

<b>204 W. 55th St., LLC v Mackler</b>
2021 NY Slip Op 32901(U)
December 2, 2021
Civil Court of the City of New York, New York County
Docket Number: Index No. L&T 300325/21
Judge: Vanessa Fang
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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK: HOUSING PART D

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204 WEST 55TH STREET, LLC,

Index No. L&T 300325/21

Petitioner-Landlord,

Motion Seq. No.: 002, 003

-against-

**DECISION/ORDER**

RICK K. MACKLER, RINALDO CABALLERO  
GUERRO, "JOHN DOE" AND/OR "JANE DOE,"

Respondent-Occupants.  
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Recitation, as required by CPLR § 2219(a), of the papers considered in review of this order to show cause by petitioner to restore on the grounds that the Covid-19 Emergency Eviction and Foreclosure Prevention Act is inapplicable and of this motion by petitioner to restore on the grounds that the stay provided under the Covid-19 Emergency Rental Assistance Program of 2021, as amended, is inapplicable.

PAPERS	NUMBERED
Notice of Motion & Affidavits Annexed	2 (NYSCEF # 26-32)
Order to Show Cause and Affidavits Annexed	1 (NYSCEF # 17-22)
Answering Affidavits	3 & 4 (NYSCEF # 33-42, 43-48, 52)
Replying Affidavits	5 (NYSCEF # 49-51)
Exhibits	
Stipulations	
Other – Covid-19 Hardship Declarations	6 & 7 (NYSCEF # 8 & 9)

**VANESSA FANG, J.:**

Petitioner commenced this summary holdover proceeding seeking to recover possession of the rent stabilized subject premises located at 204 West 55<sup>th</sup> Street, Apartment 610, New York, New York on the grounds that respondents Rick K. Mackler (aka "Richard Mackler" and "Richard K. Mackler") and Rinaldo Caballero Guerro (aka "Rinaldo Guerra"), "John Doe," and "Jane Doe" are licensees after the former tenant of record, Jack Riley (aka Jack Wiley), passed away in 2020.

Richard K. Mackler and Rinaldo Guerra submitted hardship declarations dated February 4, 2021 and March 19, 2021, respectively. Both hardship declarations indicated that respondents were experiencing financial hardship and that vacating the premises and moving would pose a significant health risk. This matter was stayed upon receipt of respondents’ hardship declaration filings.

On May 7, 2021, petitioner filed a motion to place this matter on the court’s calendar for an inquest or a trial date. On August 24, 2021, petitioner filed an order to show cause seeking to restore this matter on the grounds that the Covid-19 Emergency Eviction and Foreclosure Prevention Act (“CEEFP A”) stay was inapplicable to this proceeding. *See* L 2020, ch 381. Both respondents subsequently retained individual counsel. On September 15, 2021, counsel for Mr. Guerro informed the court that he filed a Covid-19 Emergency Rental Assistance Program (“ERAP”) application. *See* L 2021, ch 56. This matter was then stayed pending a final determination of eligibility of Mr. Guerro’s ERAP application.<sup>1</sup> On October 14, 2021, petitioner filed a motion to restore this proceeding to the court’s calendar on the grounds that the stay provided by the ERAP statute was inapplicable.

Petitioner’s order to show cause filed August 24, 2021 and motion filed October 14, 2021 seeking to lift the stays imposed by respondents’ filings of hardship declarations under CEEFP A and Rinaldo Guerro’s filing of an ERAP application are consolidated for disposition.

Hardship Declaration stay

Petitioner argues that respondents do not qualify for protection under CEEFP A as respondents are not “tenants” as it is defined in the statute. In support, petitioner proffers an affidavit from its registered managing agent, Harry Persaud, who attests that respondents neither

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<sup>1</sup> Richard Mackler’s filing of his own ERAP application was mentioned for the first time in his opposition papers.

paid rent or use and occupancy nor took occupancy with petitioner’s consent and that the prior tenant of record, Jack Riley, vacated the premises leaving respondents in possession.

Both respondents oppose and argue that they qualify as persons responsible for paying rent and are eligible for the protections afforded by the filing of hardship declarations.

Respondents assert that the petition seeks the fair value of use and occupancy against them and therefore they are persons responsible for paying use and occupancy. Contrary to respondents’ contentions, the petition’s prayer for relief seeking entry of a judgment against respondents for the “fair value of use and occupancy together with the costs and disbursements” does not constitute petitioner’s acquiescence to a stay of this proceeding or petitioner’s recognition of respondents as tenants or lawful occupants responsible for paying use and occupancy. It is simply a request for any other relief petitioner may be entitled to under the law. Therefore, this argument by respondents is unavailing.

Respondents also assert that as licensees they fall within the protected class of respondents not limited to tenants, but inclusive of occupants or other persons responsible for paying use and occupancy. Respondents argue that CEEFPA’s definition of “tenant” should be construed broadly to comport with its legislative intent that

[s]tabilizing the housing situation for tenants, landlords, and homeowners is to the mutual benefit of all New Yorkers and will help the state address the pandemic, protect public health, and set the stage for recovery. It is, therefore, the intent of this legislation to avoid as many evictions 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.

As such, it is necessary to temporarily allow people impacted by COVID-19 to remain in their homes. A limited, temporary stay is necessary to protect the public health, safety and morals of the people the Legislature represents from the dangers of the COVID-19 emergency pandemic.

