

Dasa Realty Corp. v Hughes
2022 NY Slip Op 32690(U)
May 27, 2022
Civil Court of the City of New York, Kings County
Docket Number: L&T Index No 77832/18
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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DASA REALTY CORP.,

**L&T Index No 77832/18
Mot. Seq. Nos. 4,5**

Petitioner,

DECISION AND ORDER

-against-

FRANK HUGHES,

Respondent-Tenant

“JOHN DOE” and/or “JANE DOE,”

Undertenants-Occupants.
-----X

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 restore and respondent’s cross-motion for a stay listed by NYSCEF number:

4,5,6,7,8,9,10,11,12,13,14,15,16,17,18,19,20,21,22,23,24,25,26,27,28,29,30,31,32,63,64,65

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

Petitioner, in 2018, commenced this summary proceeding to recover possession of the right-side apartment (Apartment) in the building located at 401 Wythe Avenue, in Brooklyn (Building). Petitioner moves to restore this proceeding to the court’s calendar, and respondent cross-moves for a stay.

There is an extensive history, both administrative and judicial, between the parties which requires exposition. Respondent asserts that he is a tenant protected by Article 7-C of the Multiple Dwelling Law (Loft Law), and that the building is part of a horizontal multiple dwelling. Respondent, before the Loft Board sought both Coverage for the Building and Apartment and status as a protected tenant pursuant to Multiple Dwelling Law (MDL) § 281(5). The Loft Board, in order 4714, dated

November 30, 2017 (NYSCEF No. 7), found that the building comprises part of a horizontal multiple dwelling, but that respondent is not a protected tenant. Respondent sought reconsideration, and Loft Board order 4820, dated November 15, 2018 (NYSCEF No. 8), adhered to the prior decision. Respondent then filed a petition pursuant to CPLR Article 78. In a decision and order dated June 23, 2021, the court found that the Loft Board had not acted arbitrarily or capriciously in denying respondent protected status (NYSCEF No. 9).

Respondent appealed the adverse determination in the Article 78 proceeding. When the instant cross-motion was filed, the appeal remained pending. In a supplementary affirmation (NYSCEF No. 63), respondent's counsel stated that on March 3, 2022, the Appellate Division, First Department affirmed the denial of the Article 78 petition (*Hughes v New York City Loft Board*, 203 AD3d 429 [1st Dept 2022]).

Upon amendment of the Loft Law in 2019 (L. 2019, c. 41), Hughes filed a further application seeking protected status, resulting in a hearing before OATH. In a report dated January 29, 2021, the administrative law judge recommended denial of the application, noting that "the 2019 amendments did not create a new right to apply for protected occupancy apart from a coverage claim" (NYSCEF No. 10). The Loft Board accepted the report and denied respondent's application for status as a protected tenant in Loft Board Order 5112, dated March 17, 2022 (NYSCEF No. 64). Respondent has commenced a proceeding pursuant to CPLR article 78, asserting that the order was rendered arbitrarily and capriciously (NYSCEF No. 65).

Before the court are two motions. Petitioner seeks restoration of the proceeding. The motion was made pursuant to DRP 213 after previously imposed stays had been lifted and shortly after determination of the first article 78 proceeding in 2021 (NYSCEF No. 9). Respondent's cross-motion advances two bases for a stay. Specifically, the motion seeks a stay pending appeal of the first Article 78 determination, now rendered moot by the denial of the appeal and seeks a stay pursuant to CPLR 2201,

5519(a)(6) and 5519(c) “pending determination of (1) respondent’s protected occupancy application under the 2019 amendments to the loft law pending before the Loft Board and any timely appeal taken therefrom (NYSCEF No. 63). As the court noted, the Loft Board accepted the report of the Administrative Law Judge at OATH, and denied respondent’s application for protected status, a decision now subject to an Article 78 petition (NYSCEF No. 65). In supplementary papers, respondent’s counsel asks the court to grant a stay pending determination of the pending Article 78 proceeding.

