

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF QUEENS

LEO CHENG, CARLY BRASFIELD,
OLSJON GOXHAJ, LEONARDO DE
ANDRADE and AMAR DHEBAR, on behalf
of themselves and all others similarly situated,

Plaintiffs,

-v-

50-01 2nd STREET ASSOCIATES LLC

Defendant.

Dated Filed: July 24, 2024

Index No. _____
(NYSCEF Case)

SUMMONS

Plaintiff designates Queens
County as the place of trial. The
basis of venue is the situs of the real
property at issue.

TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the Plaintiff's attorneys within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear and answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
July 25, 2024

NEWMAN FERRARA LLP



By: _____

Lucas A. Ferrara
Roger A. Sachar Jr.
1250 Broadway, 27th Floor
New York, New York 10001
(212) 619-5400
lferrara@nflp.com
rsachar@nflp.com

Defendant's Address:

50-01 2nd STREET ASSOCIATES LLC
c/o Corporation Service Company
80 State Street, Albany NY 12207

SUPREME COURT FOR THE STATE OF NEW YORK
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LEO CHENG, CARLY BRASFIELD,
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ANDRADE and AMAR DHEBAR, on behalf
of themselves and all others similarly situated,

Index No.:

Plaintiffs,

**PLAINTIFFS' CLASS ACTION
COMPLAINT**

-v-

50-01 2nd STREET ASSOCIATES LLC

Defendant.

Plaintiffs Leo Cheng, Carly Brasfield, Olsjon Goxhaj, Leonardo De Andrade, and Amar Dhebar (“Plaintiffs”), individually, and on behalf of all others similarly situated, by and through their attorneys, bring this class action complaint against Defendant 50-01 2nd Street Associates LLC (“Defendant”).

INTRODUCTION

1. Defendant is the owner-in-fee of the apartment buildings located at 2-14 50th Avenue, commonly referred to as “Gantry Park Landing” in Long Island City.

2. Gantry Park Landing participates in the 421-a Program, which requires landlords to register their units with the New York State Division of Housing and Community Renewal (“DHCR”), and that those apartments be treated as rent-stabilized.

3. Defendant has evaded the 421-a Program’s requirements, and governing rent-stabilization laws, in two ways.

4. *First*, the initial legal regulated rent to be registered for an apartment in a 421-a building must be the “monthly rent charged and paid by the tenant,” and all subsequent rent increases are to be derived from that number.

5. Here, Defendant registered initial rents at amounts far higher than what the initial tenant was paying and wrongfully registered a lower rent - - termed a preferential rent - - which represented the true amount “charged and paid” by the Building’s initial tenant.

6. Indeed, Plaintiff Dhebar’s rent history, for Apartment 501W, shows the following:

<u>Reg Year</u>	<u>Apt Stat</u>	<u>Filing Date</u>	<u>Legal Regulated Rent</u>	<u>Prefer. Rent</u>	<u>Actual Rent Paid</u>	<u>Reasons Differ./ Change</u>	<u>Lease Began/Ends</u>
2014	*REG NOT FOUND FOR SUBJECT PREMISES*						
2015	RS	05/19/2015	3296.85	2884.00		VAC/LEAS	09/20/2014 09/19/2015
	TENANT: H YOON						
2016	RS	07/12/2016	3329.82	3075.00		LEAS/RNL	07/01/2015 06/30/2016
	TENANT: H YOON						
2017	RS	07/27/2017	3662.80	3355.00		VAC/LEAS	03/10/2017 03/30/2018
	TENANT: CHRISTOPHER QUAGLIATA						

7. By registering with a preferential rent, Defendant was able to increase the first rent, at renewal, from \$2,884.00 to \$3075.00, approximately a 7% increase.

8. The applicable legal rent increase for that year, as approved by the Rent Guidelines Board, (RGB), was only 1%.

9. And, because future permitted rent increases all flowed from that initial illegal registration, an accurate rent has never been set for Plaintiff Dhebar’s unit, nor that of similarly situated class members.

