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FILED: APPELLATE DIVISION 1ST DEPT 05/22/2025

Supreme Court of the State of New York

Appellate Division, First Judicial Department

Webber, J.P., Moulton, Friedman, Gesmer, Michael, JJ.

TEDFORD'S TENANCY, LLC,

Plaintiff-Appellant,

-against-	Index No. 154082/22
CITY OF NEW YORK, et al.,	Case No. 2024-00601
Defendants-Respondents.	

Order, Supreme Court, New York County (Judy H. Kim, J.), entered November 15, 2023, which, to the extent appealed from, granted defendants' motions to dismiss the complaint pursuant to CPLR(a)(2) and (7), unanimously affirmed, with costs.

Generally, "a claim that the application of government regulations effects a taking of a property interest is not ripe until the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue" (*Williamson County Regional Planning Commission v Hamilton Bank of Johnson City*, 473 US 172, 186 [1985], *overruled on other grounds Knick v Township of Scott*, 588 US 180, 187-188 [2019]; *see also Matter of Gordon v Rush*, 100 NY2d 236, 242 [2003]). Courts have held that as-applied regulatory takings challenges to the Rent Stabilization Law (RSL) are not yet ripe where the landlord failed to apply for a hardship exemption allowing it to charge rents above the ordinary regulated rates (*see 74 Pinehurst LLC v New York*, 59 F4th 557, 565 [2d Cir 2023], *cert denied* — US —, 218 L Ed 2d 66 [2024]).

Here, plaintiff argues that it did not pursue a hardship exemption because to do so was futile, overly burdensome, and would offer de minimis relief. However, this argument fails for an as-applied takings claim when the landlord has not personally experienced repetitive or unfair procedures (*see Yee v City of Escondido*, 503 US 519, 528 [1992]). "[A] claim that a regulation effects an as-applied taking cannot be properly adjudicated until there is no question . . . about how the regulations at issue apply to the particular [property] in question" (*74 Pinehurst LLC v New York*, 59 F4th 557, 565 [internal quotations marks omitted]). Thus, plaintiff's takings claim is not yet ripe (*see Church of St. Paul & St. Andrew v Barwick*, 67 NY2d 510, 518 [1986], *cert denied* 479 US 985 [1986]).

In any event, the court also properly determined that plaintiff failed to state a claim for any regulatory taking. The complaint does not allege facts to demonstrate that the RSL has deprived plaintiff of "all economically beneficial uses" of its property to sufficiently allege a categorical regulatory taking, as plaintiff still receives regulated residential and unregulated commercial rent, and it retains a reversionary interest in the property (*see Rent Stabilization Assn. of N.Y. City v Higgins*, 83 NY2d

156, 173-174 [1993] [internal quotation marks omitted], *cert denied* 512 US 1213 [1994]).

Nor does plaintiff allege sufficient facts to assert a claim for a non-categorical regulatory taking (*see Consumers Union of U.S., Inc. v State of New York*, 5 NY3d 327, 357 [2005], citing *Penn Cent. Transp. Co. v City of New York*, 438 US 104 [1978]). Even though the property was purchased by the family of one of plaintiff's members in 1940, prior to the enactment of the RSL, plaintiff acquired the property in 2006, years after it became subject to the RSL. There is no allegation that plaintiff was unaware that the property was subject to the RSL so as to violate plaintiff's investment-backed expectations. Finally, the RSL does not have the character of a taking because it is a regulatory regime that advances "broad public interests" and does not approximate a physical invasion of property (*see Community Housing Improvement Program v City of New York*, 59 F4th 540, 555 [2d Cir 2023], 144 S Ct 264 [2023]).

We have considered plaintiff's remaining arguments and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: May 22, 2025

s/ Susanna Molina Rojas
Susanna Molina Rojas
Clerk of the Court

FILED: NEW YORK COUNTY CLERK 11/15/2023

SUPREME COURT OF THE STATE OF NEW YORK

NEW YORK COUNTY

PRESENT: HON. JUDY H. KIM, Justice

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TEDFORD'S TENANCY, LLC, Plaintiff, - v - CITY OF NEW YORK, RUTHANNE VISNAUSKAS, NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL, ROHIT T. AGGARWALA, NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION, NEW YORK STATE, ADOLFO CARRION, NEW YORK CITY HOUSING PRESERVATION DEPARTMENT, MELANIE E. LA ROCCA, NEW YORK	Part 05RCP INDEX NO. 154082/2022 MOTION DATE 04/18/2023 MOTION SEQ. NO. 001 002 **DECISION + ORDER ON MOTION**

CITY DEPARTMENT OF BUILDINGS, PRESTON NIBLACK, NEW YORK CITY DEPARTMENT OF FINANCE,

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 46, 47, 48, 49, 50, 51, 52, 55, 56, 61, 63, 64 were read on this motion for INJUNCTION/RESTRAINING ORDER.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 40, 41, 42, 43, 44, 45, 53, 54, 57, 58, 59, 60, 62, 65, 66, 67 were read on this motion for DISMISSAL.

For the reasons set forth below, defendants' motions to dismiss this action are granted.

FACTUAL BACKGROUND

In 2006, Lynette Ciner inherited 294 Third Avenue, New York, New York, a multifamily mixed-use building in Gramercy Park, Manhattan, with six rent-stabilized residential apartments and one commercial unit (the "Building"). She subsequently transferred ownership of the Building to plaintiff herein, Tedford's Tenancy, LLC, in which she and her husband are members.

From 1978 until the middle of 2020, the Building was operated by a ground lessee. After the expiration of the ground lease, plaintiff learned that the rents were far below market value and that the fixed expenses for the Building far exceeded the rent roll. Plaintiff also asserts that a “full rehabilitation” of the Building is necessary and calculates that this rehabilitation will cost upwards of $1,000,000.00.

Plaintiff commenced this action on May 11, 2022, asserting that New York’s Rent Stabilization Law (“RSL”), as applied to its ownership of the Building, violates the Just Compensation, or “Takings” Clause of the Fifth Amendment of the United States Constitution, insofar as it requires plaintiff to keep rents at a level far below its costs in maintaining and repairing the Building, thereby undermining plaintiff’s reasonable, investment-backed expectations for the Building. Plaintiff seeks a judgment declaring the RSL unconstitutional as applied to the Building or, alternatively, a judgment in the amount of $5,000,000.00, with interest. Plaintiff also seeks a permanent injunction enjoining defendants from collecting real property taxes, water and sewer taxes from the Building or issuing violations at the Building “for the period of time during which there has been a taking.” Finally, plaintiff seeks an injunction directing the New York City Housing Preservation and Development (“HPD”) to perform necessary repairs at the Building without cost to plaintiff.

