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COURT OF APPEALS

STATE OF NEW YORK

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BRANIC INTERNATIONAL REALTY CORP.,

Appellant,

-against-

No. 200

PHILLIP PITT,

Respondent.

-----

20 Eagle Street  
Albany, New York 12207  
October 22, 2014

Before:

CHIEF JUDGE JONATHAN LIPPMAN  
ASSOCIATE JUDGE VICTORIA A. GRAFFEO  
ASSOCIATE JUDGE SUSAN PHILLIPS READ  
ASSOCIATE JUDGE ROBERT S. SMITH  
ASSOCIATE JUDGE EUGENE F. PIGOTT, JR.  
ASSOCIATE JUDGE JENNY RIVERA

Appearances:

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Sara Winkeljohn  
Official Court Transcriber

1  
2 CHIEF JUDGE LIPPMAN: We're going to start  
3 off with number 200. Counsel?

4 (Pause)

5 Okay, now you can start, counselor, number  
6 200.

7 MR. ROSENBERG: Good afternoon.

8 CHIEF JUDGE LIPPMAN: Do you want any  
9 rebuttal time?

10 MR. ROSENBERG: Yes, three minutes, please,  
11 Your Honor.

12 CHIEF JUDGE LIPPMAN: Three minutes, sure.  
13 Go ahead.

14 MR. ROSENBERG: Good afternoon, Your  
15 Honors. My name is Ronald J. Rosenberg from the firm  
16 of Rosenberg Calica & Birney, and it is my distinct  
17 honor to be here on behalf of the appellant, Branich  
18 International Realty Corp. in this case that presents  
19 very compelling and important issues arising out of  
20 the Appellant Division's erroneous and unprecedented  
21 holding - - -

22 CHIEF JUDGE LIPPMAN: Counsel, why can't  
23 there be a permanent tenant growing out of this - - -  
24 not necessarily growing out of the MOU, but why  
25 couldn't Mr. Pitt be a permanent tenant?

1 MR. ROSENBERG: Because Mr. Pitt was a  
2 licensee of the city. And in order not to deprive  
3 the city of the ability - - - actually, the Rent  
4 Stabilization Law, and after all it's called the Rent  
5 - - -

6 CHIEF JUDGE LIPPMAN: Yeah, but how could  
7 you - - - how could you get him out of there if you  
8 wanted to? Don't you - - - wouldn't you have had to  
9 evict him, and if you had to evict him, why couldn't  
10 he be a permanent tenant?

11 MR. ROSENBERG: Because he wasn't - - - he  
12 had no obligation to pay rent. He didn't have a  
13 landlord-tenant relationship.

14 CHIEF JUDGE LIPPMAN: What about the length  
15 of occupancy?

16 MR. ROSENBERG: The length of occupancy's  
17 one element of becoming a permanent tenant, so that  
18 is - - -

19 CHIEF JUDGE LIPPMAN: What's the other  
20 element?

21 MR. ROSENBERG: The other element is an  
22 obligation to pay rent and - - -

23 CHIEF JUDGE LIPPMAN: Where does it say  
24 that?

25 MR. ROSENBERG: It says that under Section

1 2520.6(d), 2522.5, it - - - which provides that you  
2 can become a permanent tenant in hotels rented to an  
3 occupant not - - -

4 JUDGE PIGOTT: They - - - they stopped  
5 paying you in April, right, of '07?

6 MR. ROSENBERG: Yes.

7 JUDGE PIGOTT: The city. And then you in -  
8 - - in May served a - - - an eviction notice on - - -  
9 on the - - - Mr. Pitt, however we characterize it?

10 MR. ROSENBERG: Yes.

11 JUDGE PIGOTT: Is that right?

12 MR. ROSENBERG: I - - - I - - - I - - -  
13 actually, I don't remember the specific case, but - -  
14 -

15 JUDGE PIGOTT: In - - - in retrospect, I'm  
16 wondering would it have made sense for you to just  
17 tell the city take your people out of here because we  
18 don't have an agreement anymore and leave it to the  
19 city to do - - - take whatever action was necessary  
20 to remove any and all people that were there.

21 MR. ROSENBERG: Well, Your Honor, we did do  
22 that. It's not in the record, but we - - - we - - -

23 JUDGE PIGOTT: Okay.

24 MR. ROSENBERG: Of course, that was the  
25 first thing that we did. All of the participants in

1 this - - -

2 JUDGE GRAFFEO: Has the city - - -

3 MR. ROSENBERG: - - - program moved.

4 JUDGE GRAFFEO: The city - - - the city has  
5 reimbursed you for his occupancy?

6 MR. ROSENBERG: Not until the day he left.  
7 He had left before the perfection - - -

8 JUDGE GRAFFEO: But I mean at - - - at this  
9 juncture - - -

10 MR. ROSENBERG: No.

11 JUDGE GRAFFEO: - - - you've been - - -  
12 you've - - - you've been paid everything you're owed  
13 by the city?

14 MR. ROSENBERG: No, there's still some  
15 amount owed. There's still - - -

16 JUDGE READ: Why did you bring you - - -  
17 why did you bring a holdover proceeding?

18 MR. ROSENBERG: We did bring a hold - - -  
19 that was a holdover.

20 JUDGE READ: Well, why did you do - - - did  
21 you have another option?

22 MR. ROSENBERG: No.

23 JUDGE READ: Could you not proceed - - -

24 MR. ROSENBERG: In order to bring a summary  
25 nonpayment proceeding, under Section 711 of the RPAPL

1           you must have a landlord-tenant relationship and you  
2           are seeking to - - -

3                   JUDGE READ:  So that was your only legal  
4           option?

5                   MR. ROSENBERG:  Correct or an action in  
6           ejectment in Supreme Court.

7                   JUDGE RIVERA:  I - - - I thought the  
8           agreement with the city anticipated the possibility  
9           that - - - that some of the individuals who were  
10          referred by the city might indeed achieve this  
11          permanent tenant status.  So didn't you sign off on  
12          that?

13                   MR. ROSENBERG:  Yes, but - - -

14                   JUDGE RIVERA:  Have I misunderstood the  
15          agreement?

16                   MR. ROSENBERG:  Yeah, but that didn't - - -  
17          to give them the status.  It just recognized - - -  
18          for example, if Mr. Pitt went - - -

19                   CHIEF JUDGE LIPPMAN:  If this guy didn't  
20          have status, who does?

21                   MR. ROSENBERG:  Okay, if I - - -

22                   CHIEF JUDGE LIPPMAN:  If he was there - - -  
23          for how long was he there?

24                   MR. ROSENBERG:  He - - - he was there for  
25          six or seven years.

1 CHIEF JUDGE LIPPMAN: So - - - so - - -

2 MR. ROSENBERG: Without paying any rent.

3 JUDGE GRAFFEO: Far over the six months  
4 that's required under the definition.

5 MR. ROSENBERG: Yes, but every case in the  
6 history of the State of New York that has been - - -  
7 certainly been cited to this court, that I'm aware  
8 of, there's not one case, including the Kanti-Savita  
9 case, which the Appellant Division relied upon, that  
10 has ever held you could become a permanent tenant  
11 without having a landlord-tenant relationship with  
12 the landlord.

13 JUDGE RIVERA: No, no, no. But - - - but  
14 what I'm saying is - - -

15 MR. ROSENBERG: Not one.

16 JUDGE RIVERA: Please correct me if I'm  
17 wrong. I - - - I thought that you had signed an  
18 agreement that anticipated that some of these  
19 individuals who were referred by the city and - - -  
20 and their - - - the - - - the cost of staying at the  
21 hotel was paid for by the city - - - anticipated that  
22 some of them might, indeed, under the statute,  
23 achieve this permanent tenant status.

24 MR. ROSENBERG: I will correct you, because  
25 it merely said that if they acquired - - - not that

1 they will acquire.

