

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

A B. GILBERT, on behalf of himself and all others
similarly situated,

Index No.: 152618/2022

Plaintiff,

ANSWER

-against-

24th STREET LIC LLC,

Defendant.

PLEASE TAKE NOTICE, that Defendant 24th STREET LIC LLC (“Defendant”), by its attorneys, Belkin Burden Goldman, LLP, alleges as follows as and for its Answer to the Complaint of A B. GILBERT, on behalf of himself and all others similarly situated (“Plaintiff”), dated March 28, 2022 (the “Complaint”).

1. Defendant admits the allegations contained in paragraph 1 of the Complaint.

2. Paragraph 2 of the Complaint calls for legal conclusions, and accordingly, Defendant will not respond to such allegation. This Court is referred to the law referenced in paragraph 2 of the Complaint for its terms and legal effect. To the extent that a response is required to paragraph 2 of the Complaint, then Defendant admits the Defendant was and/or is a recipient of RPTL § 421-a tax benefits, and denies all other allegations in their entirety.

3. Defendant denies the allegations contained in paragraph 3 of the Complaint.

4. Paragraph 4 of the Complaint calls for legal conclusions, and accordingly, Defendant will not respond to such allegation. This Court is referred to the law referenced in paragraph 4 of the Complaint for its terms and legal effect. To the extent that a response is required to paragraph 4 of the Complaint, then Defendant denies such allegations in their entirety.

5. Defendant denies the allegations contained in paragraph 5 of the Complaint and instead refers the Court to the document referenced therein for its true meaning.

6. Defendant denies the allegations contained in paragraph 6 of the Complaint.

7. Defendant denies the allegations contained in paragraph 7 of the Complaint.

8. Defendant denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 8 of the Complaint.

9. Defendant denies the allegations contained in paragraph 9 of the Complaint.

10. Paragraph 10 of the Complaint calls for legal conclusions, and accordingly, Defendant will not respond to such allegation. This Court is referred to the law referenced in paragraph 10 of the Complaint for its terms and legal effect. To the extent that a response is required to paragraph 10 of the Complaint, then Defendant denies such allegations in their entirety.

11. Paragraph 11 of the Complaint calls for legal conclusions, and accordingly, Defendant will not respond to such allegation. This Court is referred to the law referenced in paragraph 11 of the Complaint for its terms and legal effect. To the extent that a response is required to paragraph 11 of the Complaint, then Defendant denies such allegations in their entirety.

12. Defendant denies the allegations contained in paragraph 12 of the Complaint.

13. Paragraph 13 of the Complaint calls for legal conclusions, and accordingly, Defendant will not respond to such allegation. This Court is referred to the law referenced in paragraph 13 of the Complaint for its terms and legal effect. To

the extent that a response is required to paragraph 13 of the Complaint, then Defendant denies such allegations in their entirety Defendant denies the allegations contained in paragraph 13 of the Complaint.

14. Defendant denies the allegations contained in paragraph 14 of the Complaint.

15. Defendant denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 15 of the Complaint.

16. Defendant denies the allegations contained in paragraph 16 of the Complaint and instead refers the Court to the document referenced therein for its true meaning

17. Defendant denies the allegations contained in paragraph 17 of the Complaint.

18. Defendant denies the allegations contained in paragraph 18 of the Complaint.

19. Defendant denies the allegations contained in paragraph 19 of the Complaint.

20. Defendant denies the allegations contained in paragraph 20 of the Complaint and instead refers the Court to the document referenced therein for its true meaning.

21. Defendant denies the allegations contained in paragraph 21 of the Complaint.

22. Defendant denies the allegations contained in paragraph 22 of the Complaint.

23. Defendant denies the allegations contained in paragraph 23 of the Complaint.

24. Defendant denies the allegations contained in paragraph 24 of the Complaint.

25. Defendant denies the allegations contained in paragraph 25 of the Complaint.

26. Defendant denies the allegations contained in paragraph 26 of the Complaint.

27. Defendant denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 27 of the Complaint.

28. Defendant denies the allegations contained in paragraph 28 of the Complaint and instead refers the Court to the document referenced therein for its true meaning.

