

Long Island Courts At Odds With NYC Courts Regarding Reach of State COVID-19 Eviction Protections

By **Kenneth J. Flickinger**

On September 14, 2021, Hon. Judge William Hohausser, of the First District Court of Nassau County, issued a decision holding that post-foreclosure holdover occupants, who filed a hardship declaration pursuant to the COVID-19 Emergency Eviction and Foreclosure Prevention Act (“CEEFFPA”)¹, were not entitled to the Acts protections. Judge Hohausser’s decision adopts a much narrower interpretation of who is entitled to CEEFFPA’s protections than his colleagues in the New York City Civil Courts.

In *Diamond Ridge Partners LLC v. Hanspal*, 2021 Misc. LEXIS 4939 (Dist. Ct. Nassau Co. Sept. 14, 2021), Petitioner prosecuted a post-foreclosure holdover proceeding against the occupants of the property. The Court recites a lengthy history of the Respondent’s actions, from bankruptcies, to state and federal litigation, “apparently in an effort to forestall entry and/or enforcement of the judgments of possession.” *Id* at *1. In April 2021 Respondents submitted a “Tenant’s Declaration of Hardship During the COVID-19 Pandemic,” pursuant to CEEFFPA, claiming a financial hardship resulting from COVID-19. The Petitioner filed a motion to invalidate the hardship declarations, which would eliminate the stay through January 15, 2022, and allow the eviction to proceed immediately. Petitioner’s representative appeared at oral argument and testified that none of the individual Respondent’s had a leasehold/ownership interest, or had made payments of any kind, including for use and occupancy, since Petitioner acceded to ownership of the property. Respondents did not submit factual evidence in rebuttal.

In its legal analysis, the Court found that the Respondents did not qualify as “tenants” or “lawful occupants” as set forth in the CEEFFPA. According to the Court, only persons responsible for paying rent, or any other financial obligation under a lease or tenancy agreement can be considered tenants for purposes of the CEEFFPA. The Court used the definition of “tenant” in Blacks Law Dictionary, as the possession of premises by right or title of real property owned by another, the duration and terms of which are usually fixed by a lease. The Court further noted that the legislature, in enacting the CEEFFPA, limited its protections to “tenants”, “but not to other classes of respondents in eviction proceedings.” *Id* at *5. The court stated, “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.” *Id* at *6 (citing *Bibow v. Bibow*, LT-466-19, 2021 NYLJ Lexis 765 (Dist. Ct. Suffolk Co. July 28, 2021)). Accordingly, the Court held that the Respondents were not entitled to the CEEFFPA protections, and issued a judgment of possession, and warrant of eviction, without stay.

¹ As set forth in previous client alerts on December 29, 2020, May 5, 2021 and September 3, 2021, CEEFFPA, which became effective December 28, 2020, allows tenants facing eviction, and mortgagors facing foreclosure, to stop those proceedings by claiming a hardship related to the COVID-19 pandemic. The stay of proceedings pursuant to the CEEFFPA, as originally enacted, was set to expire May 1, 2021. The Legislature extended the hardship stay period until August 31, 2021, then through January 15, 2022.

The Judge in *Diamond Ridge* acknowledged that New York City Civil Courts have defined the scope of “tenant” as contemplated by CEEFPA as “intentionally expansive,” citing to a trio of recent cases, including *Tzifil Realty Corp. v. Mazrekaj*, 72 Misc. 3d 748, 2021 NY Misc. LEXIS 3438 (*NYC Civ. Ct. Kings Co. 2021*), in which a building superintendent who was terminated from his employment was extended the protections of CEEFPA; *Realty Enter LLC v. Williams*, 2021 NYLJ LEXIS 360 (*Civ.Ct. Queens Co. 2021, Index No. 53712/18*), in which the successor heir of the deceased tenant asserted a successful claim for CEEFPA protection; and *Silverstein v. Huebner*, 2021 NY Misc. LEXIS 4268 (*Civ. Ct. Kings Co. 2021*), in which an illegal subtenant was held to be protected by the CEEFPA. In *Silverstein*, the court held that notwithstanding the lack of privity between the occupant and owner, mere occupancy, in and of itself, gives rise to liability for use and occupancy as a matter of quantum meruit. This argument presumably makes any occupant subject to the protections of CEEFPA, as CEEFPA explicitly protects “tenants,” and “any other person responsible for paying use and occupancy.”

The most recent extension of CEEFPA specifically authorize the petitioner in an eviction to challenge an adverse party’s hardship claim. Where such a challenge is made, the law requires the court to “grant a hearing to determine whether to find the respondent’s [or defendant’s] hardship claim invalid.” A legal challenge to the application of the CEEFPA to different categories of occupants, like the one presented in *Diamond Ridge*, may be decided very differently depending on the court in which the challenge is made.