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| Concord Seaside LP v Valbuena |
| 2021 NY Slip Op 32602(U) |
| November 29, 2021 |
| Civil Court of the City of New York, Richmond County |
| Docket Number: Index No. 300548/21 |
| Judge: Remy Smith |
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF RICHMOND: HOUSING PART Y
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CONCORD SEASIDE LP,

Index No. 300548/21

Petitioner-Landlord,

-against-

DECISION/ORDER
Remy Smith, JHC

JUAN VALBUENA and LAURA MEDINA et al.

Respondents.
-----X

REMY SMITH, JHC:

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion seeking to set aside Hardship Declarations:

| Papers: | Numbered |
|------------------------------------------------------------------------|----------|
| Petitioner’s Notice of Motion and supporting papers | 1 |
| Respondent’s Affirmation in Opposition and supporting papers | 2 |
| Petitioner’s Reply Affirmation | 3 |

Petitioner seeks to set aside Hardship Declarations submitted on behalf of respondent Laura Medina based on her status as a licensee¹ and to vacate the stay triggered thereby under Chapter 417 of the Laws of New York (“Act”). Respondent opposes and this court grants the motion in its entirety, sets aside the Hardship Declaration, and schedules this matter for trial to be held on December 13, 2021 at 11:00 a.m.

¹Medina obtained the license from her mother; while she states that she co-occupied the unit with her brother, now tenant-of-record, the court finds that he has not vacated or surrendered and therefore succession rights are not triggered by her co-occupancy with him at the premises.

Petitioner predicates this holdover seeking possession of 18 Father Capodanno Blvd., 4K, Staten Island, New York (“premises”) upon a Ten-Day Notice of Termination and Notice to Vacate served upon respondents². The court addresses the basis of the termination notice served upon Laura Medina only, as hers is the only Hardship Declaration at issue and the allegations reveal that she is the occupant petitioner wishes to evict, as will be discussed in detail in this Decision.

The termination notice dated March 19, 2021 alleges that Laura Medina is not listed on income recertifications for this Low Income Tax Credit apartment or the lease governing the tenancy of her mother, Aleida Rodriguez, who moved to Spain in August/ September 2019 and surrendered possession of the premises in or about April 2020. Petitioner alleges in the Notice that, in April and May 2020, its agent repeatedly denied Ms. Rodriguez’ request to add Laura Medina to the lease and reiterated to Ms. Rodriguez that Medina was an illegal occupant and that her income had never been reported as required to maintain the unit and Housing and Urban Development (“HUD”) subsidy.

Consistent with its refusal to add Medina to the lease, petitioner, in April 2020³, changed the head of household to Juan Valbuena, Medina’s brother, as he had been listed on the household composition. At petitioner’s request, he supplied a notarized letter as to his income. Valbuena has not, however, been able to access the unit; Medina, who is occupying same, obtained an order of protection against him prohibiting him from going to her place of residence

²Petitioner alleges that respondent Valbuena has violated his lease and riders by failing to provide Medina’s income information. He has not appeared in this case as of the adjudication of this motion.

³Lease and related documents listing Juan Valbuena as tenant of record (and sole occupant) is dated May 6, 2020 and attached as an Exhibit to the motion.

(premises) through and including July 16, 2022.

During the pendency of this proceeding, Medina filed a Hardship Declaration dated July 26, 2021 and obtained counsel on or about October 27, 2021, about one month after petitioner filed the instant motion. Medina opposes the motion but did not interpose an Answer or otherwise respond to the pleadings or assert affirmative defenses. Her opposition, however, relies on her claim of inchoate succession rights in order that her occupancy is considered appropriate for application of stay triggered by filing the Hardship Declaration. This court disagrees for the following reasons discussed below.

