CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS: HOUSING PART E

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KALIKOW FAMILY PARTNERSHIP, L.P.,

Index No. L&T 300351/20

Petitioner,

-against-

**DECISION/ORDER**

"JOHN DOE" and/or "JANE DOE,"

Respondents.

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Present:

Hon. CLINTON J. GUTHRIE
Judge, Housing Court

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of petitioner's order to show cause to restore the proceeding to the court's calendar:

| **Papers** | **Numbered** |
|---|---|
| Order to Show Cause & Affirmation/Affidavit/Exhibits Annexed..... | 1 (NYSCEF #17-19) |
| Jo Park Opposition Statement..... | 2 (NYSCEF #20) |
| COVID-19 Hardship Declaration..... | 3 (NYSCEF #16) |

Upon the foregoing cited papers, the decision and order on petitioner's order to show cause is as follows.

PROCEDURAL HISTORY

Petitioner commenced this holdover proceeding, predicated upon a notice of termination that alleges that respondents are licensees, in October 2020. In March 2021, petitioner filed a motion for a default judgment, which first appeared on the Queens HMP calendar on June 1, 2021.

On June 1, 2021, the motion was adjourned to June 25, 2021. On the same date (June 1st), Ju Park (an unnamed respondent) filed a COVID-19 hardship declaration. On June 25, 2021, Jo Park (a separate unnamed respondent) appeared in court. After a conference on the record (with petitioner's attorney appearing remotely), Judge Kimon Thermos placed the case on an administrative calendar upon the presumption that the proceeding was stayed by the filing of the hardship declaration (pursuant to Part A, Section 6 the COVID-19 Emergency Eviction and Foreclosure Prevention Act [L 2020, ch 381] (hereinafter "EEFPA"), as amended by L 2021, ch 104).[1]

Petitioner then filed the instant order to show cause on June 30, 2021, seeking to restore the proceeding to the court's calendar on the basis that Ju Park was not a "tenant" as defined Part A, Section 3 of the EEFPA (and thus not eligible for a stay under the statute). Judge Thermos signed the order to show cause and made it returnable on July 13, 2021. Jo Park appeared again on July 13, 2021 and the motion was adjourned to July 26, 2021 in Part E for opposition. On July 26, 2021, this court heard argument on the order to show cause via Microsoft Teams after Jo Park (the only appearing respondent) submitted an opposition statement. Decision was reserved upon conclusion of the argument.

ANALYSIS

I. EEFPA definition of "tenant."

Petitioner argues that Ju Park is not a "tenant" as defined by the EEFPA. Petitioner's agent,

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[1] The court has listened to the FTR audio recording for the June 25, 2021 court date. At the conference, Jo Park was advised of the availability of legal representation by The Legal Aid Society through the Universal Access right to counsel program. However, at the conclusion of the conference, after a substantial portion of the discussion had been focused on Ms. Park's access to counsel, Judge Thermos noted on the record that Ms. Park had declined representation.

Anat Gordon, states in an affidavit annexed to petitioner's order to show cause that Ju Park and Jo Park are licensees whose license expired upon the surrender of possession by the former tenants of record in or about July 2020. Ms. Gordon further states that Ju and Jo Park did not pay any rent or use and occupancy, nor did the owner consent to them remaining in possession of the subject premises. Jo Park submitted an unsworn statement in opposition to the order to show cause, arguing that she and Ju Park (who is Jo Park's mother, as alleged by Jo Park during the argument) have been in possession for over 30 days, so should be regarded as lawful occupants protected by the EEFPA.

Tenant is defined in the EEFPA as "includ[ing] a residential tenant, lawful occupant of a dwelling unit, or any other person responsible for paying rent, use and occupancy, or any other financial obligation under a residential lease or tenancy agreement, but does not include a residential tenant or lawful occupant with a seasonal use lease where such tenant has a primary residence to which to return to." L 2020, ch 381, Part A, § 3. Pursuant to Part A, Section 6 of the EEFPA (as amended), if "the tenant" provides a hardship declaration to the petitioner, the court or an agent of the petitioner or the court (and no warrant has issued), the proceeding "shall be stayed until at least August 31, 2021." L 2021, ch 104. There is no allegation by Ju and Jo Park that they are tenants with a rental agreement with petitioner or any other person or entity, nor an allegation that they are people responsible for paying rent, use and occupancy, or another other financial obligation "under a residential lease or tenancy agreement."

The only allegation made by respondents is that they are protected as "lawful occupants" because they have resided in the subject premises for at least 30 days. Ms. Gordon's affidavit acknowledges that petitioner became aware of occupants (although not their identities) in

possession in July 2020, when the former tenants surrendered possession. Consequently, there is no genuine dispute that Ju and Jo Park had been in possession for at least 30 days when Ju Park filed her hardship declaration on June 1, 2021. The relevant inquiry, therefore, is whether occupancy of 30 days or more is sufficient to confer status as a "lawful occupant" for the purposes of the EEFPA.

