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Attorneys at Law

July 9, 2020

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Re: COVID investigations no longer required (mostly)

Valued Clients:

It seems that by the time we are done drafting and uploading updates on “breaking news,” new news comes out which relegates “breaking news” to “outdated news.” At the risk of becoming an annoyance with yet another update, there has been a flurry of new Directives, laws and Administrative Orders that materially affect Landlord-Tenant related issues and eviction proceedings.

As was posted yesterday on our website, Governor Cuomo signed Senate Bill 8192B, which provided, inter alia, that no court shall issue a warrant of eviction or judgment of possession against a residential tenant or other lawful occupant that has suffered a financial hardship during the COVID-19 period for the non-payment of rent that accrues or becomes due during the COVID-19 period. Further, the Bill provided the tenant or lawful occupant to raise their COVID-19 related financial impact as an affirmative defense. If successfully raised and established, landlords will be able to get a monetary judgment for this portion of the arrears. With respect to the preCOVID-19 arrears, landlords can still get a possessory judgment and warrant. Simply, you may be entitled one or two judgments in your eviction proceedings.

We also informed you that as of yesterday Judge Marks rescinded a portion of his Administrative Order which required landlords and attorneys from supplying COVID-19 investigation affidavits and affirmations respectively along with their residential non-payment petitions. This was apparently in response to tenants having the opportunity to raise the issue as an affirmative defense.

Today we received two new directives from New York City Administrative Judge Cannataro which rescinded DRP 210 and DRP 211 to the extent such directives applied to residential non-payment cases. Specifically, DRP 210B removes the obligation to of a petitioner seeking a default judgment in a residential non-payment case to file a COVID-19 investigation affidavit. Similarly DRP 211B removes the requirement that a petitioner must first request permission from the court before enforcing or executing a warrant of eviction obtained pre-COVID-19 against a residential tenant. Although the COVID-19 investigations are no longer needed in residential non-payment matters, the new DRPs continued the requirements on commercial matters. (As neither of the new DRPs have been published, they are attached hereto for your reference.)

To summarize the ‘new’ news, you no longer need to establish the lack of COVID-19 related financial impact before you are permitted to commence a non-payment residential case, or proceed on a pre-COVID-19 matter. If you have already conducted investigations, sent out letters, or included the previously required language in your delinquency letters, these new directives and Orders relieve you of this continued obligation, and you can resume using your prior forms as before COVID-19. As we have also been serving COVID related correspondence with your tenants, this service will stop of as today.

As of today it appears the courts are permitting the commencement of most new cases (there are some exceptions, such as those properties that have Federally insured mortgages are still subject to a stay for a few more weeks). Although we are currently preparing, serving and filing demands, holdover notices and new petitions, the court has represented (in AO127/20) that once filed, the case will be suspended until other stays are withdrawn. As it appears stays are being withdrawn weekly, we strongly encourage that you proactively review your records and rent rolls and determine if you are in a position to proceed to the next appropriate step.

We are ready, willing and able to give you guidance should you have questions on the foregoing. And as always, we will keep you posted by emails or our website (www.LazKarp.com) on any more new news.

Thank you for your continued trust, and above all, be safe.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Chad L. Karp', written over a light gray rectangular background.

Chad L. Karp

CIVIL COURT OF THE CITY OF NEW YORK

DIRECTIVES AND PROCEDURES Class: DRP- 210B

Subject: Obtaining a Default Judgment During Covid-19 Pandemic Category: LT-20

Eff. Date: July 8, 2020

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BACKGROUND:

On May 7, 2020, in response to the ongoing public health crisis, Governor Andrew Cuomo issued Executive Order 202.28, which placed limits on the commencement of summary proceedings for nonpayment of rent and enforcement of eviction orders in those proceedings for 60 days beginning on June 20, 2020.

Thereafter, DRP 210 (as amended on June 12, 2020) imposed a requirement on petitioners seeking default judgment in residential and commercial landlord tenant proceedings to state by affidavit that they had made a good faith effort to ascertain whether the respondent is a person eligible for unemployment insurance or benefits under state or federal law or otherwise facing financial hardship due to the COVID-19 pandemic.

In Executive Order 202.48 issued on July 6, 2020, the relevant directives of Executive Order 202.28 were made applicable only to commercial nonpayment proceedings.

In light of the foregoing, it is ordered that:

DIRECTIVE:

Any petitioner applying for a default judgment in a commercial landlord tenant proceeding based upon the respondent’s failure to answer in a summary proceeding for nonpayment of rent shall submit, as part of such application, an affidavit by a person with personal knowledge of the facts, stating that the petitioner has made a good faith effort to ascertain whether the respondent is a person or business eligible for unemployment insurance or benefits under state or federal law or otherwise facing financial hardship due to the COVID-19 pandemic, and that the respondent is not such a person or business. The affidavit shall state the facts upon which the individual bases this conclusion.

This directive amends and supersedes DRP 210A, dated June 12, 2020, and shall remain in effect until further notice.

Date: July 8, 2020 _____/S/_____

Hon. Anthony Cannataro

Administrative Judge

Civil Court of the City of New York

CIVIL COURT OF THE CITY OF NEW YORK

DIRECTIVES AND PROCEDURES Class: DRP- 211B

Subject: Enforcing a Warrant of Eviction During Covid-19 Pandemic Category: LT-30

Eff. Date: July 8, 2020

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BACKGROUND:

On May 7, 2020, in response to the ongoing public health crisis, Governor Andrew Cuomo issued Executive Order 202.28, which placed limits on the commencement of summary proceedings for nonpayment of rent and enforcement of eviction orders in those proceedings for 60 days beginning June 20, 2020.

Thereafter, DRP 211 (as amended on June 12, 2020) imposed a requirement on petitioners seeking to enforce a warrant of eviction awarded before March 20, 2020 for the nonpayment of rent in residential and commercial landlord tenant proceedings to state by affidavit that they had made a good faith effort to ascertain whether the respondent is a person eligible for unemployment insurance or benefits under state or federal law or otherwise facing financial hardship due to the COVID-19 pandemic.

In Executive Order 202.48 issued on July 6, 2020, the relevant directives of Executive Order 202.28 were made applicable only to commercial nonpayment proceedings.

In light of the foregoing, it is ordered that:

DIRECTIVE:

Any petitioner in a commercial landlord tenant proceeding seeking to enforce a warrant of eviction that was awarded before March 20, 2020 based upon the nonpayment of rent, must first seek leave of court to enforce the warrant by filing a motion, on notice. The motion seeking leave to enforce shall include an affidavit by a person with personal knowledge of the facts stating that petitioner has made a good faith effort to ascertain whether the respondent is a person or business eligible for unemployment insurance or benefits under state or federal law or otherwise facing financial hardship due to the COVID-19 pandemic, and that the respondent is not such a person or business. The affidavit shall state the facts upon which the individual bases this conclusion.

This directive amends and supersedes DRP 211A, dated June 12, 2020, and shall remain in effect until further notice.

Date: July 8, 2020 _____/S/_____

Hon. Anthony Cannataro

Administrative Judge

Civil Court of the City of New York