After commencing this action, plaintiff moved, by order to show cause, for a temporary restraining order and preliminary injunction seeking substantially the same injunctive relief set forth above. The Court signed the order to show cause but declined to grant the temporary restraining order (NYSCEF Doc. No. 22).

Defendants the City of New York, DEP and DEP Commissioner Rohit T. Aggarwala, the New York City Housing Preservation and Development ("HPD") and HPD Commissioner Adolfo Carrion Jr., the New York City Department of Buildings ("DOB") and DOB Commissioner Melanie E. La Rocca, the New York City Department of Finance ("DOF"), and DOF Commissioner Preston Niblack (collectively the "City") oppose plaintiff's motion and cross-move to dismiss this action, arguing that this action is not ripe for adjudication given plaintiff's failure to apply for the hardship exemptions permitting an increase in rents beyond the limits of the RSL, created by Administrative Code §§26-511(c)(6)–(6-a). The City further argues that even if this action was not premature, the complaint fails to state a claim for a regulatory taking because its allegations of economic harm are speculative and, in any event, do not establish that the effect of the RSL is tantamount to a direct appropriation of the Building or ouster of plaintiff.

In motion sequence 002, defendants New York State Division of Housing and Community Renewal ("DHCR") and RuthAnne Visnauskas, in her capacity as Commissioner of DHCR, move to dismiss this action on substantially the same grounds raised by defendants in their opposition to motion sequence 001.

In opposition to defendants' motions to dismiss, plaintiff maintains that it is barred from applying for a hardship exemption but that even if it could do so, the application process is "daunting and burden-some"—it includes a twenty-six page application—and it is unlikely a hardship exemption would be granted. Finally, plaintiff adds that even if a hardship exemption was granted, it would have only a minimal impact on the Building's finances.

Motion sequences 001 and 002 are consolidated for disposition.

DISCUSSION

Defendants' motions are granted and this action is dismissed as not ripe for disposition. Ripeness is "a judicially-created doctrine designed to avoid premature review or adjudication of administrative actions" which, as pertinent here, mandates that "judicial review of an administrative determination may not be sought until the decision maker has come to 'a definitive position' which has caused 'actual, concrete injury'" (Harmon v Markus, 08 CIV. 5511 (BSJ), 2010 WL 11530596, at *2 [SDNY Mar. 1, 2010], affd, 412 Fed Appx 420 [2d Cir 2011] quoting Dozier v New York City, 130 A.D.2d 128, 133 [2d Dept 1987]). Accordingly, a takings claim "is not ripe until the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue" and "the landowner has availed itself of the state's procedures for obtaining just compensation" (Harmon v Markus, 08 CIV. 5511 (BSJ), 2010 WL 11530596, at *2 [SDNY Mar. 1, 2010], affd, 412 Fed Appx 420 [2d Cir 2011] quoting Williamson County Regional Planning Comm'n v. Hamilton Bank, 473 US 172, 195 [1985]).

No final decision regarding the application of the RSL to the Building has been reached. The RSL provides a mechanism for property owners like plaintiff to apply to DHCR for a comparative hardship exemption permitting an increase of rent stabilized rents beyond that set by the Rent Guideline Board where, inter alia, "the gross rental income is insufficient to yield to the owner an average annual net income . . . for the three-year period ending on or within six months of the date of the filing of the owner's application, equal to the annual average net income of the property for . . . the period 1968-1970 or . . . the first three years of operation, if the building was completed after 1968 . . ." (See 9 NYCRR §2522.4[b]). The RSL also provides an "alternative hardship" exemption where "guideline increases are not sufficient to enable the owner to maintain an annual gross rent income for such building which exceeds the annual operating expenses of such building by a sum equal to at least five percent of such gross rent" (See 9 NYCRR §§2522.4[c]). However, plaintiff has failed to apply for such a hardship exemption under either category. In light of this failure, no final determination has been made, rendering this action not ripe for disposition (See Harmon v Markus, 08 CIV. 5511 (BSJ), 2010 WL 11530596, at *3 [SDNY Mar. 1, 2010], affd, 412 Fed Appx 420 [2d Cir 2011]; see also 74 Pinehurst LLC v New York, 59 F4th 557, 567 [2d Cir 2023]).

Plaintiff's arguments in opposition are unavailing. It first argues that this action is ripe because it may not apply for a comparative hardship exemption because it does not maintain records for the Building from 1968-1970, the Building was completed before 1968, there has not been an arm's length sale of the Building since the 1940s, and there are current pending tax proceedings beyond the tax year. Even crediting these claims, however, they do not establish that plaintiff cannot apply for an alternative hardship exemption.

Plaintiff's other principal argument, that any efforts to seek a hardship exemption are futile, are similarly unsuccessful. As an initial matter, the "time and expense to wade through a complex process is a consequence of being in a regulated industry" and does not excuse plaintiff from the obligation of seeking a hardship exemption as a predicate to the commencement of this action (Harmon v Markus, 08 CIV. 5511 (BSJ), 2010 WL 11530596, at *5 [SDNY Mar. 1, 2010], affd, 412 Fed Appx 420 [2d Cir 2011]). Neither does the fact that plaintiff "may not ultimately obtain any relief by proceeding through the proscribed administrative process . . . render the requirement that they apply 'futile'" (335-7 LLC v City of New York, 21-823, 2023 WL 2291511, at *2-4 [2d Cir Mar. 1, 2023] citing Harmon v Markus, 08 CIV. 5511 (BSJ), 2010 WL 11530596, at *5 [SDNY Mar. 1, 2010], affd, 412 Fed Appx 420 [2d Cir 2011]). Finally, plaintiff's argument that any exemption granted would still be far less than the Building's costs is also "not sufficient to avoid the finality requirement" (Id, at *2-4). Accordingly, defendants' motion to dismiss this action is granted.

Even were the Court to reach the merits of defendants' motion to dismiss, it would conclude that the complaint fails to not state a claim for regulatory taking. Governmental regulations which limit an owner's rights to possess, use or dispose of property may amount to a "taking" where "the regulation: (1) denies the owner all economically viable use of the property or (2) does not substantially advance a legitimate State interest" (Fed. Home Loan Mortg. Corp. v New York State Div. of Hous. and Community

Renewal, 87 NY2d 325, 335 [1995] [internal citations omitted]; see also Manocherian v Lenox Hill Hosp., 84 NY2d 385, 392 [1994]). The complaint's allegations, taken as true, do not satisfy to [sic] this standard.

