

<b>Rosetree Props., LLC v Headlam</b>
2022 NY Slip Op 34152(U)
October 21, 2022
City Court of Ithaca, Tompkins County
Docket Number: Index No. LT- 49183-22
Judge: Richard M. Wallace
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STATE OF NEW YORK : COUNTY OF TOMPKINS  
CITY COURT : CITY OF THACA

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ROSETREE PROPERTIES, LLC,  
Petitioner

Hon. Richard M. Wallace  
**DECISION**  
Index No. LT- 49183-22

v.

CAROLYN HEADLAM,  
Respondent.

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Petitioner filed a holdover summary proceeding against respondent for rental properties located within the City of Ithaca. The petition was filed on August 5, 2022. On August 8, 2022, Respondent filed an ERAP application, and the case was stayed. Petitioner then filed the instant motion arguing that the ERAP stay is not applicable because the landlord is not seeking a judgment for past due rent.

At the outset, the Court notes that the Administrative Order of the Chief Administrative Judge of the Courts No. 158/22, dated June 29, 2022, directs that “[e]viction matters where there is a pending ERAP application shall continue to be stayed until a final determination of eligibility for rental assistance is issued by the Office of Temporary and Disability Assistance (OTDA), including appeals.” There is no exception made in this order for holdover proceedings. The only exception made is for nuisance behavior or property damage proceedings, but that claim has not been adequately pleaded here pursuant to the provisions of section 9-a of the ERAP statute.

The argument put forth by the petitioner is that the statutory language might be read to prohibit the stay when rental arrears are waived. As this Court has previously held in *Pirro v. Barton*, Index No. LT-48960-21, that reading of the statute is contrary to the legislative intent and the text of the statute when read as a whole.

This issue was addressed in the nonbinding decision of *Hudson Ave Hous. Assoc., LLC v. Howard*. In that case the court held, “the plain language of the statute clearly indicates that any pending ERAP application stays both non-payment and holdover proceedings until an eligibility determination is made.” *Hudson Avenue Housing Associates, LLC v. Howard*, 75 Misc.3d 419 (N.Y. City Ct. 2022). This court agrees with the *Hudson* decision and elaborates on the basis for its decision.

When presented with an issue of statutory interpretation, the court's primary consideration “is to ascertain and give effect to the intention of the Legislature. Although statutes will ordinarily be accorded their plain meaning, it is well settled that courts should construe them to avoid objectionable, unreasonable or absurd consequences.” *Long v. State of New York*, 7 N.Y.3d 269, 273 (2006) (internal quotation marks and citation omitted).

The purpose of this statute was to offer eviction relief to those facing loss of housing due to the effects of the COVID-19 health crisis. “The evidence that residential eviction protections are effective public health measures is especially strong. The CDC has repeatedly found this to be so and has urged states to enact and keep residential eviction moratoriums in place. A recent peer-reviewed study of state eviction moratoriums found that [‘]COVID–19 incidence and mortality increased steadily in states after eviction moratoriums expired, and were associated with doubling of COVID–19 incidence ... and a five-fold increase in COVID–19 mortality ... 16 weeks after moratoriums lapsed.[‘]” 2021 Sess. Law News of N.Y. Ch. 417 (S. 50001), sec. 2.

The legislature’s clear intent was to stay the action pending the determination of eligibility. The stay is linked to the determination of eligibility, not the landlord’s waiver of rental arrears, acceptance of payment, or participation in ERAP.

Further, although the landlord is free to waive rental arrears, ERAP provides an additional benefit of up to three months of prospective rental assistance. Section 9(1) reads, “No more than 12 months of rental and/or utility assistance for arrears and *3 months of prospective rental assistance* may be paid on behalf of any eligible household.” Only “rent burdened households” are eligible to receive prospective rental payments, but section 2(3) defines a “rent burdened household” as a household whose monthly rental obligation is 30% or more of its gross monthly income. This may refer to the monthly rent set forth in the lease agreement. Thus, even if a landlord waives rental arrears, the tenant may still be entitled to prospective rental assistance if eligible. But their eligibility must first be determined; thus, the determination of eligibility stay must apply.

The ERAP statute contemplates a landlord’s choice not to participate in the program, but this choice not to participate does not relieve them from the effects of the statute. Even if the landlord refuses to accept payment for rental arrears, the tenant is entitled to have an eligibility determination because additional benefits are available under ERAP, such as limitations on future eviction actions and prospective rent. For example, Section 9(2)(c) imposes a bar on commencing future proceedings if the landlord has not accepted an ERAP payment within 12 months. Section 9(2)(c) reads:

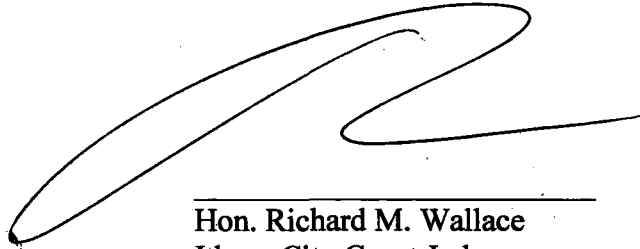
If the landlord has not accepted such provisional payment within twelve months of the determination the landlord shall be deemed to have waived the amount of rent covered by such provisional payment, and shall be prevented from initiating a monetary action or proceeding, or collecting a judgment premised on the nonpayment of the amount of rent covered by such provisional payment.

Although Petitioner claims to have waived rental arrears and to have stopped accepting rental payments, this does not actually alter the terms of the lease agreement. Petitioner might still have

a cause of action for unpaid rent despite the attempted unilateral waiver. As such, section 9(2)(c) of the ERAP statute might confer meaningful benefits for Respondent if she is determined eligible.

All proceedings shall be stayed. Petitioner's motion is DENIED.

Dated: October 21, 2022

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Hon. Richard M. Wallace  
Ithaca City Court Judge

cc: