NEW YORK STATE HOMES AND COMMUNITY RENEWAL
641 Lexington Avenue
New York, NY 10022
Respondent

WILLIAM YANG LLC
c/o Yi Mei Chen
1518 70th Street, 1st Floor
Brooklyn, NY 11228
Landlord-Respondent

XIANG YANG
772 44th Street
Unit 1H
Brooklyn, NY 11220
Landlord-Respondent

JANE YANG
772 44th Street
Unit 1H
Brooklyn, NY 11220
Landlord-Respondent

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK ROOM 130

Index No.

In the matter of the application of

LEONEL GOMEZ, IRIS HERNANDEZ, ROSAURA SOSA, and GRISELDA UVALDO,

Petitioner,

VERIFIED PETITION

-against-

ERIC ULRICH, as Commissioner of the New York City DEPARTMENT OF BUILDINGS, RUTHANNE VISNAUSKAS as Commissioner of the New York State HOMES AND COMMUNITY RENEWAL, WILLIAM YANG LLC, XIANG YANG, and JANE YANG,

Respondent.

LEONEL GOMEZ, IRIS HERNANDEZ, ROSAURA SOSA, and GRISELDA UVALDO, as and for their petition in this proceeding, respectfully allege the following:

Preliminary Statement

1. Petitioners, who occupy and reside in apartments 3L, 3R, 4L, and 4R located at 475 43rd Street A/K/A 4228 5th Street, Brooklyn, NY 11232 (the "Premises"), bring this action pursuant to New York Civil Practice Law and Rules ("CPLR") 3001, 3017(b), and 7801 against Respondent Department of Buildings of the City of New York ("DOB"), and Respondents William Yang LLC, Xiang Yang, and Jane Yang ("Landlords"), to prevent layout alterations to Petitioners' apartments.
2. Petitioners, who are rent-stabilized tenants, have been displaced from their apartments since a fire on November 3, 2021. Landlords submitted plans to the DOB, which include layout changes, to be performed during Petitioner's displacement.

3. Landlords did not apply to New York State Homes and Community Renewal ("HCR") for approval of this reduction and/or modification in services, in violation of 9 NYCRR § 2522.4(d) and (e).
4. DOB accepted Landlords' submitted plans and issued permits even though the plans violate the Rent Stabilization Laws and Code.
5. Petitioners were not consulted prior to Respondents-Landlords submitting the reconfiguring plans to DOB and oppose the layout changes.

By this action, Petitioners seek an Order: (1) Annulling and vacating Respondent New York City Department of Buildings' ("DOB") acceptance of Respondents William Yang LLC, Xiang Yang and Jane Yang's ("Landlords") plans under job filing numbers B00668071 and B00668072 ("Plans"); (2) Annulling and rescinding Respondent DOB's approval and issuance of permits under job filing numbers B00668071 and B00668072; (3) Declaring that DOB's policy and practice of approving plans for altering and/or reconfiguring rent-stabilized apartments without approval by HCR violates the New York City Charter, Building Code, and Rent Stabilization Laws and Code; (4) Directing DOB to implement procedures that prevent DOB from approving plans that alter and/or reconfigure rent-stabilized apartments without prior HCR approval; (5) Declaring that Landlords submitted the Plans in violation of 9 NYCRR § 2522.4; (6) Permanently enjoining Landlords from submitting plans that alter and/or reconfigure Petitioners' apartments without prior HCR approval; and (7) Granting such other and further relief as this Court may find just and proper.

The Parties

6. Petitioner LEONEL GOMEZ is the rent-stabilized tenant of apartment 4L at 475 43rd Street A/K/A 4228 5th Avenue, Brooklyn, NY 11232.