10. *Second*, RSC § 2521.2 provides that a “preferential rent” is triggered when the owner agrees to accept a sum that is lower than the unit’s legal regulated rent.

11. The Housing Stability and Tenant Protection Act (“HSTPA”) of 2019 provides that at renewal, a landlord can only increase a preferential rent by the permitted RGB increase.

12. In other words, the preferential rent functions precisely as a legal regulated rent does, during the entirety of a tenancy.

13. The rent regulations require that tenants in rent-stabilized units, such as Plaintiff, be given one-, or two-, year lease options.

14. Here, Defendant improperly manipulated lease terms, and payment amounts, so that it could evade the protections afforded by HSTPA.

15. Plaintiff Cheng first occupied Unit 1101W on June 12, 2021.

16. Instead of providing Plaintiff Cheng a one-, or two-, year lease, Defendant offered him an eighteen-month lease.

17. Further, the lease contained a purported Legal Regulated Rent of \$3,525.00, but Plaintiff Cheng actually paid far less, on an average monthly basis, because Defendant manipulated the manner in which payments were allocated.

18. Defendant’s lease provides that he would receive a concessions of \$3,525.00 in July 2021, November 2021, January 2022, and June 2022.

19. Thus, for the initial eighteen (18) months of Plaintiff Cheng’s occupancy, the monthly rent “agreed and paid” was effectively \$2,741.67.

20. That lower figure [\$2,741.67] represents the true preferential rent for the apartment.

21. Indeed, Defendant recognized as much, because its Streeteasy¹ advertisements show net effective, pro-rated, rents as the listed monthly rents.²

¹ Streeteasy is an online apartment advertising website.

² See e.g. <https://streeteasy.com/building/gantry-park-landing/410e>

22. Yet, at renewal, Defendant refused to renew the preferential rent, and increased Plaintiff's rent to \$3717.11, a more than 30% increase, instead of utilizing the RGB permitted 3.25% increase.

23. Further, the refusal to renew the concession also violated the rent regulatory prohibition that bars landlords from changing the terms and conditions of a rent-stabilized tenancy, at renewal (RSC § 2522.5[g]1).

24. The correct amount of Plaintiffs' legal regulated rent must be calculated pursuant to the rent laws.

25. Given Defendant's exclusive possession and control of the pertinent documentation, the correct amount of Plaintiffs' legal regulated rent can only be determined after discovery.

26. The aforementioned conduct demonstrates an attempt by Defendant to circumvent the requirements of law, all at the expense of Gantry Park Landing's residential tenants.

PARTIES

Plaintiff

27. Plaintiff Leo Cheng resides in Apartment 1101W at Gantry Park Landing, in the County of Queens, in the City and State of New York.

28. Defendant violated HSTPA by improperly raising the amount payable by Plaintiff Cheng as rent, in excess of the legally permitted increase, by Defendant wrongfully claiming that it could "pull" his rent concession at renewal.

29. Plaintiff Carly Brasfield resides in Apartment 603E at Gantry Park Landing, in the County of Queens, in the City and State of New York.

30. Defendant violated HSTPA by improperly raising the amount payable by Plaintiff Brasfield as rent, in excess of the legally permitted increase, by Defendant wrongfully claiming that it could “pull” his rent concession at renewal

31. Plaintiff Olsjon Goxhaj resides in Apartment 306E at Gantry Park Landing, in the County of Queens, in the City and State of New York.

32. Defendant violated HSTPA by improperly raising the amount payable by Plaintiff Goxhaj as rent, in excess of the legally permitted increase, by Defendant wrongfully claiming that it could “pull” his rent concession at renewal.

33. Plaintiff Leonardo De Andrede resides in Apartment 705W Gantry Park Landing, in the County of Queens, in the City and State of New York.

34. Apartment 705W’s rent history shows a first rent of \$4,418.00, which then inexplicably dropped to \$2,082.35 in the second year.

