DISTRICT COURT OF NASSAU COUNTY
FIRST DISTRICT: LANDLORD / TENANT PART

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DIAMOND RIDGE PARTNERS LLC,

INDEX NO. LT-6528/17

Petitioner,

against

Present:

HON. WILLIAM HOHAUSER

GURAMIT HANSPAL, et al,

Respondents.

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Papers Considered:

Petitioner's Notice of Motion and Supporting Documents.....1-6 (plus exhibits)
Respondent Hanspal's Opposition to Motion 1-3
Respondent Srichawla's Opposition to Motion.....1-4
Petitioner's Reply Affirmation (plus Memorandum of Law).....1-3

DECISION ON MOTION

A. Procedural History and Statement of Facts

In or about 1998, respondent Guramit Hanspal ("Hanspal") purchased the property located at 2468 Kenmore Street, East Meadow, NY 11554 ("Kenmore Street"), and obtained a mortgage loan in order to finance this purchase. Following Hanspal's almost simultaneous default on payment of the mortgage note, in May 2000 the original mortgagee obtained a judgment of foreclosure and sale in Nassau County Supreme Court. In 2011, and then again in 2018, the then-Petitioners obtained judgments of possession against Hanspal in February 2011 and in April 2018.[1] During the interim period, apparently in an effort to forestall entry and/or enforcement of the judgments of possession, Hanspal filed at least six (6) bankruptcy petitions, all of which were dismissed. Undeterred by these dismissals or either judgment of eviction, Hanspal filed another bankruptcy petition in 2019, which too was dismissed. In addition, Hanspal has filed numerous other complaints against Petitioner (or its predecessors in interest), both in federal and state courts, each of which has been dismissed.[2]

During 2019, another purported Kenmore Street occupant (but not "tenant," as the term is legally defined), a Boss Chawla ("Chawla"), filed multiple bankruptcy petitions during 2019 alone, also ostensibly to remain in possession of the

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[1]In December 2018, this Court granted Diamond Ridge's application to be substituted as Petitioner in this matter.

[2]On at least one such occasion, Hanspal has been the subject of a sanctions award, as a result of what that Court termed frivolous conduct in prolonging this matter.

Kenmore Street premises to which he had no discernable legal right of possession. Like each of Hanspal's petitions before, Chawla's petitions were dismissed outright. Chawla has at no time provided any evidence that he is a lawful occupant of the Kenmore Street premises. Similarly, respondent Bhagwant Srichawla ("Srichawla") also has not provided any evidence that he is a lawful occupant of Kenmore Street.[3] Respondent Paur has not made any appearance in this matter, to any extent.

Following the dismissal of the myriad bankruptcy petitions, Hanspal filed a second motion to vacate the 2018 judgment of this Court which granted possession to Petitioner. As the Court then aptly opined:

> Respondent has failed to justify his default for [not] appearing at trial....Respondent had the opportunity to attend the trial and present his evidence....Respondent lost the foregoing opportunity by defaulting at the trial. This history of this case going on for approximately 20 years must come to an end...."

Apparently, Hanspal did not appreciate the irony inherent in his failure to appear on his motion to vacate a default for his non-appearance. Nevertheless, in November 2020, Hanspal filed another Order to Show Cause for rehearing; this too was denied, again for Hanspal's failure to appear.

As this matter continued winding its serpentine meandering through the state and federal court systems, in April 2021 respondents Hanspal and Srichawla submitted "Tenant's Declaration of Hardship During the COVID-19 Pandemic" ("Covid Declaration"), filed pursuant to the COVID 19-Emergency Eviction and Foreclosure Prevention Act [L 2020, ch 382] ("CEEFPA").. On each such Covid Declaration, Hanspal and Srichawla checked only Box "A," indicating that they sustained only financial hardship during the pandemic period. Further, neither Hanspal nor Srichawla noted the location at which they resided pursuant to any defined financial obligation. This case comes before this Court upon Diamond Ridge's motion to invalidate the Covid Declarations filed by Hanspal and Srichawla.[4]

This matter was presented for oral argument on August 5, 2021, at which time Diamond Ridge presented testimony from Mr. Max Sold, a former representative, who testified, among other assertions, that none of the individual respondents had a leasehold / ownership interest, or had made payments of any kind, including for use & occupancy, since Diamond Ridge acceded to ownership of Kenmore Street.[5] Although counsel for respondents appeared, Hanspal failed to do so, and no factual evidence

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[3]The Court has been made aware that prior to argument on this motion, respondent Srichawla tragically was fatally injured in an automobile accident. As a result, the balance of this opinion primarily relates to respondent Hanspal.