7. Petitioner IRIS HERNANDEZ is the rent-stabilized tenant of apartment 4R at 475 43rd Street A/K/A 4228 5th Avenue, Brooklyn, NY 11232.
8. Petitioner ROSAURA SOSA is the rent-stabilized tenant of apartment 3R at 475 43rd Street A/K/A 4228 5th Avenue, Brooklyn, NY 11232.
9. Petitioner GRISELDA UVALDO is the rent-stabilized tenant of apartment 3L at 475 43rd Street A/K/A 4228 5th Avenue, Brooklyn, NY 11232.
10. Respondent WILLIAM YANG, LLC is the owner of 475 43rd Street A/K/A 4228 5th Avenue, Brooklyn, NY 11232.
11. Respondent XIANG YANG was last registered with the New York City Department of Housing Preservation and Development ("HPD") as the head officer of William Yang, LLC, with a registered business address of 772 44th Street, Unit 1H, Brooklyn, NY 11220.
12. Respondent JANE YANG was last registered with HPD as the managing agent for the subject premises, with a registered business address of 772 44th Street, Unit 1H, Brooklyn, NY 11220.
13. Respondent ERIC ULRICH is the Commissioner of the NEW YORK CITY DEPARTMENT OF BUILDINGS ("DOB") and is responsible for the actions of that entity, which is headquartered in New York City.
14. Respondent RUTHANNE VISNAUSKAS is the Commissioner of NEW YORK STATE HOMES AND COMMUNITY RENEWAL ("HCR"), which agency may be affected by a judgment in this action, and is named as a Co-Respondent pursuant to CPLR Section 1001(a).

Venue

15. Venue lies properly in this Court pursuant to CPLR 506(b) in that the principal offices of two of the Respondents are in New York County, and New York County is where the DOB made the complained-of determination.

STATUTORY AND REGULATORY SCHEME

16. DOB is bound to enforce the laws which "govern construction, alteration, maintenance, use, [and] occupancy . . . of buildings in the city." NYC Admin. Code § 28-105.8; *see also* City Charter § 643.

17. DOB "*shall* enforce, with respect to buildings and structures, such provisions of the building code, zoning resolution, multiple dwelling law, labor law *and other laws, rules and regulations as may govern the construction, alteration*, maintenance, use, occupancy, safety, sanitary conditions, mechanical equipment and inspection *of buildings or structures in the city* . . . ." City Charter § 643 (emphasis added).

18. All rent-stabilized apartments must be registered with HCR on an annual basis. 9 NYCRR § 2528.3.

19. "Required services" in rent-stabilized apartments include "[t]hat space and those services which the owner was maintaining or was required to maintain on the applicable base dates set forth below, and any additional space or services provided or required to be provided thereafter by applicable law." 9 NYCRR § 2520.6(r)(1). The "base date" for these purposes is in most cases May 31, 1968. *See id.* § 2520.6(r)(4).

20. The Rent Stabilization Code requires that landlords obtain HCR approval before decreasing or modifying any required services. 9 NYCRR § 2522.4(d), (e).

21. 9 NYCRR Section 2522.4(d) prohibits service reductions in rent-stabilized apartments without prior approval by HCR: "No such reduction in rent or decrease in services shall take place prior to the approval by the HCR of the owner's application, except that a service decrease pursuant to paragraph (2) [1] of this subdivision may take place prior to such

[1] This exception is for service reductions or modifications that are "*required* for the operation of the building in accordance with the specific requirements of law." See 9 NYCRR § 2522.4(d)(4), (e)(3) (emphasis added).

approval." A reduction in service occurs when a landlord reduces the size of a tenant's dwelling space or decreases the level of provided services.

22. 9 NYCRR Section 2522.4(e) provides that "no such modification or substitution of required services shall take place prior to the approval of the owner's application by the HCR, except that a service modification or substitution pursuant to paragraph (2) of this subdivision may take place prior to such approval." A modification of services occurs when the landlord substitutes an equivalent service for the required service. A prototypical example is the substitution of an electric cooking stove for a gas cooking stove.

23. Under the New York City Administrative Code, "[t]he issuance or granting of a permit shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this code or of any other law or rule. Permits presuming to give authority to violate or cancel the provisions of this code or other law or rule shall not be valid. The issuance of a permit based on construction documents and other data shall not prevent the commissioner from requiring the correction of errors in the construction documents and other data. The commissioner is authorized to prevent any occupancy, use or work in violation of this code, the zoning resolution or other law or rule enforced by the department." NYC Admin. Code § 28-105.8. Accordingly, permits for work that would violate any applicable law, including the Rent Stabilization Laws, are invalid.

