CIVIL COURT OF THE CITY OF NEW YORK1
COUNTY OF NY: HOUSING PART G, ROOM 581
-- X

Index No. LT 065720/19

FMB Consolidated Properties, Inc.
Petitioner,

DECISION/ORDER

-against-

Joseph Campanaro and Malika Aliali,
Respondents.
-- X
Present: Hon. Daniele Chinea
Judge, Housing Court

Recitation, as required by CPLR 2219(A), of the papers considered in the review of this Motion to lift the stay pursuant to ERAP statute, part BB, Subpart A of Chap. 56 of the Laws of 2021, as modified by L.2021, c. 417 (the "ERAP Statute"):

PAPERS		NYSCEF NUMBER
Notice of Motion & Affirmation/Affidavits		29, 30, 31
Answering Affirmation/Affidavit		35, 37
Replying Affirmation/Affidavit		38, 39

Upon the foregoing cited papers, the Decision/Order in this Motion is as follows:

Petitioner's motion is granted to the extent of lifting the stay pursuant to the ERAP Statute and restoring the proceeding to the Court's calendar to permit it to proceed to trial without prejudice to Respondent's defenses related to financial hardship due to the COVID-19 pandemic.

History:

This non-payment proceeding commenced in August 2019 by petition seeking $20,160 in rental arrears for the period of March 2019 through August 2019 at a rate of $3,360.00 per month. After failing to file an answer, Petitioner was awarded a judgment of possession on default on or about September 12, 2019. When Respondents' moved vacate the default, Petitioner consented to vacate the default by Stipulation dated December 18, 2019 (NYSCEF Doc. No. 48). At that time, the case was transferred to Part X, assigned to Part N and adjourned for trial on February 4, 2020. As a result of the COVID 19 pandemic the trial did not commence as planned. On or about February 11, 2021, Respondents filed a Hardship Declaration, staying the proceeding, citing financial hardship as well as hardship related to an underlying medical issues should they have to move during the pandemic. The proceeding was subsequently stayed by Respondents' filing of an ERAP application (No. A1441) on or about August 31, 2021.

In or around March 1, 2022, a determination was made on said application and the application was "denied." *See* NYSCEF Doc. No. 8. Subsequently, Respondents filed an appeal which was also denied. *See* NYSCEF Doc. No. 9. Thereafter, Petitioner made a motion to restore the proceeding to the Court's calendar based on the aforementioned denials; however, the proceeding was returned to the Court's

ERAP administrative calendar after Petitioner discovered in Court that Respondents appeal was apparently reopened. NYSCEF Doc. No. 28. That appeal was subsequently denied. NYSCEF Doc. No. 32.

Based on the most recent ERAP denial, Petitioner made the instant motion to vacate the ERAP stay and restore the proceeding to the Court's calendar for trial. NYSCEF Doc. Nos. 29-34. In opposition, Respondents argue that the case should remain stayed, as they have filed yet another appeal of their ERAP denial. *See* NYSCEF Docs. 35-36. Notably, the most recent appeal was filed by Respondents 10 days after Petitioner filed the instant motion to restore. NYSCEF Doc. No. 36. While Respondents argue that they may seek relief via an Article 78, Respondents have provided no evidence that an Article 78 has been filed.

Since Petitioner commenced this proceeding, the debt has ballooned to $171,360.00 through May 2023. *See* NYSCEF Doc. No. 40.

Instant Motion:

Pursuant to §8 of the ERAP Statute, once a litigant seeks rental relief through ERAP there automatic restrictions on eviction, as follows: "If eviction proceedings are commenced against a household who has applied or subsequently applies for benefits under this program or any local program administering federal emergency rental assistance program funds to cover all or part of the arrears claimed by the petitioner, all proceedings shall be stayed pending a determination of eligibility."

Petitioner moves the Court to vacate the ERAP stay, claiming that there has been a final determination with respect to Respondents' ERAP application and argue that the stay is highly prejudicial to Petitioner because it is both futile and unjust. Even if Respondents are found eligible for ERAP funds, the maximum amount they would be awarded is $50,400 (15 months @ $3,360 per month). That would leave $120,960 owed through May 2023. Furthermore, per Petitioner's ledger, no rent payments have been made by Respondents since March 2019, nearly a year before the Covid-19 pandemic was upon us. *See* NYSCEF Doc. No. 40.

