Federal Court Enjoins Eviction Based on Reasonable Accommodation Request*

In *Sinisgallo v. Islip Housing Authority*,[1] a federal court granted a preliminary injunction enjoining the defendant public housing agency (PHA) from pursuing eviction of two tenants. The injunction was granted based on the tenants' claim that the PHA violated their rights by failing to provide a reasonable accommodation after one of the tenants attacked a neighbor.[2] The court concluded that the Anti-Injunction Act and the *Younger* abstention doctrine did not preclude it from enjoining the state court proceeding.[3] The tenants were represented by Nassau/Suffolk Law Services Committee Inc. in Islandia, New York.

Background

Kathie Sinisgallo and Steve Tsilimparis lived together in public housing managed by the Islip Housing Authority (IHA).[4] The tenants' incomes consisted of Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI).[5]

Ms. Sinisgallo submitted a complaint to the executive director of the public housing program after another tenant, Michael Collins, shot her cat.[6] Mr. Tsilimparis then confronted Mr. Collins, which ended in an altercation where Mr. Collins was injured.[7] After the incident, Mr. Tsilimparis' medication was adjusted and no further violence occurred.[8] Ms. Sinisgallo subsequently received a termination of tenancy notice from IHA.[9]

Upon Ms. Sinisgallo's request, IHA held a formal administrative hearing to review the termination.[10] The tenants requested a reasonable accommodation in the form of a probationary period to determine whether Mr. Tsilimparis' medication adjustment prevented violent behavior.[11] The tenants also argued that the termination violated the Fair Housing Act (FHA).[12] The hearing officer made no reference to the reasonable accommodation request or the alleged violation of the FHA in his decision.[13] The hearing decision stated that Mr. Tsilimparis violated the lease provision by hitting Mr. Collins.[14] IHA consequently initiated summary holdover proceedings in state court to evict Ms. Sinisgallo and Mr. Tsilimparis.[15] Ms. Sinisgallo and Mr. Tsilimparis filed suit in federal district court asserting several causes of action and seeking a preliminary injunction to enjoin the eviction proceeding.[16]

The Court's Decision

The court found that the Anti-Injunction Act and the *Younger* abstention doctrine did not preclude it from granting the tenants preliminary relief enjoining the state court eviction proceedings.[17] The court granted a preliminary injunction based on the tenants' claim that IHA violated their rights under the FHA, the Americans with Disabilities Act (ADA) and the Rehabilitation Act.[18]

Abstention Analysis

The Anti-Injunction Act prohibits a federal court from enjoining state court proceedings, unless one of the Act's exceptions applies.[19] The exception at issue was whether the preliminary injunction was necessary for the federal court's jurisdiction.[20] The court noted that this exception applies when the federal claims cannot be presented in the state court proceeding.[21] In contrast, the exception does not apply if a plaintiff can fully preserve the federal claim as a defense in the state proceeding.[22]

The *Younger* abstention doctrine requires a federal court to abstain from jurisdiction when a plaintiff's federal claims "have been or could be presented in ongoing state judicial proceedings that concern important state interests."[23] *Younger* abstention is not applicable when a plaintiff cannot present the federal claims in the state proceeding.[24]

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[1] __ F. Supp. 2d __, 2012 WL 1888140 (E.D.N.Y. 2012).
[2] *Id*. at *32.
[3] *Id*. at *8.
[4] *Id*. at *1.
[5] *Id*.
[6] *Id*.
[7] *Id*. at *2.
[8] *Id*.
[9] *Id*.
[10] *Id*.
[11] *Id*.
[12] *Id*.
[13] *Id*. at *3.
[14] *Id*. at *3.
[15] *Id*.
[16] *Id*. The tenants alleged that IHA terminated their tenancy in violation of constitutional due process, the United States Housing Act, the Rehabilitation Act, the Fair Housing Act, and the Americans with Disabilities Act.
[17] *Id*. at *4.
[18] *Id*.
[19] *Id*. (quoting 28 U.S.C. § 2283, which provides that the exceptions to the Act are limited to express authorization by an Act of Congress, necessity in aid of the federal court's jurisdiction or to protect or effectuate the federal court's judgments).
[20] *Id*. at *5.
[21] *Id*. at *6 (discussing McNeill v. New York City Hous. Auth., 719 F. Supp. 233, 256 (S.D.N.Y. 1989)).
[22] *Id*. (citing Sierra v. City of New York, 528 F. Supp. 2d 465, 468 (S.D.N.Y. 2008); Bosch v. Lamattina, 2008 WL 4820247, at *7 (E.D.N.Y. 2008); Armstrong v. Real Estate Intern., Ltd., 2006 WL 354983, at *4 (E.D.N.Y. 2006)).
[23] *Id*. at *7 (quoting Hawaii Hous. Auth. v. Midkiff, 467 U.S. 229, 237-38 (1984)).
[24] *Id*. at *7 (quoting Tellock v. Davis, 2002 WL 31433589, at *4 (E.D.N.Y. 2002)).

