

To be Argued by:
NATHAN M. FERST
(Time Requested: 30 Minutes)

APL 2020-00161
New York County Clerk's Index No. 156196/18
Appellate Division—First Department Docket No. 2019-3801

Court of Appeals
of the
State of New York

In the Matter of the Application of
WEST 58TH STREET COALITION, INC., 152 W 58TH OWNERS CORP.,
SUZANNE SILVERSTEIN, CARROLL THOMPSON, XIANGHONG DI
(STELLA) LEE, DORU ILIESIU and ELIZABETH EVANS-ILIESIU,
Respondents-Appellants,

For an Order and Judgment Pursuant to CPLR Article 78

– against –

THE CITY OF NEW YORK, BILL DE BLASIO,
Mayor of the City of New York,

Appellants-Respondents,

– and –

(For Continuation of Caption See Inside Cover)

**REPLY BRIEF FOR APPELLANTS-RESPONDENTS NEW HAMPTON,
LLC, JOHN PAPPAS, PAUL PAPPAS, B GENCO CONTRACTING
CORP., TMS PLUMBING & HEATING CORPORATION
AND BASS ELECTRICAL CORPORATION**

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and Bass Electrical Corporation*
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SCOTT M. STRINGER, in his official capacity as Comptroller
of the City of New York, THE CITY OF NEW YORK DEPARTMENT OF
HOMELESS SERVICES (“DHS”), THE NEW YORK CITY HUMAN
RESOURCES ADMINISTRATION (“HRA”), THE NEW YORK CITY
DEPARTMENT OF BUILDINGS (“DOB”), STEVEN BANKS, in his official
capacity as Commissioner of DHS and Commissioner of HRA, JACQUELINE
BRAY, in her official capacity as Deputy Commissioner of HRA, NEW
HAMPTON, LLC, JOHN PAPPAS, PAUL PAPPAS, B GENCO
CONTRACTING CORP., TMS PLUMBING & HEATING CORPORATION
and BASS ELECTRICAL CORPORATION,

Appellants-Respondents,

– and –

WESTHAB, INC.,

Respondent.

In the Matter of the Application of
WEST 58TH STREET COALITION, INC., 152 W 58TH OWNERS CORP.,
SUZANNE SILVERSTEIN, CARROLL THOMPSON, XIANGHONG DI
(STELLA) LEE, DORU ILIESIU and ELIZABETH EVANS-ILIESIU,

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For an Order and Judgment Pursuant to CPLR Article 78

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THE CITY OF NEW YORK, BILL DE BLASIO, Mayor of the City of New York,

Appellants-Respondents,

– and –

SCOTT M. STRINGER, in his official capacity as Comptroller of the City of New York, THE CITY OF NEW YORK DEPARTMENT OF HOMELESS SERVICES (“DHS”), THE NEW YORK CITY HUMAN RESOURCES ADMINISTRATION (“HRA”), THE NEW YORK CITY DEPARTMENT OF BUILDINGS (“DOB”),

STEVEN BANKS, in his official capacity as Commissioner of DHS and Commissioner of HRA, JACQUELINE BRAY, in her official capacity as Deputy Commissioner of HRA, NEW HAMPTON, LLC, JOHN PAPPAS, PAUL PAPPAS, B GENCO CONTRACTING CORP., TMS PLUMBING & HEATING CORPORATION and BASS ELECTRICAL CORPORATION,

Appellants-Respondents,

– and –

WESTHAB, INC.,

Respondent.

CORPORATE DISCLOSURE STATEMENT
PURSUANT TO RULE 500.1 (f)

Pursuant to Section 500.1(f) of the Rules of Practice of the New York Court of Appeals, counsel for **APPELLANTS-RESPONDENTS NEW HAMPTON, LLC, JOHN PAPPAS, PAUL PAPPAS, B GENCO CONTRACTING CORP., TMS PLUMBING & HEATING CORPORATION AND BASS ELECTRICAL CORPORATION** certifies that they have no corporate parents, subsidiaries or affiliates.

STATEMENT OF RELATED LITIGATION

There are no actions or proceedings pending in any court of this State related to this appeal at the time of filing this Brief.

Dated: March 19, 2021

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PRELIMINARY STATEMENT

Respondents-Respondents New Hampton, LLC, John Pappas, Paul Pappas; B Genco Contracting Corp., TMS Plumbing & Heating Corporation, and Bass Electrical Corporation hereby reply to the Supplement to Opening Brief of Respondents – Appellants.

Said Supplement to Opening Brief argues that:

(a) Appellants New Hampton, LLC, John Pappas, Paul Pappas, B Genco Contracting Corp., TMS Plumbing & Heating Corporation, and Bass Electrical Corporation failed to preserve for review by this Court the point that the directive in the August 13, 2020 Decision and Order of the Appellate Division, First Department appealed from that an evidentiary hearing be held by the Supreme Court of the State of New York, County of New York, constitutes an impermissible exercise in selective enforcement; and

(b) Appellants New Hampton, LLC, John Pappas, Paul Pappas, B Genco Contracting Corp., TMS Plumbing & Heating Corporation, and Bass Electrical Corporation failed have failed to demonstrate that such selective enforcement is contrary to law.

