to vacate the stay, without prejudice to renewal upon the conclusion of the process of Co-Respondent's application for ERAP benefits.

This constitutes the decision and order of the Court.

Dated: Brooklyn, New York
May 31, 2022

HON. JACK STOLLER
J.H.C.

APPROVED
JSTOLLER , 5/31/2022, 10:59:03 AM