The court noted that the fundamental analysis under both the Anti-Injunction Act and the *Younger* doctrine was whether the federal disability claims could be asserted by the tenants in the pending state eviction proceeding.[25] In New York, when the party commencing the eviction proceeding is a federally funded housing authority, the state court's jurisdiction is based on whether the tenant received an administrative hearing prior to the eviction proceeding.[26] If the tenant did not receive an administrative hearing, the state court engages in de novo review of the termination and hears all defenses, including federal claims.[27] However, when a tenant has received an administrative hearing, the state court may only perform a "limited due process review" to determine whether the tenant was afforded notice and the opportunity to be heard.[28]

The tenants received an administrative hearing prior to the state eviction proceedings.[29] Since the state court could not engage in de novo review of the hearing decision, it was unlikely to hear the tenants' federal claims because a contrary determination would be a review of the merits of the decision.[30] The court noted an exception if the housing court decides to conduct a trial de novo under 24 C.F.R. § 966.57(c).[31] A number of states allow a public housing tenant to receive a de novo review in state court even after an administrative hearing.[32] However, the majority of New York courts only permit this if the PHA's grievance procedure provides for a trial de novo in the eviction proceeding.[33] Because IHA's grievance procedure did not provide for this, the court determined that the tenants would be unable to assert their federal disability claims in the pending eviction proceeding.[34] Therefore, the court concluded it was not barred from granting a preliminary injunction.[35]

Additionally, the court concluded that the availability of an Article 78 proceeding was irrelevant to the preclusion analysis.[36] Under New York law, an Article 78 proceeding allows for judicial review of an administrative agency's decision. The Anti-Injunction Act and the *Younger* doctrine apply only when the state proceeding is "ongoing."[37] Because an Article 78 proceeding is a new proceeding rather than an appeal, the court is not precluded or divested of jurisdiction simply because it is available to the plaintiff.[38] The tenants were not required to exhaust administrative remedies or to assert their federal claims in an Article 78 proceeding under HUD regulations or IHA grievance procedures.[39] Therefore, the tenants had a right to commence the suit in federal court, and the existence of an available Article 78 proceeding was not relevant.

Preliminary Injunction Analysis

The court noted that when a moving party seeks preliminary injunctive relief that will impact "government action taken in the public interest pursuant to a statutory or regulatory scheme," the moving party must meet the "likelihood-of-success standard" in addition to demonstrating irreparable harm and a balance of equities in the moving party's favor.[40] Generally, courts have held that the threat of eviction and potential homelessness satisfies the requirement of irreparable harm.[41] Since the tenants in this case risked eviction if the state proceedings were not enjoined, the court concluded that the irreparable harm requirement was satisfied and analyzed the likelihood of success for each claim.[42]

The court first found that the tenants were not entitled to a preliminary injunction based on their claims under 42 U.S.C. § 1983.[43] The tenants claimed that IHA violated their due process rights because the hearing officer was not an impartial decisionmaker.[44] Although the tenants did have a constitutionally protected interest in the continued occupancy of their public housing apartment, the court concluded that the allegation that the hearing officer failed to properly apply the law was not sufficient evidence of bias.[45] Therefore, the court concluded that the Section 1983 claim based on violation of due process