In determining whether a use restriction effects a taking, courts apply the balancing test set out in Penn Central Transp. Co. v City of New York, 438 US 104 (1978). This flexible, "ad hoc, factual inquir[y]" focuses on "several factors that have particular significance," i.e.: (1) "the economic impact of the regulation on the claimant," (2) "the extent to which the regulation has interfered with distinct investment-backed expectations," and (3) "the character of the governmental action" (Penn Central Transp. Co. v. City of New York, 438 US 104, 124 [1978]). All of these factors militate against plaintiff.

First, plaintiff has not plausibly alleged that the RSL has thwarted all economically viable use of the Building. While plaintiff asserts that the RSL prevents it from profiting from its ownership of the Building, it is well-settled that the owner of rent-regulated property "is not guaranteed [a] 'reasonable return' on investment" (See e.g., Bldg. and Realty Inst. of Westchester and Putnam Ctys., Inc. v New York, 19-CV-11285 (KMK), 2021 WL 4198332, at *23 [SDNY Sept. 14, 2021] [internal citations omitted]). Rather, "[t]he critical inquiry . . . [is] whether the property use allowed by the regulation is sufficiently desirable to permit property owners to sell the property to someone for that use" (Id.) and plaintiff does not assert that no sale is possible but argues that the RSL has decreased the Building's resale value. That plaintiff does not wish to sell the Building is not germane to this analysis. Finally, plaintiff's assertion, in opposition to defendants' motions, that a sale would be difficult absent a rezoning which is unlikely to be granted is unavailing as it is entirely contingent and speculative.

Second, the RSL does not interfere with plaintiff's investment-backed expectation. The New York State legislature has repeatedly revised the RSL since its initial enactment in 1969 and, therefore, when Lynette Ciner inherited the Building in 2006[1] and transferred her ownership to plaintiff, a reasonable property owner would have understood that the Building was subject to the RSL and expect that it would remain subject to same (See 335-7 LLC v City of New York, No. 21-823, 2023 WL 2291511, at *2-4 [2d Cir Mar. 1, 2023] citing 74 Pinehurst LLC v New York, 59 F4th 557, 567, at *5 [2d Cir. 2023]).

Third, and finally, the character of the RSL does not support a regulatory taking claim. In analyzing the character of the governmental action, courts focus on the extent to which a regulation was "enacted solely for the benefit of private parties" as opposed to a legislative desire to serve "important public interests" (74 Pinehurst LLC v New York, 59 F4th 557, 568 [2d Cir 2023] quoting Keystone Bituminous Coal Ass'n v DeBenedictis, 480 US 470, 485-86 [1987]). Here, the legislature has determined that the RSL is necessary to prevent "serious threats to the public health, safety, and general welfare" (See

[1] The fact that Lynette Ciner's family owned the Building before enactment of the RSL is not germane to this analysis—what matters is the time when plaintiff acquired the Building (See 74 Pinehurst LLC v New York, 59 F4th 557, 567 [2d Cir 2023] ["the critical time for considering investment-backed expectations is the time a property is acquired"]).

Administrative Code §26-501), which cannot seriously be gainsaid, and weighs against a takings claim (74 Pinehurst LLC v New York, 59 F4th 557, 568 [2d Cir 2023]; see also 335-7 LLC v City of New York, No. 21-823, 2023 WL 2291511 at *2-4 [2d Cir, 2023]).

Accordingly, it is

ORDERED that defendants' motions to dismiss this action are granted and this action is hereby dismissed; and it is further

ORDERED that plaintiff's motion for a preliminary injunction is denied as moot; and it is further

ORDERED that, within ten days from the date of this decision and order, counsel for the City of New York shall serve a copy of this decision and order, with notice of entry, on plaintiff as well as the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to enter judgment; accordingly, and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on this court's website at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of the Court.

11/13/2023	s/ Judy H. Kim
Date	Hon. Judy H. Kim, J.S.C.

State of New York

Court of Appeals

Decided and Entered on the seventeenth day of February, 2026

Present, Hon. Rowan D. Wilson, *Chief Judge,* ***presiding***.

Mo. No. 2025-499
Tedford's Tenancy, LLC,
Appellant,
v.
City of New York, et al.,
Respondents.

Appellant having moved for leave to appeal to the Court of Appeals in the above cause;

Upon the papers filed and due deliberation, it is

ORDERED, that the motion is denied.

s/ Heather Davis
Heather Davis
Clerk of the Court

FILED: NEW YORK COUNTY CLERK 05/11/2022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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TEDFORD'S TENANCY, LLC, Plaintiff(s), - against - CITY OF NEW YORK, RUTHANNE VISNAUSKAS in her official capacity as the Commissioner of the New York State Division of Housing and Community Renewal, NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL, ROHIT T. AGGARWALA in his official capacity as the Commissioner of the New York City Department of Environmental Protection, NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION, NEW YORK STATE, ADOLFO CARRION JR. in his official capacity as the Commissioner of the New York City Housing	INDEX NO. 154082/2022 **<u>VERIFIED COMPLAINT</u>**

Preservation and Development, NEW YORK CITY HOUSING PRESERVATION DEPARTMENT, MELANIE E. LA ROCCA in her official capacity as the Commissioner of the New York City Department of Buildings, NEW YORK CITY DEPARTMENT OF BUILDINGS, PRESTON NIBLACK in his official capacity as the Commissioner of the New York City Department of Finance, NEW YORK CITY DEPARTMENT OF FINANCE,

Defendant(s).

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Plaintiff TEDFORD'S TENANCY, LLC ("Plaintiff" or "Tedford"), by their attorneys, Davis & Byrnes, brings this action against CITY OF NEW YORK, RUTHANNE VISNAUSKAS in her official capacity as the Commissioner of the New York State Division of Housing and Community Renewal, ROHIT T. AGGARWALA in his official capacity as the Commissioner of the New York City Department of Environmental Protection, NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION, NEW YORK STATE, ADOLFO CARRION JR. in his official capacity as the Commissioner of the

New York City Housing Preservation and Development, NEW YORK CITY HOUSING PRESERVATION DEPARTMENT, MELANIE E. LA ROCCA in her official capacity as the Commissioner of the New York City Department of Buildings, NEW YORK CITY DEPARTMENT OF BUILDINGS, PRESTON NIBLACK in his official capacity as the Commissioner of the New York City Department of Finance, NEW YORK CITY DEPARTMENT OF FINANCE (collectively, the "Defendants" or individually a "Defendant") and alleges as follows:

SUMMARY OF ACTION

1. This is a Fifth Amendment (by the 14th Amendment) as applied regulatory taking challenge to the rent regulatory status of the property located at 294 Third Avenue, New York, New York 10019 (the "Property"). Plaintiff further seeks permanent injunctions against the Housing Preservation Department, Department of Finance, Division of Housing and Community Renewal, Department of Environmental Protection, and the Department of Buildings; and to enjoin the Housing Preservation Department to perform repairs at the property without cost to Plaintiff.

