

Casa Pasiva HDFC v Machado
2022 NY Slip Op 32292(U)
July 7, 2022
Civil Court of the City of New York, Kings County
Docket Number: L&T Index No. 77493/19
Judge: David A. Harris
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**CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: PART E**

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CASA PASIVA HDFC,

**L&T Index No 77493/19
Mot. Seq. No. 2, 3**

Petitioner,

DECISION AND ORDER

-against-

ROLANDO MACHADO,

Respondent-Tenant
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HONORABLE DAVID A. HARRIS, J.H.C.:

Recitation, as required by CPLR 2219(a), of the papers considered in the review of petitioner’s motion to enter default judgment, motion to restore for conference, amend warrant and for execution and respondent’s cross-motion to vacate default judgment, listed by NYSCEF number:

5,6,7,8,9,19,20,21,22,23,24,25,26,27,29,30,31,32,33,34,35,36,37,38,39,40,41,42,43,44,45,46,47,48

Upon the foregoing cited papers, the Decision and Order on these Motions is as follows:

After the service of a Fourteen (14) Day Notice, petitioner commenced this summary proceeding seeking recovery of outstanding rent for apartment 4B (Apartment) in the building located at 160 Harman Street, in Brooklyn (Building). Respondent neither appeared nor answered the petition, and on March 11, 2020, the court entered a default judgment (NYSCEF No. 14), and a warrant of eviction was issued on March 16, 2020 (NYSCEF No. 15).

Thereafter, because of the COVID-19 pandemic, little transpired until petitioner, on December 10, 2020 filed a motion pursuant to Administrative Order 160/20 seeking a conference, issuance of a judgment of possession, and issuance and execution of a warrant of eviction (NYSCEF Nos. 5,6,7,8,9). That motion, which the court now denies as moot, as it was made after the issuance of a judgment and a warrant of eviction had already occurred, appeared on the calendar in the HMP part on

June 4, 2021. The motion and proceeding were adjourned to June 28, 2021 and referred to this part. The court then became aware that respondent had made an application for assistance from the Emergency Rental Assistance Program (ERAP), and accordingly marked the proceeding stayed (L 2021, c 56 , Pt BB, Subpart A, §8, as amended by L 2021, c 417, Pt A, §4).

The instant motion seeks, pursuant to Administrative Order 245/21, DRP 217, DRP 219 and the COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020 (L 2020, c 381 as amended by L 2021, c 417) (CEEFPA) to restore the instant proceeding for conference, to amend the warrant of eviction to conform with requirements of the CEEFPA and for leave to execute the warrant. Respondent cross-moves seeking vacatur of the default judgment and denial of the motion-in-chief as moot. The cross-motion was served and filed on January 14, 2022. The court turns first to respondent's cross-motion that if granted would render moot the motion-in-chief.

At the time respondent's cross-motion was filed the CEEFPA remained in effect (L 2021, c 417, Pt C, Subpart A, § 11) which provided that:

“[I]f a default judgment has been awarded at any time prior to the effective date of chapter 381 of the laws of 2020, including in eviction proceedings filed on or before March 7, 2020, or between August 13, 2021 and the effective date of this act, the default judgment shall be vacated, regardless of any court proceedings that occurred subsequent to entry of the default judgment and the matter restored to the court calendar upon the respondent's written or oral request to the court either before or during such hearing and an order to show cause to vacate the default judgment shall not be required.”

On December 28, 2020, the statute setting forth the CEEFPA became effective, months prior to the entry of the default judgment in the instant proceeding.

Respondent annexes an email exchange between respondent's counsel and the court attorney to the judge then hearing this proceeding, the clerk of the part, and petitioner's counsel, in which respondent's counsel sought vacatur of the default judgment, and iterated and reiterated the request between September 21, 2021 and September 30, 2021. Respondent's counsel was informed by the court

that the stay effected by the filing of an ERAP application precluded vacatur of the judgment or scheduling of the proceeding. On January 12, 2021, respondent filed a "Letter Application For Removal of Default Judgment" noting the stay of the proceeding due the filing of an ERAP application, approval of the ERAP application and issuance of payment and the renewal of the previously made requests to vacate the default judgment.

Petitioner opposes the cross-motion, noting that the CEEFPA expired on January 15, 2022, removing the basis for vacatur of the default judgment, while simultaneously arguing that respondent's motion is premature because "the court and the parties are prevented from proceeding on this matter such time as the ERAP stay is vacated by this court." (NYSCEF No. 42)

When an ERAP application is submitted, "all proceedings shall be stayed pending a determination of eligibility" (L 2021, c 56, Pt BB, Subpart A, §8, as amended by L 2021, c 417, Pt A, §4). The stay commences by virtue of the statutory provision, without judicial action. The statute plainly defines its parameters and duration, noting that it exists until a determination of eligibility has been made. The stay commences and concludes by virtue of statutory provisions and the court need not act to terminate it. Here, where it is undisputed that the ERAP application was approved and payment made to petitioner well before respondent's January 12, 2022 request to vacate the default judgment, no stay was in effect when the request was made.

Petitioner's assertion that because the CEEFPA has expired, the court cannot grant the relief sought is without merit. The repeal of a statute does not impede the exercise of rights accrued under the statute prior to its repeal; the legislature has provided that "repeal of a statute or part thereof shall not affect or impair any ... right accruing, accrued or acquired, or liability, penalty, forfeiture or punishment incurred prior to the time such repeal takes effect, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted, as fully and to the same extent as if such repeal had not been effected." (General Construction Law § 93). This provision has been construed to apply in the context of expiring

provisions of Emergency Rent Control Laws (*850 Co. v Schwartz*, 15 NY2d 899 [1965], *rev'ing* 21 AD2d 441 [1st Dept 1964]; *West Side Invs. LLC v Wee*, 2022 NY Slip Op 30594[U] [Civ Ct Queens County 2022]).

The request to vacate the default judgment was timely made and its removal under the relevant statute is essentially a ministerial task, as the legislature has determined that no motion need be made and that no basis need be stated; a request, oral or written suffices (L 2021, c 417, Pt C, Subpart A, § 11). Accordingly, based upon respondent's timely written request, the default judgment is vacated.

Respondent's cross-motion is granted as set forth above, and the default judgment is vacated. Respondent shall have ten days from service of a copy of this order with notice of entry to interpose an answer. Petitioner's motion is denied.

This proceeding will next appear on the court's calendar on August 26, 2022 at 3:40 PM.

This is the decision and order of the court.

Dated: Brooklyn, New York
July 7, 2022



DAVID A. HARRIS, J.H.C.

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