2 JUDGE SMITH: Didn't - - - didn't that  
3 admit the possibility that it could happen?

4 MR. ROSENBERG: Yes, it did admit the poss  
5 - - -

6 JUDGE SMITH: How - - - how could it have  
7 happened?

8 MR. ROSENBERG: If the - - - if Mr. Pitt  
9 went to my client and said I would like to stay on my  
10 own right and enter into an agreement - - -

11 CHIEF JUDGE LIPPMAN: Wait, wait, wait.  
12 That - - - that - - - that - - - where did - - -  
13 where is that made up from? What - - - what do you  
14 mean that - - - that - - - that - - - where does that  
15 say that? That's totally reading something that's  
16 not in there.

17 MR. ROSENBERG: Absolutely in the  
18 agreement. When you check into a hotel, when you go  
19 - - -

20 CHIEF JUDGE LIPPMAN: That's - - - it says  
21 there that he can go and set up his own relationship  
22 after this?

23 MR. ROSENBERG: I'm - - - I'm - - -

24 CHIEF JUDGE LIPPMAN: Where - - - where  
25 does that come from?

1 MR. ROSENBERG: I'm not saying he has the  
2 right to do it. I was in the middle of answering - -  
3 -

4 CHIEF JUDGE LIPPMAN: Yeah, but what I'm -  
5 - -

6 JUDGE SMITH: You were answering my  
7 hypothetical question. Maybe you're right that that  
8 could happened.

9 MR. ROSENBERG: I understand, if I could  
10 just finish, Your Honor. I - - - I - - - if I could  
11 just finish, because I think it'll explain - - -

12 CHIEF JUDGE LIPPMAN: Yeah, yeah, but - - -

13 MR. ROSENBERG: My client wouldn't be duty  
14 bound to accept it. I agree with you. He wouldn't  
15 have to accept his offer. But if he agreed to accept  
16 his offer and said I will let you stay, pay me rent,  
17 you then become - - - it's led to a permanent tenant  
18 - - -

19 JUDGE RIVERA: But if he's there for the -  
20 - - but what I'm saying is the agreement merely says  
21 if - - - if the individuals who were referred achieve  
22 status, permanent tenant status, pursuant to the  
23 statute, right. And you have signed off on that.  
24 And he's - - - you're saying that because you read  
25 into the statute that he must pay rent, not that the

1           cit - - - because somebody was paying rent. It's not  
2           that you were not paid rent at all, ever. Someone is  
3           paying you rent. But you're saying he individually  
4           has to pay rent. It - - - it looks to me like the  
5           agreement that you signed, along with the city,  
6           anticipates that if they meet the - - - the time  
7           period requirement, the requirements of the statute  
8           regardless of who pays rent, that they get permanent  
9           tenant status.

10                       MR. ROSENBERG: Completely inaccurate, and  
11           I'll tell you why.

12                       CHIEF JUDGE LIPPMAN: And - - - and  
13           anticipates also that you - - - you can move to evict  
14           him.

15                       MR. ROSENBERG: Okay, if I could - - -

16                       CHIEF JUDGE LIPPMAN: In that case.

17                       MR. ROSENBERG: I - - - I could explain why  
18           that - - - that is inaccurate. First of all, whether  
19           that paragraph is in there or not doesn't change the  
20           legal status or relationship between the parties.  
21           Whether the parties agree to recognize legal rights  
22           that are acquired or not, the law imposes it. So  
23           there was nothing in the agreement that my client  
24           agreed to other than the unremarkable thing that he  
25           has to agree to, which is if you acquire rights, I

1 must respect them. That's all that says. It doesn't  
2 say anything that, passage of six months, you become  
3 a permanent tenant, nothing about it.

4 CHIEF JUDGE LIPPMAN: What does it say  
5 about - - - what does it say about what you do if you  
6 want to get him out of there?

7 MR. ROSENBERG: What does it say - - - it -  
8 - - it doesn't say. What does the MOU say about what  
9 - - -

10 CHIEF JUDGE LIPPMAN: It anticipated you  
11 might move to evict him?

12 MR. ROSENBERG: Well, it anticipates that  
13 at the end of the term, the eligible persons will be  
14 relocated. All of them were relocated.

15 JUDGE SMITH: But also if you - - - if you  
16 don't - - - I mean - - - I mean I think the Chief may  
17 be referring to (j) where it says if - - - if you  
18 want to get him out for bad behavior, you have to get  
19 their approval.

20 MR. ROSENBERG: Correct, which is - - -  
21 this was a lease to the City of New York. And under  
22 Section 2520.11(b), under the express explicit  
23 language, this unit was exempt from rent regulation  
24 as a matter of law, because it was leased to the City  
25 of New York. The landlord didn't pick out who could

1 occupy the city-rented units. The landlord couldn't  
2 determine and refuse people that were - - -

3 JUDGE SMITH: Could - - - could I - - -  
4 could I bring you back for a moment to - - - to what  
5 2520.6 means because, I mean, that - - - the case  
6 turns on that, doesn't it? I mean isn't - - - isn't  
7 - - - isn't that the key here?

8 MR. ROSENBERG: No, I - - - I - - - Your  
9 Honor, with all respect, it's 2520.11(b). That's  
10 what it turns on. If this is a lease between the  
11 city and Branick, you don't need to reach the other  
12 issues.

13 JUDGE SMITH: Oh, okay. I - - - I - - -  
14 that's okay. I - - - I - - -

15 MR. ROSENBERG: That's a dispositive  
16 threshold issue.

17 JUDGE SMITH: I see. I - - - I understand  
18 your - - - you - - - you - - - you - - - you - - -  
19 you said - - - you say you never have to rea - - -  
20 reach it because it's a - - - because you say the MOU  
21 is a lease?

22 MR. ROSENBERG: Right, and - - -

23 JUDGE SMITH: Isn't that a bit of a stretch  
24 for a contract that says - - -

25 MR. ROSENBERG: Absolutely not.

1 JUDGE SMITH: But isn't that for a contract  
2 that says on its face it's not even legally binding?

3 MR. ROSENBERG: Absolutely, and the reason  
4 why it says it's not legally binding has to do with  
5 the political interplay between the city controller's  
6 office and - - -

7 JUDGE SMITH: Okay, but let me - - - let me  
8 - - -

9 MR. ROSENBERG: - - - and the HRA.

10 JUDGE SMITH: I - - - I really do want to  
11 ask you about your other point.

12 MR. ROSENBERG: It is legally binding.

13 JUDGE SMITH: I'm - - - I'm more interested  
14 in your other point. The - - - you - - - if you do  
15 reach the question of what subsection (j) means and  
16 you say - - - and you read it literally, it - - - it  
17 says if you - - - if you're there for six months,  
18 you're a permanent tenant. Isn't the real question  
19 whether that's intended to expand the general  
20 definition of tenant or - - - or - - - or basically  
21 just to clarify and limit it? Isn't that what we're  
22 talking about here?

23 MR. ROSENBERG: I think it expands the  
24 definition of tenant but doesn't do away with (d)  
25 which requires that you have to have an obligation to

1 pay rent.

2 JUDGE SMITH: But you said it expands it.  
3 But if there were - - - if there were - - - let's say  
4 - - - let's say that neither (j) nor (m) is in the  
5 statute. All you've got is the general, "A tenant is  
6 any person or persons named who - - - on a lease or  
7 is party to a rental agreement and obligated to pay  
8 rent." You could read that to include an overnight  
9 guest at a hotel.

10 MR. ROSENBERG: I'm sorry?

11 JUDGE SMITH: I'm talking about the general  
12 definition of tenant, you with me?

13 MR. ROSENBERG: Yes.

14 JUDGE SMITH: It says anybody who's  
15 obligated to pay rent under a rental agreement.

16 MR. ROSENBERG: Correct.

17 JUDGE SMITH: That could mean me last night  
18 at 74 State Street.

19 MR. ROSENBERG: If you rent - - - checked  
20 into a hotel?

21 JUDGE SMITH: Yes.

22 MR. ROSENBERG: Yes.

23 JUDGE SMITH: So the - - - am I right in  
24 thinking that the reason they added (j) and (m) was  
25 to make clear that the only - - - the only hotel

1 residents who are covered are the long-termers not  
2 the short-termers. Isn't that the basic point here?