2. Plaintiff Tedford's Tenancy, LLC is the owner of the Property, a multifamily mixed-use building in Gramercy Park, Manhattan. Tedford is owned by Lynette and Richard Ciner and was inherited from Mrs. Ciner's family. The building was built in the early 1900s and has been in her family since the 1940s. Mrs. Ciner grew up in the Property—a Property which has incalculable sentimental value to her. The Ciners are not professional landlords, and

this is the only property they own except for their personal residence in California. Mr. Ciner is disabled and just entered his fourth period of remission from brain cancer in 2021. Prior to and at the beginning of the COVID-19 pandemic, the Ciners wanted to return to New York and occupy an apartment in the building. The Ciners even listed their California house for sale in anticipation of returning to the Property. They soon discovered moving into the Property would not be legally possible and that the Property is a physical and economic disaster.

3. From 1978 until the middle of 2020, the Property was operated by a ground lessee. The ground lessee used the Property as rental with six residential apartments and one commercial unit. Upon information and belief, all residential apartments are rent stabilized.

4. In the middle of 2020 when Tedford re-entered the property after the expiration of the ground lease, they discovered the rent stabilized tenant rents were far below market value. When delivered to them, the rents as presented by the ground lessee were $200, $600, $600, $700, $900, and $2,150. The residential rent roll was just $5,150 per month or $858 per month per apartment. After performing a rent regulation analysis, it was determined that the rent stabilized rent roll was likely $31,000, the actual rent roll eclipsed the legal rent roll, and the rent roll should be reduced to approximately $2,584 per month or to just $430 per apartment.

5. For reference, the average rent for studio apartments in the neighborhood are $3,500; 1-bedroom apartments are $4,200; and 2-bedroom apartments are $5,275. A single 2-bedroom apartment

in the neighborhood exceeds the annual rent for all six residential units, including two 2-bedrooms in the Property. Tedford's neighboring Property currently lists three 1-bedroom apartment [sic] for rent starting at $6,100 per month.

6. Despite the trouble above, the Ciners looked to reposition the Property over the next two years so that it would generate sufficient income. After commencing an ejectment proceeding against the commercial tenant, the Ciners entered a five-year lease during the pandemic eviction moratorium (the moratorium and lack of rent roll gave the commercial tenant leverage over Tedford). This repositioned the commercial unit from a well below market lease to a slightly below market lease with increases which will escalate the rent to at or above market rent again. The current rent is $7,500 per month plus the cost of gas to heat the Property. The Ciners have further addressed many repairs that were necessary in the Property; and engaged with architects, engineers, HPD, and brokers to determine a new course for the Property. What they discovered is the Property is a regulatory nightmare with no prospects of moving forward as it is currently situated. Each professional was astonished at the physical and economic condition of the Property.

7. The expenses for the Property far exceed the rent roll. First, the primary fixed expenses annually are as follows: property taxes in excess of $70,000; water bill in excess of $15,000; heating in excess of $18,000; superintendent costs in excess of $8,000; management fee in excess of $9,000; insurance in excess of $5,6000 [sic]; and electric in excess of $1,500. That is total operating expenses of $127,100 annually before

addressing any debt service and before performing any work at the Property or counting the other miscellaneous expen-ses that come with managing a regulated building in New York City. In fact, the government—HPD to be specific—will not even lend against it.

8. When it comes to necessary work for the Property, a full rehabilitation is necessary. The building on the Property is over 100 years old. The envelope to the building is porous with constant leaking. When one leak is discovered and remediated, another appears. Tedford is constantly investigating and repairing leaks in the Property. According to tests, the building has lead paint and asbestos throughout. A single means of egress exists with a fire escape leading to nowhere and no sprinkler system existing in the Property. Piping needs to be removed and replaced and it is likely the building needs to be rewired. If certain work is performed, this building will also require a certificate of occupancy, which will require additional work and expense.

9. The structural integrity of the building has only been inspected superficially at this point. But probing is likely necessary throughout the Property. It is hard to imagine no structural issues in 100+ year old stick framing. If probing were to occur in the building, however, complications will likely arise with lead paint, asbestos, and mold; these problems would require significant remediation and ensuing costs that the Property rent roll will simply not cover. It is not feasible for Plaintiff to have a thorough inspection related to the stability of the structure at this point. Therefore, the building likely cannot continue to

operate for much longer without being substantially rehabilitated or a vacate order being issued.

10. It is estimated that the cost to perform the piecemeal work described above, excluding any structural work, would be more than $1,000,000. Right now, the repairs and maintenance of the building are difficult to calculate because they are constant and do not address the root issues in the building. When combined with the building operating expenses, however, the total Property expenses easily exceed the actual and legal rent roll for the Property. As outlined below, the Property is expected to lose millions of dollars over the proceeding years.

11. To further complicate matters, the Property's lot size of 1,520 square feet is too small to redevelop the Property as is. Per the Zoning Resolution, the current building on the Property is a non-conforming use and if the building were altered or demolished and rebuilt, Tedford would be reduced to a one- or two-family residence and one commercial unit. This is just not an economically feasible option nor a practical one considering the neighborhood and alleged housing emergency in New York City. Tedford's southern neighbor is a 32-story mixed use apartment building. On the corner across the street, a 20-story mixed use apartment building is being constructed. On Third Avenue in Gramercy Park there is a scattered assortment of 20+ story buildings, yet Plaintiff is reduced to rebuilding only a one- or two-family building.

12. It is granted that it may be possible to obtain a zoning variance and demolish the building, however, a variance is far from guaranteed and the cost to even create the *opportunity* is prohibitive. Based on estimates from zoning professionals, the total cost is

likely to be $500,000 and those professionals believe there is a less than 50% chance of successfully obtaining a variance. In addition, there would be several years of dealing with the DHCR and buying out tenants (DHCR refers to them stipends, but they are privately funded rent subsidies). Before Tedford can even start the demolition process, they will likely incur total expenses and holding costs in excess of $2,000,000.

