

No. 22-1130

IN THE
Supreme Court of the United States

——
74 PINEHURST LLC *et al.*,

Petitioners,

v.

STATE OF NEW YORK *et al.*,

Respondents.

—
*On Petition for a Writ of Certiorari to
the United States Court of Appeals
for the Second Circuit*

**BRIEF FOR *AMICUS CURIAE*
SMALL PROPERTY OWNERS – NY, INC.
IN SUPPORT OF PETITIONERS**

E. Christopher Murray
Counsel of Record
RIVKIN RADLER LLP
*Counsel for Amicus Curiae
Small Property Owners –
NY, Inc.*
926 RXR Plaza
West Tower, 9th Floor
Uniondale, New York 11556
516-357-3000
e.murray@rivkin.com

June 19, 2023

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**STATEMENT OF INTEREST
OF *AMICI CURIAE***

Small Property Owners of New York, Inc. (“SPONY”) is a New York not-for-profit corporation representing the interest of small property owners primarily in the City of New York. The average SPONY member has 11 housing units. SPONY members are typically family-owned businesses, and most are multigenerational owners. SPONY has an interest in this matter because its membership is directly impacted by New York City’s Rent Stabilization Law (“RSL”) as amended by the Housing Stability & Tenant Protection Act of 2019 (“HSTPA”).

The RSL, as amended, denies SPONY members the right to use their property for personal use, deprives the SPONY members of any say in who resides at their property, and requires that the rental rates charged by SPONY members take into account the tenant’s ability to pay. As a result, the RSL is an unconstitutional taking of the property of SPONY members without just compensation, both on its face and as applied. Accordingly, SPONY is filing this brief in support of the Petition for a Writ of Certiorari by 74 Pinehurst LLC, et al. and this Court should grant the Petition.¹

¹ Pursuant to Supreme Court Rule 37.2(a) of the Rules of this Court, amicus curiae timely provided notice of intent to file this brief to all parties. No counsel for any party authored this brief in whole or in part and no entity or person, aside from amicus curiae, its members, or its counsel, made

SUMMARY OF THE ARGUMENT

As set forth below, the impact of the RSL as amended by the HSTPA is felt particularly hard by the membership of SPONY and has effectively usurped the property interest of these property owners. As a result of the recent amendments to the RSL, SPONY members have lost the effective ability to regain exclusive possession and control of their property for personal use. As shown by the examples set forth below this has prevented SPONY members from recovering residential units when a lease expires for their family needs, such as to accommodate a growing family or an elderly relative.

Further, because of the succession rules, SPONY members often have no say in who occupies their property. The members often enter into a lease with one person or couple, only to see through the extended definition as to who can succeed in occupying a rental unit, the unit be occupied by someone who is remote from the initial tenant.

In addition, the RSL establishes a Rent Guidelines Board (“RGB”) that sets the maximum allowable rent increase. The RSL empowers the RGB to consider a tenant’s ability to pay in setting rental amounts, as opposed to only the cost of maintaining an apartment and a fair rate of return, and the HSTPA amendments to the RSL limit vacancy and longevity bonuses. As a result, SPONY’s members

any monetary contribution intended to fund the preparation or submission of this brief.

have been conscripted to provide a public benefit that should be borne by the public as a whole. As the examples below demonstrate, this often results in unsustainable financial burdens on SPONY members. Accordingly, the petition should be granted to review this law that effectively takes the property of SPONY's members without compensation.

ARGUMENT

I. THE PROVISIONS OF THE RSL DO NOT ALLOW A PROPERTY OWNER TO USE ITS OWN PROPERTY FOR PRIVATE USE OR TO CONTROL WHO LIVES THERE

The RSL, as amended by the HSTPA, prohibits property owners whose lease with a tenant has expired from reclaiming an apartment for personal use except in very limited circumstances. A member may have a growing family and wish to expand the unit they are living in by utilizing an adjacent unit when the lease for that unit ends. The owner is not seeking to avoid the limitations on the rent that can be charged. The owner is simply trying to use his or her property for his or her family. The real-life practical experiences of SPONY members demonstrate how draconian the RSL, as amended by the HSTPA, is to small property owners in this regard.

For example, BL is a member of SPONY who in 2019 purchased a building in Manhattan.² At the time he purchased the building he was intending to use four of the units to create a duplex for his family. BL had plans drawn up and hired an expeditor, spending approximately \$25,000 and issued notices of non-renewal. However, when the HSTPA amendments to the RSL were adopted in June 2019, only one unit could be recovered by an owner (Chapter 36, Part I Section 2), BL's plans for his family's use of his own property were destroyed. Instead, BL was required to enter into lease renewals with the rent stabilized tenants and was unable to combine the units to create a home for his family.

Similarly, BM purchased his building in 2016 and moved into a unit on the first floor. The benefit of purchasing the building was to live in it because it was not otherwise profitable. In April 2018 BM served a tenant with a Notice Not to Renew so he could use the unit for his personal use. However, the matter was dragged out in court with the tenant arguing that the 2019 amendments gave him the right to remain and as of May 2023 the tenant remains in the unit.