QUESTIONS PRESENTED

1. Is the question of whether or not the directive in the August 13, 2020 Decision and Order of the Appellate Division, First Department appealed from that an evidentiary hearing be held by the Supreme Court of the State of New York, County of New York, constitutes an impermissible exercise in selective enforcement properly before his Court?

Yes.

2. Is such selective enforcement is contrary to law?

Yes.

ARGUMENT

POINT I

THE DIRECTIVE OF THE APPELLATE DIVISION, FIRST DEPARTMENT THAT SUPREME COURT, NEW YORK COUNTY HOLD AN EVIDENTIARY HEARING IS AN IMPERMISSIBLE EXERCISE IN SELECTIVE ENFORCEMENT IS PROPERLY BEFORE THIS COURT

The Supplement to Opening Brief of Respondents – Appellants ignores the fact that it was the August 13, 2020 Decision and Order of the Appellate Division, First Department appealed from which, for the first time, directed that an evidentiary hearing be held by the Supreme Court of the State of New York,

County of New York. As such, no proceedings were or could have been held in the Appellate Division, First Department arguing the validity of such directive.

CPLR 4511(b) provides that a court may take judicial notice of federal, state, and foreign government acts, resolutions, ordinances, and regulations, including those of their officers, agencies, and governmental subdivisions but judicial notice has never been strictly limited to the constitutions, resolutions, ordinances, and regulations of government, and has been applied by case law to other public documents that are generated in a manner which assures their reliability. *Affronti v. Crosson*, 95 NY2d 713, 720 (2001).

This Court may – and, it is respectfully submitted, should – take judicial notice of the fact that of all of the Class A multiple dwellings in the “R-2” occupancy group configured in the same or similar manner as the subject building, it seems that the subject building alone, because it houses a stigmatized population, is singled out for a judicial evidentiary hearing concerning safety after issuance by the Department of Buildings of a Temporary Certificate of Occupancy, which is a matter of grave public concern to every owner and operator of realty in this State.

POINT II

SELECTIVE ENFORCEMENT IN THE MATTER AT BAR IS IMPERMISSIBLE

Respondents – Appellants argue that Appellants New Hampton, LLC, John Pappas, Paul Pappas, B Genco Contracting Corp., TMS Plumbing & Heating Corporation, and Bass Electrical Corporation failed have failed to demonstrate that the selective enforcement in the matter at is motivated by improper intent.

In *Beck v Town of Groton*, 2015 WL 1499506 (NDNY, April 1, 2015), the Court dealt with claims of selective enforcement of a local land use statute in violation of the right to free speech of the plaintiff therein. The Court found that the totality of the circumstances suggested that the defendant therein had acted with ill will and bad faith towards plaintiff.

In the matter at bar, the Supplement to Opening Brief of Respondents – Appellants does not refute the point that the singling out of the subject building for a judicial evidentiary hearing concerning safety constitutes prohibited selective enforcement because the subject building houses a stigmatized population. 303 West 42nd v. Klein, 46 NY2d 686 (1979), and this failure to deny what is, after all, a matter of public record, constitutes an admission to the truth of that allegation. CPLR 3018(a).

CONCLUSION

This Court should modify the First Department's order by (a) vacating the instruction remanding the proceeding for an evidentiary hearing, and (b) dismissing the petition with prejudice.

Dated: New York, New York
March 19, 2021

Nathan M. Ferst
Attorney for Appellants New
Hampton, LLC; John Pappas; Paul
Pappas; B Genco Contracting Corp.;
TMS Plumbing & Heating
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**NEW YORK STATE COURT OF APPEALS
CERTIFICATE OF COMPLIANCE**

I hereby certify pursuant to 22 NYCRR PART 500.1(j) that the foregoing brief was prepared on a computer using Microsoft Word system.

Type. A proportionally spaced typeface was used, as follows:

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Dated: March 19, 2021

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STATE OF NEW YORK)
)
COUNTY OF NEW YORK)

ss.:

**AFFIDAVIT OF SERVICE
BY OVERNIGHT FEDERAL
EXPRESS NEXT DAY AIR**

I, Tyrone Heath, 2179 Washington Avenue, Apt. 19, Bronx, New York 10457, being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at the address shown above.

On March 19, 2021

deponent served the within: **REPLY BRIEF FOR APPELLANTS-RESPONDENTS
NEW HAMPTON, LLC, JOHN PAPPAS, PAUL
PAPPAS, B GENCO CONTRACTING CORP., TMS
PLUMBING & HEATING CORPORATION AND BASS
ELECTRICAL CORPORATION**

upon:

SEE SERVICE LIST ATTACHED

the address(es) designated by said attorney(s) for that purpose by depositing 3 true copy(ies) of same, enclosed in a properly addressed wrapper in an Overnight Next Day Air Federal Express Official Depository, under the exclusive custody and care of Federal Express, within the State of New York.

Sworn to before me on March 19, 2021



MARIA MAISONET

Notary Public State of New York

No. 01MA6204360

Qualified in Queens County

Commission Expires Apr. 20, 2021



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