13. In summary, the City has turned the Property into a privately funded housing project and expects the Ciners to contribute their retirement funds and disability payments to allow tenants to reside at the Property. The city cannot logically tell the Ciners they must provide well below market housing, allow them to collect only some the expenses for providing said housing, extract payments from the Ciners via property, sewer, and water taxes, and threaten to fine them for not correcting property violations and making capital improvements at the same time. The Fifth Amendment taking jurisprudence was developed to protect the Ciners from these unduly burdensome regulations which remove all value from the Property.

14. The value of the Property has been reduced to zero based on income valuation. The Property produces a net income but when multiplied by the capitalization rate, it results in a practical value of zero dollars. Therefore, this Court should declare that the Property is not subject to rent stabilization or order the City of New York to compensate Plaintiff justly.

THE PARTIES

15. Plaintiff Tedford's Tenancy, LLC is a limited liability company formed under the laws of New York and does business in New York, New York.

16. Lynette and Richard Ciner (the "Ciners"), husband and wife, are the sole members of Plaintiff and are California residents.

17. Lynette Ciner's family has either directly or indirectly owned the Property (defined below) since the 1940s.

18. Richard Ciner is disabled and is in remission from his fourth bout of cancer.

19. The Ciners are retired.

20. Defendant City of New York is the government entity given the responsibility by the State of New York to determine the existence of a housing emergency, to establish and implement rent stabilization, to implement the New York City Zoning Resolution, to assess and collect property taxes, determine and enforce housing standards, and determine and enforce water and sewer regulations.

21. Defendant Ruthanne Visnauskas ("Visnauskas") is the Commissioner of the New York State Division of Housing and Community Renewal ("DHCR").

22. Defendant DHCR is a state governmental agency, organized pursuant to the laws of the State of New York which oversees the administration of rent stabilization in the City of New York.

23. Defendant Rohit T. Aggarwala ("Aggarwala") is the Commissioner of the New York City Department of Environmental Protection ("DEP").

24. Defendant DEP is a city agency and municipal corporation established by the New York City Charter, charged by law with the duty to enforce the laws, rules, regulations, and the Administrative Code of the City of the New York (the "Code") regarding water and sewer regulations and enforcement in the City of New York.

25. Defendant Adolfo Carrion Jr. ("Carrion") is the Commissioner of the New York City Housing Preservation and Development ("HPD").

26. Defendant HPD is a city agency and municipal corporation established by the New York City Charter, charged by law with the duty to regulate and enforce *among other things* the Multiple Dwelling Law, New York City Housing Maintenance Code, Building Code, Electrical Code, Health Code, Fire Code, Air Pollution Control Code, and other housing and building standards.

27. Defendant Melanie E. La Rocca ("La Rocca"), is the Commissioner of the New York City Department of Buildings (the "DOB").

28. The DOB is a city agency and municipal corporation established by the New York City Charter, charged by law with the duties to regulate and enforce among other things the Multiple Dwelling Law, New York City Housing Maintenance Code, Building Code, Electrical Code, Health Code, Fire Code, Air Pollution Control Code, and other housing and building standards.

29. Defendant Preston Niblack ("Niblack") is the Commissioner of the New York City Department of Finance ("DOF").

30. Defendant DOF is a city agency and municipal corporation established by the New York City Charter, charged by law with the duty to *among other things* assess property value and collect property taxes within the City of New York.

JURISDICTION AND VENUE

31. Jurisdiction is based on New York's Civil Practice Law and Rules ("CPLR") Section 301.

32. Venue for this action is proper in the County of New York under CPLR Section 507.

33. This Complaint alleges that Defendants have violated Plaintiff's rights protected by the United States Constitution and New York Constitution.

STATEMENT OF FACTS

A. Property Ownership and Ground Lease

34. Plaintiff is the owner and landlord of the Property.

35. The Property consists of six residential apartments and one commercial unit.

36. Plaintiff obtained ownership of the Property under a certain deed executed on June 29, 2006.

37. Plaintiff, via its member Lynette Ciner, obtained ownership of the Property as the previous owner's surviving daughter.

38. The Property has been owned directly or indirectly by Lynette Ciner's family since the 1940s.

39. Mrs. Ciner's family purchased the Property before the enactment of Rent Stabilization.

40. Mrs. Ciner grew up in the Property and wishes to occupy the Property again.

41. On or about July 14, 1978, Plaintiff's predecessor-in-interest entered into a ground lease (the "Initial Ground Lease") with Horizons Investor's Inc. ("Horizons") for the entire Property.

42. On or about July 23, 1996, Horizons exercised their option to renew the Ground Lease for 21 years with a termination date of July 14, 2020 (the "Renewal" and collectively with the Initial Ground Lease the "Ground Lease").

43. At the expiration of the Ground Lease in July 2020, Plaintiff reentered the Property as the landlord.

44. Upon information and belief, Horizons subleased each of the residential apartments and the single commercial unit during the Ground Lease term or used them for personal/corporate use.

B. Tenants and Rent

45. At least five apartments in the Property are rent stabilized units.

46. A sixth apartment may have been deregulated because of individual apartment increases and vacancy increases in or about 2009, but Horizons has produced no documentation to support the costs and proper deregulation.

47. The sixth apartment is therefore likely rent stabilized.

48. There are 2 two-bedroom apartments and 4 studio/one-bedroom railroad-style apartments in the Property.

49. The *pro forma* rent roll for the residential tenants in the Property is $61,860 annually, or $859 per month per apartment.

50. The rents are as follows: $2,150, $900, $700, $600, $600, and $205.

51. Actual rent collected in 2021 was a total of $45,730.50, or $635.15 per month per apartment.

52. Based on a review of the DHCR rent registration, the max legal rents for the Property for all six apartments total about $31,000 annually, or just $430 per month per apartment.

53. Upon information and belief, the residential rents are low because there was low turnover in the Property during the Ground Lease and no pre 2019 major capital improvements or individual apartment improvements were taken.

54. Property tenants have traditionally been long-term and there has been little turnover.

55. Plaintiff issued the commercial tenant a five-year lease in early 2021 after commencing an ejectment action in the middle of the COVID-19 moratorium.

56. The rent under the commercial lease provides for $90,000 annually in the first year, or $7,500 per month and the payment of the entire Property's heat.

57. The commercial tenant does not pay a portion of the property taxes and Plaintiff is responsible for the payment of water for the entire Property, including the commercial space.

