

Pimor Assoc. LLC v Delvalle
2021 NY Slip Op 31975(U)
July 7, 2021
Civil Court of the City of New York, Queens County
Docket Number: L&T 301055/21
Judge: Clinton J. Guthrie
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS: HOUSING PART E

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PIMOR ASSOCIATES LLC,

Petitioner-Landlord,

Index No. L&T 301055/21

-against-

DECISION/ORDER

CASSIE DELVALLE,

Respondents-Tenant.

-----X

Present:

Hon. CLINTON J. GUTHRIE
Judge, Housing Court

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of petitioner’s order to show cause to reject the respondent’s hardship declaration, for a vacatur of any stay of this proceeding, to strike respondent’s first, second, third, and sixth affirmative defenses, and to place this proceeding on the trial calendar:

Papers	Numbered
Order to Show Cause & Affidavit/Exhibits Annexed.....	<u>1 (NYSCEF #13-19)</u>
Affirmation in Opposition & Exhibits Annexed.....	<u>2 (NYSCEF #20-21)</u>
Reply Affirmation & Exhibits Annexed.....	<u>3 (NYSCEF #22-25)</u>

Upon the foregoing cited papers, the decision and order on petitioner’s order to show cause is as follows.

PROCEDURAL HISTORY

Petitioner commenced this holdover proceeding predicated upon a notice of termination

dated June 10, 2020 in April 2021.¹ Petitioner then brought the instant order to show cause on May 24, 2021. The order to show cause was signed and opposition and reply were submitted prior to the return date of June 17, 2021. On June 17, 2021, the court heard argument via Microsoft Teams and reserved decision.

ANALYSIS

I. Request to “reject” hardship declaration and vacate any stay.

The court first addresses petitioner’s request to “reject” respondent’s COVID-19 hardship declaration and vacate any stay under the COVID-19 Emergency Eviction and Foreclosure Prevention Act [L 2020, ch 381] (hereinafter “EEFPA”).² Initially, there is nothing contained in the EEFPA that provides for the “rejection” of a hardship declaration filed pursuant to the statute. Generally, if a hardship declaration is filed in a pending proceeding in which no warrant has issued, the proceeding shall be stayed through the expiration date of the statute (August 31, 2021). *See* EEFPA Part A, Section 6 (as amended by L 2021, ch 104). The only exception to the stay imposed upon the filing of a hardship declaration is contained in Part A, Section 9 of the EEFPA. The exception in Part A, Section 9 applies where 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.”

As this court previously held in *Regency Gardens Co. v. Yoshevayev*, 71 Misc 3d 1046, 1049 [Civ Ct, Queens County 2021], it is incumbent upon a petitioner to come forth with

¹ A prior proceeding based on the same predicate notice was dismissed by Decision/Order of Hon. Maria Ressos dated March 31, 2021.

² The EEFPA has been amended and extended through August 31, 2021 by L 2021, ch 104.

nonconclusory evidence that a respondent is “persistently and unreasonably engaging in” nuisance-type conduct described in Part A, Section 9 to raise an issue of fact as to whether the exception to the stay should apply. *See also Cg-N Affordable LLC v. Bolshakov*, 2021 NYLJ LEXIS 202, *5 [Civ Ct, NY County, March 4, 2021, Index No. 75795/18]. Here, respondent filed a hardship declaration via NYSCEF on May 5, 2021. Therefore, the stay provided for in Part A, Section 6 applies unless the exception in Part A, Section 9 is established.

In support of its order to show cause, petitioner’s attorney/managing agent submits his affidavit and various exhibits. The affidavit references complaints about noise from respondent’s apartment by a resident in apartment #22 in the same building. The only documented complaints are annexed to the notice of termination and pre-date that notice (which was issued in June 2020). Petitioner’s attorney states in his affidavit that he has “received continuously such complaints of lack of enjoyment of the use of the premises by apt #22, most recently last week.” (Orner Affidavit dated May 24, 2021, ¶ 11). However, this statement is hearsay and does not include any specific details as to dates, times, or precise conduct. *See e.g. Zuckerman v. New York*, 49 NY2d 557, 563 [1980] [Attorney affirmation based on hearsay “is without evidentiary value and thus unavailing.”]. Therefore, petitioner has not presented evidence that raises an issue of fact as to whether respondent is “persistently and unreasonably engaging in” the conduct described in Part A, Section 9 of the EEFPA.

Consequently, the court denies the portions of petitioner’s order to show cause seeking to “reject” respondent’s hardship declaration and to vacate the stay imposed by Part A, Section 6 of the EEFPA, without prejudice to the underlying merits of the petition and any defenses thereto. The court will hold the balance of petitioner’s order to show cause, namely the request to strike

certain affirmative defenses and to place the proceeding on the trial calendar, in abeyance until the expiration of the stay. If Part A, Section 6 of the EEFPA is not extended, decision will be reserved on the remainder of the order to show cause on September 1, 2021; if Part A, Section 6 of EEFPA is extended, decision will be reserved on the date immediately following the date of expiration of the extension.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Dated: Queens, New York
July 7, 2021



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

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