

CTQ-2014-00004

Court of Appeals
STATE OF NEW YORK

IN THE MATTER OF MARY VERONICA SANTIAGO-MONTEVERDE,

Debtor,

MARY VERONICA SANTIAGO-MONTEVERDE,

Debtor-Appellant,

V.

JOHN S. PEREIRA, CHAPTER 7 TRUSTEE,

Trustee-Appellee.

*On a Question Certified by the United States Court of Appeals
For the Second Circuit (USCOA Docket No. 12-4131 – bk)*

**CORRECTED BRIEF FOR *AMICI CURIAE* NEW YORK STATE
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TABLE OF CONTENTS

	Page
INTRODUCTION.....	1
INTERESTS OF AMICI CURIAE.....	3
QUESTION CERTIFIED TO THIS COURT	5
STATEMENT OF FACTS AND THE CASE.....	6
ARGUMENT	7
I. Allowing Chapter 7 Trustees to Sell Rent-Stabilized Leases Would Contradict the Intent Behind New York’s Rent Stabilization Program by Eliminating a Critical Protection for Lower-Income Residents and Exacerbating the Shortage of Affordable Housing.	7
II. If Rent-Stabilized Rights Are Property, They Are Exempt Under Section 282(2) Because They Are Not Subject to Execution Under Section 5201.....	13
III. This Court Should Not Permit Bankruptcy Trustees and Creditors to Sell Consumer Protections That the New York State Legislature Has Provided for Affordable Housing.	18
CONCLUSION	20

TABLE OF AUTHORITIES

	Page
CASES	
<i>8200 Realty Corp. v. Lindsay</i> , 27 N.Y.2d 124 (1970)	8
<i>ABKCO Indus., Inc. v. Apple Films, Inc.</i> , 39 N.Y.2d 670 (N.Y. 1976).....	14
<i>B.N. Realty Assocs. v. Lichtenstein</i> , 238 B.R. 249 (Bankr. S.D.N.Y. 1999).....	17
<i>BFP v. Resolution Trust Corp.</i> , 511 U.S. 531 (1994)	19
<i>Butner v. United States</i> , 440 U.S. 48 (1999)	15, 19
<i>In re Henderson</i> , 245 B.R. 449 (Bankr. S.D.N.Y. 2000).....	17
<i>In re Toledano</i> , 299 B.R. 284 (Bankr. S.D.N.Y. 2003).....	17
<i>In re Touloumis</i> , 170 B.R. 825 (Bankr. S.D.N.Y. 1994).....	17
<i>Kashi v. Gratsos</i> , 712 F.Supp. 23 (S.D.N.Y. 1989).....	14
<i>Laborers Union Local 1298 of Nassau and Suffolk Counties Vacation Fund v. Frank L. Lyon & Sons, Inc.</i> , 323 N.Y.S.2d 229 (Sup. Ct. Nassau County 1971).....	15
<i>Local Loan Co. v. Hunt</i> , 292 U.S. 234 (1934)	12
<i>Marigo Corp. v. Lavian</i> , 277 A.D.2d 148 (1st Dep't 2000).....	16

<i>Rima 106, L.P. v. Alvarez,</i> 257 A.D.2d 201 (1st Dep't 1999).....	16
---	----

STATUTES

11 U.S.C. § 1129(a)(11).....	13
11 U.S.C. § 522	14, 18
11 U.S.C. § 704(a)(1).....	12
9 N.Y.C.R.R. § 225.6(b)	16
9 N.Y.C.R.R. § 2522.4.....	11
9 N.Y.C.R.R. § 2525.1	16
N.Y. C.P.L.R. § 5201	14, 15, 18
N.Y. C.P.L.R. § 5205	15
N.Y. C.P.L.R. § 5206.....	15, 19
N.Y. DEBT. & CRED. LAW § 282	<i>passim</i>
N.Y. DEBT. & CRED. LAW § 284	14
N.Y. DEBT. & CRED. LAW § 285	14
N.Y. EMERGENCY TENANT PROTECTION ACT § 2 (1974)	8, 16
N.Y. Penal Law § 180.56.....	16
N.Y. REAL PROP. LAW § 226-b	14
N.Y.C. Admin. Code §§ 26-501-520 (amended 2011).....	8
N.Y.C. Admin. Code § 26-504.1 (amended 2011).....	10
N.Y.C. Admin. Code § 26-504.2 (amended 2011).....	10, 11
N.Y.C. Admin. Code § 26-504.3 (amended 2011).....	10, 11
N.Y.C.R.R. § 2202.20.....	12

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http://www.nyc.gov/html/housing/assets/downloads/pdf/housing_plan.pdf..... 9

Erik Eckholm,
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Heather Boushey & Adam S. Hersh,
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Tenant Rights in Focus, WALL ST. J. (Oct. 20, 2013, 10:13 PM),
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N.Y. State Assemb. A.10186,
 2013-2014 Reg. Sess. (N.Y. 2013) 18

