

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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PORTOFINO REALTY CORP., PROMETHEUS :
 REALTY CORP., SYLVAN TERRACE REALTY LLC, :
 WINDSOR REALTY LLC, UNICORN 151 CORP., :
 TUSCAN REALTY CORP., 90 STATE STREET :
 ASSOCIATES, INC., 141 WADSWORTH, LLC, RENT : Index No. 501554/2014
 STABILIZATION ASSOCIATION OF N.Y.C., INC., :
 COMMUNITY HOUSING IMPROVEMENT : IAS Part 66
 PROGRAM, INC., and THE SMALL PROPERTY :
 OWNERS OF NEW YORK, INC., : Velasquez, J.

Plaintiffs, :

v. :

NEW YORK STATE DIVISION OF HOUSING AND :
 COMMUNITY RENEWAL and DARRYL C. TOWNS, :
 as Commissioner of the NEW YORK STATE HOMES :
 AND COMMUNITY RENEWAL and the DIVISION :
 OF HOUSING AND COMMUNITY RENEWAL, :

Defendants, and :

MAKE THE ROAD NEW YORK, NEW YORK STATE :
 TENANTS & NEIGHBORS, and ASSOCIATION FOR :
 NEIGHBORHOOD AND HOUSING DEVELOPMENT :

Proposed Intervening Defendants. :

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PROPOSED INTERVENORS' MEMORANDUM OF LAW

PATTERSON BELKNAP WEBB & TYLER LLP	THE LEGAL AID SOCIETY
Lisa Cleary	Adriene Holder, Attorney in Charge, Civil Practice
David N. Slarskey	Judith Goldiner, Director of Litigation-Civil
Sean Murray	Ellen Davidson, Of Counsel
Amy Vegari	199 Water Street
1133 Avenue of the Americas	New York, NY 10038
New York, New York 10036	

SOUTH BROOKLYN LEGAL SERVICES
 Edward Josephson
 Michael Weisberg
 105 Court Street, 4th Floor
 Brooklyn, New York 11201

*Attorneys for Proposed Intervenor-Defendants
 Make the Road New York, New York State Tenants &
 Neighbors, Association for Neighborhood and Housing
 Development*

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BACKGROUND

A. Plaintiffs' Challenge to the 2014 Amendments

New York's rent stabilization law ("RSL") was enacted to remedy "an acute shortage of dwellings which creates a special hardship to persons and families occupying rental housing" and "to prevent exactions of unjust, unreasonable and oppressive rents and rental agreements and to forestall profiteering, speculation and other disruptive practices tending to produce threats to the public health, safety and general welfare" Rent Stabilization Law § 26-501. The RSL attempts to balance the interests of landlords and tenants by providing for a system of regulated rent increases, while prohibiting eviction of tenants without good cause and assuring tenants of the right to lease renewals. To effectuate and administer these policies, the Legislature delegated enforcement of the RSL to the New York State Division of Housing and Community Renewal ("DHCR"). The DHCR is empowered to promulgate regulations to create "safeguards against unreasonably high rent increases and, in general, protect[] tenants and the public interest." RSL § 26-511(c)(1).

On January 8, 2014, the DHCR adopted a set of amendments (the "2014 Amendments") to the New York City Rent Stabilization Code and the New York State Emergency Tenant Protection Regulations (together, the "Rent Regulations"). These amendments, among other things, (1) align the Rent Regulations with statutory changes in the Rent Act of 2011; (2) codify DHCR's Tenant Protection Unit ("TPU"), a DHCR subdivision that investigates and prosecutes rent overcharge violations; (3) clarify that covered landlords may not increase rents for vacancies and major capital improvements if the landlord fails to maintain required services; (4) require covered landlords to include descriptions of prior rental adjustments in lease riders; (5) align the Rent Regulations with case law specifying the

conditions under which DHCR may review rent records more than four years old; (6) align the Rent Regulations with case law specifying the conditions in which DHCR may apply the “default formula” to calculate the maximum rent of a regulated unit; and (7) require covered landlords to file an application to amend an apartment registration.

