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September 25, 2019

VIA FEDERAL EXPRESS

New York State Court of Appeals
Clerk's Office
20 Eagle Street
Albany, New York 12207
Attn: John P. Asiello, Chief Clerk
and Legal Counsel to the Court

Re: Elizabeth Reich & Stanlee Brimberg, Plaintiffs/Appellants
adv. Belnord Partners, LLC & Extell Belnord, LLC
Index No. 159841/16

Mr. Asiello:

We represent the Plaintiffs/Appellants Elizabeth Reich and Stanlee Brimberg in the above captioned action, and pursuant to your instructions in your letter dated September 17, 2019, are respectfully submitting this supplemental letter brief concerning the impact of the Housing Stability and Tenant Protection Act of 2019 ("L 2019, ch 6") on this appeal. We have fully addressed this in three parts of our appellate brief, so rather than be repetitive, will provide a brief summary below:

I. The Overcharge under L 2019, ch 6 (pp.19-21 of Appellants' Brief)

- L 2019, ch 6 applies to this case because it was and is still pending when the law went into effect in June 2019. See NYC Admin Code §26-516(7)[“This act shall take effect immediately and shall apply to any claims pending or filed on and after such date”]. Moreover, subsequent to the submission of Appellants' brief in this appeal, L 2019, ch 6 was applied by the Appellate Division First Department to a class action overcharge case involving the same issue here – overcharges based on a landlord's improper destabilization of apartments while in receipt of J-51 tax benefits, with the only issue left to be resolved in the class action being the methodology in determining the amount of the overcharge – in the case entitled Dugan v. London Terrace Gardens, LP, ___ N.Y.S.2d ___, 2019 WL 4439346 (1 Dept. 2019). Lastly, L 2019, ch 6 is also applicable because it is remedial in nature, and therefore applied retroactively. See Decordova v. Bennett, 32 A.D.2d 959, 303 N.Y.S.2d 8 (2nd Dept. 1969); In re Marino S., 100 N.Y.2d (1969); Chassen v. Chatsworth, LLC, 303 A.D.2d 609, 756 N.Y.S.2d 550 (1st Dept. 2003).

- L 2019, ch 6 confirms and states more powerfully than the prior law that: an illegal base date rent cannot be used in determining an overcharge claim; states more explicitly that a tenant can go back even before the statute of limitations period of six years from the filing of an overcharge complaint to examine the rental history for the apartment and to set a base date rent; that a rent registration statement which does not contain a reliable rent figure cannot be relied upon, and that one can consider the legality of a charged rent in light of all available evidence, including unexplained increases (here, Appellants' rent went from being not registered to approximately \$20,000 a month, which was based on the prior charged illegal destabilized rent). See NYC Admin Code §§26-516 5(g-i), 26-516 4(a)2.
- L 2019, ch 6 permits Appellants to recover overcharges for a period of six years before the filing of their overcharge complaint (the old law allowed a four year recovery period). See CPLR 213-a.

II. Award of Legal Fees (pp. 28-29 of Appellants' Brief)

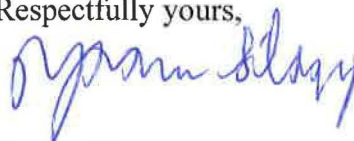
An award of legal fees to a tenant who prevails on an overcharge claim is now, under L 2019, ch 6, mandatory instead of discretionary. L 2019, ch 6 states: "An owner found to have overcharged **shall** be assessed the reasonable costs and attorneys fees of the proceeding..."[Emphasis Added]. See NYC Admin Code §26-516 4(a)(4). The old law with the same cite stated: An owner found to have overcharged **may** be assessed the reasonable costs and attorney's fees of the proceeding...[Emphasis Added]. Therefore, if this Court finds an overcharge, legal fees should be awarded to Appellants on this basis.

III Treble Damages

It is now easier for a tenant to be awarded treble damages on their overcharge claims, as under L 2019, ch 6, a landlord's voluntary adjustment of the rent will no longer be considered as evidence that an overcharge was not willful.

Lastly, this Court should decide all the issues as detailed above in the first instance on this appeal based on the applicability of L 2019, ch 6 to this appeal (see point I), because such application involves only statutory interpretation as opposed to issues of facts, and for reasons of judicial economy. Thank you for your consideration in this matter.

Respectfully yours,



Yoram Silagy

cc: Rosenberg & Estis, PC
Attorneys for Defendants-Respondents
Attn: Deborah Riegel

AFFIDAVIT OF SERVICE BY REGULAR MAIL

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Lorraine Catalano, being duly sworn, deposes and says:

I am over 18 years-old, am employed by Vernon & Ginsburg, LLP, attorneys for plaintiffs-appellants, and I am not a party to this action.

On September 26, 2019 I served a true copy of the attached Letter to New York State Court of Appeals dated September 25, 2019 by depositing three (3) true copies thereof in a properly addressed post-paid envelope, in an official depository of the U.S. Postal Service within the State of New York, addressed to the attorneys at the address below.

TO: Rosenberg & Estis, PC
733 Third Avenue, 14th Floor
New York, NY 10017-3204
Attn: Deborah E. Riegel


LORRAINE CATALANO

Sworn to before me on
September 26, 2019


NOTARY PUBLIC

YORAM SILAGY
Notary Public, State of New York
No. 02SI4982608
Qualified in New York County
Commission Expires June 3, 2023