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<http://www.nyc.gov/html/nycha/html/about/factsheet.shtml>..... 9

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http://www.nyc.gov/html/nycha/html/section8/lh_app_faqs.shtml#q5..... 9

NEW YORK CITY RENT GUIDELINES BOARD, 2013 INCOME AND AFFORDABILITY
 STUDY 8 (2014)
http://www.nycrgb.org/downloads/research/pdf_reports/ia14.pdf..... 9

New York State Division of Housing & Community Renewal, *Rent Regulation
 After 50 Years: An Overview of New York State’s Rent Regulated Housing 1993*,
<http://www.tenant.net/Oversight/50yrRentReg/history.html>..... 7

New York State Homes & Community Renewal, Tenant Protection Units and
 Initiatives,

http://www.nyshcr.org/Rent/TenantProtectionUnit/ tpu-units-and-initiatives.htm	11
NEW YORK UNIVERSITY FURMAN CENTER FOR REAL ESTATE & URBAN POLICY, PROFILE OF RENT-STABILIZED UNITS AND TENANTS IN NEW YORK CITY 4 (2014), http://furmancenter.org/files/FurmanCenter_FactBrief_RentStabilization _June2014.pdf	3, 20
OFFICE OF THE NEW YORK CITY COMPTROLLER SCOTT M. STRINGER, THE GROWING GAP: NEW YORK CITY'S HOUSING AFFORDABILITY CHALLENGE 18 (2014) http://comptroller.nyc.gov/wp-content/uploads/documents/Growing_Gap.pdf ..	12
Press Release, Governor's Press Office, Governor Paterson Acts on Three Bills (Dec. 23, 2010), http://www.governor.ny.gov/archive/paterson/press/122310gov_pat_ three_bills.html	19
SIEGEL, NEW YORK PRACTICE § 486 (5th ed. 2011)	14
TIMOTHY L. COLLINS, AN INTRODUCTION TO THE NEW YORK CITY RENT GUIDELINES BOARD 29 (Staff of the New York City Rent Guidelines Board eds., 2014).....	8
W. Dennis Keating, <i>Landlord Self-Regulation: New York City's Rent Stabilization System 1969 – 1985</i> , 31 J. Urb. & Contemp. L. 77, 81 (1987)	8

INTRODUCTION

This case poses a false tension between two of the New York State Legislature's longstanding priorities: on the one hand, a commitment to affordable housing and the prevention of a debtor's homelessness in the event of a Chapter 7 bankruptcy, and on the other hand, the need for debtors to pay their debts, though not at the expense of assets deemed necessary for their support. A logical analysis of the rent stabilization program and New York's Debtor and Creditor Law, however, demonstrates how these dual objectives complement, rather than compete with, one another.

As the homestead exemption in New York's bankruptcy law makes clear, the Legislature has determined that the loss of one's residence as a result of personal bankruptcy would be an unnecessarily harsh and counterproductive outcome. By balancing the rights of creditors with the debtor's need for protection against displacement, the law avoids forcing the debtor to decide between her home and the urgent need for creditor relief. The rent stabilization program is likewise focused on allowing residents to remain in their homes in the face of adverse events. That program protects tenants from the vagaries of a real estate market with perpetually low vacancy rates, which, if left unchecked, would drive out all but the wealthiest of citizens. Such an outcome would upset the economic,

social and cultural diversity that is a hallmark of countless municipalities in New York, most notably New York City, as well as lead to rising rates of homelessness.

The proper reading of New York's bankruptcy exemptions under Section 282 of the New York Debtor and Creditor Law and the rent stabilization program gives effect to each of these objectives. By prohibiting the assignment and sale of a regulated lease, the rent stabilization laws protect it from execution by the tenant's creditors for the satisfaction of a money judgment. The value of a rent-stabilized lease¹ should likewise be deemed exempt in a bankruptcy, both because the value is naturally exempt as it is not subject to execution, and to avoid granting a windfall to bankruptcy creditors (and even landlords) who would ordinarily not be able to reach the lease. To allow the sale, by contrast, would contravene the intent of both the bankruptcy and rent stabilization regimes to protect residents from dislocation. Given that the majority of rent-stabilized tenants are low-

¹ We do not dispute that an unregulated residential lease, in and of itself, may be assigned or sold. Such a lease, however, possesses no significant value and would routinely pass through a tenant's bankruptcy. *See* Section II, *infra*. A rent-regulated lease possesses value only to the extent that the regulations can be terminated through the bankruptcy process, as is implicit in the certified question's focus on the "protected value" of such a lease. *See also* Mem. and Order of the District Court at 3, Appendix for Appellant ("App.") 156. That is the heart of our objection. (Unless otherwise indicated, references to leases throughout this brief should be understood to refer to the value associated with the regulatory structure, rather than to the contractual lease.)

income² and therefore at increased risk of requiring bankruptcy protection, these sales may also signal a death knell for rent stabilization more broadly, a program that the Legislature has fought to maintain for over 45 years.