[4]Consistent with prior action (or more appropriately, inaction), respondent Paur has not filed a Covid Declaration.

[5]Diamond Ridge obtained ownership of Kenmore Street after purchasing the underlying mortgage note in or about 2018, and was properly substituted on motion as Petitioner in this matter.

was submitted in rebuttal for the Court's consideration.[6]

B. Legal Analysis

In addressing the issue of whether the instant Respondents qualify as "tenants" or "lawful occupants," a "tenant" may be defined as "one who holds or possesses [premises] by any kind of right or title....[or] one who has the temporary use and occupation of real property owned by another person (called the 'landlord'), the duration and terms of [the] tenancy being usually fixed by an instrument called a "lease" Blacks Law Dictionary, 11th Ed. Courts defining the scope of "tenant" as contemplated by CEEFPA generally have been "intentionally expansive," Tzifil Realty Corp. v. Mazrekaj, 2021 NY Misc. LEXIS 3438 (Kings Co. 2021). As a result, courts have "qualified" an individual asserting a colorable succession claim (The Realty Enter LLC v. Williams, 2021 NYLJ LEXIS 360 (Civ.Ct. Queens Co. 2021, Index No. 53712/18), a terminated superintendent (Mazrekaj, supra), an occupant liable for paying use and occupancy (Silverstein v. Huebner, 2021 NY Misc. LEXIS 4268 (Civ. Ct. Kings Co. 2021)).

In this regard, "lawful occupant" has been described as a "component" of the definition of "tenant." CIT Bank, N.A. v. Schiffman, 36 NY3d 550 (2021). In ascertaining the legislative intent, Court turns to the prefatory paragraphs of CEEFPA, which include: "It is, therefore, the intent of this legislation to avoid as many evictions as possible for people experiencing a financial hardship during the COVID-19 pandemic....[a] limited, temporary stay is necessary....." L.202, ch.381,§3. However, the specific stay provisions of CEEFPA limit its protections to "tenants," as defined in the statute, but not to other classes of respondents in eviction proceedings. Given the differing usages within the confines of CEEFPA, the Court must consider that the state legislature deliberately limited the umbra of CEEFPA-protected parties. See In re Warren A., 53 AD2d 400 (2d Dept 1976).

Furthermore, given the relative recency of CEEFPA, there is scant case law addressing the issue of whether the mere filing of Covid Declaration presents an absolute bar to a landlord from proceeding with an eviction. However, in a recent instructive decision from Suffolk County, that Court cited to the plain language of the Covid Declaration, to the effect that the COVID declaration would be effective if and only if it was filed by a "person responsible for paying rent....or any other financial obligation under a lease or tenancy agreement." Accordingly, the protections of the Covid Declaration would inhere to tenants, but **not** to those who have no financial obligation, such as holdover tenants following a foreclosure, who at most could be considered occupants at "sufferance," if not outright squatters. Bibow v. Bibow, LT-466-19 (Dist. Ct. Suffolk Co. July 28, 2021).

Continuing, the Bibow court was quite prescient in its analysis, opining

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[6] At argument, counsel for Srichawla maintained that in light of Srichawla's demise, his estate must be joined as an indispensable party, citing to Watersview Owners, Inc., v. Pacimeo, 13 Misc 3d 130(A) (App. Term 2nd & 11th Dists. 2006) and Ryerson Towers, Inc. V. Estate of Laura Brown, 160 Misc 2d 107 (App. Term 2nd & 11th Dists. 1994) in support thereof. However, each case is distinguishable from the instant situation. Ryerson involved Mitchell-Lama housing and a proceeding brought following the issuance of a certificate of eviction after the tenant had passed away. In Watersview, supra, the issue revolved around a proceeding against a cooperative lessee, who clearly possessed a tenancy interest. The Court finds neither case persuasive in this matter, in which no tenancy has been proven.