29. Defendant denies the allegations contained in paragraph 29 of the Complaint and instead refers the Court to the document referenced therein for its true meaning.

30. Defendant denies the allegations contained in paragraph 30 of the Complaint.

31. Defendant denies the allegations contained in paragraph 31 of the Complaint.

32. Defendant denies the allegations contained in paragraph 32 of the Complaint.

33. Defendant admits the allegations contained in paragraph 33 of the Complaint.

34. Defendant denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 34 of the Complaint as to the term “registered owner,” but otherwise admits that Defendants is the owner of the property.

35. Defendant denies the allegations contained in paragraph 35 of the Complaint.

36. Defendant denies the allegations contained in paragraph 36 of the Complaint.

37. Defendant denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 37 of the Complaint as to the term “Portfolio.”

38. Paragraph 38 of the Complaint calls for legal conclusions, and accordingly, Defendant will not respond to such allegation. This Court is referred to the law referenced in paragraph 38 of the Complaint for its terms and legal effect. To the extent that a response is required to paragraph 38 of the Complaint, then Defendant denies such allegations in their entirety.

39. Paragraph 39 of the Complaint calls for legal conclusions, and accordingly, Defendant will not respond to such allegation. This Court is referred to the law referenced in paragraph 39 of the Complaint for its terms and legal effect. To the extent that a response is required to paragraph 39 of the Complaint, then Defendant denies such allegations in their entirety.

40. Paragraph 40 of the Complaint calls for legal conclusions, and accordingly, Defendant will not respond to such allegation. This Court is referred to the law referenced in paragraph 40 of the Complaint for its terms and legal effect. To the extent that a response is required to paragraph 40 of the Complaint, then Defendant denies such allegations in their entirety.

41. Paragraph 41 of the Complaint calls for legal conclusions, and accordingly, Defendant will not respond to such allegation. This Court is referred to the law referenced in paragraph 41 of the Complaint for its terms and legal effect. To

the extent that a response is required to paragraph 41 of the Complaint, then Defendant denies such allegations in their entirety.

42. Paragraph 42 of the Complaint calls for legal conclusions, and accordingly, Defendant will not respond to such allegation. This Court is referred to the law referenced in paragraph 42 of the Complaint for its terms and legal effect. To the extent that a response is required to paragraph 42 of the Complaint, then Defendant denies such allegations in their entirety.

43. Paragraph 43 of the Complaint calls for legal conclusions, and accordingly, Defendant will not respond to such allegation. This Court is referred to the law referenced in paragraph 43 of the Complaint for its terms and legal effect. To the extent that a response is required to paragraph 43 of the Complaint, then Defendant denies such allegations in their entirety.

44. Paragraph 44 of the Complaint calls for legal conclusions, and accordingly, Defendant will not respond to such allegation. This Court is referred to the law referenced in paragraph 44 of the Complaint for its terms and legal effect. To the extent that a response is required to paragraph 44 of the Complaint, then Defendant denies such allegations in their entirety.

45. Paragraph 45 of the Complaint calls for legal conclusions, and accordingly, Defendant will not respond to such allegation. This Court is referred to the law referenced in paragraph 45 of the Complaint for its terms and legal effect. To the extent that a response is required to paragraph 45 of the Complaint, then Defendant denies such allegations in their entirety.

46. Paragraph 46 of the Complaint calls for legal conclusions, and accordingly, Defendant will not respond to such allegation. This Court is referred to the law referenced in paragraph 46 of the Complaint for its terms and legal effect. To

the extent that a response is required to paragraph 46 of the Complaint, then Defendant denies such allegations in their entirety.

47. Paragraph 47 of the Complaint calls for legal conclusions, and accordingly, Defendant will not respond to such allegation. This Court is referred to the law referenced in paragraph 47 of the Complaint for its terms and legal effect. To the extent that a response is required to paragraph 47 of the Complaint, then Defendant denies such allegations in their entirety.

48. Paragraph 48 of the Complaint calls for legal conclusions, and accordingly, Defendant will not respond to such allegation. This Court is referred to the law referenced in paragraph 48 of the Complaint for its terms and legal effect. To the extent that a response is required to paragraph 48 of the Complaint, then Defendant denies such allegations in their entirety.

49. Paragraph 49 of the Complaint calls for legal conclusions, and accordingly, Defendant will not respond to such allegation. This Court is referred to the law referenced in paragraph 49 of the Complaint for its terms and legal effect. To the extent that a response is required to paragraph 49 of the Complaint, then Defendant denies such allegations in their entirety.

50. Paragraph 50 of the Complaint calls for legal conclusions, and accordingly, Defendant will not respond to such allegation. This Court is referred to the law referenced in paragraph 50 of the Complaint for its terms and legal effect. To the extent that a response is required to paragraph 50 of the Complaint, then Defendant denies such allegations in their entirety.

51. Paragraph 51 of the Complaint calls for legal conclusions, and accordingly, Defendant will not respond to such allegation. This Court is referred to the law referenced in paragraph 51 of the Complaint for its terms and legal effect. To the extent that a response is required to paragraph 51 of the Complaint, then

Defendant admits the Defendant was and/or is a recipient of RPTL § 421-a tax benefits, and denies all other allegations in their entirety.

52. Paragraph 52 of the Complaint calls for legal conclusions, and accordingly, Defendant will not respond to such allegation. This Court is referred to the law referenced in paragraph 52 of the Complaint for its terms and legal effect. To the extent that a response is required to paragraph 52 of the Complaint, then Defendant admits the Defendant was and/or is a recipient of RPTL § 421-a tax benefits, and denies all other allegations in their entirety.

53. Defendant denies the allegations contained in paragraph 53 of the Complaint.

54. Defendant denies the allegations contained in paragraph 54 of the Complaint.

55. Defendant denies the allegations contained in paragraph 55 of the Complaint.

56. Defendant denies the allegations contained in paragraph 56 of the Complaint.

57. Defendant denies the allegations contained in paragraph 57 of the Complaint.

58. Defendant denies the allegations contained in paragraph 58 of the Complaint.

59. Defendant denies the allegations contained in paragraph 59 of the Complaint.

60. Defendant denies the allegations contained in paragraph 60 of the Complaint.

61. Defendant denies the allegations contained in paragraph 61 of the Complaint.

62. Defendant denies the allegations contained in paragraph 62 of the Complaint.

63. Defendant denies the allegations contained in paragraph 63 of the Complaint.

64. Defendant denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 64 of the Complaint.

65. Defendant denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 65 of the Complaint.

66. Defendant denies the allegations contained in paragraph 66 of the Complaint.

67. Defendant denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 67 of the Complaint.

68. Defendant denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 68 of the Complaint.

69. Defendant denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 69 of the Complaint.

70. Defendant denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 70 of the Complaint.

71. Defendant denies the allegations contained in paragraph 71 of the Complaint.

72. Defendant denies the allegations contained in paragraph 72 of the Complaint.

73. Defendant denies the allegations contained in paragraph 73 of the Complaint.

74. Defendant denies the allegations contained in paragraph 74 of the Complaint.

75. Defendant denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 75 of the Complaint.

76. Defendant denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 76 of the Complaint.

77. Defendant denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 77 of the Complaint.

78. Defendant denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 78 of the Complaint.

79. Defendant denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 79 of the Complaint.

80. Defendant denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 80 of the Complaint.

81. Defendant denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 81 of the Complaint.

82. Defendant denies the allegations contained in paragraph 82 of the Complaint.

83. Defendant denies the allegations contained in paragraph 83 of the Complaint.

84. Defendant repeats and re-alleges each of the allegations set forth in paragraphs 1 through 83 of this Answer, as if more fully set forth herein.

85. Paragraph 85 of the Complaint calls for legal conclusions, and accordingly, Defendant will not respond to such allegation. This Court is referred to the law referenced in paragraph 85 of the Complaint for its terms and legal effect. To the extent that a response is required to paragraph 85 of the Complaint, then Defendant denies such allegations in their entirety.

86. Defendant denies the allegations contained in paragraph 86 of the Complaint.

87. Defendant denies allegations contained in paragraph 87 of the Complaint.

88. Defendant denies allegations contained in paragraph 88 of the Complaint.

89. Defendant denies allegations contained in paragraph 89 of the Complaint.

90. Defendant repeats and re-alleges each of the allegations set forth in paragraphs 1 through 89 of this Answer, as if more fully set forth herein.

91. Defendant denies the allegations contained in paragraph 91 of the Complaint.

92. Defendant denies the allegations contained in paragraph 92 of the Complaint.

93. Defendant denies the allegations contained in paragraph 93 of the Complaint.

94. Defendant denies the allegations contained in paragraph 94 of the Complaint.

95. Defendant denies the allegations contained in paragraph 95 of the Complaint.

96. Defendant denies the allegations contained in paragraph 96 of the Complaint.

97. Defendant denies the allegations contained in paragraph 97 of the Complaint.

98. Defendant repeats and re-alleges each of the allegations set forth in paragraphs 1 through 97 of this Answer, as if more fully set forth herein.

99. Defendant denies the allegations contained in paragraph 99 of the Complaint.

100. Defendant denies the allegations contained in paragraph 100 of the Complaint.

101. Defendant denies the allegations contained in paragraph 101 of the Complaint.

102. Defendant admits the allegations contained in paragraph 102.

103. Defendant denies the allegations contained in paragraph 103 of the Complaint.

104. Defendant repeats and re-alleges each of the allegations set forth in paragraphs 1 through 103 of this Answer, as if more fully set forth herein.

105. Defendant denies the allegations contained in paragraph 103 of the Complaint.

106. Defendant denies the allegations contained in paragraph 106 of the Complaint to the extent that Plaintiff is entitled to legal fees.

FACTS APPLICABLE TO ALL AFFIRMATIVE

DEFENSES

107. Pursuant to *In the Matter of Regina Metropolitan Co., LLC v. New York State Div. of Housing and Comm. Renewal*, et al., 2020 NY Slip Op 02127 (2020), the Court of Appeals held that the Housing Stability and Tenant Protection Act of 2019 (“HSTPA”) cannot be applied retroactively to any overcharge claims that occurred prior to the enactment of the HSTPA on June 14, 2019 (the “Effective Date”).

108. Therefore, for any alleged overcharges that occurred prior to the Effective Date, the pre-HSTPA law applies.

109. Pre-HSTPA, Section 2520.6(e) of the Rent Stabilization Code (“RSC”) defined “legal regulated rent” as “[t]he rent charged on the base date set forth in

subdivision (f) of this section, plus any subsequent lawful increases and adjustments.”

Section 26-516(a)(2) of the Rent Stabilization Law (“RSL”) states:

A complaint under this subdivision shall be filed . . .
. . . within four years of the first overcharge alleged
and no determination of an overcharge and no award
of calculation of an award of the amount of an
overcharge may be based upon an overcharge having
occurred more than four years before the complaint
is filed This paragraph shall preclude
examination of the rental history of the housing
accommodation prior to the four-year period
preceding the filing of a complaint pursuant to this
subdivision.

110. RSC § 2526.1(a)(3)(i) addresses the determination of the legal regulated rent in a rent overcharge complaint, as follows:

The legal regulated rent for purposes of determining an overcharge shall be deemed to be the rent *charged on the base date*, plus in each case, any subsequent lawful increases or adjustments [emphasis supplied].

See also, CPLR § 213-a

111. CPLR § 213-a also addresses the time frame within which a rent overcharge claim can be asserted in court. Pre-HSTPA, CPLR § 213-a provided,

An action on a residential rent overcharge shall be commenced within four years of the first overcharge alleged and no determination of an overcharge and no award of calculation of an award of the amount of any overcharge may be based upon an overcharge having occurred more than four years before the action is commenced. This section shall preclude examination of the rental history of the housing accommodation prior to the four-year period immediately preceding the commencement of the action. (Emphasis added.)