3 MR. ROSENBERG: There's two different ways.  
4 One is, yes, but you still have to enter, like you  
5 did last night, as a guest paying for the rent under  
6 an agreement to pay the rent.

7 JUDGE SMITH: I - - - I - - - I understand  
8 your point.

9 MR. ROSENBERG: Then you can either do it,  
10 stay six months and you get a lease - - -

11 JUDGE SMITH: I'm - - - I'm trying to ask a  
12 friendly question.

13 MR. ROSENBERG: - - - or you demand a  
14 lease.

15 JUDGE SMITH: I'm - - - I'm trying to ask a  
16 - - - a - - - a - - - a softball question.

17 MR. ROSENBERG: Yeah.

18 JUDGE SMITH: It's sympathetic to you. Let  
19 me ask it, okay.

20 MR. ROSENBERG: Okay.

21 JUDGE SMITH: Is it - - - is it - - - is it  
22 not the case that the - - - the purpose of (j) and  
23 (m) is to define to what extent people who would  
24 otherwise might be - - - people who - - - people who  
25 would be tenants under the general deposition - - -

1 general definition but happened to live in hotels get  
2 rent stabilization rights.

3 MR. ROSENBERG: Yes.

4 JUDGE SMITH: Okay.

5 MR. ROSENBERG: Yes, that - - - yes.

6 CHIEF JUDGE LIPPMAN: Counsel, let me - - -  
7 let me ask you this.

8 MR. ROSENBERG: But you still have to enter  
9 into it with a possession und - - - under an  
10 agreement.

11 CHIEF JUDGE LIPPMAN: Let - - - let me ask  
12 you a question now. If you look at fairness, someone  
13 who's in there for six or seven years, and if you  
14 could become - - - have a status that gives you  
15 protection under the Rent Stabilization Law, who  
16 could be a more deserving person than someone who's  
17 there for six or seven years?

18 MR. ROSENBERG: I'm - - - I'll talk about  
19 fairness. You have a - - -

20 CHIEF JUDGE LIPPMAN: Yes, talk about  
21 fairness.

22 MR. ROSENBERG: - - - a - - - a recipient  
23 of - - - of government benefits who is given free  
24 housing.

25 CHIEF JUDGE LIPPMAN: No.

1                   MR. ROSENBERG: The city determines that  
2 better suitable housing for his particular needs,  
3 under their statutory obligation, is located in  
4 another building. All of the participants comply  
5 with the program and receive the benefits at the more  
6 suitable facility.

7                   CHIEF JUDGE LIPPMAN: Yeah, but we're  
8 talking about this fellow's case.

9                   MR. ROSENBERG: And this fellow was to move  
10 under that program because the city, not my client,  
11 made the determination that he should get better  
12 service at this other location.

13                  CHIEF JUDGE LIPPMAN: Assume - - - assume  
14 he doesn't want to go somewhere else. Assume he's  
15 got a terminal illness that keeps him - - - that he  
16 wants to stay in this place for his wellbeing, for  
17 his health, and he's been there six or seven years.  
18 Why shouldn't he - - - if anyone could receive  
19 permanent status in a hotel, why isn't this person  
20 entitled to it?

21                  MR. ROSENBERG: Most respectfully, he is  
22 not in a position to judge what is best for him.  
23 He's in a program where the city has a statutory duty  
24 with specialized professionals who make that  
25 determination for him. And in order for him to - - -

1 JUDGE RIVERA: But, counsel, of course if  
2 he has - - - you yourself have admitted it. If he  
3 satisfies the criteria of the statute, he does get to  
4 choose.

5 MR. ROSENBERG: Yes, but he also - - -

6 JUDGE RIVERA: So we're back full circle to  
7 where we were.

8 MR. ROSENBERG: Yeah, he didn't.

9 JUDGE RIVERA: Okay.

10 MR. ROSENBERG: And there's no case, except  
11 for this Appellate Division case, that has ever held  
12 absent the landlord-tenant - - -

13 JUDGE SMITH: He - - - he had - - -  
14 supposed he had been - - - so it's not very likely,  
15 but suppose the city had chosen to put him into a - -  
16 - an apartment building rather than a hotel. Then  
17 there would be no argument. He'd have to - - - he -  
18 - - he wouldn't be a tenant, correct?

19 MR. ROSENBERG: Of course.

20 JUDGE SMITH: So - - - so - - - so your - -  
21 - so your - - -

22 MR. ROSENBERG: It's the same thing.

23 JUDGE SMITH: - - - point is why should it  
24 make a difference they chose a hotel rather than an  
25 apartment building.

1                   MR. ROSENBERG: The statut - - - exactly,  
2                   the statutory language is the same. That criteria  
3                   about a landlord-tenant relationship with the  
4                   landlord - - - and I would submit, Your Honor, with  
5                   all respect, that it is unfair to allow participants  
6                   and recipients of benefits from the government to try  
7                   to dictate how the government has to give it all.

8                   CHIEF JUDGE LIPPMAN: You receive benefits  
9                   from the government - - -

10                  MR. ROSENBERG: Yeah.

11                  CHIEF JUDGE LIPPMAN: - - - you're some  
12                  kind of a leper and you have no rights. Is that what  
13                  you're saying?

14                  MR. ROSENBERG: Not at all, not at all, not  
15                  at all.

16                  JUDGE RIVERA: Well, counsel, of course - -  
17                  -

18                  CHIEF JUDGE LIPPMAN: That's fairness that  
19                  because you're label him someone who's - - - who's a  
20                  recipient of public benefits you have no rights?

21                  MR. ROSENBERG: I - - - of course you have  
22                  rights. But - - -

23                  JUDGE READ: What about the - - -

24                  MR. ROSENBERG: - - - I don't think it's  
25                  asking too much that you comply with the appropriate

1 requirements.

2 JUDGE RIVERA: But, counsel, of course you  
3 could negotiate these things, couldn't you? You  
4 could have negotiated with the city. There's a  
5 provision that says if they - - - if they're covered  
6 by the statute, they have protections. You've  
7 already conceded that your client would, of course,  
8 have to recognize those protections. If you don't  
9 want them to get those protections, you don't want  
10 them to have enough time there, you could try and  
11 negotiate this with the city. But you didn't.

12 MR. ROSENBERG: You could not, absolutely  
13 against public policy. You cannot agree with the  
14 city that you won't recognize their statutory rights.

15 JUDGE RIVERA: No, no, no. Not those kinds  
16 of rights, excuse me.

17 MR. ROSENBERG: I'm talking about these  
18 rights.

19 JUDGE RIVERA: I'm talking about the time  
20 limit that's involved here.

21 MR. ROSENBERG: This - - - this - - - draft  
22 does not say what you're trying to say it says, with  
23 all due respect.

24 JUDGE RIVERA: I'm talking about the time  
25 limit. Didn't you say one of the criteria was time

1 limit that you rent?

2 MR. ROSENBERG: Yes, yes, that he  
3 (indiscernible) to it.

4 JUDGE RIVERA: And could you not negotiate  
5 with the city how long these particular periods - - -

6 MR. ROSENBERG: You can't.

7 JUDGE RIVERA: - - - would - - - they would  
8 have - - -

9 MR. ROSENBERG: No, no.

10 JUDGE RIVERA: - - - eligibility to be in  
11 these rooms?

12 MR. ROSENBERG: As I understand Rent  
13 Stabilization - - - and by the way, the law's called  
14 Rent Stabilization. It involves rent - - -

15 JUDGE RIVERA: Right.

16 MR. ROSENBERG: - - - as the main  
17 component. The law is you can't agree under public  
18 policy considerations, this court has held, to waive  
19 those rights.

20 JUDGE RIVERA: I saw.

21 MR. ROSENBERG: So whether this agreement  
22 had this paragraph in here or not has absolutely  
23 nothing to do with the rights of Mr. Pitt to remain -  
24 - -

25 JUDGE RIVERA: Okay.

1 MR. ROSENBERG: - - - in that - - -  
2 possession.

3 CHIEF JUDGE LIPPMAN: Counsel, let's have -  
4 - -

5 MR. ROSENBERG: They couldn't agree to  
6 waive it and they couldn't agree to give it.

7 CHIEF JUDGE LIPPMAN: Coun - - - counsel -  
8 - - Judge Read.

9 JUDGE READ: I'm trying to get something in  
10 here. What about public policy in terms of if we - -  
11 - if we find - - - if we find against you, what  
12 public policy implications does that have for these  
13 kinds of programs going forward?

