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United States Court of Appeals, Second Circuit.

In re Mary Veronica SANTIAGO-**MONTEVERDE**.
Mary Veronica Santiago-**Monteverde**, Debtor-Appellant,
v.
John S. **Pereira**, Trustee-Appellee.

No. 12-

4131

-cv.

August 27, 2013.

On Appeal from the United States District Court for the Southern District of New York

Brief of New York City Bankruptcy Assistance Project as **Amicus Curiae in Support of Debtor-Appellant and Urging Reversal**

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***i Corporate Disclosure Statement**




Pursuant to [Federal Rule of Appellate Procedure 29\(c\)\(1\)](#), the undersigned counsel certifies that **amicus curiae** New York City Bankruptcy Assistance Project is a unit of Legal Services NYC, a 501(c)(3) organization located at 40 Worth Street, Suite 606, New York, NY 10013. As such, neither the New York City Bankruptcy Assistance Project nor Legal Services NYC has a parent corporation or any shareholders.

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***1 PRELIMINARY STATEMENT**

The New York City Bankruptcy Assistance Project appears as *amicus curiae*¹ pursuant to Fed. R. App. P. 29 and Local Rule 29.1 to urge the Court to reverse the District Court's order granting the Chapter 7 Trustee's application to strike the Debtor's claimed exemption for the value of a New York City rent-stabilized lease. Allowing a trustee to assign a rent-stabilized tenant's right to be free from a coerced eviction would eviscerate the protections of the New York rent stabilization rules for Chapter 7 debtors.²

Mary Santiago-Monteverde has lived in her apartment in the Alphabet City section of lower Manhattan for over forty years. During that time, she has dutifully paid her rent. When her husband died in June 2011, Ms. Santiago was unable to pay her debts and filed for Chapter 7 bankruptcy. Instead of receiving a fresh start, Ms. Santiago is confronted by an agreement between a bankruptcy trustee and her landlord to cause the involuntary surrender of her apartment.

Such an attempt is prohibited under applicable non-bankruptcy law, as any coerced agreement to surrender a rent-stabilized apartment is void. The lower *2 courts erred in implicitly allowing the Trustee to assist the landlord's *ultra vires* attempt to coercively evict Ms. Santiago. Under New York City statutes, Ms. Santiago's rights under the rent-stabilization regime are not property rights that can be sold; they are personal rights. Moreover, even if the rent-stabilization rights were property rights, they are exempt, and the Trustee is not authorized to administer them.

STATEMENT OF INTEREST

The New York City Bankruptcy Assistance Project (the "Assistance Project") provides free bankruptcy assistance to low-income residents of NYC, holding weekly workshops and helping debtors prepare and file Chapter 7 petitions. If Chapter 7 trustees are permitted to coerce rent-stabilized tenants to surrender their apartments, the Assistance Project's ability to assist low-income New Yorkers in achieving financial stability and a fresh start will be hindered.

Tenants' occupancy and renewal rights under the rent-stabilization regime are not assignable property rights, but these rights have tremendous practical value to the individuals who live in rent-stabilized apartments, most of whom struggle to pay even below-market rents.³ If the occupancy and renewal rights become part of *3 a bankruptcy estate, there is no reason why every Chapter 7 trustee will not choose to assign rent-stabilized debtors' leases and the debtors' statutory rent-stabilization rights to their landlords, despite the prohibition against coercive evictions.

The Assistance Project's interest is straightforward. The outcome of this case will affect all individual debtors and potential debtors under the Bankruptcy Code who also benefit from New York City's decades-old rent-stabilization regime. This case is therefore critical to the people the Assistance Project serves: low-income individuals who rely on the Bankruptcy Code's protection to avoid complete dependency on public benefits or even homelessness. Because an appellate decision authorizing the assignment of debtors' rent-stabilization rights could have disastrous effects on low-income individuals' ability to file for bankruptcy, the Assistance Project urges the Court to reverse the District Court's order striking Ms. Santiago's exemption.