INTERESTS OF AMICI CURIAE

Amicus Brad Hoylman is a New York State Senator who represents the 27th State Senate District in New York City, and in whose district the Appellant resides.

Amicus Linda B. Rosenthal is a New York State Assemblymember who represents New York's 67th Assembly District in New York City.

Amicus Tony Avella is a New York State Senator who represents the 11th State Senate District in New York City.

Amicus Michael Benedetto is a New York State Assemblymember who represents New York's 82nd Assembly District in New York City.

Amicus James F. Brennan is a New York State Assemblymember who represents New York's 44th Assembly District in New York City.

Amicus Karim Camara is a New York State Assemblymember who represents New York's 43rd Assembly District in New York City.

² In 2011, the median household income in rent-stabilized/controlled units was \$36,600, compared to \$52,260 for market-rate units. Roughly 66 percent of tenants living in rent-stabilized units were considered low-income in 2011, compared to 53.1 percent of market-rate tenants. NEW YORK UNIVERSITY FURMAN CENTER FOR REAL ESTATE & URBAN POLICY, PROFILE OF RENT-STABILIZED UNITS AND TENANTS IN NEW YORK CITY 4 (2014), http://furmancenter.org/files/FurmanCenter_FactBrief_RentStabilization_June2014.pdf.

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Amicus Deborah Glick is a New York State Assemblymember who represents New York's 66th Assembly District in New York City.

Amicus Richard Gottfried is a New York State Assemblymember who represents New York's 75th Assembly District in New York City.

Amicus Liz Kruger is a New York State Senator who represents the 28th State Senate District in New York City.

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Amicus Walter Mosley is a New York State Assemblymember who represents New York's 57th Assembly District in New York City.

Amicus Bill Perkins is a New York State Senator who represents the 30th State Senate District in New York City.

Amicus Gustavo Rivera is a New York State Senator who represents the 33rd State Senate District in New York City.

Amicus Daniel Squadron is a New York State Senator who represents the 26th State Senate District in New York City.

Amicus Keith Wright is a New York State Assemblymember who represents New York's 70th Assembly District in New York City.

Together, *Amici* have an interest in this case because of their shared commitment to affordable housing for New York residents and the preservation of its distinct and diverse neighborhoods. They seek to enforce the statutory rights of their rent-stabilized constituents, as well as to protect them from losing their residences. *Amici* are also concerned with how this Court's decision may impact state and city resources, including funds spent on homeless shelters, welfare assistance and other public aid. As Legislators charged with drafting and enacting the state's statutory regime, they are uniquely positioned to explain the purpose and meaning behind the New York laws in question.

QUESTION CERTIFIED TO THIS COURT

Whether a debtor-tenant possesses a property interest in the protected value of her rent-stabilized lease that may be exempted from her bankruptcy estate pursuant to New York State Debtor and Creditor Law Section 282(2) as a "local public assistance benefit"?

Consistent with the directive from the U.S. Court of Appeals for the Second Circuit that this Court may also "reformulate or expand the certified question as it deems appropriate," *Amici* offer alternative state law grounds for this Court to find

that a Chapter 7 Trustee may not sell a debtor-tenant's rent-stabilized lease free and clear of regulation.³

STATEMENT OF FACTS AND THE CASE

The facts of the case are set forth in detail in the parties' briefs to this court. The basic facts are as follows. Appellant Mary Veronica Santiago-Monteverde resides in a rent-stabilized apartment in the East Village neighborhood of New York City. Along with her now-deceased husband, Appellant signed the lease for the apartment 45 years ago. Upon the enactment of New York's Rent Stabilization Law in 1969, the lease was converted to a rent-stabilized tenancy.

In recent years, the death of Appellant's husband left her in financial straits. While she continued to pay her rent and perform all obligations under the lease, she fell behind on her credit card payments and was ultimately forced to file for Chapter 7 bankruptcy protection. In an unsolicited bid to be rid of the rent-stabilized tenancy, Appellant's landlord approached Respondent, the Trustee of Appellant's bankruptcy estate, and offered to buy Appellant's interest in the lease.⁴

Appellant objected to this sale, claiming before the U.S. Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") that the value of her rent stabilization benefits were exempt from her estate under Section 282(2) of

³ App. 333.

⁴ App. 75-76.

New York’s Debtor and Creditor Law as a “local public assistance benefit.”⁵ The Bankruptcy Court ruled that the exemption was not available to her, and the U.S. District Court for the Southern District of New York (the “District Court”) affirmed.⁶ After the Second Circuit received briefing and heard oral argument on the issue, it certified the question to this Court. This Court accepted the certification in an order issued May 13, 2014.

