

W. 49th St., LLC v. O'Neill

76 Misc. 3d 459 (N.Y. Civ. Ct. 2022) · 173 N.Y.S.3d 189 · 2022 N.Y. Slip Op. 22222
Decided Jul 14, 2022

Index No. 301352/2022

07-14-2022

WEST 49TH STREET, LLC, Petitioner, v.
Markyus O'NEILL, Respondent, Jane Doe, John
Doe, Respondent-undertenants.

SDK Heiberger (Steven B. Sperber, Esq.), for the
petitioner Thomas John Hillgardner, Esq., for the
respondent-Markyus O'Neill

Karen May Bacdayan, J.

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SDK Heiberger (Steven B. Sperber, Esq.), for the
petitioner

Thomas John Hillgardner, Esq., for the
respondent-Markyus O'Neill

460 Karen May Bacdayan, J. *460 **PROCEDURAL
HISTORY AND BACKGROUND**

This is a licensee holdover proceeding brought after the death of the rent stabilized tenant of record. The last renewal lease expired on December 21, 2022. (NYSCEF Doc No. 32, exhibit B to petitioner's motion sequence 2.) Respondent applied for the Emergency Rental Assistance Program ("ERAP") on March 22, 2022, and petitioner has moved to vacate the stay.¹ Respondent argues that the stay should remain in effect because of the plain language of the statute, and because none of petitioner's cited cases which grant a motion to vacate an ERAP stay in licensee holdover proceedings involve a factual scenario wherein a licensee raises a colorable claim of

succession. (NYSCEF Doc No. 41, respondent's memorandum of law at 2.) Respondent's attorney narrows the issue for consideration before the court: "The only issue before this Court on this motion is: in a licensee holdover proceeding involving a rent stabilized housing accommodation, whether a respondent articulating a colorable claim of succession rights is entitled to the automatic stay provided for by (ERAP)." (*Id.*) For the following reasons, the Court holds that the ERAP stay should be vacated, and that the parties should proceed with the litigation in the normal course.

¹ The parties do not dispute whether the court has the authority to determine the applicability of the ERAP statute.

DISCUSSION

To be eligible for ERAP funds an applicant must be "a tenant or occupant obligated to pay rent." (L 2021, c 56, part BB, subpart A, § 5 [1] [a] [i].) Definitions in the original ERAP statute, relevant here, remained unchanged when the statute was amended by L 2021, c 417. "Occupant" has the same meaning as under Real Property Law (RPL) Section 235-f. (L 2021, c 56, part BB, subpart A, § 2 [7].) RPL 235-f defines "occupant" as "a person, other than a tenant or a member of a tenant's immediate family, occupying a premises with the consent of the tenant or tenants." "Rent" is as defined under Real Property Actions and Proceedings Law (RPAPL) Section 702. (2021, c 56, part BB, subpart A, § 2 [9].) [RPAPL 702](#) defines "rent" as "the monthly or weekly amount

charged in consideration for the use and occupation of a dwelling pursuant to a written or oral rental agreement."

Respondent's argument that petitioner's motion must be denied rests on the proposition that he is not a mere licensee, rather he is entitled to possession of the premises, and a rent stabilized renewal lease, because he is an immediate family member of the deceased tenant of record. (*Braschi v. Stahl Assocs. Co.*, 74 N.Y.2d 201, 544 N.Y.S.2d 784, 543 N.E.2d 49 [1989].)

However, this claim has yet to be adjudicated, and, for now, respondent remains a licensee, whose license has expired with the death of the last lease holder. Respondent has no obligation to pay rent 191 *191 as there is no lease between respondent and petitioner prior to a favorable determination by this court that he is entitled to be the rent paying tenant of record. "[A] successor in interest is not a tenant until he or she becomes a party to a lease or rental agreement." (*Strand Hill Assocs. v. Gassenbauer*, 41 Misc. 3d 53, 975 N.Y.S.2d 526 [App. Term. 2d Dept. 2013]; see also *E. Harlem Pilot Block Bldg. IV HDFC Inc. v. Diaz*, 46 Misc. 3d 150[A], 2022 N.Y. Slip Op. 50529[U], 2015 WL 1015841 [App. Term., 1st Dept. 2015]; *W. 152nd Assocs., L.P. v. Gassama*, 65 Misc. 3d 155[A], 2022 N.Y. Slip Op. 50529[U], 2019 WL 6681664 [App. Term., 1st Dept. 2019].)

Respondent is not now a tenant or occupant obligated to pay rent pursuant to an agreement, written or oral, although he may be such a person once this litigation concludes. Payment of "rental arrears" for up to 12 months prior to respondent's application and potential additional three months of prospective arrears could, *practically* speaking, go some way towards settling this proceeding. Regardless, petitioner has stated that, at this juncture, it only desires possession, not "rent." (NYSCEF Doc No. 30, Ruhl affidavit ¶ 2.) In any case, notwithstanding respondent's succession claim, payment of approved ERAP funds would

not preserve an existing tenancy or create one. Even if respondent prevails on his succession claim, he will not owe rent that came due prior to the filing of this proceeding. Payment of the ERAP funds for which respondent has applied will not result in the preservation or creation of a tenancy. What *will* preserve respondent's home and create a tenancy is a determination on the 462 merits of his succession claim. *462 This court sees no reason why Respondent should not continue with this litigation in the normal course, and obtain a determination on the merits.

CONCLUSION

Accordingly it is

ORDERED that petitioner's motion to vacate the ERAP stay is GRANTED.

The parties are to appear in Part F, Room 523 of the Civil Court of the City of New York, Housing Part, at 10:00 a.m. on July 29, 2022 in person for a settlement conference and to set a briefing schedule for petitioner's motion for summary judgment and any intended motions for discovery.

If the parties settle respondent's motion for summary judgment (NYSCEF Doc No. 9-25, motion sequence 1) and their intended motions for discovery, mark the proceeding off calendar pending the completion of discovery, and stipulate that there will be no further motion practice, the parties may appear in person in Part F, Room 523 of the Civil Court of the City of New York, Housing Part, at 10:00 a.m. on July 29, 2022 for a pre-trial conference and to be sent to the trial part for trial pending completion of discovery.

This constitutes the decision and order of this court.

