

Smith v Patrick

2022 NY Slip Op 31742(U)

May 27, 2022

Supreme Court, New York County

Docket Number: Index No. 155638/2021

Judge: Mary V. Rosado

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. MARY V. ROSADO PART 33

Justice

-----X

ERIKA SMITH,

Plaintiff,

- v -

MARQUIS PATRICK, JOHN DOE, JANE DOE

Defendant.

-----X

INDEX NO. 155638/2021

MOTION DATE 05/09/2022

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64

were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER

This matter comes before the Court on defendant Marquis Patrick’s motion for leave to reargue this Court’s Decision and Order dated April 19, 2022 (“April 19th Order”), which denied defendant’s application to vacate the default judgment. Defendant requests that the Court grant his application for leave to reargue, and upon the granting of such relief, to vacate the April 19th Order as to the denial of the stay of the proceeding, and/or stay the execution of the warrant. Upon the foregoing documents and after a hearing on May 10, 2022, in which Brea Davis, Esq. (defendant Marquis Patrick’s attorney) and Heath Gurinsky, Esq. (plaintiff Erika Smith’s attorney) appeared, this motion is granted as to leave to reargue but denied as to vacating the Court’s April 19th Order.

A motion for leave to reargue “shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion . . . and shall be made within thirty days after service of a copy of the order determining the prior motion and written notice of its entry” (CPLR 2221 [d]). A motion to reargue, “addressed to the discretion of the court, is designed to afford a party an opportunity to establish that the court overlooked or misapprehended the relevant facts, or misapplied any controlling principle of law. Its purpose is not to serve as a vehicle to permit the unsuccessful party to argue once again the very questions previously decided . . . nor does reargument serve to provide a party

an opportunity to advance arguments different from those tendered on the original application” (*Foley v Roche*, 68 AD2d 558, 567-568 [1st Dept 1979] [citations omitted]).

As a preliminary matter, plaintiff entered the April 19th Order by Notice of Entry on April 22, 2022 (NYSCEF Doc. No. 50) and defendant filed the Order to Show Cause to reargue on May 6, 2022, which is within the 30-day period specified in CPLR 2221 (d) (NYSCEF Doc. No. 51). Defendant argues that the Court should grant his request for leave to reargue because the denial of his motion to vacate in the April 19th Order did not address the issue of his pending Emergency Rental Assistance Program (“ERAP”) appeal (NYSCEF Doc. No. 52). At the hearing on May 10, 2022, the Court granted defendant leave to reargue in the interest of justice.

As to the remaining issue in this motion, defendant argues that upon the granting of his request for leave to reargue, the Court should vacate the April 19th Order with respect to the denial of the stay of the proceeding and eviction, and thereafter, stay the proceeding and eviction, pursuant to Part BB, Subpart A, § of chapter 56 of the Laws of 2021, as modified by L. 2021, C. 417 (“ERAP Law”). Defendant claims that his ERAP application was denied because ERAP was unable to confirm the validity of his documents and since then, he has filed a request for an appeal to his ERAP application¹ (NYSCEF Doc. No. 52, 54 [Exhibit F]). Furthermore, defendant contends that “eviction matters where there is a pending ERAP application shall be stayed until a final determination of eligibility for rental assistance . . . including appeals” (NYSCEF Doc. No. 65 [Exhibit K – Administrative Order of the Chief Administrative Judge Lawrence K. Marks]).

Plaintiff counters that ERAP does not apply to this matter because: (1) plaintiff is a shareholder of her apartment and shareholders are not eligible for ERAP benefits; and (2) plaintiff wants to occupy her one and only co-op unit as her primary residence, which is an exception to ERAP (NYSCEF Doc. No. 58; *see* NYSCEF Doc. No. 37 at ¶ 3). Furthermore, the sublease agreement between plaintiff and defendant has expired and therefore, he no longer has rights to the apartment (NYSCEF Doc. No. 58 at ¶ 9; *see*

¹ As of the date of the hearing, the ERAP appeal application is pending. The Court attempted to check the status of the application with the information provided in Exhibits H of defendant’s moving papers for this motion (NYSCEF Doc. No. 54) but was unable to because the system could not locate the record based on the information provided.