ARGUMENT

I. Allowing Chapter 7 Trustees to Sell Rent-Stabilized Leases Would Contradict the Intent Behind New York’s Rent Stabilization Program by Eliminating a Critical Protection for Lower-Income Residents and Exacerbating the Shortage of Affordable Housing.

New York’s rent stabilization program signals the enduring commitment of elected officials to ensure an adequate supply of affordable housing for low-and middle-income families. Its precursor—rent control—was a federal initiative that implemented price controls in 1942 in response to inflation from a wartime economy.⁷ After federal regulations expired in 1950, the state, and later the individual municipalities, assumed responsibility for administering housing regulation.⁸ As the severe housing shortage created by World War II and the

⁵ App. 76.

⁶ App. 93-100; App. 154-57.

⁷ New York State Division of Housing & Community Renewal, *Rent Regulation After 50 Years: An Overview of New York State’s Rent Regulated Housing 1993*, <http://www.tenant.net/Oversight/50yrRentReg/history.html> (last visited Aug. 28, 2014).

⁸ *Id.*

Korean War gradually abated, the Legislature enacted a series of limited decontrol measures. By 1968, however, the tide had once again turned: New York City's rental vacancy rate had dropped to 1.23%,⁹ and the city received complaints of average rent increases between 30 and 60 percent in the unregulated sector.¹⁰ This ultimately resulted in a full-blown housing crisis, with substantial numbers of New York City residents displaced and forced to leave the city.¹¹ The Rent Stabilization Law of 1969 was an effort to address these shrinking vacancy rates and complaints of rent-gouging by tenants.¹²

Today the rent stabilization laws, which are periodically augmented, continue to shield covered tenants from extreme rent shocks while providing crucial protections and much needed security in a tight rental market.¹³ Indeed, by many measures the conditions that gave rise to the program have only worsened. In 2011, for example, New York City's vacancy rate stood at 3.12 percent, well

⁹ W. Dennis Keating, *Landlord Self-Regulation: New York City's Rent Stabilization System 1969 – 1985*, 31 J. Urb. & Contemp. L. 77, 81 (1987). (noting that in the non-controlled sector, the housing vacancy rate had fallen to less than one percent).

¹⁰ See *8200 Realty Corp. v. Lindsay*, 27 N.Y.2d 124, 136-37 (1970) (citing affidavit of Jason R. Nathan, Administrator of the Housing and Development Administration).

¹¹ *Id.*

¹² See TIMOTHY L. COLLINS, AN INTRODUCTION TO THE NEW YORK CITY RENT GUIDELINES BOARD 29 (Staff of the New York City Rent Guidelines Board eds., 2014), http://www.nycrgb.org/html/about/intro%20PDF/full%20pdf/intro_2014.pdf.

¹³ See, e.g., N.Y.C. Admin. Code §§ 26-501-520 (amended 2011); N.Y. EMERGENCY TENANT PROTECTION ACT § 2 (1974).

below the 5 percent threshold legally defining a “housing emergency.”¹⁴ Between 2005 and 2012, New York City tenants saw their rents rise by 11 percent while their real incomes rose by just 2.5 percent.¹⁵ Almost 55 percent of all rental households in New York City are “rent burdened,” meaning that they spend over 30 percent of their incomes on housing, leaving fewer dollars to be spent on essentials such as food and health care.¹⁶ This issue “affects nearly every income group in every neighborhood across the five boroughs.”¹⁷ At the same time, waiting lists for public housing and Section 8 vouchers have mushroomed into the hundreds of thousands.¹⁸ While rent stabilization functions as a consumer protection for tenants at all income levels, it is especially important to the most vulnerable in New York City’s housing market: the working poor and lower-middle class, who represent the majority of rent-stabilized tenants.¹⁹ By enforcing reasonable limits on annual rent increases and barring unjustified

¹⁴ NEW YORK CITY RENT GUIDELINES BOARD, 2013 INCOME AND AFFORDABILITY STUDY 8 (2014), http://www.nycrgb.org/downloads/research/pdf_reports/ia14.pdf.

¹⁵ BILL DE BLASIO, HOUSING NEW YORK: A FIVE-BOROUGH, TEN-YEAR PLAN 5 (2014), http://www.nyc.gov/html/housing/assets/downloads/pdf/housing_plan.pdf.

¹⁶ *Id.* at 17

¹⁷ *Id.* at 5.

¹⁸ New York City Housing Authority Fact Sheet (revised on April 1, 2014), <http://www.nyc.gov/html/nycha/html/about/factsheet.shtml>. Indeed, the Section 8 waiting list is currently closed, and there is no information as to when it will reopen. New York City Housing Authority, Section 8 Fact Sheet, question 5, http://www.nyc.gov/html/nycha/html/section8/lh_app_faqs.shtml#q5 (last visited Aug. 28, 2014).