Another example is LE who owns a building in Brooklyn through a Limited Liability Company

² Initials are used for the SPONY members who are concerned about retaliation or negative treatment as a result of their participation in this brief. There have been prior negative consequences for members who have spoken out against the RSL.

(“LLC”). Although it is commonplace to own property through an LLC, the RSL, as amended, does not permit a corporate or LLC entity to recover a unit for personal use. See, 9 NY-CRR Section 2524.4 (granting right to owner who intends to use property as “his or her” primary residence); *1077 Manhattan Assoc., LLC v. Mendez*, 5 Misc. 3d 130(A), 798 N.Y.S.2d 714 (App. Term 2d Dep’t 2004) (“[O]nly a natural person and not a corporation can recover an apartment for personal use . . .”). LE was unable to regain possession of a firstfloor unit for his elderly mother and aunt who because of their physical condition needed to be on the first floor.

Finally, NW wants to live in a ground floor unit in a building she owns. The current tenant owns property in Florida where she resides. The tenant will not state when she will be coming back to New York and NW is currently living with her two children in a rental unit instead of living in the building which she owns.

In addition to not being able to utilize their own property for their own personal use, many SPONY members have had tenants foisted upon them because of the expansive rules of succession. These tenants are often far removed from the original tenant who the owner agreed to rent. Accordingly, SPONY members not only lose the right to use their own property for their personal use, but often do not have a say in the tenants who occupy their property.

For example, JW previously owned a small apartment building in Manhattan. Initially a couple rented an apartment until the wife died. Thereafter the husband remarried but he soon left the apartment. The new wife then brought in her son, but she soon left. Her son then brought in the mother of his child and the child. The son then left and the mother, who had absolutely no relationship with the original tenant, is now occupying the unit whose monthly rent is \$900.

As a result of the HSTPA amendments to the RSL, SPONY members do not have the right to use their own property for their own use, nor do they have a say in who may occupy their property. The very essence of ownership has been taken away without any compensation. The challenge to the RSL will have significant impacts on the SPONY members.

II. UTILIZING A TENANT'S ABILITY TO PAY IN DETERMINING RENT FORCES SPONY MEMBERS TO PROVIDE A PUBLIC BENEFIT

The RSL allows the rate-setting board to take into account the tenant's ability to pay when setting rental amounts. Accordingly, rent is not based solely on an owner's cost plus a reasonable rate of return. This results in limiting any rental increases and can cause severe hardship to SPONY members.

For example, EB owns a 24 unit building in Manhattan. EB has a \$500,000 mortgage on the

building which now needs pointing work costing in excess of \$200,000. The rent stabilized amount for a unit averages approximately \$1,797 when a fair market rent would be \$2,731. As a result the capital improvements have been put on hold.

Similarly, KB's great grandfather purchased a building in the 1920s, prior to the RSL. In 2022 the expenses per unit is \$1300 but the monthly rent for a rent stabilized unit is between \$794 and \$815 per month. Another example is WS who owns two small buildings in Queens. His cost of maintaining the units is between \$1400 to \$1500 a month, but the rents for the rent stabilized units are between \$740 and \$920 per month. Also, LT owns a property in Manhattan. The cost for maintaining the units is \$1046 per month but the monthly rent for the rent stabilized units are \$804.

Exasperating the financial hardship is that the HSTPA amendments to RSL significantly limited the Vacancy and Longevity Bonuses and prohibits local RGBs from setting their own amounts. These amendments include capping the amount of reimbursable Individual Apartment Improvements ("IAI") at \$15,000 and restricts owners to three IAI increases within a 15-year period for a unit; removes IAI and RGB increases based on IAI after 30 years, instead of allowing them to remain permanent; and lowers increases by lengthening the IAI formula's amortization period.

Property owners can no longer make significant investments in their property because of the limita-

tions on the Vacancy and Longevity Bonuses and the limitations imposed on IAI. For example, IL has a vacant rent stabilized unit in Manhattan that was occupied continuously for decades. When the tenant vacated the unit in 2022, the legal rent was \$916. The estimated cost to bring the unit up to code after almost 40 years of occupancy is approximately \$125,000. The rent can only raise \$89 per month, which is not enough to support bringing the unit up to code.

Accordingly, SPONY Members are required to provide subsidized housing without receiving a subsidy. Requiring SPONY members to bear the cost of this public benefit is an additional reason why the RSL should be reviewed by this Court and the Petition should be granted.

CONCLUSION

This Court should grant Certiorari because the issues raised demonstrate the RSL has a serious detrimental impact on small property owners and has confiscated their property without compensation.

Dated: June 19, 2023

Respectfully submitted,

By: _____



E. Christopher Murray, Esq.

RIVKIN RADLER LLP

Counsel for Amicus Curiae

*Small Property Owners –
NY, Inc.*

926 RXR Plaza

West Tower, 9th Floor

Uniondale, New York 11556

516-357-3000

e.murray@rivkin.com