35. Moreover, Apartment 705W’s first listing on Streeteasy lists a monthly rent of \$3,682.00.³

36. Furthermore, Defendant violated HSTPA by improperly raising the amount payable by Plaintiff De Andrede as rent, in excess of the legally permitted increase, by Defendant claiming that it could “pull” his rent concession at renewal.

37. Furthermore, Defendant violated HSTPA by improperly raising the amount payable by Plaintiff Cheng as rent, over and above the legally permitted increase.

38. Plaintiff Amar Dhebar resides in Apartment 501W at Gantry Park Landing, in the County of Queens, in the City and State of New York.

³ <https://streeteasy.com/rental/1203859>

39. Apartment 1101W’s rent history shows that it was first registered with a legal regulated rent of \$3296.85, and a preferential rent of \$2884.00.

40. Defendant utilized that illegal registration to increase the rent more than permitted by the RGB.

Defendant

41. Defendant 50-01 2nd Street Associates LLC is a domestic limited liability company.

42. Defendant 50-01 2nd Street Associates LLC is Gantry Park Landing’s registered owner.

43. Upon information derived from New York City Department of Finance tax records, Defendant 50-01 2nd Street Associates LLC conducts and transacts business in the City and State of New York, County of Queens.

44. Defendant’s registered business address for service of process is: 80 State Street, Albany, New York 12207-2543.

THE APPLICABLE STATUTORY AND REGULATORY ENVIRONMENT

The Rent Stabilization Law and the Rent Stabilization Code

45. In 1969, citing a continuing shortage of residential rental housing, the New York City Council enacted a rent stabilization statute, the Rent Stabilization Law (“RSL”), N.Y. Unconsol. Law § 26-501 (McKinney).

46. Thereafter, the New York City Council gave DHCR authority to promulgate regulations in furtherance of the RSL. And DHCR did so by establishing the Rent Stabilization Code (“RSC”), N.Y. Comp. Codes R. & Regs. Tit. 9, § 2520.1, *et seq.*

47. The RSL and RSC limit the rent that landlords can charge and, *inter alia*, circumscribe the manner in which landlords are able to raise rents, cover the cost of improvements, and deregulate apartments.

48. The rent that a landlord may charge for a regulated unit is based on an initial legal rent.

49. For Gantry Park Landing, the initial legal rent was to be based on the rent “charged and paid,” by the unit’s first tenant.

50. Landlords of rent-stabilized apartments may be entitled to increase rents:

- a. when permitted by the Rent Guidelines Board (“RGB”);
- b. following a DHCR approved Major Capital Improvement;
- c. an increase following a vacancy; and/or
- d. following Individual Apartment Improvements that are properly supported by documentation, and made either during the vacancy of an apartment or agreed upon by the tenant.

51. In New York City, the RGB sets the maximum rates for rent increases once a year that are effective for rent stabilized leases commencing on or after October 1st of each year through September 30th of the following year. (RSC § 2522.4).

The 421-a Program

52. In 1971, the New York State Legislature enacted the Real Property Tax Law (“RPTL”) § 421-a, which provides tax incentives for developers who construct new, market-rate, multi-family housing.

53. As a condition to receiving 421-a Program benefits, a building owner must provide its tenants with the protections of the rent stabilization laws, even if those apartments would otherwise be exempt.

54. Because buildings participating in the 421-a Program are new construction, an initial legal regulated rent must be established.

55. Under RSL § 26-517(a) (4), a landlord must register that legal regulated rent with DHCR.

56. RSC § 2521.1(g) provides, with respect to buildings participating in the 421-a Program, “[t]he initial legal regulated rent for a housing accommodation constructed pursuant to section 421–a of the Real Property Tax Law shall be the *initial adjusted⁴ monthly rent charged and paid* but not higher than the rent approved by [the New York City Department of Housing and Preservation] pursuant to such section for the housing accommodation or the lawful rent charged and paid on April 1, 1984, whichever is later.”⁵

HSTPA and Preferential Rents

57. RSC § 2521.2 provides that a “preferential rent” is a rent which the owner agrees to charge that is lower than the legal regulated rent for the unit.

