

13 Fla. L. Weekly Supp. 1006b

Landlord-tenant -- Public housing -- Eviction -- Default -- Vacation -- Where it would be difficult or impossible for tenant to regain public housing tenancy if evicted, eviction would render tenant and family homeless, and tenant has entire amount of money owed to landlord, court grants equitable relief, stays writ of possession and vacates default judgment

MIAMI-DADE COUNTY, Plaintiff, vs. CAROLYN JACKSON, AND ALL OTHERS IN POSSESSION, Defendant. County Court, 11th Judicial Circuit in and for Miami-Dade County, Civil Division. Case No. 05-17552-CC-05 (02). July 25, 2006. Roger A. Silver, Judge. Counsel: Kimberly Sanchez, Legal Services of Greater Miami, Inc., Miami. Noel Johnson.

*ORDER GRANTING DEFENDANT'S EMERGENCY
MOTION TO STAY EXECUTION OF THE
WRIT OF POSSESSION*

THIS CAUSE came before the Court July 13, 2006, on Defendant's Emergency Motion to Stay Execution of the Writ of Possession, and the Court, after hearing argument of the parties and being fully advised on the premises, makes the following findings:

1. Defendant has been a tenant in public housing for three years.
2. Defendant is on negative rent and each month receives a \$15.00 utility allowance check from the Housing Agency.
3. Plaintiff brought this Complaint for eviction against Ms. Jackson because she failed to complete her annual re-certification.
4. At Mediation on January 26, 2006, Defendant signed a Stipulation to pay \$570.00 in attorneys fees over twelve months.
5. On May 22, 2006, Plaintiff filed an Affidavit of Non-Compliance stating that Defendant had failed to comply with the Stipulation because she failed to pay her March payment.
6. On July 8, 2006, a Writ of Possession was posted on Defendant's door.
7. Defendant has the entire amount of money that is owed to Plaintiff.
8. A court of equity may relieve a lessee against forfeiture when the effect of enforcing the default would be unconscionable, inequitable, or unjust. *Rader v. Prather*, 100 Fla. 591, (Fla. 1930); *Sharpe v. Sentry Drugs, Inc.*, 505 So. 2d 618, 12 Fla. L. Weekly D1027, (Fla. 3d DCA 1987). *Smith v. Winn Dixie Stores, Inc.*, 448 So. 2d 62, (Fla. 3d DCA 1984).
9. Tenancy in a public housing unit is a valuable right; once lost, it will be difficult or impossible for Defendant and her family to regain such tenancy.

10. If evicted from public housing, Defendant and her family would be in immediate danger of becoming homeless.

11. It would be unconscionable, inequitable and unjust to evict Defendant from her public housing unit, and render her family homeless.

It is ORDERED and ADJUDGED that the Court, acting in its capacity as a Court of Equity, grants Defendant equitable relief and orders that the Writ of Possession is Stayed and the Default Final Judgment is Vacated.