¹⁹ *See, supra*, note 2.

evictions, rent stabilization has become a powerful tool in ensuring that people from all socioeconomic brackets can call New York home.

State and city officials have fought to preserve rent stabilization not only because it provides tangible protections to New Yorkers who need it most, but also for the role it plays in preserving the socioeconomic diversity that is key to the city's economic health.²⁰ Longer tenancies associated with rent-stabilized leases reduce the negative effects of frequent turnover, including lost rental income, weaker community organizations, and disruption to schools and children's educations.²¹ In recognition of the increasingly critical role that rent stabilization plays in providing safe and affordable housing to its constituents, the Legislature strengthened the existing protections for rent-stabilized tenants as recently as 2011.²²

²⁰ See Heather Boushey & Adam S. Hersh, *THE AMERICAN MIDDLE CLASS, INCOME INEQUALITY, AND THE STRENGTH OF OUR ECONOMY* 3 (2012) (a strong middle class promotes the development of human capital, creates a stable source of demand for goods and services, and supports inclusive political and economic institutions which underpin economic growth), <http://www.americanprogress.org/issues/economy/report/2012/05/17/11628/the-american-middle-class-income-inequality-and-the-strength-of-our-economy> (last visited Aug. 28, 2014).

²¹ See Erik Eckholm, *To Avoid Student Turnover, Parents Get Rent Help*, N.Y. TIMES, June 24, 2008, www.nytimes.com/2008/06/24/us/24move.html.

²² N.Y.C. Admin. Code §§ 26-504.1-3 (amended 2011) (increasing the threshold for high-rent deregulation from \$2,000 to \$2,500 and high-income deregulation from \$175,000 to \$200,000) and § 511 (restricting the frequency of rent increases to once per calendar year, decreasing the amount by which a landlord could increase rent due to apartment improvements from 1/40th to 1/60th of the costs of the improvements). In addition, the Tenant Protection Unit was funded by the Legislature in 2012 to provide proactive enforcement to the state's rent laws. Among its mandates is to investigate fraudulent and unlawful conduct by landlords. See New York State Homes & Community Renewal, Tenant Protection Units and Initiatives,

Permitting the sale of rent-stabilized leases in a bankruptcy would severely jeopardize the existence of the program. *First*, under the current regime, if an apartment has a maximum legal regulated rent in excess of \$2,500.00, *and is vacant*, it can be permanently deregulated.²³ In addition, landlords can raise the legal regulated rent by implementing “major capital improvements” and “individual apartment improvements.”²⁴ To the extent that such improvements allow the landlord to raise the rent above the deregulation threshold, this too could lead to permanent deregulation of the apartment—if *the apartment is vacant*.²⁵ Consequently, vacancies created by the forced eviction of rent-stabilized debtor-tenants such as Appellant will further depress the supply of affordable housing and worsen the very problem the program was designed to alleviate.²⁶ *Second*, because

<http://www.nyshcr.org/Rent/TenantProtectionUnit/tpu-units-and-initiatives.htm> (last updated Oct. 17, 2013).

²³ N.Y.C. Admin. Code § 26-504.2. Deregulation can also occur if the apartment has a maximum legal regulated rent in excess of \$2,500.00, and the tenant’s household income has exceeded \$200,000 for two consecutive years. *Id.* at § 26-504.3.

²⁴ 9 N.Y.C.R.R. § 2522.4.

²⁵ The issue of unscrupulous landlords claiming improvements to increase the rent of a rent-stabilized unit and ultimately deregulate it prompted the creation of the Tenant Protection Unit discussed *supra*, note 20. By requiring that landlords document their spending on improvements to vacant apartments, the Unit added back 20,000 apartments in 2,000 buildings to regulation in just one year. See Josh Barbanel, *Tenant Rights in Focus*, WALL ST. J. (Oct. 20, 2013, 10:13 PM), <http://online.wsj.com/news/articles/SB10001424052702303680404579143411786780866>.

²⁶ These deregulation provisions have contributed to a steady decline in rent-stabilized units. As of 2011, there were 1,025,214 combined rent-stabilized/controlled rental units, comprising 47.2 percent of all New York City rental units, down from 58.8 percent in 1991. See OFFICE OF THE NEW YORK CITY COMPTROLLER SCOTT M. STRINGER, *THE GROWING GAP: NEW YORK CITY’S HOUSING AFFORDABILITY CHALLENGE* 18 (2014), <http://comptroller.nyc.gov/wp->

those who file for Chapter 7 are often of limited means, and the majority of rent-stabilized leases are held by lower-income tenants, there is considerable risk that this improper interpretation of the law will eliminate a material percentage of rent-stabilized leases.²⁷ This is especially likely given that Chapter 7 trustees will arguably be required to sell such leases pursuant to their mandate to maximize recovery for creditors.²⁸

The forced sale of a rent-stabilized lease would strike a devastating blow to lower-income Chapter 7 debtors. It would also preclude the debtor from achieving the “fresh start” that bankruptcy is intended to provide.²⁹ On average, market-rate apartments are nearly \$500 per month more expensive than rent-regulated units. A debtor-tenant is therefore almost certain to face a higher market rent in her next dwelling.³⁰ In effect, the sale of her rent-regulated lease requires a debtor-tenant to trade one expense—her prepetition debt to creditors—for another: a higher rent. In fact, the higher rent may, over time, easily exceed the amount owed. The

content/uploads/documents/Growing_Gap.pdf. Between 1994 and 2012 there was a net loss of 105,242 affordable housing units in New York City’s rent stabilization program. *Id.* at 20.