Trial courts addressing the scope of the definition of "tenant" in the EEFPA have generally adopted a view of the definition as being "intentionally expansive." *Tzifil Realty Corp v. Mazrekaj*, 2021 NY Slip Op 21163, *2 [Civ Ct, Kings County 2021]. To that end, courts have held that an individual sued as a licensee but asserting a colorable succession claim (*The Realty Enter. LLC v. Williams*, NYLJ, Apr. 28, 2021 [Civ Ct, Queens County, Apr. 21, 2021, index No. 53712/18]), a terminated superintendent (*Mazrekaj*, 2021 NY Slip Op 21163), a subtenant with a written rental agreement with a former tenant (*Koumbiadis v. Hudgins*, Civ Ct, Queens County, June 24, 2021, Guthrie, J., index No. 51980/20), an occupant liable for paying use and occupancy (*Silverstein v. Huebner*, 2021 NY Slip Op 31992[U] [Civ Ct, Kings County 2021]), and a licensee with no rental agreement (*LSA Realty Corp. v. Hammonds*, NYLJ, Jul. 28, 2021 [City Court, Westchester County, Jul. 21, 2021, index No. 1563/20]) qualified as "tenants" under the EEFPA. However, one court recently held that a licensee whose right to occupancy derived from a familial relationship with the petitioner did not qualify as a "tenant." *See Bibow v. Bibow*, 2021 NY Slip Op 50705[U] [Dist Ct, Suffolk County 2021].

II. Interpretation of "lawful occupant."

In assessing whether Ju and Jo Park are "tenants" under the EEFPA, the court starts with the presumption that "lawful occupant" is a discrete category within the definition of "tenant" that is not modified by the subsequent category requiring a financial obligation. *See Morrison Mgt.*

*LLC v. Moreno*, 71 Misc 3d 1230, 2021 NY Slip Op 50528[U] [Civ Ct, Bronx County 2021] ["The statute's punctuation indicates an intent to differentiate between a 'lawful occupant' and the next part of the 'tenant' definition which includes the rent payment language."]; *Van Patten v. La Porta*, 148 AD2d 858, 860 [3d Dept 1989] ["When coordinating conjunctions such as either/or are utilized, the alternative sentence elements are considered of equal significance."].

What, then, is a "lawful occupant"? RPAPL § 711 provides that no "tenant or lawful occupant of a dwelling or housing accommodation shall be removed from possession except in a special proceeding." This language was added to the statute as a part of the Housing Stability and Tenant Protection Act (HSTPA) of 2019. *See Jimenez v. 1171 Wash. Ave, LLC*, 67 Misc 3d 1222[A], 2020 NY Slip Op 50615[U] [Civ Ct, Bronx County 2020]. Unfortunately, however, "lawful occupant" is not otherwise defined in the RPAPL. Courts interpreting the amended language of RPAPL § 711 have differed on whether 30 or more days of occupancy (invoking RPAPL § 768, which prohibits evicting an occupant who has "lawfully occupied the dwelling unit for thirty consecutive days or longer") is sufficient to confer standing to be restored to possession in an illegal lockout proceeding.[2] *Compare Salazar v. Core Servs. Grp., Inc.*, 67 Misc 3d 1206[A], 2020 NY Slip Op 50424[U] [Civ Ct, Bronx County 2020], *and Otero v. Hope Founders HDFC*, 2021 NYLJ Lexis 474 [Civ Ct, NY County, Mar. 29, 2021, index No. 300468/21], *with Jimenez*, 2020 NY Slip Op 50615[U], *9-10.

Against a potentially expansive interpretation of who qualifies as a "lawful occupant" under the above-referenced amendments to the HSTPA, however, is a body of appellate case law holding

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[2] RPAPL § 768 was also promulgated as part of the HSTPA. *See Jimenez*, 2020 NY Slip Op 50615[U], *4

that a licensee does not have a possessory interest in property (and thus cannot maintain an illegal lockout proceeding if removed without process). *See e.g. Coppa v. LaSpina*, 41 AD3d 756, 759 [2d Dept 2007] [Licensee could be peaceably excluded from supportive housing program "without resort to legal process"]; *P&A Bros, Inc. v. City of N.Y. Dept. of Parks & Recreation*, 184 AD2d 267 [1st Dept 1992]; *Zhu v. Li*, 70 Misc 3d 139[A], 2021 NY Slip Op 50089[U] [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2021]; *Andrews v. Acacia Network*, 59 Misc 3d 10, 12 [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2018] ["Since a licensee does not have 'possession,' he cannot maintain an unlawful entry and detainer proceeding"]. In *Andrews*, which predates the HSTPA, the Appellate Term held that NYC Administrative Code § 26-521, which mirrors the language of RPAPL § 768 as applied to illegal evictions in New York City, and the prior version of RPAPL § 711, did not act to make a nonpossessory interest (i.e. a license) into a possessory one. *Andrews*, 59 Misc 3d at 12. The court in *Jimenez*, which assessed *Andrews* in light of the HSTPA amendments, reached a similar conclusion. *Jimenez*, 2020 NY Slip Op 50615[U], *9-11; *but cf. Watson v. NYCHA-Brevoort Houses*, 70 Misc 3d 900, 903 [Civ Ct, Kings County 2020] ["[A] reasonable read of the statute [RPAPL § 768] could be to expand standing to commence an illegal lockout proceeding."]; *Salazar*, 2020 NY Slip Op 50424[U], *3. More recently, in February 2021, while not specifically addressing the HSTPA amendments, the Appellate Term in *Zhu* nonetheless reaffirmed the holding in *Andrews* that licensees do not have standing to maintain illegal lockout proceedings. *Zhu*, 2021 NY Slip Op 50089[U], *1.