58. RSL § 26-511(c)(14) prohibits owners who offer tenants preferential rents from increasing the preferential rent upon a lease renewal at an amount in excess of the RGB promulgated increase.

⁴ “Adjusted” refers to the fact that the initial rent cannot include charges for “parking facilities, and electricity, gas, cooking fuel, and other utilities.” RPTL 421-a(1)(a)

⁵ Emphasis added.

**DEFENDANT’S PRACTICE TO DEPRIVE ITS TENANTS OF THE PROTECTIONS
OF THE RENT STABILIZATION LAWS**

59. Upon information and belief, all the residential units at Gantry Park Landing are subject to the RSL because Gantry Park Landing received benefits under the 421-a Program.

60. Upon information and belief, Defendant knowingly and willfully failed to comply with the requirements of the 421-a Program by, among other things, improperly registering the apartments with DHCR.

61. Defendant did not register Gantry Park Landing’s units at the monthly rent actually “charged and paid” by the tenants, and instead registered the units, prior to occupancy by the first tenant, at artificially high amounts.

62. Defendant also offered its tenants “rent concessions,” which provided for “free” rent of a month or more.

63. Defendant’s “rent concessions” were simply “preferential rents” by another name.

64. Rather than give a discount each month, Defendant engaged in sleight-of-hand, and simply combined the discount into “free rent” for a certain period.

65. Whether termed a preferential rent, or a concession, the effect is the same - - the rent “charged and paid” by the tenant is less than the initial legal registered rent.

66. By camouflaging the preferential rent as a concession, Defendant was able to take excess rent increases on subsequent renewals, in violation of governing law.

67. Upon information and belief, Defendant’s registration and concession scheme extends to each of the apartments at Gantry Park Landing.

CLASS ALLEGATIONS

The Class and Sub-Class

68. This action may be properly maintained as a class action under the provisions of Article 9 of the CPLR.

69. The proposed Class is defined as all tenants of Gantry Park Landing, who occupied their apartments between July 25, 2018 and the present.

70. The Class seeks certification of claims for damages arising out of Defendant's preferential rent / concession scheme.

71. Unless the law is changed, Plaintiffs, and the members of the putative class, will NOT seek any penalties in the event the Class is certified.

72. In addition, Plaintiffs propose a Sub-Class consisting of all current tenants, who reside at Gantry Park Landing.

73. The Sub-Class seeks certification of claims for declaratory and injunctive relief as described more fully below.

Class and Sub-Class Meet Requirements for Certification

74. The Class and Sub-Class are so numerous that joinder of all members is impracticable.

75. Although the exact number and identities of the members of the Class and Sub-Class are currently unknown to Plaintiff, it is reasonable to conclude that the practices complained of herein affect more than one thousand (500) current and former Gantry Park Landing tenants.

76. Nearly all factual, legal, and statutory issues that are raised in this Complaint are common to each of the members of the Class and Sub-Class and will apply uniformly to every member of the Class and Sub-Class.

77. The claims of the representative Plaintiffs are typical of the claims of each member of the Class.

78. Plaintiffs, like all other members of the Class, sustained damages arising from Defendant's fraudulent scheme to evade the rent stabilization laws.

79. The representative Plaintiffs and the members of the Class were, and are, similarly or identically harmed by the same unlawful, deceptive, unfair, systematic, and pervasive pattern of misconduct.

80. The claims of the representative Plaintiffs are typical of the claims of each member of the Sub-Class.

81. Plaintiffs, like all other members of the Sub-Class, are entitled to the same declaratory and injunctive relief as the members of the Sub-Class.

82. The Plaintiffs will fairly and adequately represent and protect the interests of the Class and Sub-Class.

83. There are no material conflicts between the claims of the representative Plaintiffs and the members of the Class and Sub-Class that would make class certification inappropriate.