²⁷ *Supra* note 2.

²⁸ See 11 U.S.C. § 704(a)(1).

²⁹ See *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934) (Bankruptcy “gives to the honest but unfortunate debtor . . . a new opportunity in life . . . unhampered by the pressure and discouragement of preexisting debt”).

³⁰ OFFICE OF THE NEW YORK CITY COMPTROLLER SCOTT M. STRINGER, *supra* note 26, at 18. Rent-regulated apartments also provide access to a number of ancillary benefits and protections. See N.Y.C.R.R. § 2202.20(a),(b) (providing for Senior Citizen Rent Increase Exemption and limiting application of exemption to rent-regulated tenants).

consequence may well be a return to bankruptcy in the near future and/or increasing reliance on public aid, a serious concern given the limited resources of this city and state.³¹ It also presents a Catch-22 dilemma to those individuals most in need of both rent stabilization's protections *and* Chapter 7's protections—they are forced to choose one or the other.

II. If Rent-Stabilized Rights Are Property, They Are Exempt Under Section 282(2) Because They Are Not Subject to Execution Under Section 5201.³²

As noted in the Brief of *Amici Curiae* New York Bankruptcy Assistance Project and MFY Legal Services, should this Court find that the protected value of a rent-stabilized lease is the tenant's personal, not property, right, then it never becomes part of the bankruptcy estate and therefore may not be administered by the Trustee.³³ We agree with that position. But even if a tenant's rent-stabilized rights are property, they are nonetheless exempted from the bankruptcy estate because they are not subject to execution.

³¹ This is the same vicious cycle that Congress sought to prevent with the so-called "feasibility requirement" in Chapter 11 plans of reorganization. *See* 11 U.S.C. § 1129(a)(11) (stating that a Chapter 11 plan may be confirmed only if "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization"). The same concern is equally valid in the Chapter 7 context, where the benefit of a debtor's discharge of her debts would be severely undermined by the assumption of a more expensive lease.

³² In the alternative, for the reasons set forth in Appellant's Brief, this Court should find that the rent-stabilized value of a lease is exempt as a "local public assistance benefit" under Section 282(2).

³³ Brief of New York City Bankruptcy Assistance Project and MFY Legal Services as *Amici Curiae*, Dkt. No. 12-4131-cv; *see generally* Brief of New York City Bankruptcy Assistance Project at App. 278-79, 283-89.

C.P.L.R. § 5201(b), which defines what property may be reached to satisfy a judgment, permits a creditor to reach any property, not otherwise exempt, “which could be assigned or transferred,” i.e., property that the debtor has the power to assign or transfer.³⁴ The rent-stabilized rights in a lease plainly do not meet this criterion. Tenants are expressly prohibited from transferring or assigning a rent-stabilized lease without the prior written consent of the owner, who can withhold consent without cause, and the law mandates that rights to occupancy and renewal remain with the tenant.³⁵ Accordingly, because the rent-stabilized portion of the lease may not be “assigned or transferred,” it may not be utilized to satisfy a judgment under Section 5201(b).³⁶

It follows logically that rent-stabilized leases are also precluded from administration in a bankruptcy. Section 282 of New York’s Debtor and Creditor Law shields assets from a debtor’s bankruptcy estate that would otherwise be subject to execution.³⁷ The implication is that assets not subject to execution are

³⁴ N.Y. C.P.L.R. § 5201(b); *see also* SIEGEL, NEW YORK PRACTICE § 486 (5th ed. 2011); *cf.* *ABKCO Indus., Inc. v. Apple Films, Inc.*, 39 N.Y.2d 670, 674 (N.Y. 1976) (profit-sharing rights under a licensing agreement were attachable because they were assignable).

³⁵ N.Y. REAL PROP. LAW § 226-b; *see also* *Kashi v. Gratsos*, 712 F.Supp. 23, 26 (S.D.N.Y. 1989) (a rent-regulated lease “is not an attachable property interest in the hands of the lessee.”).

³⁶ *See Kashi*, 712 F. Supp. at 26.

