

Zabala v Mealie

2021 NY Slip Op 32026(U)

August 27, 2021

Civil Court of the City of New York, Kings County

Docket Number: 52310/19

Judge: Heela D. Capell

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This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART O

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TERESA ANN ZABALA,

L&T Index No. 52310/19

Petitioner,

Mot. Seq. # 7

-against-

DECISION/ORDER

CHRISTOPHER MEALIE, "JOHN DOE" AND "JANE
DOE",

Respondents.

-----X

Present: Hon. Heela D. Capell
Judge, Housing Court

Recitation, as required by CPLR § 2219(a), of the electronically filed papers considered in the review of the respondent's order to show cause for a stay pending appeal pursuant to CPLR 2201 and 5519(c), numbered as they appear on NYSCEF.

Papers	Numbered
Order to Show Cause & Affirmation Annexed.....	142, 129-131
Exhibits.....	132-140
Answering Affidavits.....	144
Exhibits.....	145
Reply Affidavits.....	147

After oral argument and upon the foregoing cited papers, the Decision and Order on this order to show cause is as follows:

Teresa Ann Zabala ("Petitioner") commenced this holdover proceeding against Christopher Mealie ("Respondent"), seeking possession of 20 Harrison Place, Apt. 2L, Brooklyn, NY 11206 ("Premises") on the grounds that Petitioner intends to use the Premises as her primary residence. The relevant procedural history is as follows: Respondent moved to dismiss this

proceeding in the Resolution Part, arguing that the *Golub* notice is defective insofar as it does not plead compliance with the new “immediate and compelling necessity” standard contained in Part I of the Housing Stability and Tenant Protection Act of 2019 (“HSTPA”). In a decision and order dated August 8, 2019, the Honorable Bruce E. Scheckowitz denied the motion and held that the notice contained sufficient facts to meet either “immediate and compelling necessity” standard, or the pre-HSTPA “good faith” standard. (NY St Cts Elec Filing [NYSCEF] Doc No. 10 [August 8, 2019].) Respondent moved to reargue Judge Scheckowitz’s decision.

In a Decision and Order dated May 6, 2021 (“Decision”) Judge Scheckowitz adhered to, but modified, the August 8, 2019 decision, as follows :

“...Petitioner’s motion is granted to the extent of modifying this court’s previous decision and order. The previous standard of the HSTPA which required that the facts of this case be analyzed under the “immediate and compelling necessity” [standard] has now been changed by *Matter of Harris*.¹ As the instant proceeding was pending at the time of the passage of the HSTPA, this owner’s use holdover proceeding is governed by the relevant pre-HSTPA statutes and case authority. Petitioner is required to demonstrate a “good faith” standard.”

(NY St Cts Elec Filing [NYSCEF] Doc No. 132)

¹ *Matter of Harris v Israel*, (191 AD3d 468 [1st Dept 2021].) In *Matter of Harris v Israel*, the Appellate Division, First Department held that a retroactive application of Part I of the HSTPA violated constitutional due process. In *Harris*, the landlord had already obtained a judgment of possession against the tenant. In the motion to reargue, Respondent maintained that *Harris* must be limited to post-judgment proceedings. Respondent also relies upon *Karpen v Castro*, a Brooklyn Housing Court decision rendered subsequent to the Decision, which holds that *Matter of Harris* should be limited to post-judgment proceedings. (*Karpen v Castro*, 2021 NY Slip Op 21169 [Civ Ct Kings County 2021].)

On May 11, 2021, this proceeding was transferred to this Part ~~Part O~~ for trial. Respondent filed a Notice of Appeal on May 13, 2021. A pre-trial conference was held in this Part on May 19, 2021, and the court scheduled the trial for October 5, 2021, and October 12, 2021. On August 6, 2021, Respondent filed this order to show cause seeking a stay of this proceeding, which this court signed. Oral argument was held on August 24, 2021.

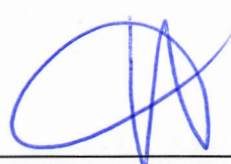
Respondent argues that he would be prejudiced at trial if the pre-HSTPA standard was used and that he intends to appeal the Decision. However, aside from a Notice of Appeal, Respondent has not filed any appellate papers since May 13, 2021. Petitioner argues that she will be prejudiced from a further delay of this “owner’s use” proceeding as she is 83 years old and has been waiting to move into the Premises for years. Petitioner also maintains that it would be more efficient to appeal the eventual decision after trial rather than the Decision, which was on a motion to reargue.

CPLR 5519(c) provides, in pertinent part, “the court from or to which an appeal is taken or the court of original instance may stay all proceedings to enforce the judgment or order appealed from pending an appeal...” CPLR 2201 provides: “[e]xcept where otherwise prescribed by law, the court in which an action is pending may grant a stay of proceedings in a proper case, upon such terms as may be just.” “Stays are addressed to the sound discretion of the trial court” (*Estate of Salerno v Estate of Salerno*, 154 AD2d 430, [2nd Dept 1989]). There is, however, a strong rule against staying a summary proceeding. (*3165 LLC v Lopez*, 68 Misc 3d 1202[A], 2019 NY Slip Op 52189[U], [Civ Ct, Bronx County 2019] citing *Scheff v 230 E. 73rd Owners Corp.*, 203 AD2d 151, 152 [1st Dept 1994]; *Hillside Park 168, LLC v Hossain*, 61 Misc. 3d 132(A), 110 N.Y.S.3d 8632018 NY Slip Op 51451(U) [App Term 2nd Dept 2018].)

Here, Respondent filed a Notice of Appeal on May 11, 2021. The court file in this case shows that Respondent did not take any other actions until August 6, 2021, when he filed this order to show cause. Valuable time passed since this court conducted a pre-trial conference on May 19, 2021 and selected a trial date in consultation with the parties. Furthermore, Respondent failed to perfect an appeal of a previous decision in this case.² The court notes that the Petitioner, who seeks possession of the Premises so that she may reside there, is 83 years old, and this case was commenced January 30, 2019, almost two and a half years ago. Staying this case at this late stage, after a trial date has already been set in consultation with the parties, would not promote judicial economy. Therefore, this court exercises its discretion and denies the stay. This decision and order is without prejudice to Respondent seeking a stay at the Appellate Term.

This constitutes the decision and order of this Court.

Dated: Brooklyn, New York
August 27, 2021



HON. HEELA D. CAPELL, J.H.C.

² Respondent filed an appeal of Judge Scheckowitz' August 8, 2019 decision, which was dismissed for failure to prosecute on December 21, 2020. (NY St Cts Elec Filing [NYSCEF] Doc No. 145.)