Plaintiffs brought this action against the DHCR on February 24, 2014, alleging that the 2014 Amendments are unconstitutional and invalid because they (1) are inconsistent with the statutes upon which they are based; (2) constitute legislative policy-making and therefore violate the constitutional principle of separation of powers; (3) violate property owners’ due process rights; and (4) were not adopted in compliance with the State Administrative Procedure Act.

On March 4, 2014, Plaintiffs filed a motion to preliminarily enjoin enforcement of the 2014 Amendments. That motion is currently pending before this Court and, upon information and belief, no discovery has been taken by either party.

B. Interests of the Proposed Intervenors

Proposed intervenor Make the Road New York (“MTRNY”) is a member organization whose mission is to empower Latino and working class communities through organizing, policy innovation, and survival services. (Dias Aff. ¶ 3.) MTRNY has over 14,000 members, many of whom live in rent-stabilized housing. (*Id.*) MTRNY members have experienced many of the problems and abuses that the 2014 Amendments are designed to correct, including rent overcharges due to claims of Individual Apartment Improvements (“IAIs”) during a vacancy period, landlords’ use of preferential rents to cover up illegal rents, rent increases for major capital improvements despite the presence of immediately hazardous conditions, dismissal of rent reduction applications due to an inability to prove landlord

notification, lack of proactive enforcement of rent laws, illegal rent overcharges, and landlord harassment. (*See id.* ¶¶ 4, 6, 19-20.) MTRNY testified and submitted comments and recommendations seeking greater protections for tenants during the rulemaking process that led to the 2014 Amendments. (*Id.* at ¶¶ 12-17.)

Proposed intervenor New York State Tenants and Neighbors (“T&N”) is a member organization whose mission is to empower and educate tenants, preserve affordable housing, and strengthen tenant protections. (Gotla Aff. ¶ 3.) T&N has over 3,000 members, the great majority of whom are rent-stabilized or rent-controlled tenants. (*Id.*) T&N members have experienced many of the problems and abuses that the 2014 Amendments are designed to correct, including lack of proactive enforcement of rent laws, illegal rent overcharges, landlord harassment, and substandard conditions requiring rent reduction order. (*See id.* ¶¶ 4, 16-17.) T&N testified and submitted comments and recommendations seeking greater protections for tenants during the rulemaking process that led to the 2014 Amendments. (*Id.* at ¶¶ 6-14.)

Proposed intervenor Association for Neighborhood and Housing Development (“ANHD”) is a member association of not-for-profit neighborhood-based affordable housing organizations in all five boroughs of New York City. (Dulchin Aff. ¶ 3.) ANHD works directly with many thousands of tenants facing poor physical conditions and displacement pressure in their privately-owned apartments. (*Id.*) For many years, ANHD member groups have worked with tenants facing such problems as illegal rent overcharges, substandard conditions requiring rent reduction orders, DHCR’s reluctance to proactively enforce rent laws, and landlord abuse of IAIs to unlawfully raise rents. (*Id.* ¶¶ 4-6, 17-18.) ANHD testified and submitted comments and recommendations seeking greater protections for tenants during the rulemaking process that led to the 2014 Amendments. (*Id.* ¶¶ 7-13.)

If Plaintiffs prevail in this action, these organizations and their members will lose vital legal protections and procedural tools to combat landlord fraud and abuse.

ARGUMENT

I. The Proposed Intervenors Should Be Permitted To Intervene Pursuant to CPLR 1013

As set forth below, the proposed intervenors should be permitted to intervene because (1) their defenses share common questions of law and fact with the main action; (2) they have a direct and substantial interest in the outcome of the action; and (3) permitting intervention at this stage in the proceedings will not prejudice any party or unduly delay the action.

A. Standard for Permissive Intervention

Section 1013 of the New York Civil Practice Law and Rules (“CPLR”), authorizes the Court to allow intervention where the proposed intervenor’s “claim or defense and the main action have a common question of law or fact.” CPLR § 1013. In exercising its discretion, “the court shall consider whether the intervention will unduly delay the determination of the action or prejudice the substantial rights of any party.” *Id.*

Intervention under CPLR 1013 “does not depend on a showing that the proposed intervenor has a direct, personal, or pecuniary interest in the subject of the action.” 3 Weinstein, Korn & Miller, New York Civil Practice P 1013.03 (2d ed. 2014). Rather, “intervention should be permitted where the intervenor has a real and substantial interest in the outcome of the proceedings.” *Berkoski v Board of Trustees of Inc. Vill. of Southampton*, 67 A.D.3d 840, 843 (2d Dep’t 2009).

