

Olivierre v Parkchester Preserv. Co., L.P.
2022 NY Slip Op 34471(U)
July 28, 2022
Supreme Court, New York County
Docket Number: Index No. 452058/2022
Judge: Richard G. Latin
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. RICHARD LATIN PART 46V

Justice

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KEISHE OLIVIERRE,

Plaintiff,

- v -

PARKCHESTER PRESERVATION COMPANY, L.P.,
PARKCHESTER PRESERVATION MANAGEMENT, LLC

Defendant.

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INDEX NO. 452058/2022
MOTION DATE July 28, 2022
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 10, 11, 12 were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

Upon the foregoing documents, it is ordered that plaintiff's order to show cause for a preliminary injunction is determined as follows:

Plaintiff Keishe Olivierre commenced the instant action by emergency order to show cause alleging that the defendants discriminated against her based on her lawful source of income, pursuant to NYC Admin. Code § 8-107 and State Human Rights Law § 290, in insisting she show a minimum income of \$62,000 a year, or secure guarantors earning cumulatively \$124,000 in yearly income, instead of just accepting her CityFHEPS voucher that would have paid her rent in full, each month. After a temporary restraining order was granted and a briefing schedule was set, oral argument was held today, July 28, 2022. Currently, plaintiff's CityFHEPS voucher is set to expire in just over a week, on August 8, 2022. With this order to show cause, plaintiff is seeking a preliminary injunction ordering defendants Parkchester Preservation Company, L.P. and Parkchester Preservation Management, LLC (collectively "Parkchester") to process her application for a three-bedroom apartment if one is available, or if not, for a two-bedroom apartment, utilizing a full CityFHEPS voucher, and if there is a waiting list, to place her on the list

based on her original application date in April. Her complaint also seeks¹, inter alia, declaratory relief, other injunctive relief, and compensatory and punitive damages.

In support of the order to show cause, plaintiff submits her affidavit and that of Sara Zuiderveen, Senior Advisor for Housing and Homelessness for the New York City Department of Social Services (“DSS”).

Plaintiff Olivierre avers that she is thirty-four years old and is homeless. She testifies that she currently sleeps on the floor of her friend’s small, one-bedroom apartment in the Bronx with her one-year-old and five-year-old sons. She claims that her friend will not allow them to sleep on the floor for much longer and that she will end up on the street or in a homeless shelter. Olivierre states that she is homeless, indigent, and receives food stamps and monthly cash assistance.

Plaintiff received a full CityFHEPS voucher from DSS on April 8, 2022 that expires on August 8, 2022. Because her voucher covers up to \$2,217 a month and her share of the rent is fixed at \$0, she applied for a three-bedroom apartment at Parkchester for \$2,100 per month. She remembers that on April 13, 2022, she received an email informing her that her application was denied. She also recalls that later that day she received a phone call from a Parkchester employee, Aracelis Ladisa, informing her that even with the voucher, Parkchester required her to show an income of \$62,000. Olivierre states that she called Ladisa back that day to confirm that the full voucher was insufficient and was told that she must meet the income requirement or get two guarantors to meet double the income requirement. Olivierre then applied again on June 30, 2022 looking for either a three-bedroom or a two-bedroom apartment and expressly indicated that she has a full CityFHEPS voucher to pay rent and was immediately rejected.

¹ As this relief concerns the ultimate relief sought, it will not be addressed at this time.

Olivierre further explains that she applied to the Parkchester because she grew up there and has family and friends who currently live there including her parents, younger sister, and a friend from church that is temporarily helping her with housing. She adds that everything she needs to raise her family is at Parkchester including playgrounds, supermarkets, laundry, urgent care, schools for her children, and family and friends to help watch the children as she runs errands. Her 5-year-old son is currently on the waitlist to start kindergarten at the Parkchester school, which is in walking distance from Parkchester.

Sara Zuiderveen states that she currently reports to the Commissioner of DSS and focuses on developing and executing policies and programs related to homelessness and housing across the agency, which is comprised of both the NYC Human Resources Administration (“HRA”) and Department of Homeless Services. She adds that she has worked for DSS for nearly twenty years. Before working as the Senior Advisor for Housing and Homelessness for DSS, Zuiderveen served as the Deputy Commissioner of HRA. In that capacity, she oversaw homelessness prevention programs, rental assistance, and civil legal services.