14 MR. ROSENBERG: Well, first of all, the - -  
15 - you would have a chilling effect, a freezing  
16 effect, on any client - - - any building that was  
17 like my client who, because the shortage of available  
18 emergency housing for these desperately-needed people  
19 - - - and I have the greatest respect for them and  
20 sympathy for them, Your Honor. So I hope I have  
21 never given you any other impression. They won't be  
22 able to fill that need because no landlord is going  
23 to agree to put these people into temporary housing  
24 if the minute they get there they can also stay as  
25 permanent tenants under a different setup.

1 CHIEF JUDGE LIPPMAN: Counselor, we're not  
2 talking - - - well, let's have - - - hear your  
3 adversary. But the point is we're not talking about  
4 the second they get there. We're talking about  
5 someone who is there for six or seven years.

6 MR. ROSENBERG: But it's part of the  
7 statute. You can demand a lease if you qualify.

8 JUDGE SMITH: Well, but - - - but six - - -  
9 but six months and a day would be the same as seven  
10 years under the statute.

11 MR. ROSENBERG: Yeah, and - - -

12 CHIEF JUDGE LIPPMAN: But - - - but not  
13 necessarily in a fairness evaluation.

14 MR. ROSENBERG: And - - -

15 CHIEF JUDGE LIPPMAN: Counsel, in any  
16 event, let's hear from your adversary, and then we'll  
17 talk more.

18 MR. ROSENBERG: Thank you very much, Your  
19 Honors.

20 CHIEF JUDGE LIPPMAN: Okay, go ahead.  
21 Counselor, you're on.

22 MS. WEITHMAN: Good afternoon, may it  
23 please the court my - - -

24 JUDGE READ: He has a point, doesn't he,  
25 about having a chilling effect on landlords who might

1 not want to participate in this program?

2 MS. WEITHMAN: I don't believe so, Your  
3 Honor.

4 JUDGE READ: Why not?

5 MS. WEITHMAN: Counsel is asking this court  
6 to ignore the plain language of Section 2520.6(j).

7 JUDGE SMITH: But - - - but - - - but, no -  
8 - -

9 MS. WEITHMAN: And - - -

10 JUDGE SMITH: But Judge Read's question is  
11 about - - - Judge Read's question is about the  
12 implications.

13 JUDGE READ: How?

14 JUDGE SMITH: Even - - - even if you're  
15 right - - - if you - - - if you're right, you're  
16 right. But does it create problems?

17 MS. WEITHMAN: I don't believe so. I  
18 believe this is a perceived policy concern that is  
19 not based in any - - - it's not based on the record.  
20 There's nothing to support it, and it's based on pure  
21 speculation.

22 JUDGE GRAFFEO: Is - - - is this - - - is  
23 this the only instance that this has happened in the  
24 last couple of years in New York City?

25 MS. WEITHMAN: Concerning a person who was

1 referred by a city agency to an SRO unit?

2 JUDGE GRAFFEO: Yes, who will - - - who  
3 refused to - - - to leave once the city isn't willing  
4 to pay for that SRO unit.

5 MS. WEITHMAN: This has - - - this has  
6 happened over time. I can't cite to you any cases.  
7 However - - -

8 CHIEF JUDGE LIPPMAN: Why doesn't it happen  
9 more frequently, counsel? What - - - what's the  
10 practical issues here when these people come in under  
11 a program like this?

12 MS. WEITHMAN: I think - - - I think it  
13 depends. It depends on the building. It depends on  
14 who the owner is of the building. And often times  
15 people who have been referred to SROs, maybe they do  
16 move on to - - - to - - -

17 CHIEF JUDGE LIPPMAN: Do you have any  
18 expectation when you put these people into programs  
19 like this, emergency needed, whatever, that they  
20 could become permanent tenants? Is that - - -

21 MS. WEITHMAN: Most definitely.

22 CHIEF JUDGE LIPPMAN: That's within your  
23 contemplation at the time when you do this?

24 MS. WEITHMAN: Most definitely, because - -  
25 -

1 CHIEF JUDGE LIPPMAN: Why - - - what gives  
2 you that - - - that view?

3 MS. WEITHMAN: When we're - - - when we're  
4 looking at this case in particular, this is a rent-  
5 stabilized SRO building. There's no dispute that it  
6 is rent stabilized.

7 JUDGE GRAFFEO: But why did you stop paying  
8 for him then? If you knew he was going to become a  
9 permanent tenant, isn't there an obligation to make  
10 sure the monthly charge is still paid by the city?

11 MS. WEITHMAN: If I may just clarify, I was  
12 - - - I did not put my - - - my appearance on the  
13 record. I am not from the city. I'm Martha  
14 Weithman. I'm with Goddard Riverside's SRO Law  
15 Project. So we - - - we did not place Mr. Pitt  
16 there.

17 JUDGE GRAFFEO: Okay, well, I mean - - -

18 MS. WEITHMAN: He was referred by HRA.

19 JUDGE GRAFFEO: Why - - - why would this -  
20 - - why - - - I'm sorry.

21 MS. WEITHMAN: No, that's okay.

22 JUDGE GRAFFEO: Why would the city stop  
23 making payment then if there was a recognition that  
24 he had attained the status of a permanent tenant?

25 MS. WEITHMAN: Well, HRA isn't necessarily

1 in the position of making such a determination. And  
2 HRA - - -

3 JUDGE PIGOTT: Well, they signed the  
4 agreement, didn't they? Aren't they the ones that  
5 said if you put this person in a room, we'll - - - we  
6 will pay sixty-five dollars a night? And - - - and  
7 when - - - I would think - - - let's assume there are  
8 fifty people there. In December of '06 that - - -  
9 that agreement expired. You would expect fifty  
10 people to move because you're - - - HRA is never  
11 going to pay anymore, and so they would all move.  
12 Now one doesn't. Why is that the problem of the  
13 landlord when it was the MOU that expired, that you,  
14 HRA, then was going to move them?

15 MS. WEITHMAN: Well, the nec - - - the - -  
16 - the MOU may have expired. However, it was able to  
17 continue past that - - - that period.

18 JUDGE PIGOTT: Could you leave all fifty  
19 people there and say we're not paying for them  
20 anymore because the MOU is expired. So we're not  
21 paying, and leave all fifty of them there?

22 MS. WEITHMAN: I - - - I don't - - - I  
23 don't believe the HRA would do that. In fact, HRA  
24 did continue - - -

25 JUDGE PIGOTT: Of course not, they

1 wouldn't.

2 MS. WEITHMAN: - - - to pay on behalf of  
3 the defendant.

4 JUDGE PIGOTT: What they would do, I would  
5 think, is - - - is pay for the people that are there.  
6 And if there's a problem tenant, this one or any  
7 other one, they would pay until they moved their  
8 people to wherever they were going to send them. I  
9 don't understand why the landlord all of a sudden has  
10 to assume that obligation.

11 MS. WEITHMAN: I don't believe that the  
12 landlord did assume that obligation here.

13 JUDGE PIGOTT: You don't think he should?

14 MS. WEITHMAN: In fact, HRA did continue -  
15 - - did continue to pay - - -

16 CHIEF JUDGE LIPPMAN: Yeah, didn't they  
17 continue to pay after he indicated they told him that  
18 - - - that - - - and we'll put you somewhere else and  
19 he said no, I'm staying here? And they kept paying,  
20 didn't they?

21 MS. WEITHMAN: They did. And, in fact,  
22 Branick actually sued HRA in Supreme Court to obtain  
23 back rent when HRA did stop paying. So they obtained  
24 over 65,000 dollars in back rent. So they did obtain  
25 - - -

1                   JUDGE SMITH: I think we - - - I think that  
2                   thrusters us where we started with this with Judge  
3                   Read's original question, well, I - - - I think is  
4                   aren't there going to be a number of hotel owners,  
5                   who deal with HRA all the time, who are going to be -  
6                   - - who - - - who - - - who would be distressed to  
7                   learn that every time one of these people stays more  
8                   than six months, he's a - - - he's a statutory  
9                   tenant.