This threshold issue of applicability of the Act provides the court with an opportunity to determine the merits of a potential affirmative defense of succession before same has even been interposed. This mechanism of reaching a potentially substantive determination about the merits of a case at this pre-answer stage is unusual in the context of a summary proceeding. Summary proceedings are governed by CPLR §401, *et seq.* and are designed to dispose of cases in an expeditious manner outside of the more common discovery and motion schedules found in civil actions. Because of that, a request for an interim stay, for example, on an order to show cause to stay an eviction, does not require the same type of notice as in an action. See 22 NYCRR 202.7(f), which requires that the party seeking a the injunction notify his adversary of the time, date and place that the application for injunctive relief will be made in a manner sufficient to permit the party an opportunity to appear in response to the application.⁴

⁴The statute specifically exempts orders to show cause brought in proceedings subject to Article 7 of the RPAPL, to wit, housing court proceedings.

The stay imposed by the Act, however, is not triggered by an Order to Show Cause and does indeed contemplate a review of the merits as opposed to simply a movant's application for a stay for good cause pursuant to RPAPL §749 or in good faith and upon presentation of extreme hardship pursuant to RPAPL §753⁵. To that end, the court relies on analysis and application of CPLR §6301 to determine whether the stay must be vacated.

CPLR §6301 requires a court, when confronted with a proponent's *ex parte* application for a temporary restraining order against a defendant, to determine whether the "defendant is threatening or about to do an act in violation of the plaintiff's rights respecting the subject of the action. . . . [and such] temporary restraining order may be granted pending a hearing for a preliminary injunction where it appears that immediate and irreparable injury, loss or damage will result unless the defendant is restrained before the hearing can be had."

Clearly, the stay triggered by filing a Hardship Declaration is imposed by the Act, not a court order. However, in analyzing a motion to vacate such stay, the court is guided by the defendant's opposition to such an application pursuant to CPLR §6301 and focuses on the standards that proponent of the injunctive relief must establish toward the end of obtaining one, for example, likelihood of ultimate success on the merits, irreparable injury to the proponent in the absence of injunctive relief, balance of the hardships or equities favoring the proponent, and public policy considerations.

⁵The court also notes the distinction between the stay imposed by the Act as opposed to those particular sections of the RPAPL and the latter's inclusion of conditional language against the absence thereof in the former and therefore cannot analyze petitioner's motion to vacate the stay under the RPAPL but rather looks to a more expansive discussion of injunctive relief and its requirements and implications.

Because the stay is imposed by the Act which already takes public policy and balance of equities into consideration and essentially forecloses analysis thereof⁶, the court examines the first two elements of injunctive relief in its determination that the stay must be vacated and Hardship Declaration set aside. The second requirement guides the answer to the first in that an adjudication of this threshold issue does not deprive the respondent Medina of the opportunity to assert the affirmative defense of succession. Rather, vacating the stay simply demands that she do so sooner. Therefore, the court finds that she does not suffer irreparable injury by vacating the stay because she can still interpose the defenses and develop same in the context of the summary proceeding. She just can't wait until the Act expires to do so.

A temporary restraining order must be denied where “issues prevented that subvert the [proponent]’s likelihood of success on the merits . . . to such a degree that it cannot be said that the [proponent] established a clear right to relief (*citations omitted*).” Cooper v. Board of White Sands Condominium, 89 A.D.3d 669 (2d Dep’t 2011). Based on her retention of this potential defense, although not yet interposed, the court can analyze the first requirement for ordering a temporary restraining order based on her failure to establish likelihood of success on the ultimate merits. The court, in deciding this motion, does not pass on Medina’s ultimate ability to adjudicate and develop the defense of succession. This defense can be developed during the litigation of this matter. However, at this stage, she cannot show likelihood of ultimate success on the merits of the defense based on the record herein, specifically her lack of requisite co-occupancy with her mother, the tenant-of-record. She therefore is not entitled to the injunctive

⁶Notwithstanding this, the proponent cannot establish irreparable harm in the absence of an injunction in this particular case, as there has been no entry of judgment and therefore there is no threat of eviction at this time.

relief of the stay triggered by the Hardship Declaration.