In support of Olivierre, Zuiderveen speaks to the benefits of CityFHEPS in providing government assistance to enable low-income, unhoused, and housing insecure New Yorkers to obtain stable housing. She explains that with wages not meeting the costs of housing, many households are severely rent burdened and that it only takes one crisis to send a household into homelessness. She alleges that the City devotes a significant portion of its funds to provide rental assistance to get people out of homelessness or shelters and into permanent housing. Specifically, through its initiatives (including voucher programs), the City has helped more than 175,000 children and adults secure permanent housing in the last seven years, with the majority leaving shelters for more stable conditions.

She avers that a program like CityFHEPS also provides landlords with a direct stream of reliable monthly revenue straight from the government, based on the fair market rent. Moreover, she recalls that the City Council made it illegal in 2008 for landlords to turn away applicants based on their reliance on government assistance and their source of income. Therefore, she concludes that it is “unconscionable for landlords to turn away these households with vouchers as they navigate an extremely tight housing market and are doing everything they can to find stable housing.”

Zuiderveen asserts that Olivierre and her two children, homeless and without employment income, “are exactly the people who need and are intended to benefit from the protections of the laws prohibiting source of income discrimination.” To be eligible for CityFHEPS, Olivierre’s family must have had a gross annual household income of no more than \$46,060 (200% of the federal poverty level). Thus, she surmises that with Parkchester’s \$62,000 minimum income requirement, it would be impossible for Olivierre, or any CityFHEPS “To Move” voucher recipient, to secure a new apartment from Parkchester. Zuiderveen had DSS staff search and analyze DSS’s voucher data and confirmed of Parkchester’s 171 buildings and 6,362 units, that zero people have used a CityFHEPS voucher to move into an apartment. Zuiderveen states that this is particularly striking in light of the fact that all of Parkchester’s units fall within the voucher limits.

She concludes that Parkchester’s irrational minimum-income requirements are completely inconsistent with the City’s housing goals and the laws that ban source of income discrimination. She explains that since the City government is paying Olivierre’s entire rent directly to the landlord, it is irrelevant what her family’s employment-based income is. Furthermore, she adds

that it is policies like these, and landlords like Parkchester, that keep unhoused New Yorkers like Olivierre from obtaining affordable housing.

In opposition, defendants submit the affidavit of Ricky Pizarro, Chief Executive Officer of defendant Parkchester Preservation Management LLC. He contends that Parkchester does have legitimate business reasons for asserting a minimum income requirement and that it is also not discriminatory as it uniformly applies to each and every applicant, regardless of protected characteristic or class. Specifically, Pizzaro states that in calculating whether one meets the minimum income requirements, defendants accept and count all forms of lawful income, including government vouchers. Additionally, he argues that minimum income requirements make “good tenants” in that they can meet other financial obligations outside of rent, including significant sums relating to property damage and post-possession charges. He avers that about 25% of all funds that are due to them that go unpaid relate to non-rent charges.

Defendants also argue that plaintiff will not be able to demonstrate an irreparable injury as the plaintiff currently resides at Parkchester, has legal rights to occupy that residence pending court order (given that she has been there for at least 30 days), should have remedied her living situation using other alternatives, and because her current situation was not caused by Parkchester. Instead, defendants suggest that plaintiff should seek an injunction against her friend from church with whom she has been living in order to prevent her and her family’s homelessness.

Pursuant to CPLR 6301,

[a] preliminary injunction may be granted in any action where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff’s rights respecting the subject of the action, and tending to render the

judgment ineffectual, or in any action where the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to the plaintiff.

In order to be entitled to injunctive relief, the plaintiff must establish 1) a likelihood of success on the merits, 2) the danger of irreparable harm if the injunction is not granted, and 3) a balancing of the equities in her favor (*see Nobu Next Door, LLC v Fine Arts Housing, Inc.*, 4 NY3d 839, 840 [2005]; *Four Times Square Assocs., L.L.C. v Cigna Investments, Inc.*, 306 AD2d 4, 5 [1st Dept 2003]; CPLR 6301). With regards to the first prong, the plaintiff need not establish the merits conclusively as the determination depends on probabilities, which may ultimately be disproven (*see J.A. Preston Corp. v Fabrication Enters.*, 68 NY2d 397, 406 [1986]). The decision whether to grant a preliminary injunction, which tasks the court with weighing a myriad of factors, rests in the sound discretion of the court (*see Doe v Axelrod*, 73 NY2d 748, 750 [1988]; *Nichols v Hochul*, 2022 NY Slip Op 22167 [Sup Ct, NY County 2022, Love, J.]).

