

No. 21-342

IN THE

**Supreme Court of the United States**

HONG TANG

Petitioner

V.

RUTHANNE VISNAUSKAS, et al.

Respondents

On Petition For Writ of Certiorari

To The United States Court Of Appeals For The

Second Circuit

PETITION FOR REHEARING

HONG TANG

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## PETITION FOR REHEARING

## ARGUMENTS

Pursuant to Supreme Court Rule 44.2, *pro se* petitioner Hong Tang ("petitioner") respectfully petitions this Court for an order (1) granting rehearing, (2) vacating the Court's October 12, 2021, order denying certiorari, and (3) redisposing of this case by granting the petition for a writ of certiorari.

The Second Circuit's summary order ruled that "[a]lthough [the plaintiff's] original district court complaint was filed on January 25, 2019, the last day of this three-year period, his amended complaint was filed after the statute of limitations had expired and did not relate back to his original complaint. In fact,

[the plaintiff's] original complaint contained no factual assertions whatsoever regarding the equal protection claim. See *Lehman XS Tr., Series 2006-GP2* by *U.S. Bank Nat'l Ass'n v. GreenPoint Mortg. Funding, Inc.*, 916 F.3d 116, 128 (2d Cir. 2019) (“[E]ven where an amended complaint tracks the legal theory of the first complaint, claims that are based on an entirely distinct set of factual allegations will not relate back.” (internal quotation marks omitted)). See *Appe. Ct. Dkt. 66-1* at 6

Petitioner's original district court complaint was filed on a standardized complaint form provided by the district court. On the standardized form (“Complaint for Violation of Civil Rights”) provided by the district court, the *pro se* petitioner briefly stated the injuries and the fact underlying his 42 U.S.C. § 1983 claim

that " [p]laintiff filed an "Illusory Sublet" complaint/claim under the DHCR Fact Sheet #7 with Defendants. Defendants only reviewed the renewal lease portion of the claim and refused to review the overcharge refund portion of the claim. ", "[p]laintiff did not receive the overcharge refunds." See Dist. Ct. Dkt. 1 at 5 to 6

Further, the administrative proceeding and agency policy that is at issue in this case, the DHCR Fact Sheet #7 (" Fact Sheet #7 'Sublets, Assignments and Illusory Tenancies' " of the New York State Division of Housing and Community Renewal) notes:

*" Illusory Sublets*

*An illusory sublet occurs when the alleged prime tenant has not actually been in physical occupancy of the apartment. This type of case is*

called an "illusory prime tenancy" because the alleged prime tenant does not maintain the apartment as a primary residence and the sublet is intended to evade various requirements of the Rent Stabilization Law and Code.

The subtenant of an apartment in an illusory sublet situation may file a "Tenant's Complaint of Owner's Failure to Renew Lease and/or Failure to Furnish a Copy of a Signed Lease" (DHCR Form RA -90) with DHCR. If DHCR finds that the complaint is justified, it will deny the illusory prime tenant the right to a renewal lease and require the owner of the building to recognize the subtenant as the actual tenant, who is entitled to a renewal lease at the lawful stabilized rent.

In addition, the illusory prime tenant will be legally responsible to refund all overcharges

*collected from the subtenant. If the illusory prime tenant has furniture in the apartment, DHCR may direct the subtenant to permit the furniture to be removed. If the subtenant can prove that the building owner received part or all of the overcharge, the owner will also be responsible for refunding the rent overcharge." See Dist. Ct. Dkt. 17-1 at 3 ("Illusory Sublets")*

On the amended district court complaint, the petitioner stated in details that " [d]efendants' inequitable enforcement of facially neutral policy and the failure and neglect of Defendants to enforce the policy on behalf of the "class" and person of the tenant (subtenant) amounted to a denial of equal protection of the laws. The concerned administrative

proceeding and agency policy were administered by Defendants in a prejudicial manner ("reverse 'selective enforcement'"), against tenant (subtenant), favoring landlord (building owner). *Yick Wo v. Hopkins*, 118 U.S. 356 (1886) ". See Dist. Ct. Dkt. 17 § 19

Comparing the aforementioned plain language of petitioner's amended district court complaint to that of his original district court complaint, any reasonable person can conclude that the petitioner's equal protection claim was properly stated in his original complaint, the factual allegations on the amended complaint and the original complaint are not distinct at all, and the amended complaint did relate back to the original complaint.

Thus, the lower courts' above-noted timeliness ruling on the petitioner's equal protection claim was apparently not based on or supported by the evidence on record. The lower courts clearly erred in ruling that the petitioner's amended complaint did not relate back to his original complaint.

### CONCLUSION

For all of the foregoing reasons, the petition for rehearing should be granted.

Respectfully submitted,

Dated: November 6, 2021



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**CERTIFICATE OF *PRO SE* PETITIONER**

**HONG TANG**

**Petitioner**

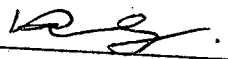
**V.**

**RUTHANNE VISNAUSKAS, et al.**

**Respondents**

I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Supreme Court Rule 44.2.

Executed on November 6, 2021



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