CEEFPA, Section 1, §3.

Respondent Mackler asserts that he entered occupancy of the subject premises through a written agreement with Mr. Wiley; resided at the subject premises for over 33 years since August 1, 1988 with Mr. Wiley; and paid rent to him until his death. Mr. Mackler states that, prior to Mr. Wiley’s passing, he completed caretaking tasks for Mr. Wiley including shopping, fixing meals, and cleaning. Mr. Mackler also states that he is disabled and receives SSD; his primary care physician is merely blocks away at Mount Sinai; and this apartment is the only home he has known for over 33 years. Although Mr. Mackler offered to pay the use and occupancy for the apartment and the payments were returned, he remains willing to pay the use and occupancy.

Respondent Guerro states that he has resided at the subject premises with both Mr. Mackler and Mr. Wiley for over seven years since January, 2015. Mr. Guerro maintains that he assisted Mr. Mackler with obtaining his medication when Mr. Mackler was too ill to leave the apartment and considers Mr. Mackler as a member of his household.

Pursuant to CEEFPA, a “tenant” is defined as

a residential tenant, lawful occupant of a dwelling unit, or any other person responsible for paying rent, use and occupancy, or any other financial obligation under a residential lease or tenancy agreement, but does not include a residential tenant or lawful occupant with a seasonal use lease where such tenant has a primary residence to which to return to.

CEEFPA, Part A, Section 1(3).

In recognizing that “residential eviction protections are effective public health measures,” on September 2, 2021, the New York State Legislature amended CEEFPA to broaden and reinforce its residential eviction protections and coverage in order to maintain housing stability in efforts to facilitate the state’s ability to address the pandemic, protect the public’s health, and promote recovery throughout. L 2021, ch 417, Section 2.

Mr. Mackler represents that he lived with the former tenant for over three decades and later came to care for Mr. Wiley. Mr. Guerro represents that he resided with both Mr. Wiley and Mr. Mackler for over seven years and considers Mr. Mackler a household member. Respondents accept responsibility for and are willing to pay use and occupancy for the subject apartment as they are continuing to incur this liability as licensee-occupants in possession. *See Silverstein v. Huebner*, 2021 NY Slip Op 31992(U) (Civ Ct, Kings Co 2021); *see e.g. Carlyle, LLC v. Beekman Garage LLC*, 133 AD3d 510 (1st Dept. 2015). The court finds respondents here are the other persons responsible for paying use and occupancy of whom CEEFPA intended to protect during this public health emergency.

Accordingly, petitioner’s order to show cause to restore this matter and vacate the stay of this proceeding on the basis that respondents are not “tenants” as defined under CEEFPA is denied.

ERAP stay

Petitioner also argues that respondents are ineligible for a stay under ERAP based on ERAP’s stated eligibility criteria. Petitioner maintains that respondents are licensees and thus disqualified from obtaining financial relief from the program as they are neither tenants nor lawful occupants obligated to pay rent, use and occupancy or any other financial obligations under a residential lease or tenancy agreement for the subject premises. Petitioner also argues that the ERAP stay violates the ruling by the Supreme Court of the United States in *Chrysaifis v. Marks*, 141 SCt 2482 (2021).

Respondents oppose and assert that, absent extreme factual situations or nuisance claims, ERAP eligibility determinations rest with OTDA. Respondent Guerro also asserts that he

qualifies as an occupant eligible to apply for ERAP assistance based on the statute’s definition of an “occupant.”

Since this proceeding was commenced based on licensee grounds, the nuisance exception to a stay of this proceeding does not apply. In addition, the *Chrysafis* decision addressed the only issue presented before the court: the tenant’s ability to self-certify a hardship declaration under CEEFPA. *Id.* The *Chrysafis* holding neither addressed nor applied its injunction to the ERAP statute. Therefore, petitioner’s argument that the ERAP stay violates the *Chrysafis* holding is without merit.

The ERAP statute authorizes and directs the New York State’s Office of Temporary and Disability Services (OTDA) to implement and administer the rental and utility assistance program for those eligible pursuant to subsection 5 of the act. ERAP, L 2021, ch 56, Part BB, Subpart A, Section 1(3). Subsection 5 of the ERAP statute sets forth four sets of criteria on which the OTDA commissioner determines eligibility for the ERAP program. ERAP, Section 1(5).

Petitioner asks the court to make a judicial determination, either apart from OTDA or to supplant OTDA’s decision, finding that respondents are ineligible for ERAP funds. The ERAP statute provides that the OTDA commissioner is authorized and charged with implementing and administering the financial assistance program. ERAP, Section 1(3). The statute does not provide the Housing Court with the authority to determine whether a person is eligible for ERAP assistance. This ERAP eligibility determination lies solely with OTDA. Accordingly, that branch of petitioner’s motion to vacate any stays associated with respondents’ submission of an ERAP application is denied.

Accordingly, petitioner's motions are denied. This proceeding is administratively stayed pending a final determination of eligibility of respondents' ERAP application and pursuant to CEEFPA as amended through January 15, 2022.

This constitutes the decision and order of the court.

Dated: December 2, 2021  
New York, New York



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HON. VANESSA FANG, J.H.C.