

Sam Van LLC v Bickley

2023 NY Slip Op 34209(U)

November 30, 2023

Civil Court of the City of New York, Bronx County

Docket Number: Index No. L&T 307534/2023

Judge: Miriam Breier

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This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF THE BRONX: HOUSING PART F

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SAM VAN LLC,

Petitioner,

L&T Index No. 307534/2023

DECISION/ORDER

against

JANNIE BICKLEY,
JOHN DOE,
JANE DOE,

Respondents.

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MIRIAM BREIER, J.

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of respondent’s motion to dismiss pursuant to CPLR 3211(a)(1) and 3211(a)(7).

<u>Papers</u>	<u>NYSCEF Doc. No.</u>
Notice of Motion, Affidavits, and Exhibits.....	11-22
Memorandum of Law	23
Affirmation in Opposition and Exhibits.....	26-30
Reply	31

Upon the foregoing cited papers, the Decision/Order in this motion is as follows:

Petitioner commenced this summary holdover proceeding to recover possession of apartment 2 located at 1736 Van Buren Street, Bronx NY 10460 on the grounds that the premises are not subject to rent stabilization and that respondent’s lease expired in September 2021.

The proceeding initially appeared on the court’s calendar on March 3, 2023, in the Intake Part, where it was adjourned to April 5, 2023 for respondent to seek counsel. Respondent appeared by counsel on April 5, 2023, and the proceeding was adjourned for respondent to file an answer and for motion practice. Respondent filed the within motion to dismiss pursuant to CPLR

3211(a)(1) and (a)(7) and the proceeding was adjourned for opposition and reply. The Court heard oral argument on June 26, 2023 and reserved decision.

Respondent moves to dismiss the proceeding, pursuant to CPLR §§ 3211(a)(1) and (a)(7) on the grounds that petitioner impermissibly commenced this proceeding while respondent's second ERAP application was pending, and that petitioner vitiated the notice of termination by accepting rent during the "window period" between the expiration of the termination notice and service of the petition commencing the proceeding. The commencement of this proceeding while the ERAP was pending was a violation of the ERAP stay, and necessitates dismissal of the proceeding on that ground. The issue of vitiation by alleged acceptance of rent shall not be reached in this decision.

Respondent argues that this proceeding should be dismissed because petitioner impermissibly commenced this proceeding while respondent had a pending ERAP application. Respondent argues that ERAP Statute § 8 (as modified by L. 2021, Ch. 417, § 4) titled "Restrictions on eviction" prohibits commencing an eviction proceeding against a tenant who has a pending ERAP application.

Respondent submitted this second ERAP application (VE95B) on August 16, 2022, and petitioner was notified of the filing on August 17, 2022 in the context of a pending nonpayment proceeding between the parties. That nonpayment proceeding under Index No. LT 316461/22 was placed on the court's ERAP Administrative Calendar pending determination of the ERAP application. For reasons that are not explained, petitioner commenced this summary holdover proceeding while the second ERAP application was still pending.

Petitioner contends that the pendency of respondent's second ERAP application should not serve as a basis for this Court to dismiss this proceeding. Petitioner argues that respondent had already been granted ERAP on a prior application, albeit for only six months rent, which petitioner accepted. Petitioner then argues that it rejected the ERAP monies from the second ERAP application which were granted to respondent in June 2023, and that the money was returned to ERAP. For those reasons, petitioner argues that the commencement of the proceeding while the second ERAP application was pending, was not a violation of the ERAP stay.

ERAP Statute § 8 (as modified by L. 2021, Ch. 417, § 4) provides in relevant part as follows: "Eviction proceedings for a holdover or expired lease...shall not be commenced against a household who has applied for this program...unless or until a determination of ineligibility is made." Respondent filed for a second ERAP on August 16, 2022. Once that application was filed, petitioner was prohibited from commencing a holdover proceeding until such time as the ERAP application was determined.

Petitioner inexplicably commenced this proceeding in February 2023 while the ERAP application was pending. Petitioner argues that because it went ahead and rejected the ERAP monies in June 2023, this proceeding should not be dismissed. The rejection of the ERAP payment three months after this proceeding was commenced and while the ERAP was pending, does not negate the fact that the proceeding should not have been commenced in the first place. Moreover, respondent had no basis to believe that petitioner would reject the ERAP payment, especially since petitioner had already accepted ERAP money paid on respondent's behalf.

There is no justification for petitioner's reasoning, and in fact, the commencement of this holdover proceeding while the ERAP application was pending requires the dismissal of this proceeding. See *Youngstar Irrevocable Trust v. Paetz*, 2023 NY Slip Op 50464(U), 2023 WL 3445706 (App. Term 2d Dep't May 11, 2023) affirming dismissal of no-cause holdover proceeding commenced while ERAP application was pending because "the statute plainly prohibited the commencement of this proceeding while tenant's ERAP application was pending".

For the reasons stated herein, respondent's motion to dismiss the proceeding is granted, and the proceeding is dismissed without prejudice.

This constitutes the Decision and Order of the Court.

Dated: Bronx, New York
November 30, 2023

So Ordered:

Miriam Breier

Hon. Miriam Breier
Judge of the Housing Court