III. Legislative intent.

Against this legal backdrop, the court must also interpret the meaning of "tenant" (and its component "lawful occupant") in the EEFPA within the context and intent of the statute itself. *See*

*CIT Bank, N.A. v. Schiffman*, 36 NY3d 550, 559 [2021] [In interpreting a statute, "due consideration [is to be] given to the statutory purpose and history, including the objectives the legislature sought to achieve through its enactment"]; *Riley v. County of Broome*, 95 NY2d 455, 463-464 [2000]. Contained within the preliminary portion of the EEFPA is a statement of legislative intent (Section 3), which reads in relevant part:

> "Stabilizing the housing situation for tenants, landlords, and homeowners is to the mutual benefit of all New Yorkers and will help the state address the pandemic, protect public health, and set the stage for recovery. It is, therefore, the intent of this legislation to avoid as many evictions and foreclosures as possible for people experiencing a financial hardship during the COVID-19 pandemic or who cannot move due to an increased risk of severe illness or death from COVID-19…A limited, temporary stay is necessary to protect the public health, safety and morals of the people the Legislature represents from the dangers of the COVID-19 emergency pandemic." L 2020, ch 381, § 3.

Although this statement of legislative intent infers nearly universal coverage ("people experiencing a financial hardship"), the specific stay provisions (Part A, Sections 6 and 8(a)) limit their protections to "tenants" as defined therein. This is distinguishable from the use of the broader term, "respondent," in Part A, Section 7 of the EEFPA (which addresses the means by which default judgments are issued and removed in eviction proceedings). Therefore, the court must ascribe significance to the legislature's placement of the defined term "tenant" in certain sections describing protections and not others. *See e.g. Matter of Walsh v. New York State Comptroller*, 34 NY3d 520, 524 [2019] ["A statute 'must be construed as a whole and [] its various sections must be considered together and with reference to each other.'"] [Quoting *Matter of New York County Lawyers' Assn. v. Bloomberg*, 19 NY3d 712, 721 [2012]]. While imposing a stay of proceedings against "tenants" (as defined in the statute) but not other types of respondents in eviction proceedings may not comprehensively carry out the stated legislative intent of avoiding as many

evictions as possible for people experiencing financial hardship during the COVID-19 pandemic, the court must assume that the limiting language had a legislative purpose. *See In re Warren A.*, 53 AD2d 400, 404 [2d Dept 1976] ["We should not ascribe to the Legislature an intent which renders the language of [a] statute surplusage and without significance."]. If the scope of the stay provisions was intended to match the broad language of the statement of legislative intent, it is for the legislature rather than this court to remedy. *See Kimmel v. State of New York*, 29 NY3d 386, 394 [2017].

IV. Conclusion.

Upon the motion record before the court, Ju and Jo Park have not demonstrated that they have any status greater than licensees. Since the relevant appellate case law, even after the adoption of the above-referenced HSTPA amendments (*Zhu*, 2021 NY Slip Op 50089[U], *1), has consistently held that licensees do not have possessory interests and can be removed without legal process when it does not breach the peace (*Coppa*, 41 AD3d at 759), it follows that Ju and Jo Park are not "lawful occupants" (and thus not "tenants") under the EEFPA. Accordingly, notwithstanding Ju Park's filing of a COVID-19 hardship declaration, petitioner's order to show cause is granted and the proceeding will be restored to the court's calendar for further proceedings. Any prior administrative stay is deemed vacated. The court stresses that the determinations made herein are for the purposes of assessing whether a stay applies under the EEFPA and are without prejudice to all parties' claims and defenses regarding the ultimate merits.

The proceeding shall be restored to the Part E calendar (Room 404, 89-17 Sutphin Boulevard, Jamaica, New York 11435) for all purposes on August 26, 2021 at 2:30 PM. A virtual Microsoft Teams link will be sent to petitioner's attorney and Jo Park by email. This

Decision/Order will be filed to NYSCEF. Petitioner's attorney shall serve a copy of this Decision/Order by first class mail upon Ju Park, Jo Park, John Doe, and Jane Doe at the subject premises address no later than August 11, 2021.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Dated: Queens, New York
August 6, 2021

HON. CLINTON J. GUTHRIE, J.H.C.

SO ORDERED - HON. CLINTON J. GUTHRIE, J.