10                   MS. WEITHMAN: I don't believe so, Your  
11                   Honor.

12                   JUDGE RIVERA: Well, can I just follow - -  
13                   - follow up on that. If you could also answer the  
14                   question that I asked before about whether or not  
15                   they can negotiate a way to avoid someone becoming a  
16                   permanent tenant?

17                   MS. WEITHMAN: Yes, just to begin with, I  
18                   believe that the memorandum - - - memorandum of  
19                   understanding is very clear that such rights were  
20                   contemplated, that referred elig - - - eligible  
21                   persons could obtain permanent tenancy status under -  
22                   - - under the - - - the - - - the - - -

23                   JUDGE SMITH: Is this the - - - can you  
24                   cite a case of anyone, before this guy's, ever been  
25                   held to have obtained it?

1 MS. WEITHMAN: Who obtained permanent  
2 tenancy rights?

3 JUDGE SMITH: Yeah, obtained - - - a - - -  
4 an HRA client put in under these circumstances who  
5 obtained tenancy - - - and was held to have obtained  
6 tenancy rights.

7 MS. WEITHMAN: There - - - there - - - I -  
8 - - I cannot cite to a case. However, this is a very  
9 similar case involving the same owner with a  
10 different tenant who is procedurally still in housing  
11 court, and they're actually awaiting this particular  
12 decision. However, they - - - the court did find  
13 that by HRA paying rent on behalf of that particular  
14 tenant did not make - - - did not lessen that - - -  
15 that tenant's or that person's rights.

16 CHIEF JUDGE LIPPMAN: Counsel, what's - - -

17 JUDGE RIVERA: And can they negotiate?

18 MS. WEITHMAN: Of course they can  
19 negotiate. I would submit that Branick had went into  
20 this MOU with eyes open.

21 JUDGE SMITH: But they can't negotiate out  
22 of rent control?

23 MS. WEITHMAN: Of course they can. It's an  
24 - - - it's an agreement with the city. And - - - and  
25 I would say that their incentive to continue to - - -

1 JUDGE SMITH: What - - - what - - - what -  
2 - -

3 JUDGE RIVERA: Well, couldn't - - - no, no.  
4 Well, I guess my question is to clarify. Could they  
5 negotiate I'm only going to take someone for thirty  
6 days and no longer?

7 MS. WEITHMAN: I - - -

8 JUDGE RIVERA: If the city was willing?

9 MS. WEITHMAN: If the city was willing, I  
10 would imagine that they could.

11 JUDGE SMITH: But if - - - but if - - - but  
12 if they take them for six months and one day, the  
13 city can say up and down he's not rent-controlled.  
14 He's still controlled, isn't he, on - - - on your  
15 theory? Or stabilized?

16 MS. WEITHMAN: He's rent stabilized, yes,  
17 pursuant to the code.

18 JUDGE SMITH: And - - - and the city saying  
19 otherwise wouldn't help. And - - - and the city  
20 saying otherwise wouldn't help.

21 MS. WEITHMAN: I would - - - well, I would  
22 agree. And I would - - - I would also submit that if  
23 the city - - -

24 JUDGE RIVERA: No, but my question was it -  
25 - - just to clarify this question about the chilling

1 effect, whether or not, in a market society, is this  
2 party able to negotiate an agreement that avoids what  
3 they consider something that will have a chilling  
4 effect?

5 MS. WEITHMAN: I would imagine that they -  
6 - - they could - - -

7 JUDGE READ: What would that be?

8 JUDGE SMITH: They - - - they could  
9 negotiate a maximum of five months, twenty-nine days  
10 for everybody?

11 MS. WEITHMAN: Yes, yes, they could.

12 JUDGE SMITH: But would that - - - would  
13 that not, in itself, tend to interfere with the  
14 operation of this program? Wouldn't that make it a  
15 little harder to get AIDS - - - to - - - to treat  
16 AIDS people properly when they have to be nomads and  
17 move every six months?

18 MS. WEITHMAN: I - - - I - - - I don't  
19 think that it would - - - I think, in looking at the  
20 memorandum - - - memorandum of understanding, we also  
21 have to - - - to be clear that, you know, the city  
22 did contemplate this happening. So whether or not a  
23 - - - a landlord would actually try to - - -

24 CHIEF JUDGE LIPPMAN: Show us where - - -  
25 where it shows that the city contemplated this.

1 MS. WEITHMAN: In looking at Article 1,  
2 paragraph J, it clearly speaks of - - - it  
3 references, specifically, Rent Stabilization Code  
4 Section 2520.6(j) and the - - - the possibility, the  
5 very - - - the very potential that a referred  
6 eligible person could obtain those tenancy rights.  
7 The city did not - - -

8 JUDGE PIGOTT: But how do you look at - - -  
9 I'm sorry. I'll let you finish that.

10 MS. WEITHMAN: The city - - - the city did  
11 not list a - - - a long laundry list of different  
12 rights that tenants could obtain, but they did  
13 recognize this. So very clearly they contemplated  
14 that.

15 JUDGE GRAFFEO: You seem to be making an  
16 assumption that HRA is always going to pay for these  
17 individuals. Say someone is in one of these SROs,  
18 this building or some other building, and they stay  
19 three years and then HRA stops paying for them. What  
20 can the landlord do? Nothing? They just have to  
21 provide this housing, for however long that person  
22 wants to stay there, for free?

23 MS. WEITHMAN: Absolutely not, Your Honor.  
24 The landlord has recourse by commencing a nonpayment  
25 proceeding in housing court.

1 JUDGE SMITH: Against - - - against the  
2 tenant?

3 MS. WEITHMAN: Against the tenant. That's  
4 correct.

5 JUDGE SMITH: What is the source of the  
6 tenant's obligation to pay rent?

7 MS. WEITHMAN: The Rent Stabilization Code  
8 Section 2524.1, that provides an obligation for all  
9 tenants to pay rent. But it's not - - -

10 CHIEF JUDGE LIPPMAN: So he's like any  
11 other tenant? In other words, if he doesn't pay his  
12 rent they can get him out of there, no?

13 MS. WEITHMAN: That's - - - that's correct,  
14 Your Honor. This - - - the - - -

15 CHIEF JUDGE LIPPMAN: So it's just whether  
16 he - - - so the only issue here is whether he obtains  
17 the status to begin with. Once he obtains the  
18 status, it follows whatever the statutory framework  
19 is?

20 MS. WEITHMAN: That's correct, Your Honor.  
21 The Rent Stabilization Code has two very clear  
22 statutory schemes, one as it applies to apartment  
23 tenants and one as it applies to SRO tenants.

24 CHIEF JUDGE LIPPMAN: Let - - - let me ask  
25 you a different question sort of changing where we

1 began. Why are we considering this case? What - - -  
2 what is - - - what's relevant or live about it right  
3 now? How long has he been out of there?

4 MS. WEITHMAN: He moved out in 2000 - - -  
5 the summer of 2012, July.

6 CHIEF JUDGE LIPPMAN: Why - - - why isn't  
7 this thing moot?

8 MS. WEITHMAN: Well, I believe that the  
9 Appellate Division thought they had found - - -

10 CHIEF JUDGE LIPPMAN: I - - - I know what  
11 they said. I'm asking you.

12 MS. WEITHMAN: - - - that - - - that this  
13 issue, it - - - it meets one of the exceptions of the  
14 mootness doctrine in that this is an issue of - - -

15 JUDGE GRAFFEO: So how many - - - how many  
16 more people do we have in this situation who are - -  
17 -

18 MS. WEITHMAN: Well, I - - -

19 JUDGE GRAFFEO: - - - in - - - in buildings  
20 where the building owners are claiming that they're  
21 not being paid or that their tenancies have expired?

22 MS. WEITHMAN: Well, I think what we have  
23 here, the issue before you all, is the - - - the  
24 interpretation of this plain language of the statute.

