

State of New York
Unified Court System



Lawrence K. Marks
Chief Administrative Judge

25 Beaver Street
New York, N.Y. 10004
(212) 428-2100

MEMORANDUM

August 17, 2021

To: Hon. George J. Silver
Hon. Vito C. Caruso

From: Lawrence K. Marks *LM*

Subject: Residential Eviction Proceedings Following *Chrysafis v. Marks* (August 12, 2021)

=====

As you may know, on August 12, 2021, the United States Supreme Court granted an application for injunctive relief in *Chrysafis v. Marks*, 594 U.S. ____ (2021) (Exh. A). The decision enjoined enforcement of all of Part A of chapter 381 of the Laws of 2020, entitled the COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020 [“CEEPFA” (effective December 28, 2020)], which was later amended by chapter 104 of the Laws of 2021, extending the moratorium for residential evictions under CEEPFA, Part A, through August 31, 2021 [“Amendment” (effective May 4, 2021)].

Additional guidance on residential evictions is set forth in administrative orders [AO/244/21 and AO/245/21; Exh. B] and as follows:

A. Residential Eviction Matters

1. No Automatic Stay of Eviction Proceedings, or Tolling of Commencement of Proceedings, Upon Submission of a Tenant’s Hardship Declaration: *Chrysafis* enjoins enforcement of all of CEEPFA, Part A, thereby eliminating the statutory requirement that where a tenant delivers a Hardship Declaration to a landlord, a landlord’s agent, or the court (in a pending matter), a proceeding must be stayed until at least August 31, 2021, or its commencement be tolled until August 31, 2021.

2. **Court Practice Upon Commencement of a New Proceeding:** The court is no longer prohibited from accepting a new residential eviction proceeding filing without both (1) an affidavit of service of the Hardship Declaration, and (2) an affidavit from the landlord stating that no Hardship Declaration has been received from the tenant or that the Nuisance Exception applies. In addition, service of the notice of petition with a Hardship Declaration is no longer required. The directive to reject such CEEPFA non-compliant new filings is withdrawn immediately.

The court should commence restoring stayed proceedings to active calendars, keeping in mind that existing state and federal moratoria or a stay pending a rental assistance application may still apply. In jurisdictions such as New York City and other municipalities with resolution parts, proceedings where respondent-tenant has counsel may be restored by individual resolution parts to their own calendar. Proceedings in which respondent-tenant does not have counsel should be restored to the calendar for assignment of counsel where available. Motions by petitioners to restore proceedings to the calendar should be handled expeditiously and, where appropriate, in the assigned resolution parts if respondent has counsel.

The court must continue to expediently determine if a proceeding continues to be stayed pursuant to existing state statutes and federal moratoria as follows:

a. **Tenant Safe Harbor Act:** In *Chrysafis*, the Court specifically noted that Chapter 127 of 2020, otherwise known as the “Tenant Safe Harbor Act” (“TSHA”), still applies to residential evictions in New York. The TSHA limits eviction of a residential tenant with a Covid-19 related hardship for nonpayment of rent due for the “Covid-19 covered period.” The statute defines COVID-19 covered period as from March 7, 2020 until such date when all Executive Orders have been expired or rescinded and none of the provisions that closed or otherwise restricted public, or private business or all non-essential gatherings in the county of the tenant’s or lawful occupant’s residence. The Governor ended the statewide state of emergency on June 24, 2021. No court shall issue a warrant of eviction or other possessory judgment against a residential tenant who has suffered a financial hardship during the COVID-19 covered period for the non-payment of rent during such period. A tenant may raise financial hardship as an affirmative defense in a summary proceeding under Article 7 of the RPAPL. The TSHA does not prohibit any court from awarding a money judgment for the rent due and owed to a successful petitioner in a RPAPL Article 7 summary proceeding.

b. **CDC Eviction Moratorium:** Effective August 3, 2021, the CDC issued a new Order establishing a federal moratorium on residential evictions for certain individuals living in counties with “high” or “substantial” COVID-19 transmission rates, as defined by the Order. Under the CDC Order, a landlord, owner of a residential property, or other person with a legal right to pursue an eviction or possessory judgment shall not evict any *covered person*, as defined in the CDC Agency Order, from any residential property in any jurisdiction through October 3, 2021 (emphasis added). Covered persons may use the Declaration form included in the Order to invoke protection from eviction.

c. **Emergency Rental Assistance Application:** In addition, an eviction proceeding in

which a petitioner or respondent-tenant has a pending Emergency Rental Assistance Program application (ERAP) is stayed until a final determination is made on the rental assistance application by the State Office of Temporary and Disability Assistance (OTDA).

4. Warrants in Residential Eviction Proceedings: The provisions in CEEPFA, Part A, requiring a different form of warrant are no longer in effect. Petitioners may make a motion to vacate the stay in proceedings where the judge has already issued an order to stay the execution of a warrant through August 31, 2021, pursuant to CEEPFA, Part A, §8. The conference requirement for execution of warrants of eviction issued prior to March 7, 2020 remains in effect pursuant to AO/245/21 and DRP 217, as the courts have required conferencing of pre-pandemic warrants prior to CEEPFA. However, the warrant no longer must be in the form as required by the statute.

5. Default Judgments: *Chrysafis* further removed the requirement that the court must first hold a hearing upon motion of the petitioner before issuing a default judgment authorizing an eviction in a residential eviction matter or authorizing the enforcement of an eviction pursuant to a default judgment.

Please distribute this memorandum and attachments to judges and non-judicial staff as you deem appropriate. Questions on the subject may be addressed to Jessica Cherry of Counsel's Office (jcherry@nycourts.gov).

c: Hon. Carolyn Walker-Diallo