B. The Proposed Intervenors' Defenses Share Common Questions of Law With the Plaintiffs' Claims

The proposed intervenors' defenses are directed to, and therefore precisely overlap with, the legal claims set forth in plaintiffs' Complaint and plaintiffs' Application for Preliminary Injunctive Relief. Plaintiffs allege that the 2014 Amendments are invalid because they (1) are inconsistent with the Rent Stabilization Statutes upon which they are based; (2) constitute legislative policy-making and therefore violate the constitutional principle of separation of powers; (3) violate property owners' due process rights; and (4) were not adopted in compliance with SAPA-mandated procedures. As set forth in the accompanying Proposed Answer and Opposition to Plaintiffs' Application for Preliminary Injunction, the proposed intervenors seek to defend each of these claims on the merits by demonstrating that the 2014 Amendments (1) are consistent with the Rent Stabilization Statutes upon which they are based; (2) constitute an appropriate and limited exercise of DHCR's delegated authority to promulgate "interstitial" regulations to further the policies of the rent statutes; (3) do not violate property owners' due process rights because they do not result in binding determinations with legal consequences; and (4) were adopted in full compliance with SAPA-mandated procedures. In other words, the proposed intervenors' defenses will raise the same questions of law regarding the constitutional and statutory legality of the 2014 Amendments that are raised in the plaintiffs' complaint and that, presumably, will be raised in the Government's responsive pleading and opposition to the preliminary injunction. *See Saljen Realty Corp. v. Human Resources Admin. Crisis Intervention Servs.*, 111 Misc. 2d 791, 793 (Civ. Ct. N.Y. Cnty. 1981), *mod. on other grounds*, 115 Misc. 2d 553 (1st Dep't 1982) (permitting tenants and block association to intervene in landlord's suit against government service providers where "the rights that [proposed intervenors] raise are identical to the affirmative defenses raised by the named

[defendants], and a resolution of the matters contested by the present parties will also necessarily decide the factual and legal issues raised by the tenants”).

C. The Proposed Intervenors Have a Direct and Substantial Interest in the Outcome of This Action

Although “the only requirement for obtaining an order permitting intervention via [CPLR 1013] is the existence of a common question of law or fact,” courts are “more likely” to grant intervention when the intervenor has a “direct and substantial interest in the outcome of the proceeding.” *Pier v. Board of Assessment Review of Niskayuna*, 209 A.D.2d 788, 789 (3d Dep’t 1994). Here, in addition to raising common questions of law, the proposed intervenors plainly have a direct and substantial interest in this litigation.

Courts routinely hold that the intended beneficiaries of a statutory scheme have a direct and substantial interest in litigation concerning the validity of the scheme. *See Kaplen v. Town of Haverstraw*, 105 A.D.2d 690, 690 (2d Dep’t 1984) (“Where the gravamen of an action . . . is the alleged invalidity of a governmental enactment, it is appropriate, as was done here, to permit intervention of persons for whose benefit the enactment was made.”); *Village of Spring Valley v. Village of Spring Valley Housing Auth.*, 33 A.D.2d 1037 (2nd Dep’t 1970) (low-income residents had direct and substantial interest in action to dissolve government housing authority that constructed and maintained public housing for low-income residents); *Patterson Materials Corp. v. Town of Pawling*, 221 A.D.2d 609, 610 (2d Dep’t 1995) (homeowners who lived in close proximity to proposed mining site permitted to intervene in action challenging municipal laws that restricted plaintiff’s mining operations); *County of Westchester v. Department of Health*, 229 A.D.2d 460, 461 (2d Dep’t 1996) (hospitals had direct and substantial interest in action challenging health regulations because they would lose funds if regulations were invalidated); *Empire State Ass’n of Adult Homes, Inc. v. Perales*, 139 A.D.2d 41, 45 (3d Dep’t

1988) (adult care facility resident permitted to intervene in action challenging statute that required facilities to establish personal allowance accounts for residents).