24. Applications for building permits "shall include all information required by this code, *other applicable law* or the rules of the department." NYC Admin. Code § 28-105.5 (emphasis added). Therefore, DOB should require that landlords provide proof of HCR approval of a service decrease or modification before submitting any plans to reconfigure or otherwise substantially alter a rent-stabilized apartment.

25. NYC Admin. Code Section 28-105.10 authorizes the commissioner to suspend or revoke approved permits for failure to comply with the provisions of this code or other applicable laws or rules; or whenever there has been any false statement or any misrepresentation as to a material fact in the application or submittal documents upon the basis of which such approval was issued; or whenever a permit has been issued in error and conditions are such that the permit should not have been issued.

STATEMENT OF FACTS

26. On or around November 3, 2021, there was a fire at the premises. The Department of Buildings issued a full vacate order, a true and complete copy of which is attached as **Exhibit A**, and Petitioners have been displaced since then.
27. Each Petitioner received an Order from HCR reducing their rent to $1 per month due to the vacate order,
28. Petitioners filed an "HP" proceeding in the Housing Part of the Civil Court for Kings County on or about December 15, 2021. The proceeding sought an order requiring Landlords to make needed repairs to have the vacate order rescinded and to otherwise correct violations of housing standards. The initial return date was December 28, 2021.
29. On December 28, 2021, the Court issued an Order to Correct requiring Landlords correct the conditions that led to the vacate order on or before March 31, 2022. A true and complete copy of the Order to Correct is attached as **Exhibit B**.

Landlord-Respondents' Permit Applications

30. In February 2022, the Department of Buildings issued permits for work at the building. Permit number B00668071 (for general construction, including new partitions, doors, flooring and cosmetic work) is dated February 4, 2022, and permit number B00668072 (for plumbing

work, including the relocation of existing kitchen and bathroom fixtures) is dated February 11, 2022. True and complete copies of the issued permits are attached as **Exhibits C and D**, respectively.

31. The permit applications filed by Landlords indicated that the building contained rent-stabilized units. True and complete copies of the "Statements and Signatures" permit application information available through the DOB NOW public portal are attached as **Exhibits E** (permit number B00668071) **and F** (B00668072).
32. Petitioners were not notified that Landlords sought to modify the layout of their apartments.
33. The initial plans, dated January 24, 2022, and accepted by DOB on February 1 and 2, 2022, appeared to show proposals for significant changes to the layouts of Petitioners' apartments, including the reduction of the number of bedrooms in some apartments.

Landlord-Respondents' Revised Plans

34. On May 25, 2022, Landlords' counsel in the HP proceeding contacted Petitioners' counsel and provided revised building plans. These plans contained a different proposed layout and room configuration for Petitioners' apartments on the third and fourth floors than the initial plans. The revised plans, dated May 24, 2022, and accepted by DOB on May 26, 2022 ("Plans"), are attached as **Exhibit G**.
35. The Plans show that an additional bathroom would be placed in each apartment on the third and fourth floors. *See* Ex. G.
36. The Plans also propose significant layout changes to Apartments 4L and 3R. Currently, these apartments have the kitchen at the end of the apartment. The Plans show the kitchen in the middle of the apartment. *See id.*
37. Apartments 4R and 3L had previously been modified before the fire. The layouts shown in the Plans do not depict the apartments' pre-fire configuration.

38. Upon information and belief, there had been no other changes to the apartments' layouts since the building's construction.

39. The initial plans (originally submitted with the permit application) and the revised plans would result in significant changes to Petitioners' apartments and impermissible reductions or modifications in services.

40. Petitioners Rosaura Sosa, Griselda Uvaldo, Iris Hernandez, and Leonel Gomez object to the installation of a second bathroom in their apartments. Petitioners do not want or need a second bathroom, and the installation of the additional bathrooms would significantly reduce the size of one of their bedrooms.

41. Additionally, moving the kitchen from the end of Apartment 4L and 3R to the middle of the apartments would diminish the utility of the bedroom that would be moved to where the kitchen was previously. Among other reasons, this is because the fire escape was outside the kitchen windows. Mr. Gomez and Ms. Sosa would not be able to put any furniture near that window without obstructing egress to the fire escape, and so the usable floor space of one of their bedrooms would be significantly diminished. Therefore, this change would also be a significant change to the layouts of Apartments 3R and 4L.