25 JUDGE SMITH: Well, so maybe - - -

1 MS. WEITHMAN: So there are thousands - - -  
2 there - - -

3 JUDGE GRAFFEO: We're - - - we're looking  
4 at mootness issue. Why - - - why is this not moot?  
5 So if it's - - - if it's because there's other  
6 pending people in the same situation, so this is  
7 likely to arise again, then perhaps it's an exception  
8 to the mootness doctrine; that's what we're trying to  
9 get at. Why should we consider the merits of this  
10 case?

11 MS. WEITHMAN: I believe that you should be  
12 considering the merits of this case because there are  
13 thousands of SRO tenants across the city who face  
14 claims challenging their tenancy rights in housing  
15 court all of the time. And what we know is that the  
16 majority - - -

17 CHIEF JUDGE LIPPMAN: That there are  
18 tenants under similar - - -

19 MS. WEITHMAN: Whether they were - - -

20 CHIEF JUDGE LIPPMAN: - - - emergency  
21 housing framework?

22 MS. WEITHMAN: Not even - - - just in  
23 general, like if they were referred by - - -

24 JUDGE SMITH: Well, no - - - no one - - -  
25 no one's saying that no SRO tenant can be rent

1 stabilized. We're just talking about the ones who  
2 were in their - - - on an arrangement like this.

3 MS. WEITHMAN: That's what - - -

4 JUDGE SMITH: Are there thousands of those?

5 MS. WEITHMAN: That's the actual factual  
6 situation before you today.

7 CHIEF JUDGE LIPPMAN: Does this same  
8 program exist today?

9 MS. WEITHMAN: Yes, there are still some  
10 SRO buildings we have.

11 CHIEF JUDGE LIPPMAN: How many, would you  
12 say, people are in SROs coming out of this program in  
13 HRA?

14 MS. WEITHMAN: How many SRO buildings  
15 actually enter into this - - -

16 CHIEF JUDGE LIPPMAN: How many SRO tenants  
17 are there in this kind of situation today? A lot, a  
18 few?

19 MS. WEITHMAN: I would say a - - - a lot.  
20 But I - - - I think broader this - - -

21 JUDGE SMITH: Your - - - your - - - your  
22 light is on and nobody's asked you yet about what the  
23 statute means. I - - - can I just ask one question  
24 about that. I suggested to your adversary that the  
25 idea of the - - - of these definitions in the Rent

1 Stabilization Code is you have a general definition  
2 of tenant that works for people who live in apartment  
3 buildings. And then you have a - - - but - - - but  
4 it doesn't work for people who live in hotels. And  
5 isn't the thrust of (j) and (m) just to say for  
6 hotels you're - - - you - - - you get protection if  
7 you're there for six months and not - - - but not for  
8 the - - - but not if you're there overnight. Isn't  
9 that - - - isn't that really just all we're talking  
10 about?

11 MS. WEITHMAN: That's correct, Your - - -  
12 Your Honor. The - - - the interpret - - -

13 JUDGE SMITH: Well, so why - - - why then  
14 should we read, I mean, this admittedly - - - yeah,  
15 some of us find it a sligh - - - a slightly confusing  
16 language. But why should we read this language to  
17 expand the general definition of tenant? Normally, I  
18 mean, in an apartment building, a tenant is somebody  
19 who's got a rental obligation. Why shouldn't that  
20 also be true in a hotel?

21 MS. WEITHMAN: Well, Your Honor, I don't  
22 believe that this would expand the definition of  
23 tenant. There - - - the legislature intended to crea  
24 - - -

25 JUDGE SMITH: Well, if - - - if you had - -

1 - if you had nothing but the definition - - - but the  
2 definition, indeed - - - the definition of tenant,  
3 your guy wouldn't qualify.

4 MS. WEITHMAN: That's correct, but it's - -  
5 - that would be under an apartment building whereas  
6 this is an SRO building.

7 JUDGE SMITH: That's my point.

8 MS. WEITHMAN: And the legislature - - -

9 JUDGE SMITH: Why - - - why is he better  
10 off because he's in a hotel?

11 MS. WEITHMAN: Well, whether he's better  
12 off, this is the type of housing that he is - - - he  
13 is in and the plain language sets forth - - -

14 JUDGE SMITH: My - - - my question is why.  
15 Why should we assume that the authors of the Rent  
16 Stabilization Code - - - Code - - - or why should we  
17 infer that the authors of the Rent Stabilization Code  
18 intended to give more rights to hotel residents than  
19 apartment residents?

20 MS. WEITHMAN: I don't believe that there  
21 are more rights, but I believe it is in the - - - the  
22 intent of the legislature - - -

23 JUDGE SMITH: You said that - - - you said  
24 - - - you just said a minute ago that if this guy's -  
25 - -

1 MS. WEITHMAN: They're different.

2 JUDGE SMITH: - - - in an apartment you  
3 lose the case.

4 MS. WEITHMAN: I believe that they're  
5 different rights, right? They - - - and I believe  
6 that the legislature did intend to - - - to protect  
7 this historically vulnerable and marginalized - - -

8 CHIEF JUDGE LIPPMAN: But why isn't this -  
9 - - why isn't this basically simple? He's there long  
10 enough. His rent is paid. And if he's there and his  
11 rent is not being paid, the landlord has the rights  
12 that they have. Is there anything more complicated  
13 than this?

14 MS. WEITHMAN: I don't believe so, Your  
15 Honor, I think - - -

16 JUDGE RIVERA: Well - - - well - - - well,  
17 the statute doesn't - - - the statute doesn't have  
18 any requirements about who pays your rent.

19 MS. WEITHMAN: Exactly.

20 JUDGE RIVERA: This is not - - - it doesn't  
21 matter here - - -

22 MS. WEITHMAN: Exactly.

23 JUDGE RIVERA: - - - whether the city pays  
24 the rent, he pays the rent, your center pays the rent  
25 - - -

1 MS. WEITHMAN: Exactly.

2 JUDGE RIVERA: - - - some friend off the  
3 street pays the rent.

4 JUDGE SMITH: Yeah, but that - - -

5 JUDGE RIVERA: As long as he's paying the  
6 rent - - - excuse me, it doesn't matter.

7 But I have a different question. I just  
8 want to be clear. Can you - - - how long - - - let's  
9 - - - let's assume for one moment we're talking about  
10 someone who satisfies these requirements. How long  
11 is he a permanent - - - or she a permanent tenant?  
12 What - - - what time frame do they get? What kind of  
13 tenancy are they really entitled to?

14 MS. WEITHMAN: They're entitled to be there  
15 - - -

16 JUDGE RIVERA: Is it a month-to-month, is  
17 it a six-month-to-six-month, is it a year - - -  
18 that's what I'm asking you.

19 MS. WEITHMAN: If - - - if they move in and  
20 they - - - but they become a statutory tenant upon  
21 continuously residing there for six months - - -

22 JUDGE RIVERA: Six months.

23 MS. WEITHMAN: - - - they'd become a  
24 permanent per - - - month-to-month tenant. However -  
25 - -

1 JUDGE RIVERA: Then they're a month-to  
2 month?

3 MS. WEITHMAN: Yes.

4 JUDGE RIVERA: That's what I wanted to  
5 know.

6 MS. WEITHMAN: However, if they do request  
7 a lease of a period of six months, then they're  
8 pretty - - -

9 JUDGE RIVERA: They can get one six-month  
10 lease? Can they renew that lease?

11 MS. WEITHMAN: The - - - the lease would be  
12 renewable, yes.

13 JUDGE RIVERA: And how many time - - - I'm  
14 sorry. Last question, is it automatically renewable?

15 MS. WEITHMAN: Yes.

16 JUDGE RIVERA: Over and over?

17 MS. WEITHMAN: Yes, exactly.

18 JUDGE RIVERA: Like a - - - a regular rent-  
19 stabilized lease. You get it renewed, but it would  
20 run for a six-month period?

21 MS. WEITHMAN: Yes.

22 JUDGE RIVERA: Okay.

23 MS. WEITHMAN: Or - - - but if - - -

24 JUDGE SMITH: But they're - - - but if  
25 they're there - - - but as long as they pay the rent

1           they can be there for life?