58. The *pro forma* rent roll for the Property is $151,860 based on the above calculated actual rent for the residential and commercial tenants.

59. Plaintiff collected $69,500 in 2021 commercial tenant rent, $45,730.50 in residential tenant rent, and

$59,500 in arrears from the commercial tenant for a total of $174,950 in 2021.[1]

60. The *pro forma* rent for the Property based on the estimated legal rents is $90,000 for the commercial space and $31,000 for the residential tenants for a total of $121,000 annually. This of course does not consider vacancy and nonpayment.

C. The Market

61. According to publicly available information, the average studio apartment for rent in Gramercy Park is $3,500 per month.

62. According to publicly available information, the average one-bedroom apartment in Gramercy Park is $4,200 per month.

63. According to publicly available information, the average two-bedroom apartment in Gramercy Park is $5,275 per month.

64. If the average market rent of the apartments were based on the above, the residential rent roll for the Property would be between $294,600 annually, or $24,500 per month, and $328,200 annually, or $27,350 per month.

65. The commercial tenant lease term is at or about market rent.

D. Property Expenses and Maintenance

66. The 2021 Property tax bill was $65,926.96.

67. Plaintiff challenged the 2021 Property tax bill and the DOF offered a reduced assessment from

[1] A *de minimis* amount of arrears was included in the 2021 residential tenant rent.

$537,073 to $497,290 and final tax bill of $62,026.98 to settle.

68. The settlement offer was rejected by Plaintiff and a tax certiorari proceeding has been commenced in the New York County Supreme Court, Index No. 266045/2021.

69. There has been no resolution of the 2021 tax proceeding to date.

70. The 2022 Property tax bill is $70,967.65.

71. Plaintiff has challenged the 2022 Property tax bill and is awaiting the DOF's offer/resolution and a hearing in front of the Tax Commission.

72. Plaintiff will likely have to file a tax certiorari in the Supreme Court this year as well.

73. 50% of the Property tax bill for 2022, or $35,483.83, is due on July 1, 2022, despite Plaintiff's challenge.

74. Plaintiff's Property taxes are expected to rise 8% per year until they are about 12.335% of the Property's full assessed value, or $216,375 per year.

75. Plaintiff is obligated by law and regulation to provide heat and hot water to all residential tenants in the Property.

76. In 2021, the Property's total water bill exceeded $15,000.

77. There are currently over $18,000 in arrears due to the DEP.

78. Upon information and belief, the residential tenants are responsible for 50% of the water bill.

79. Upon information and belief, the Property's heating has [sic] bill was more than $18,000.

80. Upon information and belief, the residential tenants and residential common arrears are responsible for over 70% of the heating bill.

81. The Property is managed by ZRE Properties and Plaintiff pays ZRE Properties a management fee of $9,000 annually, or $750 per month, which is below the cost of what most management companies charge for similar properties.

82. The Property is required by law to maintain a superintendent in the City of New York (the “Super”) and pays the Super $8,056.80 annually, or $671.40 per month.

83. Because of the Property’s condition, the Super’s job is much more burdensome and Tedford must pay for additional services for the Property.

84. In fact, just before filing this action, the Super tendered a 30-day notice of termination because of the burdensome work involved with this Property.

85. The Property pays about $1,500 annually, or $120 per month, towards common area electricity.

86. The Property’s insurance is about $5,600 annually, or $460 per month.

87. The Property requires significant capital improvements and repairs.

E. Maintenance, Repairs, and Capital Improvements

88. The Property is over 100 years old.

89. Few major renovations or substantial renovations have been performed at the Property.

90. The building located on the Property is porous and constantly under investigation for leakage and repair of water intrusion.

91. The Property's pipes need to be replaced.

92. Upon information and belief, the Property has only one means of egress and requires a sprinkler system.

93. The installation of a sprinkler system will cost over $350,000.

94. The Property, based on the existing rent roll, cannot pay for said upgrade.

95. The Property requires substantial lead paint abatement and is receiving HPD violations for the same. A copy of the outstanding HPD violations is annexed hereto as Exhibit A.

96. All windows in the Property, except for 3, need replacement.

97. The cornice, as required by the Housing Maintenance Code, must be painted.

98. Said painting will cost, upon information and belief, in excess of $10,000 because it requires permits and a manlift to perform the work.

99. Each apartment needs to be painted under law.

100. Said painting is estimated to cost in excess of $1,500 per apartment.

101. A decommissioned oil tank is in the basement and may need to be removed.

102. The Property requires substantial asbestos abatement with the roof containing asbestos and likely other parts of the Property; piping in the Property has tested positive for asbestos.

103. Plaintiff has spent an estimated $20,000 repairing the roof to prevent leakage into the rest of the building.

104. Plaintiff has spent an estimated $18,000 on other water intrusion remediation in the building.

105. Plaintiff recently issued a rent credit to the commercial tenant because of water intrusion.

106. Upon information and belief, the roof requires the installation of a safety bar across the rear side of the building and the installation of an alarm on the access door.

107. The external drainage for the building needs to be replaced with larger pipes.

108. Upon information and belief, the Property will be obligated to obtain a certificate of occupancy if the necessary repairs and alterations are performed.

109. The logistics and costs of relocating the existing tenants to perform the work would be substantial.

110. The property manager for the Property has contacted HPD through the general number many times to request assistance; however, no person has returned his phone calls.

111. The Property's estimated cost of work is likely more than $1,000,000; and that is before unknown damage and necessary work is discovered and undertaken.

F. Laws and Regulations

a. Rent Stabilization

112. The Rent Stabilization Law of 1969 and Emergency Tenant Protection Act of 1974, as both have been amended (collectively, the "RSL") restricts landlord's ability to raise rents and evict tenants.

113. The RSL is administered by DHCR and authorized by the New York State legislature.

114. The RSL requires Plaintiff issue tenants' renewal leases indefinitely unless there is cause not to renew as set forth under the DHCR regulations.

115. The RSL has limited New York City rent increases ("RGB") over the past 10 years to just 1.275%.

116. These increases are nearly 50% below inflation for that time-period.

117. As part of the RSL, landlords are only allowed to collect rent increases for improvements to individual apartments ("IAI") if they meet the standards set by DHCR and are approved.

118. Recovery for IAIs is limited to $15,000 in aggregate over a 15-year period for up to three apartments, even if the actual costs were significantly more than that amount, and any such rent increase is materially limited and must be removed after 30 years, making full recovery of the value of the improvement impossible.