84. The counsel selected to represent the Class and Sub-Class will fairly and adequately protect the interest of the Class and Sub-Class, and they are lawyers who have experience in class and complex litigation and are competent counsel for this class action litigation.

85. Counsel for the Class and Sub-Class will vigorously assert the claims of all members of the Class and Sub-Class.

86. Upon certification of the Class, Plaintiffs will forego any claim to any penalty, or treble damages, unless existing law is changed, or modified.

87. This action is properly maintained as a class action in that common questions of law and fact exist as to the members of the Class and Sub-Class and predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

- a. the interests of the members of the Class and Sub-Class in individually controlling the prosecution or defense of separate actions;
- b. the impracticability or inefficiency of prosecuting or defending separate actions;
- c. the extent and nature of any litigation concerning the controversy already commenced by or against members of the Class and Sub-Class;
- d. the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
- e. the difficulties likely to be encountered in the management of a class action.

88. Among the numerous questions of law and fact common to the Class and Sub-Class are:

- a. whether the Defendant acts or refuses to act on grounds generally applicable to the Plaintiff, the Class, and the Sub-Class;
- b. whether the Defendant has established a pattern, practice, or policy of misrepresenting legal regulated rents;
- c. whether Defendant has established a pattern, practice, or policy of overcharging rent;
- d. whether Defendant's practices, acts, and conduct violate the RSL and RSC;
- e. to what extent Plaintiffs and members of the Class are entitled to damages; and
- f. to what extent Plaintiffs and members of the Sub-Class are entitled to declaratory and injunctive relief.

COUNT ONE
VIOLATION OF THE RENT STABILIZATION LAWS AND REGULATIONS
(on behalf of the Class)

89. Plaintiffs re-allege and incorporate by reference the allegations in ¶¶ 1 thru 89 of this complaint.

90. At all times relevant hereto, apartments of Plaintiffs and the Class were subject to the provision of the RSL.

91. Defendant entered into leases with Plaintiffs and the Class, which misrepresented the amount of rent Defendant was legally entitled to charge and collect.

92. Defendant charged Plaintiffs and the Class rents more than the correct legal regulated rent

93. Defendant overcharged Plaintiffs and the members of the Class an amount equal to the difference between their monthly rents and the appropriate legal regulated rent-stabilized rents.

94. Plaintiffs and members of the Class are entitled to recover monetary damages from Defendant based on the unlawful overcharges, as well as an award of interest thereon.

COUNT TWO
VIOLATION OF THE RENT STABILIZATION LAWS AND REGULATIONS
(on behalf of the Sub-Class)

95. Plaintiffs re-allege and incorporate by reference the allegations in ¶¶ 1 thru 89 of this complaint.

96. A justiciable controversy exists between the parties in that, among other things, Plaintiffs and the members of the Sub-Class allege that their respective apartments are subject to rent stabilization coverage, pursuant to the RSL.

97. Defendant entered into leases with Plaintiffs and the members of the Sub-Class, which incorrectly, falsely, and illegally misrepresented the amount of rent Defendant was legally entitled to collect.

98. As described above, and upon information and belief, Defendant's conduct was wrongfully and unlawfully designed to deprive Plaintiffs and members of the Sub-Class of the protections of rent stabilization.

99. A justiciable controversy exists in that, upon information and belief, Defendant disputes that it acted unlawfully and believes the rent amounts it collected for its Gantry Park Landing units were somehow justifiable

100. Plaintiffs and members of the Sub-Class lack an adequate remedy at law.

101. By reason of the foregoing, Plaintiffs and members of the Sub-Class are entitled to a declaratory judgment adjudging and determining:

- a. the apartments of Plaintiffs and members of the Sub-Class are each subject to the RSL and RSC;
- b. Plaintiffs and members of the Sub-Class are each entitled to a rent-stabilized lease in a form promulgated by DHCR;
- c. the amount of the legal regulated rent for the apartments of Plaintiffs and members of the Sub-Class; and,
- d. Plaintiffs and members of the Sub-Class are not required to pay any rent increases unless and until legally permissible rent-stabilized lease offers are made to, and accepted by, Plaintiffs and members of the Sub-Class.