³⁷ States are authorized to opt out of the federal exemptions. 11 U.S.C. § 522(b). Under Section 284 of the New York Debtor and Creditor Law, New York has opted out of the federal exemptions scheme allowing debtors domiciled in New York to elect either the exemptions available under New York law and other generally applicable federal law or the federal exemptions provided in 11 U.S.C. § 522. N.Y. DEBT. & CRED. LAW §§ 284-285. Section

already exempt: they are beyond the reach of a debtor's creditors. Because rent-stabilized leases are not attachable property under Section 5201, an explicit exemption for them would be redundant. In other words, for property to be exempt, it must first be subject to execution, which rent-stabilized leases are not.³⁸

Property that is not subject to execution should be deemed exempt both as a matter of common sense and to avoid creating an unintended disparity between bankruptcy and ordinary debtor creditor law. There is simply no justification for permitting creditors to profit from the sale of a rent-stabilized lease in a bankruptcy proceeding while New York law prohibits that scenario in a non-bankruptcy judgment. Indeed, such inconsistent outcomes have been roundly condemned by the Supreme Court in *Butner v. United States*:

Uniform treatment of property interests by both state and federal courts within a State serves to reduce uncertainty, to discourage forum shopping, and to prevent a party from receiving a windfall merely by reason of the happenstance of bankruptcy.³⁹

This reading of Section 282 also gives effect to the Legislature's deliberate design of the rent stabilization laws to ensure that its units did not become a

282(i)'s exemptions include certain real and personal property that are likewise "exempt from...the satisfaction of money judgments" under Sections 5205 and 5206. N.Y. DEBT. & CRED. LAW § 282(i).

³⁸ See *Laborers Union Local 1298 of Nassau and Suffolk Counties Vacation Fund v. Frank L. Lyon & Sons, Inc.*, 323 N.Y.S.2d 229 (Sup. Ct. Nassau County 1971) (analyzing whether an employee's remainder interest in an ERISA trust is transferrable and therefore "within the reach of creditors" pursuant to CPLR 5201(b), "except as exempt by statute").

³⁹ 440 U.S. 48, 55 (1999) (citations omitted).

fungible asset from which either a tenant or his creditors could profit.⁴⁰ By restricting the transferability of rent-stabilized leases, the Legislature manifestly sought to preclude the auction of leases to the highest bidder.⁴¹ Yet to permit the sale of leases in the event of a tenant's bankruptcy would create just such a market. In fact, it would create a market in *regulated* leases for landlords that would give them the ability to *deregulate* the units.⁴² Such an outcome flies in the face of the Legislature's stated purpose in enacting rent stabilization: "to forestall profiteering [and] speculation" as well as "prevent uncertainty, hardship and dislocation" borne by residents who, without a regulated supply of affordable housing, would be driven from their homes.⁴³

There is also a longstanding judicial practice of returning rent-stabilized leases to debtors. Bankruptcy courts have traditionally treated a rejection of a

⁴⁰ See 9 N.Y.C.R.R. § 2525.1 (making it unlawful to receive any rent in excess of the legal regulated rent); *id.* § 225.6(b) (imposing treble damages in the event a tenant charges a sub-tenant an amount higher than the legally regulated rent); N.Y. Penal Law § 180.56 (prohibiting a landlord from price-gouging, i.e. soliciting or accepting extra consideration, in addition to lawful rent and other lawful charges, in order to ensure lease renewal); *Marigo Corp. v. Lavian*, 277 A.D.2d 148, 151 (1st Dep't 2000) (a rent-stabilized tenant cannot freely assign the premises even if the lease purports to permit such assignment because such a clause would be "incompatible with the underlying Rent Stabilization Law").

⁴¹ See *Marigo*, 277 A.D.2d at 151 (holding that the Rent Stabilization Law "was never intended 'to create a class of mini-landlords who can profiteer in housing units placed under the law's protection'") (quoting *Rima 106, L.P. v. Alvarez*, 257 A.D.2d 201, 205 (1st Dep't 1999)).

⁴² The sale of rent-stabilized leases raises an additional concern that they will be undervalued. There is only one potential buyer—the landlord—and the absence of competition is certain to result in a reduced price. It is questionable whether the objectives of the Bankruptcy Code are furthered when the debtor's primary asset is sold at a discount. See, e.g., Brief of Appellant to U.S. District Court 21-23, App. 127-29, and sources cited therein.

⁴³ Emergency Tenant Protection Act of 1974 § 2 (amended 2011).

residential lease by a Chapter 7 Trustee as an abandonment of the leasehold interest so that it reverts back to the debtor.⁴⁴ This practice has applied with equal force for rent-stabilized leases.⁴⁵ Accordingly, unless the debtor has defaulted in making rental payments or otherwise breached the terms of the lease, she has been able to safely assume that she would avoid eviction or termination of the lease solely by reason of her bankruptcy petition. Were this Court to depart from historical practice and authorize the sale of a rent-regulated lease, debtor-tenants, many of whom file *pro se*, will be caught unaware that their bankruptcy petition puts them at risk of a forced eviction. Inevitably, countless debtors will face the unexpected loss of their homes.