further that by not providing the landlord with the ability to challenge the validity of the Covid Declaration, that portion of the enabling statute was violative of the landlord's due process rights. Citing to Mullane v. Central Hanover Bank, 339 U.S. 306 (1950), the Court found that the landlord was denied the most basic opportunity to be heard. As the Bibow court reasoned, "it would be incomprehensible to find that the [state] legislature would vitiate the constitutional premise of due process to allow a party to obtain a unilateral stay of...eviction without resort to a judicial forum to hear the landlord's assertion of a 'standing' objection to the same."[7] See also Southern Acquisition Co. LLC v. TNT, LLC, 71 Misc. 3d 1002; 2021 Slip Op 21804 (Sup. Ct. Ulster Co. 2021).[8]

Approximately two weeks following the Bibow decision, the United States Supreme Court issued its decision in Chrysafis v. Marks, 2021 U.S. LEXIS 2635. There, the Supreme Court specifically enjoined enforcement of only Part A of CEEFPA, finding that allowing a tenant to self-certify financial hardship, and precluding a landlord from contesting that hardship, violates the "Court's longstanding teaching that ordinarily 'no man can be a judge in his own case' consistent with the Due Process Clause," citing In re Murchison, 349 U.S. 133, 136 (1955). Since the plain language of CEEFPA did not provide a landlord with such ability to challenge a tenant's self-certification of financial hardship, the Supreme Court invalidated any COVID Declaration relying on Part A alone.[9]

C. Conclusion

Although the salutary import of CEEFPA and related statutes cannot be denied, the legislative history is clear that their enaction derived from a unique pandemic afflicting the state, commencing in late 2019. The various moratoria on eviction proceedings were designed to prevent undue hardships befalling on those harmed by the pandemic's pervasive impact. Just as clearly, CEEFPA and related statutes were not promulgated to serve as a mechanism to delay further the administration of justice in cases, such as this, pending for decades.[10]

Here, none of the respondents qualifies for CEEFPA protection, either as a "tenant" or, alternatively, as a "lawful occupant" owing any financial obligation to

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[7]In a parallel to the case at bar, the Bibow court noted that the person filing the Covid Declaration failed to appear at the hearing.

[8]For a more fulsome description of the divination of legislative intent vis-a-vis occupants, see Kalikow Family Partnership, L.P. v. Doe, 2021 N.Y. Misc. LEXIS 4310 (Civ. Ct. Queens Co. 2021), in which the Court determined that the operative use of "tenant," rather than "respondent" within the relevant section of CEEFPA was quite significant and in that matter, held that licensees were not "lawful occupants" and thus not tenants entitled to protection under the CEEFPA.

[9]Of necessity, this decision does not implicate the protections afforded by the Tenant Safe Harbor Act ("THSA") 2020 N.Y. Laws Ch. 127, §§ 1, 2(2)(a). The THSA affords protections to residential tenants facing eviction for non-payment of rent between March 2020 and the expiration or rescindment of Executive Orders pertaining to Covid-19 relating restrictions. Those protections do not apply in holdover proceedings, such as that at bar.

[10]With some dismay, the Court notes Srichawla's contention that Diamond Ridge "has {advanced} no real reason why it should be in front of all other landlords in evicting Respondents," in that Diamond Ridge and its predecessors have been waiting for more than two decades.

Petitioner, be it called rent or use and occupancy.[11] If anything, Respondents' behavior, which reflect no payments of any kind for decades, augurs strongly against any protection under the CEEFPA statute, as this could not be considered a temporary issue warranting interim protection.[12]

Accordingly, in order to forestall any further delays, the Court re-issues a judgment of possession and warrant of eviction, without stay.

Dated: September 14, 2021

William Holgado
DISTRICT COURT JUDGE

CC: William Friedman, Esq.
David Gevanter, Esq.
Jordan Katz, Esq.
James Markotsis, Esq.

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[11]Not only does Hanspal possess no leasehold interest, but he has been subject to two adverse judgments of possession in this matter's long history.

[12]While this motion was *sub judice*, the on September 1, 2021, New York State Legislature passed an extension / modification to CEEFPA, S50001, which seeks to remedy the deficiency found in CEEFPA with regards to the perceived inability of a landlord to challenge a tenant's self-certification of financial hardship. Given that this Court finds that the instant Respondents fail to qualify either as "tenants" or "lawful occupants" within the meaning of CEEFPA or its recent modification, the Counrt further concludes that the protections included in the most current iteration of the moratorium do not inure to Respondents' benefit.