

Ketcham Assoc. LLC v Gil

2021 NY Slip Op 30780(U)

February 5, 2021

Civil Court of the City of New York, Queens County

Docket Number: L&T 69181/18

Judge: Clinton J. Guthrie

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS: HOUSING PART HMP

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KETCHAM ASSOCIATES LLC,

Petitioner,

Index No. L&T 69181/18

-against-

DECISION/ORDER

PATRICIA GIL, GYOZO (JESSE) PAPP, JOHN DOE,
JANE DOE,

Respondents.

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Present:

Hon. CLINTON J. GUTHRIE
Judge, Housing Court

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of Respondent Gyozo (Jesse) Papp’s oral application to “remove” the default judgment pursuant to the COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020:

Papers	Numbered
Oral Application by Robert G. Hammond, Esq. (made on January 11, 2021)....	<u>1</u>
Affirmation in Opposition & Affidavits/Exhibits Annexed.....	<u>2</u>
Affirmation in Reply & Affidavit/Memorandum of Law/Exhibits Annexed.....	<u>3</u>

Upon the foregoing cited application and papers, the decision and order on Respondent Papp’s oral application is as follows.

PROCEDURAL HISTORY

This holdover proceeding was commenced in September 2018. The Petition (by way of the annexed Ten (10) Day Notice of Termination) alleges that Respondent Patricia Gil was committing a nuisance in her apartment, which is subject to rent stabilization. After counsel (The Legal Aid

Society) appeared for Ms. Gil and submitted an answer for both her and her son, Gyozo (Jesse) Papp, The Legal Aid Society moved to withdraw as counsel for Mr. Papp and said motion was granted by this court on June 7, 2019. Petitioner then moved to join Mr. Papp as a respondent. On July 23, 2019, this court granted the motion to join Mr. Papp as a respondent without opposition.

Subsequently, by stipulations dated September 13, 2019 and November 20, 2019, Ms. Gil, through counsel (still The Legal Aid Society) surrendered possession to the subject premises and the proceeding was discontinued against her. On September 13, 2019, the court (John S. Lansden, J.) also conducted an inquest and granted a default judgment against all respondents (including Mr. Papp, who failed to appear). The COVID-19 pandemic then led to all evictions being administratively stayed beginning in mid-March 2020. In late August 2020, Petitioner moved pursuant to DRP-213 to execute upon the warrants of eviction. Following Mr. Papp's failure to appear on three (3) return dates of Petitioner's DRP-213 motion, this court granted Petitioner's motion on default on December 2, 2020, and stayed execution through December 22, 2020 (with notification of Adult Protective Services (hereinafter "APS") required prior to execution). Mr. Papp filed a *pro se* order to show cause on December 16, 2020, alleging that he had received a marshal's notice, that he had been depressed because of his mother's death, and that he had diabetes.¹ On the return date of Mr. Papp's order to show cause, December 23, 2020, Queens Legal Services appeared as counsel for Mr. Papp and advised the court that an APS referral was pending.² The court adjourned the order to show cause to January 11, 2021 in order to learn of the outcome of

¹ Mr. Papp states in his affidavit in reply that his mother, Ms. Gil, died as a result of COVID-19 in an assisted-living facility in April 2020.

² The APS referral was apparently made by a city marshal.

the APS referral.

On January 11, 2021, the *pro se* order to show cause was withdrawn and counsel for Mr. Papp made an oral application on the record to “remove” the default judgment in accordance with the COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020 (hereinafter “EEFPA”), which had been signed by Governor Andrew M. Cuomo on December 28, 2020. Petitioner’s counsel requested the opportunity to oppose the request in writing, which the court granted. The proceeding was adjourned to February 4, 2021 for submission of opposition and reply papers. On February 4, 2021, after the opposition and reply had been submitted, the court heard argument on the application via Microsoft Teams and reserved decision.

ANALYSIS

The EEFPA was passed with the stated legislative intent to “avoid as many evictions as 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.” *See* L 2020, ch 381, § 3. Included alongside EEFPA provisions staying eviction proceedings generally for 60 days and further, to May 1, 2021, where financial hardship or increased risk of severe illness or death from COVID-19 from vacating and moving is affirmed, is Part A, Section 7, which addresses default judgments. Relevant here is the specific provision of Part A, Section 7 that states as follows:

“If a default judgment has been awarded prior to the effective date of this act, the default judgment shall be removed and the matter restored to the court calendar upon the respondent’s written or oral request to the court either before or during such hearing and an order to show cause to vacate the default judgment shall not be required.” (L 2020, ch 381, Part A, § 7).

