

Li v Echevarria

2022 NY Slip Op 33045(U)

May 13, 2022

Civil Court of the City of New York, Kings County

Docket Number: Index No. 80868/19

Judge: Elizabeth Donoghue

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This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART T

-----X
VALERIES J. LI

Petitioner

Index No.: 80868/19

-against-

DECISION/ORDER

LOUIS MANUEL ECHEVARRIA SR
JACQUELINE ECHEVARRIA

Respondent(s)

Motion Seq.: 001, 002

“JOHN DOE” and “JANE DOE”

Respondent-Undertenant(s)
-----X

Present:

Hon. ELIZABETH DONOGHUE
Judge, Housing Court

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of this motion to declare ERAP stay inapplicable:

PAPERS

NUMBERED

- Notice of Motion & Affidavit Annexed..... 1,
- Exhibit in Support of Motion
- Memorandum of Law.....
- Affidavit in Opposition to Motion 2
- Affirmation in Reply.....3

Upon the foregoing cited papers, the decision and order of this motion is as follows:

In this holdover proceeding, Petitioner, Valeries J. Li (“Petitioner”) seeks to recover possession of the premises located at 2352 West 11th Street, Third Fl, Brooklyn, New York 11223 (“Premises”) from respondents, Louis Manuel Echevarria, Sr., Jacqueline Echevarria, John Doe, and Jane Doe (“Respondents”) on the grounds that Petitioner terminated Respondents’ tenancy. This proceeding first appeared on the court’s calendar on November 19, 2019. Respondents Louis Manuel Echevarria, Sr. and Jacqueline Echevarria appeared and the parties settled this proceeding

by stipulation of settlement wherein Petitioner was granted a final judgment of possession and warrant of eviction, execution of which was stayed until March 30, 2020 for Respondents to vacate. Respondents also agreed to pay all outstanding use and occupancy through November 2019, and ongoing use and occupancy, at a rate of \$1,800.00 per month. Finally, all claims as against John Doe and Jane Doe, were severed. A warrant of eviction issued on February 18, 2020. On January 10, 2022, Petitioner filed a motion with the court seeking leave for the warrant of eviction to execute pursuant to DRP 213. The parties appeared in the Housing Motion Part (“HMP”) on February 15, 2022. Respondent Louis Echevarria appeared and stated that he had filed an application for assistance with the Emergency Rental Assistance Program (“ERAP”). Based upon Respondent’s representation, this proceeding was referred to the ERAP Administrative Calendar. Petitioner now moves to vacate the stay of this proceeding imposed by Respondent’s ERAP application. The court addresses Petitioner’s motion to vacate the ERAP stay first.

In general, the ERAP statute provides that a summary proceeding is automatically stayed upon an application for benefits pending an eligibility determination by Office of Temporary and Disability Assistance (OTDA). L. 2021, c. 56, Part BB, Subpart A, § 8, as amended by L. 2021, c. 417, Part A, § 4. Numerous courts of concurrent jurisdiction have ruled on whether the automatic stay imposed by the filing of an ERAP application can be lifted by the court, and, if so, under what circumstances. The considerations for vacating the stay include, the regulatory status of the premises, the nature of the cause of action, the relationship between the applicant and the landlord, does the applicant meet the basic criterion for assistance as outlined in the statute, and whether the equities favor the landlord. Generally, courts have vacated the automatic stay imposed by an ERAP application where there is no contractual obligation for the respondent to pay rent or use and occupancy, or where the ERAP applicant has since vacated the premises. *See e.g.* 2986

Briggs LLC v Evans, et al., 2022 NY Slip Op. 50215(U)[Civ Ct Bronx Co, J. Lutwak]; *Ben Ami v Ronen*, 2022 WL 1053304, Civ Ct, Kings Co, March 23, 2022, Barany, J., index no. 59050/20; *Papandrea-Zavaglia v. Arroyave, et al.*, 2022 WL 1098889, Civ Ct. Kings Co, April 7, 2022, Scheckowitz, J., index no. 303636/21.

Here, Petitioner asserts that the ERAP stay is inapplicable in a holdover proceeding where a judgment of possession and a warrant of eviction have been issued. Petitioner's argument, which lacks decisional authority or analysis, is not enough to lift an ERAP stay, particularly in view of petitioner's numerous requests for rent/use and occupancy throughout this case. At the outset, the petition includes use and occupancy in its prayer for relief and states that there was an "oral rental agreement," as required under RPAPL § 702 of "rent" incorporated by reference in the ERAP statute. Second, the stipulation of settlement provides for payment of use and occupancy. Third, the motion seeking to execute on the warrant, repeats that use and occupancy was set in the stipulation and that respondent has failed to pay. In the instant motion to lift the stay, petitioner's attaches a rent ledger as an exhibit. This contrasts with the petitioner in *Papandrea-Zavaglia*, who advised the respondent when ERAP was filed that it would not accept the funds. Here, petitioner continued to ask for use and occupancy re-affirming that use and occupancy was being sought and very much part of the resolution of this holdover. Only recently, in this motion, has petitioner indicated that he does not wish to participate in the ERAP program.

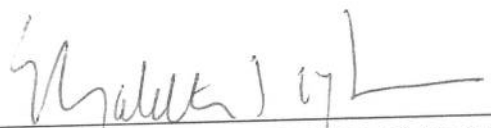
As the court stated in *Laporte v Garcia*, 2022 WL 1233669 (Civ Ct, Bronx Co), "[t]he fact that petitioner does not want to participate in the program is not fatal to an ERAP stay Petitioner 'does not possess the right to dissolve the stay b[y] refusing to provide required input for the application to be complete.'" *Carousel Props. v Valle* 74, Misc3d 1217[A], 2022 NY Slip Op.

50168[U] [Dist. CT, 6th Dist, Suffolk Co 2022]. See also *255 Skyline Drive Ventures LLC v Ryant*.
LT 50014-20/RI [Civ Ct, Richmond Co 2021].

Accordingly, Petitioner's motion seeking to vacate the stay of this proceeding imposed by Respondent's application for assistance with ERAP is denied without prejudice. The instant proceeding has been referred to the ERAP Administrative Calendar. Petitioner's motion seeking leave to issue and execute on the warrant of eviction is held in abeyance.

This constitutes the decision and order of the court. The decision will be uploaded to NYSCEF.

Dated: Brooklyn, New York
May 13, 2022



HON. ELIZABETH DONOGHUE
J.H.C