2                   MS. WEITHMAN: That's correct, Your Honor.  
3           And I think that's what's important to - - - to note  
4           here with these two different statutory schemes and  
5           in looking at the definition of permanent tenant that  
6           it - - - which specifically states that reference in  
7           the code to tenant should also include permanent  
8           tenant.

9                   CHIEF JUDGE LIPPMAN: Okay, counselor.  
10          Thanks, counselor.

11                  MS. WEITHMAN: Thank you.

12                  CHIEF JUDGE LIPPMAN: Let's get rebuttal.

13                  MR. ROSENBERG: Let me just address the  
14          first point to Your Honor, Judge Rivera, about the  
15          point about having an agreement in this free market  
16          system where you could agree that they wouldn't  
17          acquire these benefits. Contrary to my learned  
18          adversary's - - -

19                  JUDGE RIVERA: Well, they - - - they  
20          wouldn't be there more than six months?

21                  MR. ROSENBERG: Yeah, it - - - it would be  
22          - - - well, they - - - still under the other section,  
23          they could demand a lease if they're there a day. So  
24          the six months is not the only way. There are two  
25          ways - - -

1 JUDGE RIVERA: Okay.

2 MR. ROSENBERG: - - - you can become a  
3 permanent tenant. One is to have a landlord-tenant  
4 relationship, pay rent, stay there six months, and  
5 then you can remain. Or, two, have a landlord-tenant  
6 relationship, have an agreement to pay rent, and  
7 demand a lease.

8 CHIEF JUDGE LIPPMAN: Counselor - - -  
9 counsel - - -

10 MR. ROSENBERG: Nothing - - - nothing that  
11 happened here.

12 CHIEF JUDGE LIPPMAN: Counsel, if this - -  
13 - if - - - if Mr. Pitt paid rent - - - after HRA  
14 stopped paying the rent, if he started paying the  
15 rent, would you have taken it?

16 MR. ROSENBERG: That would be speculative,  
17 but I would say probably not, but I don't know.

18 CHIEF JUDGE LIPPMAN: Why not?

19 MR. ROSENBERG: I don't know. You're  
20 asking me to spec - - - I have to speak for my  
21 client.

22 CHIEF JUDGE LIPPMAN: Yeah, but I'm asking  
23 you a basic question. Why - - -

24 MR. ROSENBERG: You know when they say you  
25 assume.

1 JUDGE RIVERA: You must have same basis  
2 there for that now.

3 CHIEF JUDGE LIPPMAN: Why did you not take  
4 it? You're in to make money, aren't you?

5 MR. ROSENBERG: Yes.

6 CHIEF JUDGE LIPPMAN: Isn't that why you  
7 enter into the - - -

8 MR. ROSENBERG: Yes.

9 CHIEF JUDGE LIPPMAN: Let me ask you a  
10 question, do you enter into this lease with HRA  
11 because you're doing a humanitarian service or  
12 because you're making money?

13 MR. ROSENBERG: I think both. It's a false  
14 alternative question, with all respect. I think the  
15 - - -

16 CHIEF JUDGE LIPPMAN: I don't - - - I don't  
17 think so.

18 MR. ROSENBERG: I think it's both, Your  
19 Honor. I think you can be humanitarian - - -

20 CHIEF JUDGE LIPPMAN: What's your primary  
21 motive, counsel?

22 MR. ROSENBERG: First of all, it's not my  
23 primary. It's my client's primary motive.

24 CHIEF JUDGE LIPPMAN: What's your client's  
25 primary motive?

1 MR. ROSENBERG: I think like with all  
2 people who own property and manage property, it's to  
3 make a profit.

4 CHIEF JUDGE LIPPMAN: Okay, so - - -

5 MR. ROSENBERG: But that doesn't preclude  
6 doing it in a humanitarian way.

7 CHIEF JUDGE LIPPMAN: So if the ten - - -  
8 if the "tenant," in quotes, were to continue paying  
9 rent, you really think that your client would say no,  
10 I don't - - - I don't think so.

11 MR. ROSENBERG: Okay, I don't know.

12 CHIEF JUDGE LIPPMAN: Okay.

13 JUDGE SMITH: Well, wouldn't - - - wouldn't  
14 - - - wouldn't the problem be that your client  
15 wouldn't want to accept the idea that he's a rent-  
16 stabilized tenant and have that - - -

17 MR. ROSENBERG: Correct, right.

18 JUDGE SMITH: - - - have that - - - have  
19 that become a regulated rent forever.

20 MR. ROSENBERG: Right, if - - - if I can  
21 just get to the - - -

22 CHIEF JUDGE LIPPMAN: Go ahead, counselor.  
23 Get to it.

24 MR. ROSENBERG: Okay, contrary to what my  
25 adversary said, it's right in the statute, 2520.13,

1 "Waiver of benefit void, an agreement to waive the  
2 benefit of any provision of the Rent Stabilization  
3 Law or the Code is void." Okay, it's against public  
4 policy. So you can't. This provision in the MOU is  
5 meaningless. All it says is if you're there more  
6 than thirty days or otherwise acquire any other  
7 protections or rights, you have to bring a summary  
8 proceeding. That's all it says.

9 JUDGE SMITH: Okay, let - - - let me ask  
10 you a different question, if I may. There are  
11 documents in the record that apparently your client  
12 filed with DHCR that seem to say this apartment is  
13 rent stabilized and lists - - - lists Mr. - - -

14 MR. ROSENBERG: Pitt, Pitt.

15 JUDGE SMITH: - - - Pitt as the tenant.

16 MR. ROSENBERG: Yes.

17 JUDGE SMITH: I mean, am I - - - am I  
18 misreading the documents?

19 MR. ROSENBERG: You're not misreading the  
20 documents, but you should have seen the footnote in  
21 our brief which is that that - - - that has been held  
22 by the appellate courts as not conferring rent-  
23 stabilized status. It's an erroneous registration.  
24 So - - -

25 JUDGE SMITH: You - - - so - - - so but - -

1 - so but your answer is it was just - - - it was a  
2 mistake and it's a mistake that doesn't bind?

3 MR. ROSENBERG: It's a make - - - mistake  
4 and has no legal significance as a matter of law.

5 CHIEF JUDGE LIPPMAN: Counsel, why are we  
6 considering the MOU altogether?

7 MR. ROSENBERG: Because - - -

8 CHIEF JUDGE LIPPMAN: The MOU only comes in  
9 at a later point in the appellate courts, right?

10 MR. ROSENBERG: Because the MOU was  
11 undisputed. There was never a dispute about the fact  
12 that Mr. Pitt did not come in - - -

13 CHIEF JUDGE LIPPMAN: Yeah, yeah, but the  
14 lower court did not take the MOU, right?

15 MR. ROSENBERG: No, the lower court quashed  
16 the - - -

17 CHIEF JUDGE LIPPMAN: Because Mr. Pitt  
18 would not consent, right?

19 MR. ROSENBERG: No, the lower court - - -  
20 and it says it in the decision, quashed the subpoena  
21 - - -

22 CHIEF JUDGE LIPPMAN: Right.

23 MR. ROSENBERG: - - - and said that we  
24 tried to get it in the record. I wasn't the attorney  
25 at that point - - -

1 CHIEF JUDGE LIPPMAN: Right, we know.

2 MR. ROSENBERG: - - - in the proceeding.

3 Okay, but the salient facts were undisputed and un -  
4 - - unremarkable and don't need the specific  
5 provisions of the MOU, because it was undisputed that  
6 Mr. Pitt went into possession, not under his own  
7 agreement with the landlord on which he obligates to  
8 pay rent, but under a lease with the city. And the  
9 city was paying for his room, and he was one of up to  
10 134 other eligible persons.

11 CHIEF JUDGE LIPPMAN: Yeah, yeah, but if  
12 you don't know the terms of the MOU, it's hard to  
13 determine what the nature of that payment was and why  
14 it was being made, et cetera, et cetera.

