

**Harvey v Harvey**

2021 NY Slip Op 32859(U)

December 23, 2021

Civil Court of the City of New York, Queens County

Docket Number: Index No. L&T 72325/19

Judge: Clinton J. Guthrie

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This opinion is uncorrected and not selected for official publication.

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

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ZENNA HARVEY,

Petitioner,

Index No. L&T 72325/19

-against-

**DECISION/ORDER**

NOEL L. HARVEY,

Respondent.

-----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 motion to strike respondent’s hardship declaration, to the lift the stay, and to set an expedited return date on petitioner’s prior motion:

<b>Papers</b>	<b>Numbered</b>
Notice of Motion & Affirmation/Affidavit/Exhibits Annexed.....	<u>1 (NYSCEF #14-25)</u>
Affirmation in Opposition & Affidavit/Exhibits Annexed.....	<u>2 (NYSCEF #26-32)</u>
Affirmation in Reply.....	<u>3 (NYSCEF #33-34)</u>

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

PROCEDURAL HISTORY

This holdover proceeding was initially settled with a stipulation dated February 18, 2020, whereby petitioner and respondent (both appearing *pro se*) agreed that petitioner was granted a judgment of possession with issuance of a warrant forthwith. Execution of the warrant was stayed through May 31, 2020. Before the warrant issued, all eviction proceedings were suspended as a result of the COVID-19 public health emergency (*see* Administrative Order 68/20).

In August 2021, petitioner, now represented by counsel, filed a motion seeking issuance and

execution upon a warrant, as well as various injunctive relief. The motion appeared on the Part Z calendar on September 21, 2021. On September 21, 2021, respondent was referred to potential counsel, Queens Legal Services, and the motion was adjourned to October 21, 2021 in Part E. Prior to October 21, 2021, respondent, represented by Queens Legal Services, filed a COVID-19 hardship declaration. With the filing of the hardship declaration, the proceeding was stayed pursuant to L 2021, ch 417, without prejudice to petitioner’s right to challenge the declaration under the law.

Subsequently, on October 25, 2021, petitioner, through counsel, filed the instant motion to strike the hardship declaration, to lift the stay, and to restore the prior pending motion. The matter was restored to the court’s calendar for argument on December 7, 2021. Prior thereto, opposition and reply to the motion were submitted via NYSCEF. On December 7, 2021, the court heard argument on the motion (via Teams) and reserved decision.

DISCUSSION

Petitioner seeks to “strike” the hardship declaration on the alleged basis that petitioner has a good-faith belief that respondent has not experienced hardship. Although L 2021, ch 417 does not contain a mechanism for “striking” a hardship declaration, the relevant provision states: “[a] motion may be made by the petitioner, attesting to a good faith belief that the respondent has not experienced a hardship, with notice to the respondent, and the court shall grant a hearing to determine whether to find the respondent’s hardship claim invalid.” L 2021, ch 417, Part C, Subpart A, Sec. 10. The question, then is whether petitioner has set forth a good faith belief that respondent has not experienced a hardship such that the court would be required to grant a hearing under the statute.

The motion is supported by an affidavit from petitioner, as well as an attorney affirmation and various exhibits. In her affidavit, petitioner states that respondent is her deceased husband's grandson and that he moved into the subject premises days after her husband's death, without her permission. Additionally, she states that respondent has lived rent-free since he moved in, that she (petitioner) has had to bear the property's expenses during the period that respondent has resided there, and that she has known respondent to be unemployed during his entire time at the property. Finally, petitioner states that she lived with respondent but had to temporarily relocate to North Carolina because respondent had many visitors to the subject premises who did not observe social distancing or wear masks, and she was afraid of contracting COVID-19 given her age (87) and asthmatic condition.

Respondent opposes petitioner's motion in its entirety. At the outset, the court is not persuaded that by respondent's argument that the motion should be denied because petitioner does not specifically request a hearing. The relevant statute only requires a petitioner to make a motion and attest to a good faith belief that a respondent has not experienced a hardship. If this is done, the court "shall" grant a hearing. As this court has previously held, "[t]his is an unequivocal directive that the court must follow once the motion and good faith elements are met." *Malaczynski v. Wittmann*, 2021 NY Slip Op 21296, \*2 [Civ Ct, Queens County 2021].

The remaining focus of respondent's argument is that the motion support, including petitioner's affidavit, does not evince a good faith belief that respondent has not experienced a hardship. Respondent, in his own affidavit, states that (contrary to petitioner's assertion), he has been employed previously as a seasonal park worker, and now works part-time as a handyman and as a driver for a rideshare company. He further states that he has childcare obligations to his 9-

year-old son, and that he is at risk of severe illness or death from COVID-19 as a result of medical conditions including obesity, high blood pressure, and depression.

In assessing whether a good faith belief in the lack of a hardship exists, courts have generally “constru[ed] the statute liberally, safeguarding landlords’ right to challenge hardship declarations.” *Chrysafis v. Marks*, 2021 U.S. Dist. LEXIS 227977, \*29 [ED NY, Nov. 29, 2021, No. 21-cv-2516]; *see also Bitzarkis v. Evans*, 2021 NY Slip Op 21280 [Civ Ct, Kings County 2021]; *Hernandez v. Vasquez*, 2021 NY Slip Op 51034[U] [Civ Ct, Bronx County 2021].

Nonetheless, conclusory statements have been held to be insufficient to demonstrate a good faith belief. *See e.g. Zheng v. Choudhary*, 2021 NYLJ LEXIS 1152 [Civ Ct, Kings County, November 30, 2021, No. 77424/2019]. Here, in assessing the “totality of the circumstances,” the court finds that petitioner has set forth a good faith belief of respondent’s lack of hardship to warrant a hearing pursuant to the statute. *Sanchez-Tiben v. Washington*, 2021 NY Slip Op 21276 [Civ Ct, Bronx County 2021] [citing *Wells Fargo Bank, NA v. Van Dyke*, 101 AD3d 638, 639 [1st Dept 2012]]. Petitioner explains the basis of her belief, namely that she has a quasi-familial relationship with respondent and previously resided in the same premises as him. Although respondent disputes certain assertions made by petitioner, such as those regarding his employment status, he does not proffer proof of employment and, in any event, disputed issues of fact should be resolved at a hearing. *See generally Matter of Cabrera v. Humphrey*, 192 AD3d 227, 233 [3d Dept 2021].

Finally, while this court has held that where a respondent chooses both Option A and Option B on the hardship declaration, both bases for the stay must be sufficiently challenged (*see 115 Spring, Inc. v. Augustine*, 2021 NY Slip Op 51133[U] [Civ Ct, Queens County 2021]), the court finds that petitioner’s statements about respondent exposing both parties to elevated risk of

COVID-19 as a result of his alleged hosting of individuals in the premises without adequate social distancing or masking are adequate to manifest a good faith belief that respondent is not subject to the protections of Option B on the hardship declaration. The court stresses that petitioner's statements are allegations and are subject to a determination on the merits at the hearing.

CONCLUSION

Upon the foregoing determinations, petitioner's motion is granted insofar as petitioner is entitled to a hearing as to whether respondent's hardship claim is invalid. The hearing is scheduled for January 14, 2022 at 3:15 PM. Any pre-marked exhibits shall be emailed to the court no later than January 12, 2022. Virtual appearances are permitted; however, any witness must have video capability. This Decision/Order will be filed to NYSCEF.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Dated: Queens, New York  
December 23, 2021

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

To: Karen N. Wilson-Robinson, Esq.  
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SO ORDERED - HON. CLINTON J. GUTHRIE

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