On the threshold determination of whether the stay should apply, the court concludes that respondent is simply a licensee who, like the respondents in Kalikow Family Partnership, LP v. Doe, 2021 N.Y.Misc.LEXIS 4310 (Civ. Ct. Queens Cty 2021) , obtained a license without the permission of the petitioner⁷ and therefore do not have possessory rights that afford them protection under the Act. Any inchoate succession rights that would give respondent Medina a colorable claim to such protection are absent from the record. Compare Realty Enter LLC v. Williams, 2021 NYLJ LEXIS 360 (Civ. Ct. Queens Cty 2021)(a licensee who has viable succession rights is a lawful occupant) and Braschi v. Stahl Associates Co., 74 N.Y.2d 201 (1989)(injunctive relief appropriate to preserve the potential succession rights of a person with whom the tenant-of-record resided for 11 years in a non-traditional family relationship).

Under the circumstances herein, succession rights are not triggered because the tenant of record has not surrendered or vacated but cannot access the unit because of the Order of Protection. Second, to the extent that she asserts succession rights in connection with her mother's tenancy, the record shows that she did not reside with her mother for 2 years prior to her mother's vacatur in March 2019 or surrender in April 2020. Her own affidavit reveals that she moved into the unit in March 2019⁸. Respondent relies on no appellate authority that succession can be based on co-occupancy of a year or less. See Rent Stabilization Code §2523.5. In

⁷The court analyzes only her succession claim based on her mother's vacatur; there is no evidence that the current tenant of record, her brother Juan Valbuena, has surrendered possession of unit but can't access it based on the order of protection against him. Moreover, there is no proof that they ever lived together for any period of time.

⁸Medina's occupancy at the premises with her mother in 2010 is irrelevant.

addition, since Medina's co-occupancy falls significantly short of the 2 year requirement⁹, the court does not address her argument about petitioner's refusal to add her to the household composition or whether the absence thereof affects the succession defense. The court therefore rejects her argument that she is a lawful occupant.

The court also rejects Medina's argument that petitioner's acceptance of her rent payments support her succession defense. First, she paid rent while her mother was the only tenant-of-record ("TOR"). This alone does not prove that the landlord consented to her occupancy in the apartment. Rather, the record supports the conclusion that she made credit card payments of rent on behalf of her mother. Furthermore, the landlord's intent was manifested in the emails to Medina's mother, TOR, that it did not consent to her occupancy and repeatedly denied the TOR's's request to add her to the household composition¹⁰.

Based on the above, petitioner's motion is granted on the ground that, as a licensee whose license was not given by petitioner, respondent is not a "lawful occupant" and, as that term is defined in Section 3 of subpart A of the Act, the use of the word "respondent" in §6 of S50001, without more, does not change the lawful status analysis. When statutory language is clear, the court need not conduct an inquiry into legislative intent.

⁹To the extent that succession rights are designed to protect a tenant-of-record's family (traditional or not) members in the midst of housing shortages, the court cannot ignore the time line in this case. While TOR surrendered possession in April 2020 as per the documents annexed as Exhibits, such as Medina's own affidavit dated 11/5/21, the TOR physically left the unit for Spain in August 2019 and Medina moved into same in March 2019, which contradicts any claim that Medina was using this unit as a family home for any period of time.

¹⁰Respondent attaches a few and non-consecutive documents concerning the apartment with Medina's name on them, however no full and duly executed Lease or documents containing Medina as part of the family composition and such claim is belied by petitioner's emails repeatedly stating that it did not consent to have her added to the family composition while the TOR was in the process of moving out.

This court grants petitioner's motion, sets aside the Hardship Declaration and vacates the concomitant stay. The matter is scheduled for trial to be held on December 13, 2021 at 11:00 a.m.

The foregoing constitutes the Decision/Order of this Court.

Dated: Staten Island, New York
November 29, 2021



REMY SMITH, J.H.C.