STATEMENT OF THE ISSUE

May the Chapter 7 Trustee administer the debtor's right to renewal of her lease and the right to occupy her apartment at a rent-stabilized rate, thereby assisting the landlord's attempt to coercively evict the debtor from her home in direct contravention of the New York City rent-stabilization statutory scheme?

***4 ARGUMENT**

I. The Bankruptcy Code and the Rent Stabilization Code, taken together, prohibit the landlord from forcibly evicting Ms. Santiago.⁴

The Rent Stabilization Code prohibits landlords from coercing a tenant into surrendering an apartment,⁵ and no provision or policy of the Bankruptcy Code allows the Trustee to disregard state law.⁶ Furthermore, any agreement between a landlord and tenant to cause the surrender of a rent-stabilized apartment is void if the tenant is being displaced under coercion or duress.⁷

Although the Rent Stabilization Code allows a tenant, in some instances, to agree with a landlord to accept a payment in exchange for a settlement of all claims and the surrender of the apartment, agreements to surrender are enforceable only *5 when they are fully voluntary.⁸ Where there is any indication of bad faith, overreaching on the part of the landlord, coercion, or duress, courts refuse to enforce surrender agreements.⁹

Ms. Santiago is not voluntarily agreeing to surrender her apartment. Her landlord is attempting to force her surrender in violation of the Rent Stabilization Code.¹⁰ While the Trustee's attempt to assign Ms. Santiago's rights may, *arguendo*, be effective, the Trustee is substantively supporting the landlord's unlawful attempt to coercively evict Ms. Santiago. The Trustee is attempting to use a statutory regime intended to protect tenants from eviction to extract value for creditors unavailable outside of bankruptcy. The Bankruptcy Code does not immunize a trustee's legally wrongful acts, and the Court must not approve the Trustee's participation in an unlawful coerced eviction. Further, allowing the Trustee to participate in an unlawful coerced eviction is an abuse of discretion by the lower courts.¹¹

Even if the Trustee and the landlord enter into an agreement to force the surrender of the apartment, such an agreement is void under governing non- *6 bankruptcy law.¹² The landlord and Trustee's proposed transaction would be void outside of bankruptcy. The Bankruptcy Code does not modify the landlord's rights and obligations under the Rent Stabilization Law,¹³ and the Trustee may not violate non-bankruptcy law.¹⁴ The lower courts erred by implicitly authorizing the Trustee to facilitate the landlord's improper eviction.

If the Bankruptcy Code is wrongly interpreted to provide an exception to the Rent Stabilization Code's prohibition of coercive eviction, Chapter 7 trustees will find themselves selling the occupancy rights of virtually every rent-stabilized Chapter 7 filer to that tenant's landlord. A Chapter 7 trustee must marshal assets for the benefit of the unsecured creditors.¹⁵ If an asset of the estate has value and can be sold, a Chapter 7 trustee must sell it for the benefit of the unsecured creditors.¹⁶ The effect of allowing the proposed transaction in this case, combined *7 with the duties of a Chapter 7 trustee, will lead to the evisceration of rent-stabilization rights in virtually all Chapter 7 cases in New York City.

At least a million New Yorkers¹⁷ who benefit from the rent-stabilization regime may be able to get a discharge, but the price will be the loss of their rent-stabilized homes, leaving them to find alternative housing "at market," to leave the City, or to become homeless. This result violates both the purposes and the provisions of the rent-stabilization regime and the purpose and operation of the bankruptcy laws. Instead of permitting coercive evictions, the Court should read the Bankruptcy Code and the Rent Stabilization Code in harmony, upholding the protections of both regimes.¹⁸

II. Rent-stabilization rights are personal rights, not property rights, and the Trustee cannot administer them as part of the bankruptcy estate.