CPLR 2201 provides that “[e]xcept where otherwise prescribed by law, the court in which an action is pending may grant a stay of proceedings in a proper case, upon such terms as may be just.” The other grounds for a stay advanced by respondent have no application here, as they relate to stays during appeal.

A stay pursuant to CPLR 2201 is discretionary (*see Grand Lodge of Independent Order of Odd Fellows v Rutigliano*, 199 AD3d 991 [2d Dept 2021]). In the context of a stay sought during an Article 78 proceeding, a stay has been found to be appropriate where “the issues and the relief sought in this action and in the CPLR Article 78 proceeding are sufficiently similar such that the goals of preserving judicial resources and preventing an inequitable result are properly served (*Finger Lakes Racing Ass’n v New York Racing Ass’n*, 28 Ad3d 1208 [2d Dept 2006] *quoting National Mgt. Corp v Adolphi*, 277 AD2d 553, 555 [3d Dept 2000] [internal quotation marks omitted]).

The Loft Board order that is the subject of the Article 78 petition addressed a narrow issue, stating that “[t]he only question before the Loft Board is whether Tenant is entitled to protected occupancy status after the Loft Board previously denied Tenant’s protected occupancy claim” (NYSCEF No. 65). That question was answered in the negative, with the Loft Board order stating that “the 2019 amendments [of the Loft Law] do not affect the analysis of for Tenant’s protected occupancy claim,” and found that the creation of a new window for protected occupancy claims for units covered by MDL § 281(6) did not create a new opportunity for protected tenancy claims for units already covered by the Loft

Law pursuant to MDL § 281(5) (NYSCEF No. 65).

The challenge to Loft Board Order 5112 does not create an opportunity for de novo review by the court. Rather, the issue to be determined, as expressly stated in the petition (NYSCEF No. 65) is whether the Loft Board's determination to deny respondent protected tenant status was arbitrary and capricious. The issue raised by that petition is not before this court. While a different determination by the Loft Board would significantly alter the respondent's position in this proceeding, it is not the decision itself, but the manner in which it was made, that is the subject of the Article 78 proceeding.

Courts are vested with the "broad discretion to grant a stay in order to avoid the risk of inconsistent adjudications, application of proof and potential waste of judicial resources" (*Matter of Tenenbaum*, 81 AD3d 738, 739 [2d Dept 2011] [citations and internal quotation marks omitted]). Because the issue raised in the Article 78 petition is not before this court, and because of the differing procedural natures of this proceeding and the Article 78 proceeding, those concerns do not lie.

The initial appearance in this proceeding was on August 27, 2018, almost four years ago. There has never been a finding favorable to respondent's claim of protected tenant status before the Loft Board, in Supreme Court, or in the Appellate Division.

It has been held that article 7 of the RPAPL "represents the legislature's attempt to balance the rights of landlords and tenants to provide for expeditious and fair procedures for the determination of disputes involving possession of real property" (*Brusco v Braun*, 84 NY2d 674 [1994]) and that "[t]here is a strong rule against staying summary proceedings pending the determination of an action in another court, as a landlord is entitled by statute to an expeditious determination of its claim that it is wrongfully being deprived of possession." (*Hillside Park LLC v Hossain*, 61 Misc 3d 132[A] [App Term 2d, 11th and 13 Jud Dists 2018]).

Weighing the various factors and concerns raised compels the conclusion that a stay of the proceeding is not warranted. The litigation has been protracted, respondent has not, in several

attempts, been granted protected tenant status and the issues in the Article 78 proceeding differ from those before this court. Petitioner's motion is granted, and the proceeding is restored to the court's calendar. Respondent's cross-motion is denied. This matter will next appear on the court's calendar on July 22, 2022, 12:10 PM.

This is the decision and order of the court.

Dated: Brooklyn, New York
May 27, 2022



DAVID A. HARRIS, J.H.C.

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