15 MR. ROSENBERG: Ab - - - absolutely not,  
16 because it was undisputed throughout the record - - -  
17 and that's why the summary proceeding was required -  
18 - - that Mr. Pitt, like the other eligible residents,  
19 got exclusive occupancy of their rooms, which made it  
20 a lease for each and every one of those rooms. And  
21 ev - - -

22 JUDGE SMITH: But what - - - what - - -  
23 what occurs to me is that if we're - - - if we're for  
24 some - - - somehow barred from looking at the MOU,  
25 then it's ridiculous for us to apply the moot - - -

1 mootness exception here, because we can't. We - - -  
2 we don't want to set precedent for every other case.  
3 And the whole point of the mootness exception is to  
4 set a precedent. So if we're barred from looking at  
5 the MOU, shouldn't we say we never should have taken  
6 this appeal, the Appellate Division never should have  
7 decided it, we reverse the Appellate Division, tell  
8 them to dismiss the appeal, reinstate appellate term.  
9 You'd be okay with that?

10 MR. ROSENBERG: I'd be fine with that.

11 JUDGE RIVERA: Um-hum.

12 MR. ROSENBERG: And I did move to dismiss  
13 the Appellate Division appeal bo - - - for mootness,  
14 and they felt this was a matter - - - and it doesn't  
15 impact thousands of SRO tenants, because this doesn't  
16 have to do with anything to do with a typical SRO  
17 tenant. This - - -

18 CHIEF JUDGE LIPPMAN: All right, but you -  
19 - - you agree with Judge Smith, though, if we - - -  
20 if - - - if we're going to rule on it, we got to look  
21 at the MOU?

22 MR. ROSENBERG: No, I - - - I think - - -

23 CHIEF JUDGE LIPPMAN: No, you don't agree.  
24 Why don't you agree?

25 MR. ROSENBERG: I think you should look at

1 the MOU. I think I win regardless of whether you  
2 look at the MOU or not, because the undisputed facts  
3 in the record, that are indisputably in the record,  
4 was that the - - - Mr. Pitt was there under a lease  
5 with the city and Branic, and he didn't pay rent. He  
6 didn't have an agreement to pay rent. He never  
7 tendered rent. And he was a clear licensee under  
8 well-settled law.

9 CHIEF JUDGE LIPPMAN: Well, you - - - you  
10 received - - - you received rent.

11 MR. ROSENBERG: Yes, but the law - - - the  
12 - - - the Rent Stabilization Code expressly exempts  
13 subtenants and licensees from any tenant rights.

14 JUDGE SMITH: There - - - is there a  
15 difference - - -

16 MR. ROSENBERG: So who pays rent does make  
17 a difference, contrary to what was said.

18 JUDGE SMITH: Well - - - well, wait. Is  
19 there a difference between who pays the rent? I  
20 mean, presumably, you - - - you know, I - - - I don't  
21 lose my rights if my brother-in-law pays my rent.  
22 But if - - - but - - - but is - - - is the question  
23 who's obligated to pay the rent?

24 MR. ROSENBERG: Yes.

25 JUDGE SMITH: Your guy not only didn't pay,

1 he - - - he wasn't obliged to pay.

2 MR. ROSENBERG: Yes, but your brother-in-  
3 law is not necessarily the right example. Actually,  
4 a landlord doesn't have to accept the tender of a  
5 subtenant's rent. So if a licensee or a subtenant  
6 wants to pay the rent on behalf of the tenant, the  
7 landlord doesn't have to accept that. If - - -  
8 couldn't bring it - - -

9 JUDGE SMITH: I understand.

10 CHIEF JUDGE LIPPMAN: Yeah, couldn't you  
11 accept - - -

12 JUDGE SMITH: You - - - you would not have  
13 - - - have to accept it. But it doesn't ma - - - the  
14 tenant's still a tenant if somebody else is paying  
15 the rent.

16 MR. ROSENBERG: Oh, if the landlord accepts  
17 it, of course, of course.

18 CHIEF JUDGE LIPPMAN: But you accepted the  
19 HRA - - - after HRA told him to go and that they're  
20 not paying for this thing anymore, you accepted their  
21 rent continuing to pay for it.

22 MR. ROSENBERG: Right, and he stayed in  
23 possession for the period of time they paid.

24 CHIEF JUDGE LIPPMAN: Because - - - because  
25 - - - and commendably so, you want to make a dollar,

1 so why wouldn't you take the rent?

2 MR. ROSENBERG: Well, it's - - - actually -  
3 - -

4 CHIEF JUDGE LIPPMAN: Whether it's the  
5 brother-in-law or HRA?

6 MR. ROSENBERG: Whether we want to make a  
7 dollar or not, we had no choice. We couldn't evict  
8 him legally. We're not going to do it illegally. So  
9 why aren't we going to get paid?

10 CHIEF JUDGE LIPPMAN: You couldn't evict  
11 him legally because he - - - what, he had some  
12 status, no?

13 MR. ROSENBERG: No, we could evict him  
14 legally. The appellate term recognized that in  
15 accordance with all the cases in the history of this  
16 state, upon until the Appellate Division decision in  
17 this case. Every case found in the same way the  
18 appellate term did.

19 CHIEF JUDGE LIPPMAN: So maybe that's why  
20 we have to rule on it if - - - if, you know, this is  
21 the first of its kind.

22 MR. ROSENBERG: If you rule this way, yes.

23 CHIEF JUDGE LIPPMAN: Say again?

24 MR. ROSENBERG: Only - - - only if you're  
25 ruling this way.

1 CHIEF JUDGE LIPPMAN: Okay.

2 MR. ROSENBERG: And - - - and - - -

3 CHIEF JUDGE LIPPMAN: Fair enough.

4 JUDGE RIVERA: Coun - - - coun - - - coun -  
5 - -

6 MR. ROSENBERG: - - - the Kanti-Savita  
7 case, by the way, was a nonpayment. And by the way,  
8 what was said by my adversary, we could not bring a  
9 nonpayment proceeding. And she knows better because  
10 a nonpayment proceeding, you have to prove as part of  
11 your prima facie case, the exact agreement and what  
12 rent - - - rent was agreed to be made.

13 JUDGE RIVERA: Counsel - - -

14 CHIEF JUDGE LIPPMAN: Counselor, one other  
15 question. Judge Rivera and then - - -

16 JUDGE RIVERA: Sorry.

17 CHIEF JUDGE LIPPMAN: - - - you all can go  
18 about your way.

19 JUDGE RIVERA: Counsel, I'm sorry.

20 CHIEF JUDGE LIPPMAN: Go ahead, Judge  
21 Rivera.

22 JUDGE RIVERA: Did - - - I'm - - - I'm not  
23 sure if you've already answered this or - - - or said  
24 this otherwise. You have other individuals who are  
25 being - - - whose rent is being paid by HRA right now

1 in your building?

2 MR. ROSENBERG: In - - - no, not in this  
3 one.

4 JUDGE RIVERA: In your client's building,  
5 the building we're talking about.

6 MR. ROSENBERG: No.

7 JUDGE RIVERA: None?

8 MR. ROSENBERG: No, this is the only one  
9 that wouldn't move.

10 JUDGE RIVERA: Thank you.

11 MR. ROSENBERG: And remember, we're not  
12 talking about - - -

13 CHIEF JUDGE LIPPMAN: Okay.

14 MR. ROSENBERG: - - - putting someone out  
15 in the street. They were being relocated to another  
16 facility paid for by the city. So it wasn't a matter  
17 of putting anyone out in the street or making anyone  
18 homeless.

19 CHIEF JUDGE LIPPMAN: Counsel, we hear you.  
20 We hear your adversary. Thank you both, appreciate  
21 it.

22 MR. ROSENBERG: Thank you very much, Your  
23 Honors.

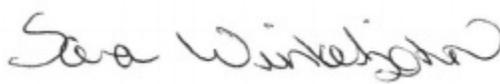
24 CHIEF JUDGE LIPPMAN: Thank you.

25 (Court is adjourned)

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C E R T I F I C A T I O N

I, Sara Winkeljohn, certify that the foregoing transcript of proceedings in the Court of Appeals of Branick International Realty Corp. v. Phillip Pitt, No. 200 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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