With respect to the likelihood of success on the merits, NYC Admin. Code § 8-107(5) states that it shall be an unlawful discrimination for the owner, or its agents, to refuse to rent or lease to someone based on their lawful source of income (NYC Admin Code 8-107[5][a][1]-[2]). Courts in this state have routinely held that a landlord's refusal to accept a legitimate voucher qualifies as unlawful discrimination (*see Rodriguez v 308 Hull LLC*, 2018 NY Slip Op 32457[U][Sup Ct, NY County 2018, Tisch, J.]). Likewise, courts in other jurisdictions have reached the same conclusion (*see Commission on Human Rights & Opportunities v Sullivan*, 250 Conn. 763 [Conn. 1999]; *Commission on Human Rights & Opportunities v. Sullivan*, 285 Conn.

208 [Conn. 2008]; *Fulk v Lee*, CV970063572 [Conn. Super. Ct 2002]). Additionally, the agencies responsible for adjudicating these types of claims, who are given great deference in the interpretation of their own regulations, have found it to be illegal, and against the purpose of the source of income law, to allow landlords to reject an applicant with a full subsidy based upon minimum income requirements (*see Arif v N.Y.C. Taxi & Limousine Comm'n*, 3 AD3d 345 [1st Dept 2004]; N.Y.C Admin. Code § 8-130; N.Y.C. Comm'n on Hum. Rts., Best Practices for Housing Providers to Avoid Source of Income Discrimination, 1 (Jan. 2021), https://www1.nyc.gov/assets/cchr/downloads/pdf/materials/FairHouse_FAQs-Landlord-English.pdf; N.Y.C. Comm'n on Hum. Rts., Lawful Source of Income Protections Under the NYC Human Rights Law, (April 2021), https://www.nyc.gov/assets/cchr/downloads/pdf/materials/SOI_FactsheetCityFHEPS-2021Eng.pdf; N.Y. Div. of Hum. Rts., Guidance on Protections from Source of Income Discrimination (Oct. 13, 2020), <https://dhr.ny.gov/sites/default/files/pdf/postings/nysdgr-SOR-guidance-2020.pdf>). Further, these claims are to be construed broadly in favor of discrimination plaintiffs, to the extent with which that is reasonably possible, as is apparent from the legislative intent (*see Albunio v City of New York*, 16 NY3d 472 [2011]; *Albright v Metz*, 88 NY2d 656 [1996]). Here, it is undisputed that plaintiff Olivierre's rental applications were denied based on not meeting Parkchester's minimum income requirements despite the fact that plaintiff had a CityFHEPS voucher that would pay her entire months' rent directly from the City to Parkchester.

Furthermore, defendants' purported legitimate business concern regarding property damage and post-possession charges is unpersuasive inasmuch as HRA issues a Security Voucher

for situations just like this². Additionally, without a further understanding of what comprises the “bad debt” it is unclear how much, if any, of the 25% of non-rent funds that go unrecovered relate to charges that would be collectible in any forum. Further, if every landlord enforced minimum income requirements in this fashion, the spirit of source of income discrimination law would be subverted and rendered meaningless.

Likewise, this Court finds the argument unavailing that defendants cannot be liable for discrimination when they may violate N.Y.C. Admin. Code 8-107(5) uniformly against all new applicants, regardless of their class or characteristic (*see Moran v Tower Management Services*, DCR Docket No. HB52WR-61415, Finding of Probable Cause [<https://www.nj.gov/oag/newsreleases20/Tower.FPC>]). Moreover, it is not clear if the minimum income requirement is actually applied uniformly as plaintiff’s calculation, uniquely, has no relation to her share of rent that she would be required to be pay. The analysis also neglects to value the fact that the subsidy is not just some of plaintiff’s income that a tenant could use in various ways, but a direct stream of money to the landlord, earmarked for rent.