DOB's Acceptance of the Plans Despite Landlords' Failure to Obtain Prior Approval from the New York State Homes and Community Renewal

42. Upon information and belief, Landlords did not seek approval from HCR regarding these alterations before submitting the permit applications. Petitioners have not received any notification that Landlords have filed HCR applications to alter their apartments. Had Landlords complied with the law and filed an application with HCR, Petitioners would have had an opportunity to object to Landlords' proposed reductions or modifications in services.

43. Upon information and belief, DOB accepted the Plans on May 26, 2022, without requiring or verifying HCR's approval of the alterations. It is, evidently, DOB's current policy and practice to forego verification that HCR approved plans for reconfiguration, even when such plans for reconfiguration contravene and violate applicable laws and regulations, including the Rent Stabilization Code. Because DOB is acting pursuant to an established policy, it would be futile to seek administrative redress.

44. The submission and acceptance of the Plans occurred despite the existence of a Housing Court Order, dated May 9, 2022, which enjoined the Landlords "from materially changing the layout or size of the Petitioner's apartments, including but not limited to the number of bedrooms, from the size and layout in existence on November 3, 2021." If the plans and permits are not nullified, and the Landlords proceed with construction on Petitioners' apartments, Petitioners will be irreparably harmed, as the apartments will no longer fit the needs of their families.

CLAIMS

Petitioners' First Cause of Action

45. Petitioners repeat, reiterate and reallege each and every allegation made in the preceding paragraphs as if the same were set forth herein.

46. DOB wrongfully issued the permits mentioned above, as the proposed alterations would clearly violate 9 NYCRR Sections 2522.4(d)(4) and (e). Sections 2522.4(d) and (e) both require prior approval of HCR for the changes and reductions in services depicted in the subject permits and Plans. DOB did not verify that Landlords obtained HCR approval for the proposed changes before accepting the Plans and issuing the permits. DOB's acceptance of the Plans and issuance of the permits should be vacated and annulled.

47. DOB's acceptance of the plans and issuance of the permits was arbitrary and capricious and contrary to applicable laws and regulations, including NYC Admin. Code Section 28-105.8 and NYC Charter Section 643, which require DOB to ensure that all laws governing construction and alteration of dwelling units in New York City are followed. These laws necessarily include the Rent Stabilization Laws and Code applicable to rent-stabilized units. DOB accepted the plans and issued the permits without requiring that Landlords comply with the clear mandates of the Rent Stabilization Code, despite being on notice that the affected units were rent-stabilized. Therefore, DOB failed to enforce applicable laws that govern the alteration of buildings in the city, NYC Charter § 643, and issued a permit that presumed to give Landlords the authority to violate the Rent Stabilization Laws and Code, NYC Admin. Code § 28-105.8.

Petitioners' Second Cause of Action

48. Petitioners repeat, reiterate, and reallege each and every allegation made in the preceding paragraphs as if the same were set forth herein.
49. Petitioners seek a judgment declaring that DOB's current policy or practice of accepting plans and issuing permits that reconfigure or alter rent-stabilized apartments without first requiring approval from HCR is unlawful.
50. DOB's policy or practice violates City Charter Section 643, NYC Administrative Code Section 28-105.8, and other provisions of the New York City Building Code.
51. As discussed above, DOB is mandated to enforce all applicable laws concerning the construction or alteration of buildings in New York City, including rent-stabilized apartments.
52. The Rent Stabilization Code requires that landlords obtain prior approval from HCR before altering apartment layouts or otherwise decreasing or modifying apartment services.
53. DOB's permit application requires landlords to answer whether there are rent-stabilized apartments in the building.

54. Upon information and belief, DOB does not currently require, and has never required, landlords to demonstrate that they prior obtained approval from HCR before accepting plans that depict alterations to rent-stabilized apartment layouts and issuing permits based on such plans.

55. DOB is failing to perform its duty to reject plans that do not conform with applicable laws, rules, and regulations.

56. The Court should declare that DOB's policy or practice of accepting plans and issuing permits that reconfigure or substantially alter rent-stabilized apartments without first requiring proof of approval from HCR is unlawful. The Court should also order DOB to implement procedures to require proof of HCR approval of alterations or reconfigurations of rent-stabilized apartments as a precondition to its review of permit applications involving such alterations or reconfigurations.