102. Plaintiffs and members of the Sub-Class are also entitled to reformation of their leases to represent the actual amount of rent Defendant is legally entitled to charge Plaintiffs and members of the Sub-Class.

COUNT THREE
DECLARATORY RELIEF
(on behalf of the Sub-Class)

103. Plaintiffs re-allege and incorporate by reference the allegations in ¶¶ 1 thru 89 of this complaint.

104. A justiciable controversy exists between the parties in that, among other things, Plaintiffs and members of the Sub-Class allege that their respective apartments are subject to rent stabilization coverage.

105. Notwithstanding the clear requirements of the RSL and RSC, Defendant has not provided Plaintiffs and members of the Sub-Class with rent-stabilized leases and/or rent-stabilized leases in the correct amounts, as required by law.

106. Moreover, as set forth in more detail above, and upon information and belief, Defendant's conduct was willful and designed to remove the apartments of Plaintiffs and members of the Sub-Class from the protections of rent stabilization.

107. Upon information and belief, Defendant disputes that it acted unlawfully and believes the rent amounts it collected for its Gantry Park Landing units were somehow justifiable

108. Plaintiffs and members of the Sub-Class lack an adequate remedy at law.

109. By reason of the foregoing, Plaintiffs and members of the Sub-Class are entitled to a declaratory judgment adjudging and determining:

- a. the apartments of Plaintiffs and members of the Sub-Class members are subject to the RSL and RSC and any purported deregulation by Defendant was invalid as a matter of law;
- b. Plaintiffs and members of the Sub-Class are each entitled to a rent-stabilized lease in a lease form promulgated by DHCR;
- c. the amount of the legal regulated rent for the apartments of Plaintiffs and members of the Sub-Class;

- d. any leases offered by Defendant to Plaintiffs and members of the Sub-Class are invalid and unlawful unless they are offered on lease forms and terms prescribed by DHCR; and
- e. Plaintiffs and members of the Sub-Class are not required to pay any rent increases unless and until legally permissible rent-stabilized lease offers are made to, and accepted by, said Plaintiffs and members of the Sub-Class.

PRAYER FOR RELIEF

WHEREFORE, and for the foregoing reasons, Plaintiffs prays to this Court for the following relief:

- A. Certifying the Class and Sub-Class proposed by Plaintiffs, appointing the Plaintiffs as representatives of the Class and Sub-Class; and appointing Plaintiffs' counsel as Class Counsel for the Class and Sub-Class;
- B. Appropriate money damages against Defendant resulting from its willful and wrongful violation of the RSL and RSC;
- C. Because Plaintiffs and members of the Sub-Class have no adequate remedy at law for Defendant's ongoing violations of the RSL and RSC, Plaintiffs require injunctive relief in order to undertake all appropriate and corrective remedial measures, including, but not limited to, appointing an independent individual or entity to audit and undertake an accounting of every apartment at Gantry Park Landing, and reforming leases to comply with the RSL and RSC, where necessary;
- D. Temporarily, preliminarily, and permanently enjoining Defendant from continuing to violate the RSL and RSC;
- E. A money judgment against Defendant for disgorgement of profits from fees earned as a direct and proximate result of rent overcharges;

- F. A money judgment against Defendant for judgment in the amount of Plaintiffs' attorneys' fees, costs and disbursements in an amount to be determined at a hearing or trial pursuant to CPLR Article 9; and
- G. Granting such other and further relief as this Court deems just and proper.

DATED: New York, New York
July 25, 2024

NEWMAN FERRARA LLP



By: _____

Lucas A. Ferrara
Roger A. Sachar Jr.
1250 Broadway, 27th Floor
New York, New York 10001
(212) 619-5400
lferrara@nflp.com
rsachar@nflp.com