112. Section 2520.6(f) of the RSC defined “base date” as the date which is the most recent of:

(1) the date four years prior to the date of the filing of a fair market rent appeal or rent overcharge complaint;

(2) the date on which the housing accommodation first became subject to the RSL; or

(3) April 1, 1984, for complaints filed on or before March 31, 1988 for housing accommodations for which initial registrations were required to be filed by June 30, 1984, and for which a timely challenge was not filed.

113. Pursuant to *Regina*, the Court of Appeals therefore found that the base date for rent overcharge complaints was the earlier of: (i) four years prior to interposing a rent overcharge complaint; or (ii) for years prior to the enactment of the HSTPA.

114. Thus, the base date for determining whether an overcharge occurred is four years prior to the filing of the overcharge action, or, at most four years prior to the Effective Date (the “Base Date”).

115. Plaintiff’s Complaint is predicated upon the allegations that the rent for the Apartment was higher than the rent allowable under the RSL.

116. Plaintiff incorrectly alleges that the pre-Base Date rent should be reviewed. Pursuant to *Regina*, the proper look back must be limited to the Base Date.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

117. All rents which Plaintiff was charged since the inception of their respective tenancies have been lawful.

118. As Plaintiff was not overcharged, Plaintiff's first, second, third and fourth causes of action must be dismissed.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

119. All lease renewal offers provided to Plaintiff provided for the payment of lawful rents.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

120. There has been no rent overcharge or any improper conduct by the Defendant.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

121. Plaintiff's claims are barred by the doctrine of estoppel.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

122. Plaintiff waived any claim(s) he may have had to seek damages or other relief for their claims.

123. Plaintiff waited many years before commencing this action seeking a declaration that Plaintiffs were overcharged.

124. By reason thereof, the claims for equitable relief are barred by the doctrine of laches.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

125. Plaintiff's claims are time-barred as this action has been commenced after the expiration of the applicable statute of limitations.

126. Accordingly, the Complaint must be dismissed in its entirety.

AS AN FOR A SEVENTH AFFIRMATIVE DEFENSE

127. Any award of retroactive damages would violate Defendant's rights under the United States Constitution and the New York State Constitution.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

128. Defendant properly relied upon duly promulgated provisions, rules, guidelines, and/or opinions of the Rent Stabilization Code, DHCR and/or HPD in setting the rents for Plaintiff's respective apartments.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

129. Plaintiff is not entitled to retroactive remedies or relief.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

130. Any award of damages or other relief would cause Plaintiff to receive a windfall.

AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE

131. The Complaint fails to state a cause of action upon which relief may be granted.

132. Therefore, the Complaint should be dismissed in its entirety.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

133. Joinder of all plaintiffs having claims is practicable.

134. Individual claims, questions of law and fact predominate over common claims and questions.

135. The claims of the purported representative party is not typical.

136. A class action is not superior to other available methods for adjudication of the controversy and parties' claims and defenses.

137. Plaintiff is not entitled to have this action certified as a class action.

AS AND FOR THE FIRST COUNTERCLAIM

138. Defendant repeats and re-alleges each of the allegations set forth in paragraphs 1 through 137 of this Answer, as if more fully set forth herein.

139. Upon information and belief, pursuant to the lease and New York Real Property Law § 234 and/or CPLR 909, Defendant is entitled to recover its costs, expenses and attorneys' fees incurred herein, to the extent such fees are recoverable in this action.

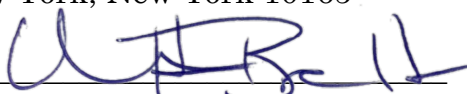
WHEREFORE, Defendant requests that this Court issue an Order and Judgment:

- (a) Dismissing the Complaint in its entirety and with prejudice;
- (b) Awarding Defendant a money judgment for attorneys' fees incurred by Defendant in this action; and
- (c) Granting other and further relief to Defendant as the Court deems just and proper.

Dated: New York, New York
May 20, 2022

Yours, etc.

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