

No. 23-1148

IN THE
Supreme Court of the United States

——
G-MAX MANAGEMENT, INC., *et al.*,
Petitioners,

v.

STATE OF NEW YORK, *et al.*,
Respondents.

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

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

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	ii
STATEMENT OF INTEREST OF AMICI CURIAE	1
SUMMARY OF THE ARGUMENT	2
ARGUMENT	4
I. THE PROVISIONS OF THE RSL, AS AMENDED BY THE HSTPA, SEVERELY LIMITS A PROPERTY OWNER'S USE OF ITS OWN PROPERTY FOR PRIVATE USE OR TO CONTROL WHO LIVES THERE	4
II. THE HSTPA PREVENTS OWNERS FROM CONVERTING THEIR PROPERTIES TO CONDOMINIUMS OR CO-OPS	8
CONCLUSION.....	10

TABLE OF AUTHORITIES

	Page(s)
Cases	
<u>1077 Manhattan Assoc., LLC v. Mendez</u> , 5 Misc. 3d 130(A), 798 N.Y.S.2d 714 (App. Term 2d Dep't 2004)	6
Statutes	
Housing Stability & Tenant Protection Act of 2019	1, 2, 3, 4, 5, 7, 8
New York City's Rent Stabilization Law.....	1, 2, 4, 5, 6, 7
Other Authorities	
http://ag.ny.gov/libraries- documents/offering-plan-database	8
https://zicklin.baruch.cuny.edu/wp- content/uploads/sites/10/2021/05/5. 5.2021_NYC-Condo- Conversion_Impact-of-the-Recent- Law-Change_May-5th-2021.pdf	9
Supreme Court Rule 37.2(a).....	1

STATEMENT OF INTEREST OF
AMICI CURIAE

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

The RSL, as amended by the HSTPA, places draconian limitations on SPONY members’ right to use their property for personal use, and deprives the SPONY members of any say in who resides at their property. Further, as a result of the HSTPA tenants are given a veto right as to whether a members’ property may be converted to a condominium or a co-op. As a result, the RSL is an unconstitutional taking of the property of SPONY members without just compensation. Accordingly, SPONY is filing this brief in support of the Petition for a Writ of Certiorari by G-Max Management, Inc., et al. and this Court should grant the Petition.¹

¹ Pursuant to Supreme Court Rule 37.2(a) of the Rules of this Court, amicus curiae timely provided notice of intent to file this brief to all parties. No counsel for any party authored this brief in whole or

SUMMARY OF THE ARGUMENT

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

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

Finally, the HSTPA increased to fifty one percent (51%) the number of tenants who must approve a conversion of a building to a co-op or condominium. As a result, the number of conversions has plummeted, and the City is being

in part and no entity or person, aside from amicus curiae, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

deprived of owner occupied housing which is often the first home young adults can purchase, and the building owners are deprived of a right to convert their property as they deem appropriate.

Accordingly, the petition should be granted and this Court review the HSTPA which has severe practical implications for the property owners within the City of New York.

ARGUMENT

I. THE PROVISIONS OF THE RSL, AS AMENDED BY THE HSTPA, SEVERELY LIMITS A PROPERTY OWNER'S USE OF ITS OWN PROPERTY FOR PRIVATE USE OR TO CONTROL WHO LIVES THERE

The RSL, as amended by the HSTPA, prohibits property owners whose lease with a tenant has expired from reclaiming an apartment for personal use except in the very limited circumstances of an “immediate and compelling necessity.” 2019 N.Y. Sess. Laws § 6458, Part I. In addition, a property owner is limited to occupying only one unit for personal use. 2019 N.Y. Sess. Laws §6458, Part I, Section 2. The HSTPA requirement of a “immediate and compelling necessity” was new requirement to the RSL.

As a result, a SPONY member may have a growing family and wish to expand the unit they are living in by utilizing an adjacent unit when the lease for that unit ends. The owner is not seeking to avoid the limitations on the rent that can be charged. The owner is simply trying to use his or her property for his or her family. The real-life practical experiences of SPONY members demonstrate how draconian the RSL, as amended by the HSTPA, is to small property owners in this regard.

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

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

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

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

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

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

Finally, KFT owns a building in Manhattan and would like to use a ground floor unit as a place to live for a Superintendent to manage the property. The unit that would work best for this purpose is occupied a tenant who owns a home outside of New York City where she spends most of her time. The unit is currently being used for storage.

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

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

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

II. THE HSTPA PREVENTS OWNERS FROM CONVERTING THEIR PROPERTIES TO CONDOMINIUMS OR CO-OPS

Prior to the HSTPA a property owner could convert its property to a condominium or co-op by securing purchase agreements for 15% of their apartments, either from existing tenants or outside buyers who would occupy units upon vacancy. However, the HSTPA increased the number of unit owners who must approve a conversion to either a condominium or a co-operative by purchasing their unites to 51% of existing tenants.

As a result of this change the number of conversions in New York City has decreased dramatically. Since the passage of HSTPA the number of offering plans submitted to the New York Attorney General for conversions has reached an all time low with a 75% decrease from the passage of the HSTPA. See <http://ag.ny.gov/libraries-documents/offering-plan-database>.

The decrease in offerings has a negative impact on the New York City's economy. First time buyers seeking home ownership experience a decrease in opportunities. Conversions provide many rental households in New York City with an opportunity to start accumulating wealth through price appreciation.

Further, conversions provide an economic boost to New York City. There is an increase in employment including the construction industry. In addition, there is increase in economic activity in professional services and an increase in governmental revenue. See generally https://zicklin.baruch.cuny.edu/wp-content/uploads/sites/10/2021/05/5.5.2021_NYC-Condo-Conversion_Impact-of-the-Recent-Law-Change_May-5th-2021.pdf

Finally, requiring a majority vote of the existing tenants effectively disenfranchises the owner from pursuing a course of conduct for his property that makes the most economic sense, the very essence of ownership.


CONCLUSION

This Court should grant Certiorari because the issues raised demonstrate the RSL, as amended by the HSTPA, has a serious detrimental impact on small property owners and has confiscated beneficial ownership of their property without compensation.

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Respectfully submitted,

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