A tenant's statutory rights under the rent-stabilization regime are not property rights. A rent-stabilized tenant's rights come from two sources: (i) the rent-stabilized lease and (ii) the Rent Stabilization Law and Rent Stabilization Code.¹⁹ Assuming, *arguendo*, that a rent-stabilized lease is an “unexpired lease” within the meaning of 11 U.S.C. § 365, which may either be assumed or rejected, the rights created by the rent-stabilization laws are independent personal rights.²⁰

The tenant has two major rights that arise from the Rent Stabilization Law and Rent Stabilization Code: first, **the right to renew** the lease at a rent-stabilized rate;²¹ and second, if the landlord fails to renew the lease, **the right to occupy** the apartment on the same terms.²² These rights are created by statute, not by the lease, i.e., they are statutory, not contractual. When the tenant remains in the apartment pursuant to a lease, the lease rights and the statutory rights appear to be intertwined. But the tenant's statutory rights and rights under the lease are actually separate: the tenant retains anti-eviction rights under the Rent Stabilization Law and Rent Stabilization Code even after the lease has expired or been repudiated.²³


The tenant's occupancy and renewal rights are not property rights, and they cannot be transferred.²⁴ Instead, they are personal rights created by statute. Under New York law, a right of occupancy is a personal right, not a property right that becomes an asset of the bankruptcy estate.²⁵ In *In re Hilsen*,²⁶ the Bankruptcy Court for the Eastern District of New York held that a conditional right of occupancy of real estate owned by a trust, granted to the beneficiary of the trust, was not a property right, but a personal right.²⁷ Because the right was inalienable and did not include the right to exclude others from possession, the right to lease and collect rents, or the right to force a sale, it did not have the characteristics of a life estate, and was instead a personal right that was not subject to administration as a property right.²⁸ The occupancy right under the rent regulations has the same nature: it is a conditional,²⁹ non-transferable right for an individual person to occupy a particular piece of real property. Like the right to occupy trust property, the right to remain in a rent-stabilized apartment is not a property right.

The renewal right also is a personal right. The renewal right gives the occupant of a rent-stabilized apartment the option to renew a lease. It thus creates the possibility of the tenant obtaining a property right--a new lease. But a personal right that, if exercised, creates a property right is not itself a property right.³⁰ The judge in *In re McCourt* held that a surviving spouse's privilege to elect against a deceased spouse's will was not a “property right *in esse*, but only a property right *in posse* which springs into existence only if the statutory right is exercised under the conditions which create the right only as of the time of the exercise of the election.”³¹ The personal right of election, because it was not a “property right *in esse*,” was not property of the surviving spouse's bankruptcy estate.³² The trustee in bankruptcy could not require the surviving spouse to exercise the right, even if exercising the right would allow the trustee to reach assets.³³ The rent-stabilization renewal right, if exercised, gives rise to a property right--a new lease. But the renewal right is not itself a property right, and it does not become property of the bankruptcy estate.

Occupancy and renewal rights under the rent regulations cannot be sold,³⁴ cannot be inherited,³⁵ would not be part of a marital estate,³⁶ and cannot be attached by a creditor outside of bankruptcy.³⁷ These rights do not have the characteristics of property rights.³⁸ The Trustee therefore has no authority to exercise or to assign these rights.³⁹ Even if Trustee may assume and assign *the lease*, Ms. Santiago retains the *personal right to occupy* the apartment even after the termination of the lease.⁴⁰

Because the occupancy and renewal rights are *not* property of the estate, Ms. Santiago's exemption of those rights is superfluous, not erroneous. A debtor is permitted, out of an abundance of caution, to exempt assets or rights that may not be property of

the estate.⁴¹ Courts should not strike cautious exemptions of rights that are not actually property of the estate.⁴² Moreover, the occupancy and renewal rights are *not* amenable to process outside of bankruptcy. Thus, Ms. Santiago's creditors could not expect to satisfy their claims by reaching her occupancy and renewal rights.⁴³

*13 In the alternative, even if renewal and occupancy rights are property rights, they are exempt local public assistance benefits under  New York Debt. & Cred. Law Section 282(2)(a), for the reasons set forth in the Debtor-Appellant's brief.⁴⁴

III. Even if the occupancy right is a property right, the Trustee may not exercise it.

Regardless of whether the occupancy right is a property right, the Trustee may not assign the lease. Under the rent regulations, Ms. Santiago has no right to assign her lease or occupancy rights in exchange for payment.⁴⁵ The renewal and occupancy rights are not assignable.⁴⁶ A family member⁴⁷ who resides with a tenant for at least two years prior to the tenant's death may succeed to the tenant's rights, but the family member's succession rights are based on occupancy, not inheritance.⁴⁸ A living tenant does not have the right to assign her lease in exchange for payment or to assign her occupancy and renewal rights. Restrictions *14 on the alienability of property rights are not preempted by the Bankruptcy Code.⁴⁹ The Chapter 7 Trustee succeeds only to the rights that could have been exercised by Ms. Santiago.⁵⁰ If he assumes the lease, he assumes it *cum onere*,⁵¹ subject to all the restrictions against it under state law--including all the restrictions imposed by the Rent Stabilization Law and Rent Stabilization Code. Because Ms. Santiago may not assign her rights, the Trustee has no authority to assign her rights.

The Trustee does not even have the authority to assume the lease. His ability to assume the lease is subject to the rent-stabilization regime's restrictions. Rent-stabilization rights are based on physical occupancy of a rent-stabilized apartment.⁵² The Trustee cannot and does not occupy the apartment, and he does not qualify as a tenant either in his individual capacity or in his capacity as *15 Trustee.⁵³ Even without considering the coercion inherent in the proposed sale, the Trustee may not assume or assign Ms. Santiago's lease. The lower courts erred in implicitly sanctioning the proposed transaction.

CONCLUSION

For the reasons set forth above, the Court should reverse the District Court's order granting the Chapter 7 Trustee's application to strike the Debtor's claimed exemption for the value of a New York City rent-stabilized lease.

Footnotes

- 1 Pursuant to Fed. R. App. P. 29(c)(5), the Assistance Project (as defined below) states the following: Thompson & Knight LLP (“TK”), counsel for the Assistance Project in this matter, authored this brief in its entirety. TK has authored this brief and overseen its submission on a pro bono basis. No other person contributed money intended to fund preparing or submitting this brief.
- 2 Mr. **Pereira** has been administering Chapter 7 consumer cases as a panel trustee for over thirty years. The Assistance Project does not question that his actions appear to be motivated by his duty to marshal assets for the estate.
- 3 For the majority of rent-stabilized tenants, their apartments are not affordable under the United States Department of Housing and Urban Development's benchmark. HUD's benchmark of affordability is a 30% rent-to-income ratio. The

median rent-to-income ratio for rent-stabilized tenants is 35.2%. New York City Rent Guidelines Board, 2012 Income and Affordability Study 9 (2012).

- 4 The Assistance Project does not question that the Trustee's actions appear to be motivated by his duty to marshal assets for the estate. Nonetheless, the Assistance Project does call into question the Trustee's application of the law.
- 5 9 N.Y.C.R.R. § 2524.1(a) (“As long as the tenant continues to pay the rent to which the owner is entitled, no tenant shall be denied a renewal lease or be removed from any housing accommodation by action to evict or to recover possession, by exclusion from possession, or otherwise, nor shall any person attempt such removal or exclusion from possession, except on one or more of the grounds specified in this Code.”); *Reid v. DDEH 103 East 102 LLC?* 2008 N.Y. Slip Op. 51798, at *4 (N.Y. Sup. Ct. Aug. 20, 2008) (holding that tenant's release of rights was invalid where the “deal was non-negotiable and [tenant] had no bargaining power to assert otherwise”); see *Grasso v. Matarazoo*, 180 Misc.2d 686, 688 (N.Y. App. Term 1999) (holding that an out-of-court, coerced surrender agreement “was unenforceable and prohibited under the Rent Control Law”); *Paniccioli v. Div. of Hous. & Cmty. Renewal*, 2007 N.Y. Slip Op. 50528, at *3 (N.Y. Sup. Ct. Mar. 21, 2007) (tenants may enter into voluntary stipulations in settlement of “a bona fide dispute,” but agreements must be made “at arms length”).
- 6 See *Midlantic Nat'l Bank v. New Jersey Dep't of Env'tl. Prot.*, 474 U.S. 494, 502, 505 (1986) (“Congress has repeatedly expressed its legislative determination that the trustee is not to have *carte blanche* to ignore nonbankruptcy law. . . . Congress did not intend for the Bankruptcy Code to pre-empt all state laws that otherwise constrain the exercise of a trustee's powers.”).
- 7 See cases cited *supra* note 5.
- 8 See cases cited *supra* note 5.
- 9 See cases cited *supra* note 5.
- 10 See cases cited *supra* note 5.
- 11 See *In re Smith*, 507 F.3d 64, 73 (2d Cir. 2007) (bankruptcy court exceeds its discretion when its decision “cannot be located within the range of permissive decisions”).
- 12 See *Grasso*, 180 Misc.2d at 688 (coerced surrender agreements are void).
- 13 See *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 544 (1994) (“Federal statutes impinging upon important state interests cannot . . . be construed without regard to the implications of our dual system of government. . . . To displace traditional state regulation in such a manner, the federal statutory purpose must be clear and manifest.”) (citations and internal quotation marks removed).
- 14 See *Midlantic Nat'l Bank v. New Jersey Dep't of Env'tl. Prot.*, 474 U.S. 494, 505 (1986) (requiring trustee to comply with non-bankruptcy law).
- 15 11 U.S.C. § 704(a)(1) (providing that the Chapter 7 Trustee shall “collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interest of parties in interest”); *In re Merrill Lynch & Co., Inc. Research Reports Sec. Litig.*, 375 B.R. 719, 727 (S.D.N.Y. 2007) (“Although a Chapter 7 trustee is a fiduciary obligated to treat all parties fairly, *his primary duty is to the estate's unsecured creditors.*”) (quoting *In re Balco Equities Ltd.*, 323 B.R. 85, 98 (Bankr. S.D.N.Y. 2005)).

- 16 See authorities cited *supra* note 15.
- 17 Moon Wha Lee, Selected Initial Findings of the 2011 New York City Housing and Vacancy Survey 2, 4 (2012) (“[In 2011], there were 987,000 rent-stabilized units (occupied and vacant available), comprising 45 percent of the rental stock in 2011. . . . The vacancy rate for rent-stabilized units as a whole was 2.63 percent in 2011.”).
- 18 See [BFP](#), 511 U.S. at 544 (requiring “clear and manifest” statutory purpose in the Bankruptcy Code to displace state law) (citations and internal quotation marks removed); [Butner v. United States](#), 440 U.S. 48, 55 (1979) (“Property interests are created and defined by state law. Unless some federal interest requires a different result, there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding.”).
- 19 N.Y.C. Admin. Code §§ 26-501-26-520; 9 N.Y.C.R.R. §§ 2520-2530; see [Resolution Trust Corp. v. Diamond](#), 45 F.3d 665, 674-75 (2d Cir. 1995) (regarding rent-stabilized leases and tenants' anti-eviction rights under the Rent Stabilization Law as separate rights and concluding that repudiation of the leases would be “fruitless” as long as the tenant retained anti-eviction rights). The Second Circuit concluded in *Diamond* that the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) preempted the anti-eviction laws because Congress passed FIRREA to avoid large-scale “financial hemorrhaging” by maximizing the net present value return from the sale of thrift assets. The economic importance of this goal, together with a clear conflict with the Rent Stabilization Law, led the Second Circuit to conclude that in the limited situation in which a FIRREA debtor is a landlord, FIRREA preempts the Rent Stabilization Law's anti-eviction provisions. The Bankruptcy Code balances multiple goals, and its “principal purpose” is a fresh start for the debtor. [Marrama v. Citizens Bank of Mass.](#), 127 S.Ct. 1105, 1107 (2007). When the debtor is the tenant, the goal of a fresh start is served by *preserving* the anti-eviction right, not by preempting it.
- 20 E.g., 9 N.Y.C.R.R. § 2525.6(d) (providing that if a tenant sublets, the renewal and occupancy rights remain with the tenant); [Evans v. Schneider](#), 183 Misc.2d 114, 117-18 (N.Y. Civ. Ct. 1999) (holding that the automatic stay does not apply to a landlord's notice of intent to terminate a rent-stabilized lease because the tenant's renewal right “may have practical value to both the tenant and landlord, [but] it is not an interest that can properly be sold on the market and to which a monetary value can be assigned”).
- 21 9 N.Y.C.R.R. § 2524.1(a).
- 22 9 N.Y.C.R.R. § 2523.5(d) (“Except as provided in Part 2524 of this Title, the failure to offer a renewal lease pursuant to this section shall not deprive the tenant of any protections or rights provided by the RSL and this Code and the tenant shall continue to have the same rights as if the expiring lease were still in effect.”).
- 23 [Diamond](#), 45 F.3d at 674-75; see [In re Muniz](#), 1999 WL 182588, at *2 (S.D.N.Y. Mar. 31, 1999) (even after issuance of a warrant of eviction, a rent-controlled or rent-stabilized tenant “possesses the right, incident to his possessory status and subject to the court's discretionary and equitable jurisdiction, to reinstate his statutorily protected landlord/tenant relationship by paying rent and judgment arrears”).
- 24 9 N.Y.C.R.R. § 2525.6; see also [N.Y. Civ. Prac. L. & R. § 5201](#) (only assignable or transferable rights are attachable property interests); [Kashi v. Gratsos](#), 712 F. Supp. 23, 26 (S.D.N.Y. 1989) (a lease for a rent-controlled apartment is not an attachable property interest under [§ 5201](#) because it is not assignable).
- 25 *In re Hilsen*, 405 B.R. 49, 60 (Bankr. E.D.N.Y. 2009) (holding that “a conditional right of occupancy is more closely akin to a personal right rather than a property right” and thus is not property of the bankruptcy estate and cannot be transferred or exercised by the trustee).

26 *Id.*

27 *Id.*

28 *Id.* at 59-60.

29 *E.g.*, 9 N.Y.C.R.R. § 2524.3 (listing wrongful acts of tenant that justify eviction) and § 2524.4 (listing grounds for refusal to renew lease, including recovery of possession for owner's personal use and occupancy).

30 *In re McCourt*, 12 B.R. 587, 589-90 (Bankr. S.D.N.Y. 1981).

31 *Id.*

32 *Id.* at 591.

33 *Id.*

34 Although a tenant may sublet, the tenant may not take a payment in excess of the legal rent, and the renewal and occupancy rights remain with the tenant, not the subtenant. 9 N.Y.C.C.R. § 2525.6(d) and (e).

35 Although a family member may succeed to a tenant's rent-stabilization rights, if that person resided with the tenant for two years prior to the tenant's death, 9 N.Y.C.R.R. § 2520.6(o), the successor's rights are his or her own rights under the statute as a co-occupant, not the inherited rights of the deceased tenant. *See* [South Pierre Assocs. v. Mankowitz](#), 844 N.Y.S.2d 552, 553 (N.Y. App. Term 2007) (succession rights are not automatically vested in a potential successor upon the death of a tenant, but remain inchoate until judicial determination).

36 *Cudar v. Cudar*, 98 A.D.3d 27, 35 (N.Y. App. Div. 2012) (holding that leasehold interest to use and occupy a rent-controlled apartment “is neither marital nor separate property”).

37 *See Kashi v. Gratsos*, 712 F. Supp. 23, 26 (S.D.N.Y. 1989) (a lease for a rent-controlled apartment is not an attachable property interest because a judgment creditor cannot reach assets in which the judgment debtor has no interest).

38 *See In re Hilsen*, 405 B.R. 49, 59 (Bankr. E.D.N.Y. 2009) (distinguishing a “right to occupy,” which is personal in nature and non-transferable, from a life estate, which is an alienable property right and includes the right to exclude others, the right to lease and collect rents, and, under certain circumstances, the right to force a sale of real property).


39 *Id.* at 60 (a trustee may not exercise a debtor's personal right) (citing *In re McCourt*, 12 B.R. 587, 590 (Bankr. S.D.N.Y. 1981)).

40 9 N.Y.C.R.R. § 2523.5(d); [Resolution Trust Corp. v. Diamond](#), 45 F.3d 665, 675 (2d Cir. 1995) (a tenant's anti-eviction rights remain even after repudiation of leases).

41 *See Hilsen*, 405 B.R. at 60 (holding that parties objecting to debtor's exemption of conditional right of occupancy did not show that the exemption was not properly claimed, because the right was a personal right and not property of the bankruptcy estate); *In re Brand*, 251 B.R. 912, 916 (Bankr. S.D. Fla. 2000) (overruling trustee's objection to debtor's exemption of an elective share in his wife's will, which the debtor had listed on his schedules “out of an abundance of caution,” because the elective share was a personal right and not property of the bankruptcy estate).

42 *See* cases cited *supra* note 41.

43 *See In re Bygaph, Inc.*, 56 B.R. 596, 605 (Bankr. S.D.N.Y. 1986) (“Section 365 “is not designed to afford a landlord with a benefit in addition to that which he originally bargained for under the original lease.”); *In re Prime Motor*

Inns, Inc., 166 B.R. 993, 997 (Bankr. S.D. Fla. 1994) (“[The] objective of  Section 365 . . . is to protect the landlord, not to improve its position.”).


44 Brief for Debtor-Appellant, Dkt. No. 24.

45 A tenant may sublet an apartment for a maximum of two years, and the rent may not exceed the legal maximum. 9 N.Y.C.C.R. § 2525.6(e)(1). A tenant thus may not permanently transfer her rights, and may not engage in profiteering. A tenant may also assign a lease with the consent of the landlord, but not in exchange for payment. 9 N.Y.C.C.R. § 2525.6(e)(2). In fact, attempting to collect a payment in exchange for the lease would be rent gouging, a crime under New York law. N.Y. Pen. L. §§ 180.54-180.57.

46 If the tenant sublets, the renewal and occupancy rights remain with the tenant, not the subtenant. 9 N.Y.C.C.R. § 2525.6(d).



47 The Rent Stabilization Code limits succession to individuals who share a legal relationship, such as a spouse, parent, child, or stepchild, or an “emotional and financial commitment, and interdependence” with the departed tenant. 9 N.Y.C.C.R. § 2520.6(o).

48 See 9 N.Y.C.C.R. § 2523.5(b)(1) (succession rights depend on co-occupancy with tenant).

49 See  *Integrated Solutions, Inc. v. Serv. Support Specialties, Inc.*, 124 F.3d 487, 495 (3d Cir. 1997) (holding that a debtor-in-possession may not assign prejudgment tort claims in violation of state law, because to allow the transfer would be “tantamount to expanding the pre-petition rights of the debtor in the property of the estate simply because the debtor has commenced bankruptcy proceedings”).

50 See *id.* (“[T]he estate succeeds only to the nature and the rights of the property interest that the debtor possessed pre-petition. Indeed, were we to find federal preemption of the state law restriction at issue here, the trustee would possess *greater* rights in the property than the debtor.”).

51  *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 531 (1984).

52 See, e.g., 9 N.Y.C.C.R. § 2520.6(o) (limiting succession rights to a tenant's co-occupants);  *In re Muniz*, 1999 WL 182588, at *2-*4 (S.D.N.Y. Mar. 31, 1999) (even after warrant of eviction, rent-controlled or rent-stabilized tenant has the right “incident to his possessory status” to cure arrears and reinstate landlord-tenant relationship);  *Aguaiza v. Vantage Props., LLC*, 2009 N.Y. Slip Op. 31144, at 13 (N.Y. Sup. Ct. May 21, 2009) (“[I]n most instances involving the vacancy of a rent regulated apartment and without ever having to sign a vacancy lease, a potential successor tenant's leasehold interest would accrue by virtue of his or her privity of estate grounded on the non-eviction or lease succession provisions of the Rent Stabilization Law and Code.”).

53 See authorities cited *supra* note 52.