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[25]*Id*. at *7.
[26]*Id*. at *12.
[27]*Id*. (citing Hempstead Hous. Auth. v. Wells, 590 N.Y.S.2d 1014 (N.Y. Dist. Ct. 1992); N.Y. County Dist. Attorney's Office v. Oquendo, 553 N.Y.S.2d 973, 976 (N.Y. City Civ. Ct. 1990)).
[28]*Id*. at *13 (citing Millennium Hills Hous. Dev. Fund Corp. v. Patterson, 2009 WL 3321432, at *2 (N.Y. Dist. Ct. 2009); Millennium Hills Hous. Dev. Fund Corp. v. Davis, 2011 WL 3631960, at *2 n.1 (N.Y. Dist. Ct. 2011)).
[29]*Id*.
[30]*Id*. at *14.
[31]*Id*.
[32]*Id*. (citing Jones v. Chester Hous. Auth., 1993 WL 332068, at *2 (E.D. Pa. 1993); Hous. & Redev. Auth. of St. Cloud v. Tesfaye, 2010 WL 1753271, at *5 (Minn. App. 2010); Hous. Auth. of St. Louis County v. Lovejoy, 762 S.W.2d 843, 845-46 (Mo. Ct. App. 1988)).
[33]*Id*. at *15 (citing New York City Hous. Auth. v. Simmons, 568 N.Y.S.2d 258, 258-59 (N.Y. App. Term 1990); Mun. Hous. Auth. for the City of Yonkers v. Jones, 2006 WL 3437868, at *1-2 (N.Y. App. Term 2006); Town of Oyster Bay Hous. Auth. v. Schwartz, 906 N.Y.S.2d 776 (N.Y. Dist. Ct. 2009)).
[34]*Id*. at *16
[35]*Id*.
[36]*Id*. at *8.
[37]*Id*.
[38]*Id*. (citing Meachem v. Wing, 77 F. Supp. 2d 431, 442 (S.D.N.Y. 1999)).
[39]*Id*. at *9 (citing Huntington Branch, N.A.A.C.P. v. Town of Huntington, 689 F.2d 391, 394 n.3 (2d Cir. 1982); Advocacy and Res. Ctr. v. Town of Chazy, 62 F. Supp. 2d 686, 688 (N.D.N.Y. 1999); Sokoya v. 4343 Clarendon Condo Ass'n, 1996 WL 699634, at *3 (N.D. Ill. 1996)).
[40]*Id*. at *16 (quoting Metro. Taxicab Bd. of Trade v. City of New York, 615 F.3d 152, 156 (2d Cir. 2010); Lynch v. City of New York, 589 F.3d 94, 98 (2d Cir. 2009)).
[41]*Id*. at *16 (citing Tellock v. Davis, 2002 WL 31433589, at *7 n.2 (E.D.N.Y. 2002); Baumgarten v. County of Suffolk, 2007 WL 1490482, at *5 (E.D.N.Y. 2007)).
[42]*Id*.
[43]*Id*. at *4.
[44]*Id*. at *17.
[45]*Id*. at *20 (citing Shepard v. Weldon Mediation Servs., Inc., 794 F. Supp. 2d 1173, 1180 (W.D. Wash. 2011) (noting that errors may be evidence of bias if the plaintiff alleges systematic repetition of a particular error or recurring errors that favor a particular class)).

would not likely succeed on the merits. The tenants also claimed that IHA violated their rights under the United States Housing Act.[46] The court concluded that the tenants' Section 1983 claim based on the alleged violation of the Housing Act would not likely succeed on the merits because the tenants' allegation that the hearing officer was not an impartial decisionmaker failed.[47] In addition, the court concluded that the tenants could not assert a successful Section 1983 claim based on the deprivation of rights under the FHA, the ADA or the Rehabilitation Act because those statutes provide comprehensive remedies.[48] Thus, the court concluded that the tenants failed to demonstrate a likelihood of success on the merits of their Section 1983 claims.[49]

The court next found that the tenants were entitled to a preliminary injunction based on their claims that IHA violated their rights under the FHA, ADA and Rehabilitation Act (the federal disability statutes).[50] The tenants' main argument was that IHA failed to reasonably accommodate Mr. Tsilimparis' disability before determining that the tenancy would be a direct threat to other tenants.[51] The court stated that the fact that a disabled tenant engages in violent conduct does not automatically mean that the individual is a direct threat warranting an exception to the reasonable accommodation requirement.[52] Once a plaintiff has established a prima facie case of discrimination, the defendant must demonstrate that there is no reasonable accommodation option to eliminate or minimize the risk that the tenant poses to the safety of others.[53]

The court found that the tenants were likely to succeed on their prima facie case of discrimination based on IHA's failure to reasonably accommodate.[54] The court analyzed the following elements for the tenants' prima facie case: (1) whether Mr. Tsilimparis is "disabled"; (2) whether IHA was aware of the disability; (3) whether there was a causal connection between Mr. Tsilimparis' disability and the basis for termination of tenancy; and (4) whether a reasonable accommodation was proposed and considered.