The proposed intervenors are member organizations whose members are primarily rent-stabilized and rent-controlled tenants, and therefore the intended beneficiaries of the 2014 Amendments. (*See* Dias Aff. ¶ 3; Gotla Aff. ¶ 3; Dulchin Aff. ¶ 3.) These members have experienced many of the problems and abuses that the 2014 Amendments are designed to correct, including rent overcharges due to claims of Individual Apartment Improvements during a vacancy period (*see* 9 NYCRR § 2522.5(c)(1), 9 NYCRR § 2526.1(a)(2)(ix)), landlords' use of preferential rents to cover up illegal rents (*see* 9 NYCRR § 2526.1(a)(2)(viii)), rent increases for major capital improvements despite the presence of immediately hazardous conditions (*see* 9 NYCRR § 2522.4(a)(13)), dismissal of rent reduction applications due to an inability to prove landlord notification, lack of proactive enforcement of rent laws (*see* 9 NYCRR § 2523.4(c)), DHCR's failure to proactively enforce the rent laws (*see* 9 NYCRR § 2520.5(o), and landlord harassment (*see* 9 NYCRR § 2525.5). (*See* Dias Aff. ¶¶ 4, 6, 19-20; Gotla Aff. ¶¶ ¶¶ 4, 16-17.) Accordingly, they have a direct and substantial interest in the outcome of this action.

D. Intervention is Timely and Will Not Unduly Delay the Determination of the Action or Prejudice the Rights of Any Party

Intervention will not cause any delay in this action. Plaintiffs filed their complaint on February 24, 2014; upon information and belief, no discovery has begun. The proposed intervenors agree to be bound by the existing briefing schedule for Plaintiffs' pending motion for preliminary injunctive relief, and have included with this motion their Opposition to the Plaintiffs' application for a preliminary injunction. These papers are being filed on the same day that the Government's opposition to the preliminary injunction motion is due. Moreover, as is clear from the proposed answer and opposition papers, the proposed intervenors are not

attempting to bring new cross-claims or counterclaims. Accordingly, neither of the present parties will be prejudiced or delayed by intervention.

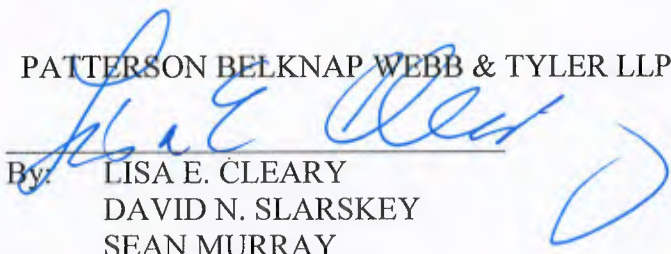
CONCLUSION

Because the proposed intervenors seek to raise identical questions of law to those raised by plaintiffs and defendants, because proposed intervenors have a real and substantial interest in the outcome of the action, and because intervention would not prejudice any party or unduly delay the action, the Court should grant the instant motion and allow movants to intervene pursuant to CPLR § 1013.

Dated: March 26, 2014

Respectfully submitted,

PATTERSON BELKNAP WEBB & TYLER LLP


By: LISA E. CLEARY
DAVID N. SLARSKEY
SEAN MURRAY
AMY VEGARI

1133 Avenue of the Americas
New York, New York 10036
Attorneys for Proposed Intervenors
(212) 336-2000
lecleary@pbwt.com
dnsalarskey@pbwt.com
smurray@pbwt.com
avegari@pbwt.com

ADRIENE HOLDER, ESQ., Attorney in Charge,
Civil Practice
JUDITH GOLDINER, ESQ., Director of Litigation-
Civil
ELLEN DAVIDSON, ESQ., Of Counsel
THE LEGAL AID SOCIETY
199 Water Street
New York, NY. 10038
Attorneys for Proposed Intervenors

(212) 577-3339

EDWARD JOSEPHSON, ESQ.

MICHAEL WEISBERG, ESQ.

SOUTH BROOKLYN LEGAL SERVICES, INC.

105 Court Street

Brooklyn, NY 11201

Attorneys for Proposed Intervenors

(718) 237-5500