57. DOB's implementation of these procedures will require the involvement of HCR, in that DOB will need to coordinate with HCR to verify the rent-stabilized status of apartments when permit applications are submitted. Therefore, HCR's is joined as a party because its participation is required for complete relief to be accorded in this proceeding and because it would be affected by a judgment.

Petitioners' Third Cause of Action

58. Petitioners repeat, reiterate and reallege each and every allegation made in the preceding paragraphs as if the same were set forth herein.

59. Petitioners seek a judgment declaring that Landlords are required to apply for and obtain HCR's approval for the alterations depicted in its submitted plans before undertaking any construction work related to the plans.

60. As shown by their permit applications and submitted plans, Landlords seek to alter or reconfigure the layout of Petitioners' apartments by adding second bathrooms and otherwise changing the location of certain rooms.

61. "Required services" include the dwelling space that comprises an apartment. 9 NYCRR § 2520.6(r)(1).
62. These alterations are, at minimum, modifications in services under any interpretation of that term, and Petitioners allege that they are reductions in services.
63. Sections 2522.4(d) and (e) of Title 9 of the New York Codes, Rules, and Regulations require that a landlord obtain HCR approval before decreasing or modifying any services.
64. Landlords failed to apply for or seek approval from HCR for these alterations prior to obtaining DOB permits related to the alterations.
65. The Court should issue a judgment declaring that Landlords violated 9 NYCRR Section 2422.4 by obtaining permits for these alterations without seeking HCR approval. The Court should also permanently enjoin Landlords from submitting plans regarding the alteration or reconfiguration of Petitioners' apartments or taking any other steps to alter or reconfigure any of Petitioners' apartments without prior HCR approval.

WHEREFORE, Petitioners respectfully request a judgment:

1. Annulling and vacating Respondent New York City Department of Buildings' ("DOB") acceptance of Respondents William Yang LLC, Xiang Yang and Jane Yang's ("Landlords") plans under job filing numbers B00668071 and B00668072 ("Plans");
2. Annulling and rescinding Respondent DOB's approval and issuance of permits under job filing numbers B00668071 and B00668072;
3. Declaring that DOB's policy and practice of approving plans for altering and/or reconfiguring rent-stabilized apartments without approval by HCR violates the New York City Charter, Building Code, and Rent Stabilization Laws and Code;
4. Directing DOB to implement procedures that prevent DOB from approving plans that alter and/or reconfigure rent-stabilized apartments without prior HCR approval;

5. Declaring that Landlords submitted the Plans in violation of 9 NYCRR § 2522.4;

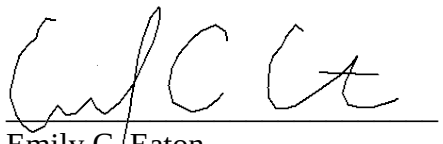
6. Permanently enjoining Landlords from submitting plans that alter and/or reconfigure Petitioners' apartments without HCR approval; and

7. Granting such other and further relief as this Court may find just and proper.

Dated: New York, NY
September 23, 2022

Emily C. Eaton
Meghan Walsh
Nell Hirschmann-Levy
Of Counsel
Twyla Carter, Esq., Attorney-in-Chief
THE LEGAL AID SOCIETY
394 Hendrix Street
Brooklyn, NY 11207
(646) 995-8576

Edward Josephson
Evan Henley
THE LEGAL AID SOCIETY
199 Water Street, 3rd Floor
New York, NY 10038
Attorneys for Petitioners

By: 
Emily C. Eaton

VERIFICATION

Emily Eaton, an attorney duly admitted to practice before the courts of the state of New York, affirms the following;

I am a member of The Legal Aid Society, attorneys for the petitioner identified herein. The contents of the petition are true to the knowledge of the affirmant except as to those matters stated to be alleged upon information and belief and as to those matters affirmant believes the answer to be true. The grounds of affirmant's belief are statements and information supplied by Petitioners to affirmant. This verification is made by the petitioner's attorney pursuant to CPLR § 3020(d)(3).

Emily C. Eaton

Dated: Brooklyn, NY
September 23, 2022