As for the issue of whether there will be irreparable harm without the ordering of an injunction, this is exactly the type of case that injunctive relief is meant for, as “a remedy at law would be inadequate” and the brutality of homelessness is too great a risk (*Rodriguez*, 2018 NY Slip Op 32457[U]; *see Jones v Berman*, 37 NY2d 42 [1975]; *McCain v Koch*, 117 AD2d 198 [1st Dept 1986], *rev’d on other grounds*). Here, absent an injunction, plaintiff Olivierre would be without her own home, will either be homeless or soon to be homeless, and would “lose interest

² Of note, the Security Voucher specifically states that “refusal to accept this voucher in lieu of a security deposit may constitute source of income discrimination under the NYC Human Rights Law Sec. 8-107(5)(a)(1)-(2) ([26_w147n,-security-voucher.pdf \(nyc.gov\)](https://www.nyc.gov/assets/hchr/downloads/pdf/2016_07/26_w147n-security-voucher.pdf))[accessed July 28, 2022]).

in an apartment that she would have received but for the unlawful discrimination” (*Rodriguez*, 2018 NY Slip Op 32457[U]).

It is a red herring to quibble with whether plaintiff is currently homeless or merely doubled up, housing insecure, and likely to be homeless in the near future. Assuming arguendo that plaintiff’s circumstances (of sleeping on the floor of another’s one-bedroom apartment with her two minor children) do not fit the definition of homelessness, this type of living is often just part of the cycle of homelessness and carries its own instability and harms (*see generally* 18 NYCRR 304.2; 42 US Code §11302[a][2]). Zuiderveen explained that the purpose of CityFHEPS is to assist both the unhoused and the housing insecure (those at risk of homeless and those experiencing homelessness) in obtaining stable housing, as the line between the two is extremely fine. By defendants’ refusal to accept the housing voucher for full rent, plaintiff is still subject to this instability. Even the threat of homelessness constitutes irreparable injury (*see Jones v State Farm Fire and Cas. Co.*, 189 AD3d 1565 [2d Dept 2020]; *Jiggetts v Dowling*, 196 Misc2d 678 [Sup Ct, NY County 2003]). It is equally disingenuous to argue that plaintiff’s friend, a church parishioner who let her and her family temporarily crash on the floor, will be the cause of her homelessness and should be sued. It is the defendants’ refusal to accept the housing subsidy (that again would pay defendants’ rent in full) that is the cause of her housing instability. Likewise, defendants characterize plaintiff’s potential irreparable harm as possibly losing out on a voucher that she could have sought an extension for; however, it is clear that the real harm here is the risk of homelessness for the plaintiff and her children.

With respect to the balancing of the equities, the scales tip in favor of the plaintiff who will suffer from the threat of homelessness without an injunction, as opposed to the defendants who will still receive full market rent and will face the inconvenience and hardship of one of its

approximately six thousand units not conforming with its income requirements (*see Jiggets*, 196 Misc2d at 691). Furthermore, defendants' argument that plaintiff hastened her urgent situation by failing to apply for alternate housing with her voucher is unavailing as there is no duty to mitigate damages from source of income discrimination. Moreover, even if there was such a duty, this would not exculpate defendants from discrimination, but would possibly limit recoverable damages at a later stage of this case. Also, real property is considered unique, and plaintiff gave numerous reasons why living at Parkchester is particularly important to her and beneficial to her young children.


Thus, this Court finds based on the papers and after oral argument, that given the strong likelihood of success on the merits, the balancing of the equities in the plaintiff's favor, and the legitimate risk of severe irreparable harm, the issuance of a preliminary injunction is warranted (CPLR 6312).

Accordingly, it is hereby ORDERED that the Parkchester defendants are to process plaintiff's application for a three-bedroom apartment if one is available, or if not, for a two-bedroom apartment, utilizing a full CityFHEPS voucher and without considering its minimum income requirements, or, if there is a waiting list, to place her on the list based on her original application date, provided that an undertaking in the fixed sum of \$10.00 (ten dollars)³, in the form of a surety bond or a deposit of cash, money order, or bank check, be deposited with the County Clerk of the County of New York, and remain in effect until further order of this Court and it is further

³ The undertaking amount was consented to on the record, during the oral argument.

ORDERED that the parties are to appear for a preliminary conference on August 24, 2022 at 10AM via Microsoft Teams.

This constitutes the decision and order of the Court.

<u>7/28/2022</u> DATE		 Richard G. Latin, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE