

<b>Vasilatos v 500 Metro. Owner LLC</b>
2026 NY Slip Op 31111(U)
March 23, 2026
Supreme Court, New York County
Docket Number: Index No. 151109/2022
Judge: Paul A. Goetz
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. PAUL A. GOETZ PART 47

Justice

-----X

ANDREAS VASILATOS

Plaintiff,

- v -

500 METROPOLITAN OWNER LLC,

Defendant.

-----X

INDEX NO. 151109/2022

MOTION DATE 11/12/2024

MOTION SEQ. NO. 007

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 007) 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153 were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER).

In this class-action rent-overcharge action, plaintiff moves unopposed, for summary judgment on liability, to dismiss defendant’s counterclaims, and to compel defendant to provide outstanding discovery.

It is undisputed that defendant, 500 Metropolitan Owner LLC (“500 Metro” or “Building”), participates in the Real Property Tax Law § 421-a program and thus is required to provide its tenants with rent stabilization protections (NYSCEF Doc No 132). Plaintiff, as a representative of his class, alleges that upon moving into the building, defendants offered a “rent concession” and charged tenants at this “so called” discounted rate for their initial leases. 500 Metro provided leases and registered apartments with the DHCR with a “Legal Rent” calculated as if this rent concession was not offered.

For example, plaintiff initially signed a one-year lease for Apartment 9C at the Building, with a commencement date of March 1, 2021 (NYSCEF Doc No 1 at ¶ 17). That lease contained a purported “Monthly Legal Rent” of \$4,643.63 (id. at ¶ 18). Plaintiff was allowed to occupy Apartment 9C three months prior to the purported lease commencement date pursuant to an

Early Occupancy Rider, which required him to pay \$11,000 in rent for those three months (*id.* at ¶ 19 – 20). However, the lease also included a Temporary Rent Concession Rider, offering “one-time credit” to Plaintiff of \$11,328.00, to be applied in increments of \$944.00 towards each month’s rent (*id.* at ¶ 21). Therefore, for the initial 15 month period of plaintiff’s occupancy, he in effect paid a monthly rent of \$3,699.70 (*id.* at ¶ 22). However, 500 Metro did not note this figure anywhere on the lease, nor did it register this as a “preferential rent”, instead listing and registering a legal regulated rent of \$4643.63 (NYSCEF Doc No 134).

Before the New York Legislature passed the Housing Stability and Tenant Protection Act of 2019 (“HSTPA”), owners of rent stabilized buildings who were charging tenants a “preferential rent,” that is a rent which owner agrees to charge that is lower than the legal regulated rent that the owner could lawfully charge, upon lease renewal could raise the tenant’s rent up to the “legal rent”, that is the maximum amount of rent an owner can legally charge, provided that the legal rent was properly registered with the DHCR and the amount was listed on the initial lease (*see* NYSCEF Doc No 144). However, following the passing of the HSTPA, tenants retain the “preferential rent” for the entirety of the tenancy and the owner may only apply the legal regulated rent increases to the preferential rent, and can only raise the rent to the legal rent upon vacancy of the unit (*see* NYSCEF Doc No 146).

In the instant case, plaintiff argues that 500 Metro was required to register his “preferential rent” at \$3,699.70. Upon his lease renewal, defendant offered him a lease, also containing a “Temporary Rent Concession Rider,” which resulted in him paying a monthly rent of \$4,300.00 (NYSCEF Doc No 1 at ¶¶ 24 – 27). Plaintiff argues that this 16.23% increase was an unlawful increase in excess of the permitted increase allowed by the Rent Guidelines Board (“RGB”) of 2.5% of a tenant’s preferential rent (*id.* at ¶ 28 – 30). Plaintiff argues that the “rent

concessions” offered by the defendant are “preferential rents” in all but name, and defendant was required to register that discounted rent, and thus was limited in the amount it could increase his rent.

Whether a rent concession is the functional equivalent of a “preferential rent”, must be evaluated under the totality of the circumstances in which the concessions were made (*Viohl v Chelsea W26 LLC*, 241 AD3d 1187 [1st Dept 2025]). For example, when landlords have offered “two particular rent-free months, with the full monthly rent payable for each month of the remainder of the lease's term,” courts have held that this qualifies as a concession and is not the equivalent of a preferential rent (*Burrows v 75-25 153rd St., LLC*, 215 AD3d 105, 116 [1st Dept 2023], *affd as mod and remanded*, 44 NY3d 74 [2025]). In contrast when pro-rated discounts are offered and applied monthly, they “are actually preferential rents, which must be the rent registered under RSC § 2521.1(g) for buildings under the 421-a program” (*Bascom v 1875 Atl. Ave Dev., LLC*, 227 AD3d 767, 768 [2d Dept 2024], *lv to appeal dismissed*, 42 NY3d 965 [2024]).

Here, while plaintiff’s lease contained what was labelled as a Temporary Rent Concession Rider, offering a “one-time credit” to Plaintiff of \$11,328.00, (NYSCEF Doc No 134), it was applied in increments of \$944.00 per month, and thus for the initial 15 month period, the monthly rent “agreed and paid” was effectively \$3,699.70, which should have been registered as a “preferential rent,” and thus, only subject to a 2.5% rent increase upon renewal. A 2.5% increase would result in a rent of \$3,792.19. However, defendant offered plaintiff a two-year renewal lease, with a purported “Legal Rent” of \$4,759.72 per month, with a further total concession for the two-year period of \$11,033.28, resulting in the actual monthly rent charged and paid, of \$4,300.00, creating a monthly overcharge of \$507.81. Therefore, summary judgment

will be granted for the tenants in the class, like plaintiff Vasilatos, who received amortized concessions, and were subsequently overcharged based on defendant's failure to properly register their monthly rent charged and paid as a "preferential rent".

Further, plaintiff notes that pursuant to RSL § 26-517(e):

The failure to file a proper and timely initial or annual rent registration statement shall, until such time as such registration is filed, bar an owner from applying for or collecting any rent in excess of the legal regulated rent in effect on the date of the last preceding registration statement or if no such statements have been filed, the legal regulated rent in effect on the date that the housing accommodation became subject to the registration requirements of this section.

Additionally, pursuant to RSC § 2521.1, "the initial legal regulated rent for a housing accommodation constructed pursuant to Section 421-a of the Real Property Tax Law shall be the initial adjusted monthly rent charged and paid." Since, as stated above amortized concessions are preferential rents, the units where the initial tenant was given an amortized concession, have never been properly registered since their registered legal rent was higher than the amount actually charged and paid. Accordingly, defendant was not entitled to any increases as "an owner who fails to timely file [proper] rent registrations with DHCR is barred from collecting rent in excess of the base date rent" (*Grady v Hessert Realty L.P.*, 178 AD3d 401, 404 [1st Dept 2019]). Consequently, the maximum rent allowable must be frozen at the initial monthly rent charged and paid and any charges in excess of that amount will be deemed an overcharge.

However, as for plaintiff's argument that the members of the class who received "lump sum" concessions, were also overcharged and that defendant was obligated to treat this concession as the tenant's "preferential rent," as stated above lump sum concessions are allowable under rent regulation laws, and "[h]ad the legislature intended to require that all concessions be treated as preferential rents, it could easily have so provided" (*Burrows*, 215


AD3d at 116). Plaintiff has failed to adequately explain why the facts here, lend themselves to a different result. Therefore, tenants who received lump sum concessions are not entitled to summary judgment on their overcharge causes of action.

Accordingly, it is,

ORDERED that plaintiff’s motion for summary judgment is granted to the following extent:

- The initial amortized rents are the Building’s actual initial legal regulated rents;
- any subsequent tenant who received an amortized concession, is entitled to treat that concession as a preferential rent;
- defendant is liable for and tenants are entitled to refunds for payments made over and above the legally permitted rents; and it is further

ORDERED that defendant is directed to turn over full leases and ledgers; and it is further ORDERED that a trial on damages will be held after the filing of the Note of Issue.



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<u>3/23/2026</u> DATE					<u>PAUL A. GOETZ, J.S.C.</u>	
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	OTHER
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	REFERENCE