119. The max IAI increase Plaintiff could receive in a 15-year period if they were all taken in the same year is $89 per apartment per month, or a total of $267 per month or $3,214 annually.

120. At a steady inflation rate of 2.5%, this would result in collections of less than the initial $45,000 permitted by law over the 30-year period.

121. Plaintiff would be unable to take any other IAIs for 15 years and would be paying out of pocket for apartment improvements and repairs.

122. In addition to the IAI restrictions, Major Capital Improvement ("MCI") restrictions prevent Plaintiff from recovering any reasonable sum if the necessary capital improvements are performed.

123. Plaintiff will only be able to collect MCI increases at the rate of 2% of legal rent for thirty years for approved expenses.

124. Upon information and belief, approved expenses will far exceed the maximum increase allowed.

125. At a rate of 2% based on the existing rent roll, Plaintiff will collect during the thirty-year period a total $1.15 million (based on a 2.5% RGB increase for single year leases and $1,000,000 in improvements).

126. This calculation excludes financing and with an inflation rate of 2.5%, the total time value of money during that period is $2.71 million.

127. If Plaintiff must finance these MCI improvements at a rate of just 6% over thirty years, Plaintiff will pay an estimated $5.4 million.[2]

128. If the MCI increases were calculated based on the estimated legal rents for the Property, Plaintiff would collect just $584,000 over 30 years.

129. Upon information and belief, MCI and IAI upgrades will provide little value to the commercial space.

130. Both MCIs and IAIs are temporary and must be removed after 30 years.

131. While the RSL allows for hardship increases, Plaintiff is barred from applying and their impact on the Property's finances would be *de minimis*.

132. Plaintiff cannot apply for comparative hardship because Plaintiff does not maintain records from 1968-1970, the building was completed before 1968,

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[2] The likely financing rate for this building is likely 7.5%-10%.

and there has not been an arm's length sale of the Property since the 1940s.

133. Plaintiff is further ineligible for both alternative and comparative increases because there are pending tax proceedings beyond the tax year.

134. Hardship rent increases are capped at 6% per year, including other permitted rent increases.

135. According to DHCR testimony, there were no hardship applications granted in 2018 and there are only two cases pending.

136. Furthermore, the hardship application procedures are too burdensome for landlords, including Plaintiff.

137. The RSL became permanent in 2019 through the Housing Stability and Tenant Protection Act.

138. For these reasons, the Property will perpetually lose income.

b. Zoning Restrictions

139. New York City is subject to the Zoning Resolution approved by the New York City Council with the authority of the New York State legislature and State Constitution.

140. The Property is in a C2-8A zoning district.

141. C2 zoning districts must also comply with Residence Use restrictions, and specifically R10A for the Property.

142. R10A is subject to minimum lot area restrictions under ZR 23-32, specifically that no multiple dwelling may be developed with a lot size under 1,700 square feet.

143. The Property's lot size is 1,520 and the building is currently a non-conforming use.

144. If the Property were to be redeveloped to at least the minimum current use, the estimated cost for architectural plans and legal fees to *attempt* to obtain a variance would be $500,000.

145. Upon information and belief, the Property cannot be redeveloped in any economically feasible manner because of existing regulations.

146. The ZR does not restrict the development of a single-family or two-family residence to the maximum FAR allowed on the property.

147. The 1,700-foot restriction does not further its legislative purposes and specifically interferes with the housing emergency declared by the City Council and State Legislature in the City of New York.

c. Property Tax

148. New York City is subject to real property taxation administered through the DOF with the authority of the New York City Council, New York State legislature, and the State Constitution.

149. The DOF is responsible for assessing and collecting property taxes in New York City.

150. The DOF's collection of property taxes from Plaintiff prevents Plaintiff from complying with other agency/department laws and regulations, including the Building Code and Housing Maintenance Code.

d. Building and Housing Maintenance Codes

151. New York City is subject to property use regulations administered through HPD and DOB with the authority of the New York City Council, New York State legislature and State Constitution.

152. HPD and DOB are responsible for administering and enforcing the Housing Maintenance Code, Building Code, Electrical Code, Health Code,

Fire Code, Air Pollution Control Code, and other housing and building standards (collectively, the "Codes").

153. Plaintiff cannot comply with the Codes because the RSL has eradicated the Property's rent roll.

154. It is unduly burdensome for Plaintiff to comply with the Codes.

155. Plaintiff should not have to comply with the Codes because the Property cannot generate sufficient income due to overly burdensome government restrictions.

e. Financing

156. Based on a review of the HPD finance program qualifications, the Property does not meet the criteria required, specifically, the debt-to-income ratios.

157. And private lenders have stated they will not lend against the property because of the restricted rent roll and property tax bill.

158. Plaintiff has received an Economic Impact Disaster Loan ("EIDL"), however, the EIDL is a Federal Program with no consideration for the health of Plaintiff's business.

159. Plaintiff received approximately $80,000 in funding from EIDL and is approved for another approximately $65,000 in funding.

160. Unfortunately, EIDL funds have since been exhausted and no other funds were received to date.

161. The EIDL proceeds have been used to pay the operating expenses of the Property, including property tax payments, as well as other ordinary business expenses.

162. The EIDL is only a temporary program that is sporadically funded and not a permanent source of financing.

163. Plaintiff will soon be required to start repayment of the EIDL loan in the middle of 2023 at a rate of about $450 per month and if Plaintiff accepts the $65,000 in additional funding available, the monthly repayment amount will be about $800 for a term of 30 years.

AS AND FOR A FIRST CAUSE OF ACTION

(Regulatory Taking as Applied to Plaintiff)

164. Plaintiff repeats and realleges every allegation contained in the foregoing paragraphs as if more fully set forth at length above.

165. The RSL constitutes a regulatory taking as applied to Plaintiff.

166. The RSL inflicts a regulatory taking because it imposes a severe burden on Plaintiff's private property rights.

167. The RSL has caused and will continue to cause Plaintiff significant economic harm, including by (i) making it substantially tougher, considering existing tax burdens and onerous regulatory requirements, to comply with all applicable laws and regulations; (ii) decreasing the resale value of Plaintiff's properties; (iii) forcing Plaintiff to subsidize and pay out of pocket for tenants to rent in the Building; and (iv) depriving Plaintiff's members of the rights to use and possess the apartments they own, and to exclude others from occupying and using those apartments.

168. The RSL likewise undermines Plaintiff's reasonable, investment-backed expectations by

precluding Plaintiff from fully recovering the cost of improvements to the apartments, including improvements mandated by law.