If the stay is continued, the debt will continue to accrue at a rate of $3,360 per month until the ERAP is determined, a period currently unknown as the ERAP fund is depleted and Respondents' appeals have now been denied twice. To require Petitioner to accrue a monthly unsecured debt while knowing it will not be made whole by the relief funds creates an unjust result not intended by the Legislature. Petitioner points to several recent cases where courts have seen fit to permit the ERAP stay to lift.

In opposition, Respondents argue that they have acted in good faith throughout the ERAP application process and have not used the appeal process as a tactic to delay this proceeding. Respondents further argue that the continued ERAP stay is not futile and must stand as it may preserve Respondents' tenancy, unlike other situations involving subtenants, licensees, squatters or superintendents whose tenancy would not be preserved or created by a stay. *See Actic v. Greg*, 2022 NY Misc. Lexis 582 (Civ. Ct. Kings Co. 2022); *Ami v. Ronen*, 2022 NY Slip Op. 22098. Finally, Respondents argue that "the amount sought in the non payment petition could easily be satisfied by the ERAP payment" (NYSCEF Doc. No. 35 at ¶ 15) and cites other courts which have declined to vacate an ERAP stay when the receipt of the ERAP payment could "natural and foreseeably resolve the non payment litigation." *See Harbor Tech LLC v. Correa*, 154 N.Y.S3d 411 (Civ. Ct. Kings Cty. 2021).

In reply, Petitioner argues that the issue of on-going rent and the amount of debt owed even after payment of the maximum amount of ERAP funds are relevant here because they are evidence that the stay is unjust. Petitioner points to the fact that the ERAP payment would not, in fact, satisfy the petition, noting that the amount sought in the petition was for arrears that entirely pre-date the Covid-19 pandemic. Petitioner also challenges Respondents' assertion that any delay is the fault of Petitioner and argues that Respondents are using the ERAP appeal process as a "permanent stay mechanism."

DECISION AND ORDER:

The instant proceeding was commenced long before Covid was an issue. Indeed, Respondents' last rental payment was in March 2019 – more than four years ago – and show no ability to pay rent to Petitioner; either past, current, or future.

The Legislative Intent stated in the passage of the ERAP Statute was to prevent unnecessary eviction resulting from non-payment of rent based upon financial or personal hardship caused by Covid. While Respondents' cited financial hardship in their Hardship Declaration filed in February 2021 in their initial request for a stay under the now invalidated Covid Emergency Eviction and Foreclosure Protection Act (CEEFPA), they have failed to articulate how the stay is just under the present circumstances.

CEEFPA was invalidated by the US Supreme Court in its ruling in *Chrysafis v Marks, 141 S.Ct. 2482 (2021).* The Supreme Court invalidated the stay created by the CEEFPA statute because it did not permit challenge, saying *"[t]his scheme violates the Court's longstanding teaching that ordinarily 'no man can be the judge in his own case' consistent with the Due Process Clause." See 2986 Briggs LLC v Evans, 74 Misc.3d 1224(A).* A court must "construe New York State statutes so as to avoid constitutional impairment." *Abuelafiya v Orena, 73 Misc 3d 576 (Dist Ct 3rd Dist Suffolk Co 2021).*

To construe the ERAP stay as unchallengeable would be to create another scheme by which one party completely controls the progress and determination of a dispute. Such a result is unacceptable after *Chrysafis v Marks, supra.* Moreover, unlike the invalidated CEEFPA statute, nothing in the ERAP Statute deprives a party of the ability to challenge the stay. *See Evans (supra) at *4.*

Finally, lifting the stay does not result in eviction but allows the case to proceed in the ordinary course and permits Respondents to raise any and all defenses to the proceeding, including financial hardship caused by COVID or qualification for TSHA, which precludes an award of a possessory judgment for amounts accrued due to financial hardship. Moreover, the Housing Stability and Tenant Protection Act (HSTPA) permits Respondents to seek a stay of up to one year on terms that may be just even after issuance of a judgment and warrant.

Despite lifting the stay, Respondents third ERAP appeal remains pending and, if funds are awarded, Respondents would remain eligible for any and all additional benefits of the ERAP Statute. Continuing the stay on these specific facts would not serve the cause of justice; to allow the stay to remain would require Petitioner to continue to accrue unsecured debt at a rate of $3,360 per month indefinitely with little additional benefit provided to Respondents. A balancing of the equities under these facts warrants lifting of the stay.

The proceeding is restored to the Court's calendar for pre-trial conference on August 4, 2022 at 10 am, Part N – Room 855. Parties are expected to appear in person.

DATED: August 3, 2023

SO ORDERED

Hon. Daniele Chinea, JHC