In light of this historical practice, along with the Legislature's intent and understanding that rent-stabilized leases were exempt from a bankruptcy estate, *Amici* were surprised and alarmed by the decisions of the lower courts in this case. In response, *Amicus* Assemblymember Rosenthal introduced an amendment to

⁴⁴ See *B.N. Realty Assocs. v. Lichtenstein*, 238 B.R. 249, 255 (Bankr. S.D.N.Y. 1999) (a Trustee's failure to assume a rent-stabilized lease under Section 365 does not terminate the lease but instead effects an abandonment of the lease back to the debtor); see also *In re Touloumis*, 170 B.R. 825, 828 (Bankr. S.D.N.Y. 1994) ("A residential lease, while theoretically an asset of the estate, is not one that a Chapter 7 trustee will generally assume and assign.... Whether he formally abandons the lease, or simply closes the case without administering it, the lease will revert to the Debtor.").

⁴⁵ See *In re Henderson*, 245 B.R. 449, 459 (Bankr. S.D.N.Y. 2000) ("[R]ejection, without more, does not terminate the lease"); *Lichtenstein*, 238 B.R. at 255; but see *In re Toledano*, 299 B.R. 284 (Bankr. S.D.N.Y. 2003).

Section 282 that spelled out the exemption for the debtor's interest in a rent-stabilized tenancy.⁴⁶ In so doing, she sought to clarify what members of the Legislature had previously thought was obvious: that rent-stabilized leases are not assets of the bankruptcy estate.

III. This Court Should Not Permit Bankruptcy Trustees and Creditors to Sell Consumer Protections That The New York State Legislature Has Provided for Affordable Housing.

The rent stabilization program reflects a determination by New York's elected officials that certain tenants should be protected from inequitable and excessive rent increases. By selling the Appellant's lease to her landlord in exchange for a payment that would eliminate her outstanding debts, the Trustee has effectively monetized the consumer protections afforded by rent stabilization, which cannot be monetized, and redirected its "value" to the creditors of a person the program is designed to help. This appropriation eviscerates the expressed wishes of the state sovereign to ensure a stable supply of affordable housing. It also contravenes the purpose of Section 522(b)(3)(A) of the Bankruptcy Code, which permits debtors to retain property that is exempt under applicable state law, and Section 5201 and Section 282, which work jointly to exempt property that is not subject to process by non-bankruptcy creditors. Taken together, the statutes

⁴⁶ N.Y. State Assemb. A.10186, 2013-2014 Reg. Sess. (N.Y. 2013).

are designed to ensure that the federal bankruptcy regime does not ride roughshod over the state's resolution of its residents' property rights.⁴⁷

Here, the seizure and sale of Appellant's rent-stabilized lease contravenes not only the letter of New York's laws governing debtors' rights, but also their spirit. As then-Governor Paterson declared in tripling the homestead exemption to \$150,000 for homes in five New York counties:

The purpose of such exemptions is to permit debtors in bankruptcy to retain a modest amount of personal property and equity in their homes so that they can continue to maintain their lives, and to protect them from becoming homeless.⁴⁸

It is nonsensical to conclude that the Legislature saved homeowners from the plight of dislocation after bankruptcy through the homestead exemption, but intended to abandon hundreds of thousands of their constituents with rent-stabilized tenancies, many of whom have lived in their apartments for decades, to such a grim fate.⁴⁹ Both the Rent Stabilization Law and the bankruptcy exemptions were enacted to allow residents to remain in their homes in the face of

⁴⁷ *Accord Butner v. U.S.*, 440 U.S. 48 (1979) (state law controls property rights in a bankrupt's estate); *see also BFP v. Resolution Trust Corp.*, 511 U.S. 531, 544 (1994) ("To displace traditional state regulation . . . the federal statutory purpose must be clear and manifest) (internal citations and quotations omitted).

⁴⁸ Press Release, Governor's Press Office, Governor Paterson Acts on Three Bills (Dec. 23, 2010), http://www.governor.ny.gov/archive/paterson/press/122310gov_pat_three_bills.html; *see* N.Y. C.P.L.R. § 5206(a) (2011).

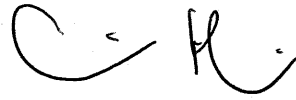
⁴⁹ *See* NEW YORK UNIVERSITY FURMAN CENTER FOR REAL ESTATE & URBAN POLICY, *supra* note 18, at 7.

adverse events. The Legislature urges this Court to find that they operate in tandem as intended: to shield Chapter 7 debtors—a subset of residents most in need of this protection—from forced evictions.

CONCLUSION

For all of these reasons, as well as those set forth in Appellant's brief, *Amici* urge the Court to hold that the rent-stabilized rights in a lease are not assets that may be sold in a debtor-tenant's bankruptcy.

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