

255 Skyline Dr. Ventures LLC v Ryant
2021 NY Slip Op 33324(U)
October 13, 2021
Civil Court of the City of New York, Richmond County
Docket Number: Index No. 50014/20
Judge: Remy Smith
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF RICHMOND

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255 SKYLINE DRNE VENTURES LLC,

Petitioner,

Index No. 50014/20

-against-

DECISION/ORDER

Remy Smith, J.H. C.

BARBARA RYANT, et al.

Respondents.

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Hon. Remy Smith

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion to set aside stays under S50001:

Papers:	Numbered
Petitioner's Motion to Set Aside/Vacate S50001 Stays	1
Respondent's Affirmation in Opposition	2, 3
Petitioner's Reply Affirmation..	4

Petitioner moves this court pursuant to the Extraordin_{ary} Session S50001 Bill ("Act") to set aside the Hardship Declaration filed by respondent Taiquan Ryant on January 26, 2021 as well as to vacate the stays imposed by both the Hardship Declaration as well as the respondents' Emergency Rental Assistance Program ("ERAP") application submitted under application #4J1AA, both pursuant to the Act as well as the ERAP Budget Bill passed on April 16, 2021 ("BB"). Respondents oppose the motion. The court denies same with leave to renew that portion seeking to set aside the Hardship Declaration after expiration of the ERAP stay upon denial or approval of said application.

The Act at §8 of Part A of §50001 states as follows:

Except as provided in section 9-1 of this act, in any pending eviction proceeding, whether filed prior to, on, or after the effective date of this act, against a household who has applied or subsequently applies for benefits under this program or any local program administering federal emergency rental assistance program funds to cover all or part of the arrears claimed by the petitioner, all proceedings shall be stayed pending a determination of eligibility.

Respondents clearly had a rental obligation in this case and same was never waived as per stipulation. It is also undisputed that respondent has not paid rent and/or use and occupancy and the statute does not provide for lifting of the stay in the event the petitioner no longer seeks to obtain arrears that it had previously requested. The parties' judgment stipulation dated February 27, 2020 specifically states that "in the event respondents seek an extension to vacate beyond 4/30/2020, respondents shall be required to pay ongoing use & occupancy in the amount of \$1980 per month no later than the 5th day of each month to commencing 5/5/2020 on condition of any stay."

Petitioner relies on the distinction between "rent" and "use and occupancy" in support of her argument that the ERAP stay should not apply. The court disagrees in light of the particular circumstances of this case. First, in agreeing to accept said monthly use and occupancy as a condition of respondents' extension to remain at the premises, the parties created a monetary obligation sufficient to satisfy ERAP definitions such that these are the types of difficulties that the program is designed to alleviate. Moreover, petitioner's predecessor and respondents were parties to a rental agreement based upon which petitioner sought, in its petition, ongoing use and occupancy. The petition itself contains interchangeable use of both terms¹. Therefore, the court


¹Commonly, use & occupancy relates to an ongoing obligation to pay the value of the occupancy of the premises in the absence of privity of contract and without the creation and ratification of a relationship to which the parties may not intend to agree. However, as the ERAP statute and the Act contains its own restrictions on eviction in light of acceptance or rejection of its funds, the court considers the distinction between use & occupancy and rent as academic and insufficient to warrant a finding that respondents do not meet the threshold filing requirements.

finds that ERAP covers respondents' obligation, even if petitioner does not participate and ultimately decides not to accept the ERAP payment. However, prophylactic and unilateral waiver of arrears coupled with expressed desire to reject the program does not warrant vacatur of stay triggered by respondents' filing of the ERAP application and therefore this matter remains on the ERAP calendar until the application is denied or accepted. At that time, petitioner can renew its request to set aside the Hardship Declaration.

The foregoing is the Decision/Order of this court.

Dated: Staten Island, New York

October 13, 2021

BY:  _____

Remy Smith, J.H.C.