Mr. Papp’s oral request, through counsel, to remove the default judgment against him, is

made pursuant to this provision of the EEFPA. Mr. Papp's reply papers also include a written request, signed by Mr. Papp on February 1, 2021, to remove the default judgment. Petitioner opposes Mr. Papp's request, primarily arguing that the facts and circumstances of this two-plus year-old proceeding, which involves specific allegations of nuisance conduct by Ms. Gil prior to her vacatur and by Mr. Papp on an ongoing basis, exempt the case from the relevant default judgment provisions of the EEFPA. Petitioner references Part A, Section 8(b)(ii) of the EEFPA, which allows the court to permit execution upon warrants issued on or before March 7, 2020 where the court has found that 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."

For the court to make such a finding, however, it must do so pursuant to the provisions of Part A, Section 9 of the EEFPA, which makes inapplicable certain stay provisions of Part A (specifically Sections 2, 4, 6, and 8(a)(ii)) where the tenant is persistently and unreasonably engaging in the aforementioned nuisance-type behavior. Crucially, though, Part A, Section 9 does not explicitly (or by implication) make inapplicable the default judgment provisions of Part A, Section 7. Therefore, the court must conclude that the legislature intended for the default judgment provisions to apply to all eviction proceedings, regardless of whether nuisance-type behavior was alleged. *See e.g. Matter of Walsh v. New York State Comptroller*, 34 NY3d 520, 524 [2019] ["A statute 'must be construed as a whole and [] its various sections must be considered together and with reference to each other.'"] [Quoting *Matter of New York County Lawyers' Assn. v. Bloomberg*, 19 NY3d 712, 721 [2012]]; *Kimmel v. State of New York*, 29 NY3d 386, 394 [2017] ["Where the legislature has addressed a subject and provided specific exceptions to a general rule...the maxim

expressio unius est exclusio alterius applies (see McKinney’s Cons Laws of NY, Book 1, Statutes § 240 at 412-413 [‘where a statute creates provisos or exceptions as to certain matters the inclusion of such provisos or exceptions is generally considered to deny the existence of others not mentioned’]”).

Furthermore, although the proceeding has been pending for over two years and the default judgment was granted prior to the COVID-19 pandemic, the EEFPA does not limit the default judgment provisions only to those judgments that were granted in or after March 2020 (i.e. the onset of the COVID-19 emergency in New York). This is distinguishable from the Tenant Safe Harbor Act (L 2020, ch 127), which specifically limited its applicability to a “COVID-19 covered period” that began on March 7, 2020. See *Matter of Cabrera v. Humphrey*, 2021 NY Slip Op 00358 [3d Dept 2021]. For the court to impose a similar temporal limitation in the absence of statutory language providing for it would impermissibly “give effect to an assumed legislative intent by judicial construction.” *Kimmel*, 29 NY3d at 394.

Accordingly, Respondent’s application to remove the default judgment is granted pursuant to Part A, Section 7 of the EEFPA. The default judgment against Gyozo (Jesse) Papp is hereby vacated, along with the warrant of eviction. See RPAPL § 749 [Warrant shall issue only upon rendering of a judgment]. This determination does not connote an assessment of merit of Mr. Papp’s defenses or Petitioner’s claims, as the EEFPA does not require the showing of a reasonable excuse or meritorious defense to remove a default judgment.³ *Contra* CPLR § 5015(a)(1).

³ Nonetheless, the underlying allegations are such that the court will continue to calendar this proceeding so that the court may assess the potential applicability of Part A, Section 9 of the EEFPA.

CONCLUSION

Mr. Papp's application to remove the default judgment against him is granted for foregoing reasons. The default judgment and warrant of eviction (against Mr. Papp only) are vacated. This proceeding shall be restored to the Part A calendar on February 16, 2021 at 9:30 AM for a virtual conference on APS status and the applicability of Part A, Section 9 of the EEFPA. Counsel for the parties will receive a Microsoft Teams invitation for the conference.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Dated: Queens, New York
February 5, 2021


HON. CLINTON J. GUTHRIE, J.H.C.

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SO ORDERED - HON. CLINTON J. GUTHRIE