169. In fact, the RSL will force Plaintiff to permanently lose money and it will be necessary for the members to fund Plaintiff.

170. The RSL is preventing Plaintiff from making improvements to the Property that would have made under law but cannot afford. The RSL prevents Plaintiff from fully recouping the cost of improvements to rent-stabilized apartments and has made it uneconomical to undertake similar improvements.

171. The rent increases authorized by the Rent Guidelines Board and its members have not kept pace with Plaintiff's operating expenses, further undermining Plaintiff's investment-backed expectations.

172. Individually and collectively, the RSL's restrictions result in confiscatory rents that are "below what would otherwise be a 'reasonable rent." *Pennell v City of San Jose*, 485 US 1, 21 [1988] (Scalia, J., *concurring* in part and *dissenting* in part), and prevent Plaintiff from earning a reasonable rate of return on the rent-stabilized apartments it owns.

173. The character of the government action under RSL is functionally equivalent to a direct appropriation of private property. In effect, the RSL converts the apartments it governs, permanently, into public housing stock used to provide social-welfare benefits to tenants.

174. By requiring Plaintiff to subsidize tenant rents no matter the reasonableness of those rents, and without providing corresponding benefits to Plaintiff, the RSL unlawfully forces Plaintiff "to bear public

burdens which, in all fairness and justice, should be borne by the public as a whole," *Penn Cent. Transp. Co. v City of New York*, 438 US 104, 123 [1978], and "us[es] the occasion of rent regulation . . . to establish a welfare program privately funded by" property owners, *Pennell*, 485 U.S. at 22 (Scalia, J., concurring in part and dissenting in part).

175. Even if the problems the RSL attempts to fix are caused by property owners as a class, such issues are "not remotely attributable to" Plaintiff. *Id.*

176. Defendants, acting under color of New York law, have caused and will continue to cause, the constitutional violations described in this Count.

177. Each Defendant has participated directly in causing the uncompensated taking of Plaintiff's property or implemented and continued policies causing the uncompensated taking of Plaintiff's property.

178. All Defendants have created a regulatory scheme which deprives Plaintiff of its Property.

179. Such deprivation violates Plaintiff's Fifth Amendment rights though the 14th Amendment.

180. Such deprivation violates Plaintiff's rights under NY Const art. I, § 7(a).

181. Without declaratory relief, just compensation, or injunctive relief, Plaintiff will suffer irreparable harm caused by deprivation of its constitutional rights.

182. As a result of the foregoing, Plaintiff suffered damages in an amount that the Court will determine, but in no event less than $5,000,000.

183. Accordingly, judgment should be granted declaring the Property not subject to the RSL or just compensation should be paid to Plaintiff.

AS AND FOR A SECOND CAUSE OF ACTION

(Permanent Injunction)

184. Plaintiff repeats and realleges every allegation contained in the foregoing paragraphs as if more fully set forth at length above.

185. Visnauskas, DHCR, DEP, Carrion, HPD, Rocca, DOB, DOF, and Niblack, should be enjoined from extracting the payment of real estate taxes, water and sewer taxes, and issuing violations at the Premises.

186. Visnauskas, DHCR, DEP, Carrion, HPD, Rocca, DOB, DOF, and Niblack, are violating Plaintiff's rights by implementing and enforcing a regulatory scheme that deprives Plaintiff of its property in violation of the Fifth Amendment.

187. Visnauskas, DHCR, DEP, Carrion, HPD, Rocca, DOB, DOF, and Niblack, have created a regulatory scheme with which compliance is impossible.

188. Plaintiff cannot afford to pay the property taxes demanded, water and sewer charges demanded, and comply with the housing maintenance codes and building code.

189. Plaintiff has no adequate remedy at law to prevent foreclosure and further fines and violations issuing from the foregoing individuals and agencies relating to the Premises.

190. If an injunction is not issued, Plaintiff risks foreclosure and further unconscionable fines and violations, the regulatory scheme endangers the occupants of the Premises because necessary repairs and improvements cannot be performed, and the regulatory scheme has and will continue to erode the physical Property.

191. The equities balance in favor of Plaintiff because Plaintiff has a rent roll that is less than expenses and is therefore unable to comply with the regulations above.

192. The low rent roll does not result from Plaintiff's actions or inactions, but the regulatory scheme of which it is a part.

193. Without injunctive relief, Plaintiff will suffer irreparable harm caused by deprivation of its constitutional rights.

AS AND FOR A THIRD CAUSE OF ACTION

(Injunction Against HPD)

194. Plaintiff repeats and realleges every allegation contained in the foregoing paragraphs as if more fully set forth at length above.

195. HPD is tasked with enforcing the Housing Maintenance Code.

196. HPD has issued violations at the Property.

197. HPD has authority under the Emergency Repair Program to make those repairs/contract to make those repairs.

198. Per the HPD website, HPD's costs to make such repairs are intentionally higher than they would otherwise costs: "The city is subject to laws governing procurement, contracting, and wages that may make such work significantly more expensive than the price the owner could obtain himself."

199. Because Plaintiff is unconstitutionally restricted in using their property and collecting a reasonable rent to cover repairs, HPD should make the repairs to the Property to protect both the tenants and Property.

200. Plaintiff should not be charged the costs of said repairs because Plaintiff is unconstitutionally unable to recoup the cost of said repairs.

201. Plaintiff is further unable to afford the costs of said expenses.

202. If the repairs are not performed, tenants will be made to live with violations at the Property and the Property will continue to deteriorate.

WHEREFORE, Plaintiff respectfully demands and requests judgment against Defendants as follows:

(a) On Plaintiff's first cause of action, judgment declaring RSL unconstitutional against Plaintiff's Property and the Property not subject to the RSL;

(b) Alternatively on Plaintiff's first cause of action, judgment in the amount of not less than $5,000,000together with interest;

(c) On Plaintiff's second cause of action, a permanent injunction against Visnauskas, DHCR, DEP, Carrion, HPD, Rocca, DOB, DOF, and Niblack, from collecting real property taxes, water and sewer taxes, and issuing violations at the Property for the period of time during which there has been a taking of Plaintiff's Property;

(d) On Plaintiff's third cause of action, enjoining HPD from performing necessary repairs at the Premises without cost to Plaintiff;

(e) Together with such other further and different relief as this Court deems just and proper.

Dated: New York, New York
May 10, 2022

Appendix 44a

DAVIS & BYRNES
Attorneys for Plaintiff

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Mitchell Cantor