NYSCEF Doc. No. 37 at ¶ 4). In addition, defendant has not paid rent for over a year, putting plaintiff at risk of losing her HDFC co-op because of nonpayment of maintenance (NYSCEF Doc. No. 58, ¶ 12; *see* NYSCEF Doc. No. 37).

The Court finds defendants' arguments to be meritless for the following reasons.

The sublease agreement between plaintiff and defendant commenced on June 1, 2020 and ended on May 31, 2021 (NYSCEF Doc. No. 11). Based on the moving and opposition papers, and from the hearing held on May 10, 2022, defendant has not paid any rent or use and occupancy after the sublease expired and continues to be in possession of the subject apartment (NYSCEF Doc. No. 1 ¶ 6).²

"Co-op shareholders are not eligible for ERAP to cover monthly co-op/maintenance fees" (NYSCEF Doc. No. 59 [Exhibit B]). As a shareholder, plaintiff is not entitled to the ERAP payments, and defendant's argument that the case should be stayed pending the ERAP appeal, is unavailing. By Order dated November 25, 2022, Judge Tisch granted plaintiff's default judgment motion and granted possession of the apartment to plaintiff and the ejectment of defendant (NYSCEF Doc. No. 22). By the April 19th Order, this Court denied defendant's motion to vacate the default judgment and ordered possession of the apartment to be returned to plaintiff and directed the sheriff to eject defendant (NYSCEF Doc. No. 49). As this case continues to be prolonged, plaintiff remains at risk of losing her apartment. This Court has been mindful of this since the hearing on the prior motion. As this Court's April 19th Order stated "[t]he balancing of the equities favors plaintiff as she has not been able to return to her apartment after expiration of the sublease arrangement. As this residence is a HDFC, plaintiff may be at risk of losing her apartment because of the nonpayment of the maintenance" (*id.*).

Accordingly, it is

ORDERED that the motion of defendant for leave to reargue this Court's April 19 Order is granted; and it is further

² Plaintiff's papers state that defendant was seen moving possessions out of the apartment on May 4, 2022 (NYSCEF Doc. No. 58 at ¶ 3). Defendant's attorney confirmed this observation during oral arguments on May 10, 2022.

ORDERED that, upon reargument, the Court adheres to its Decision and Order dated April 19, 2022, denying defendant’s said motion to vacate the default judgment entirely; and it is further

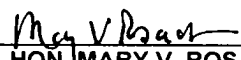
ORDERED and ADJUDGED that plaintiff is entitled to possession of 30 Macombs Place, Apartment 61, New York, New York as against defendant Marquis Patrick, and the Sheriff of the City of New York, County of New York, upon receipt of a certified copy of this Order and Judgment and payment of proper fees, is directed to place plaintiff in possession accordingly, and it is further

ORDERED and ADJUDGED that immediately upon entry of this Order and Judgment, plaintiff may exercise all acts of ownership and possession of 30 Macombs Place, Apartment 61, New York, New York, including entry thereto, as against defendant Marquis Patrick, and any “John” and/or “Jane” “Doe[s]”; and it is further

ORDERED that the stay is vacated within 10 days of this Order and the Sheriff is directed to evict, eject, or remove defendant Marquis Patrick, and any “John” and/or “Jane” “Doe[s]” from the subject premises and put plaintiff in possession; and it is further

ORDERED that the money judgment granted to Plaintiff and entered on February 7, 2022 (NYSCEF Doc. No. 24) remains in full force and effect.

The Court has considered defendant’s remaining contentions and find them unavailing. This constitutes the decision and order of the Court.

<u>5/27/2022</u> DATE					 HON. MARY V. ROSADO, J.S.C.			
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED		<input type="checkbox"/>	NON-FINAL DISPOSITION			
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER		<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT		<input type="checkbox"/>	REFERENCE