The court first examined whether Mr. Tsilimparis was disabled for purposes of the federal disability rights laws. IHA argued that Mr. Tsilimparis had not demonstrated that he was disabled because he relied on a letter from a social worker, who could not make diagnoses. The court rejected this argument and found sufficient proof of disability. The court noted that Mr. Tsilimparis received SSI and that Department of Justice guidance states that a non-medical service agency can verify a person's disability.[55] The court also determined that IHA was aware of the tenants' disabilities prior to the eviction proceedings because of their awareness of the tenants' income source.[56] In addition, the court noted that IHA is charged with possessing the same knowledge as the hearing officer.[57]

The court next examined whether the tenants showed a nexus between Mr. Tsilimparis' disability and the assault of the neighbor. Although the court noted it was a close question, the tenants showed, for purposes of the motion for preliminary injunction, that there was a causal connection between the incident and Mr. Tsilimparis' disability. The court noted that Mr. Tsilimparis' medication was adjusted the day after the attack, and no further violence had occurred since that date.[58]

The court next found that, for purposes of a preliminary injunction, the tenants satisfied their burden to demonstrate that IHA failed to provide or consider a reasonable accommodation.[59] The court noted that plaintiffs who commit a violent act have a more difficult burden of establishing that their request for accommodation is reasonable.[60] The tenants proposed accommodation through a grant of a probationary period to determine whether Mr. Tsilimparis was still a direct threat after his medication adjustment.[61] The court noted that this type of "second chance" accommodation has been found reasonable by a number of courts, HUD and the Department of Justice.[62] Because IHA did not offer any accommodation or explain why the proposed "second chance" accommodation was unreasonable, IHA was not relieved of its duty to provide a reasonable accommodation to the tenants.[63]

In balancing the equities, the court noted that IHA had an interest in protecting the safety of public housing

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[46]*Id*. at *21.
[47]*Id*.
[48]*Id*. at *22 (citing Vinson v. Thomas, 288 F.3d 1145, 1156 (9th Cir. 2002); Credle-Brown v. Conn. Dep't. of Children & Families, 2009 WL 1789430, at *1 (D. Conn. 2009); South Middlesex Opportunity Council, Inc. v. Town of Framingham, 2008 WL 4595369, at *15-16 (D. Mass. 2008); Homebuilders Ass'n of Mississippi, Inc. v. City of Brandon, Miss., 2009 WL 1635763, at *11 n.3 (S.D. Miss. 2009)).
[49]*Id*. at *22.
[50]*Id*. at *4.
[51]*Id*. at *23.
[52]*Id*. at *24-25 (citing 24 C.F.R. § 9.131(c)); *see also* 42 U.S.C. § 3604(f)(9) (providing an exception to the reasonable accommodation requirement when tenants "constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damages to the property of others").
[53]*Id*. at *25 (citing Roe v. Sugar River Mills Assocs., MB, 820 F. Supp. 636, 640 (D.N.H. 1993)).
[54]*Id*. at *32.
[55]*Id*. at *27 (citing Wilson v. Seattle Hous. Auth., 2010 WL 1945740, at *2 (W.D. Wash. 2010)).
[56]*Id*. at *28 (citing Boston Hous. Auth. v. Bridgewaters, 898 N.E.2d 848, 857-58 (Mass. 2009) (holding that a PHA is on notice of a tenant's disability when the tenant receives SSI or SSDI payments)).
[57]*Id*. at *28 (citing 24 C.F.R. § 966.57(b)(2) (noting that a housing authority has the power to overturn a hearing officer's decision if it is contrary to HUD regulations or other law)).
[58]*Id*. at *30.
[59]*Id*. at *31.
[60]*Id*. at *30 (citing Super v. J. D'Amelia & Assocs., LLC, 2010 WL 3926887, at *5 (D. Conn. 2010)).
[61]*Id*. at *31.
[62]*Id*. at *31 (citing Super v. J. D'Amelia & Assocs., LLC, 2010 WL 3926887, at *6 (D. Conn. 2010); Boston Hous. Auth. v. Bridgewaters, 898 N.E.2d 848 (Mass. 2009)).
[63]*Id*. at *31.

tenants.[64] However, the court determined that the irreparable injury of potential wrongful eviction to the tenants outweighed IHA's safety concerns in light of the fact that Mr. Tsilimparis had not been violent since the incident.[65] Accordingly, the court enjoined IHA from pursuing the state court eviction proceeding pending the conclusion of the federal case.[66]

[64] *Id*. at *33.
[65] *Id*.
[66] *Id*.

Conclusion

The court's ruling in *Sinisgallo v. Islip Housing Authority* provides helpful guidance for advocates assisting tenants who are facing evictions for violent acts related to their disabilities. Additionally, the court's analysis of the Anti-Injunction Act and the *Younger* abstention doctrine may be useful for advocates seeking to use a federal court action to enjoin pending state court eviction proceedings. ■