

**Prometheus Realty v City of New York**

2009 NY Slip Op 30273(U)

February 4, 2009

Supreme Court, New York County

Docket Number: 111132/08

Judge: Eileen A. Rakower

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

PRESENT: EILEEN A. RAKOWER  
Justice C.

PART 5

Index Number : 111132/2008  
**PROMETHEUS REALTY CORP.,**  
VS.  
**CITY OF NEW YORK**  
SEQUENCE NUMBER : # 001  
LEAVE TO INTERVENE

INDEX NO. 111132-08  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. #001  
MOTION CAL. NO. \_\_\_\_\_

ere read on this motion to/for \_\_\_\_\_

PAPERS NUMBERED

1, 2  
3, 4  
5

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

**FILED**  
FEB 09 2009  
COUNTY CLERK'S OFFICE  
NEW YORK

**DECIDED IN ACCORDANCE WITH  
ACCOMPANYING DECISION / ORDER**

Dated: 2/4/09

EILEEN A. RAKOWER s.c.  
J.S.C.

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST

REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 5

-----X  
PROMETHEUS REALTY, RESHIT  
GJINOVIC, ASIA GJINOVIC, 68-60 108  
REALTY, LLC, and THE RENT  
STABILIZATION ASSOC. OF NYC, INC.

Plaintiffs,

- against -

THE CITY OF NEW YORK

Defendant.

-----X  
HON. EILEEN A. RAKOWER

Index No.  
111132/08

**DECISION  
/ORDER**  
Mot. Seq.  
No.: 001

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NEW YORK

Plaintiffs, four individual landlords and the Rent Stabilization Association of NYC, Inc.<sup>1</sup>, bring this action to challenge the enactment of Local Law No. 7 of 2008 ("Local Law No. 7"), by the City of New York ("City"). Local Law No. 7 became effective on March 13, 2008, and amends provisions of the City's Administrative Code (also known as the "Housing Maintenance Code") to define and prohibit a course of conduct termed "harassment" and by enabling tenants to seek injunctive relief on harassment claims. Theresa Perez ("Perez"), in her capacity as president of the Queens Vantage Tenants Council, and the Association for Neighborhood and Housing Development ("ANHD") move to intervene. Plaintiffs oppose the motion. City does not submit papers.

Perez and ANHD, in support of their motion submit the following: (1) a notice of motion; (2) counsel's affirmation; (3) the affidavit of Theresa Perez; (4) the

\_\_\_\_\_  
<sup>1</sup> A not-for-profit organization that represents the interests of New York City property owners.

affidavit of Irene Baldwin, Executive Director of ANHD; (5) Meridian Capital Group's financing proposal regarding the purchase of Queens Portfolio II; (6) Perez's and ANHD's proposed answer; (7) a memorandum of law; and (8) a reply memorandum of law. Movants seek to interpose an answer raising the defense that Local Law 7 is constitutional and a valid exercise of the City Council's powers. Perez and ANHD argue that permissive leave to intervene should be granted because their proposed defense shares issues of law and fact with City and because their interest in the outcome of this action is direct and substantial. Movants submit a proposed answer, adopting City's affirmative defense that the complaint fails to state a cause of action.

Plaintiffs, in opposition, submit: (1) counsel's affirmation; (2) the complaint; (3) City's answer; and (3) a memorandum of law in opposition to the motion to intervene. Plaintiffs contend that leave to intervene should be denied because movants' interests arise from matters extraneous to City's enactment of Local Law No. 7.

Local Law No. 7 provides that any tenant in the Housing Part of the New York City Civil Court may commence a litigation or allege a counterclaim in a proceeding where the tenant is a respondent on the grounds of harassment by the building's owner. It amends the Housing Maintenance Code to define "harassment" as acts or omissions by or on behalf of the owner that cause or are intended to cause a lawful occupant to vacate an apartment unit or forgo any occupancy rights, and enables a tenant to bring an order to show cause seeking injunctive relief solely on the basis of a harassment claim. The legislative history notes that the law was intended to provide "a framework by which tenants can take legal action on their own behalf to prevent harassment from occurring and to ensure that City government responds to harassment in a more effective manner..." (*New York City Local Law Report No. 7, Int. 627-A [2008].*)

In August 2008, Plaintiffs commenced an action seeking declaratory and injunctive relief against City, alleging that City's enactment of Local Law No. 7 violates the New York State Constitution and improperly expands the court's equitable jurisdiction beyond what is granted in the New York Civil Court Act. On October 3, 2008, City served an answer denying the principal allegations of the complaint and raising the affirmative defenses that plaintiffs fail to state a cause of action and lack standing.

Proposed intervenor Theresa Perez is the president of the Queens Vantage Tenants Council, an organization of tenants in over 50 buildings recently purchased by Vantage Properties LLC. (“Vantage”). Perez alleges that members of her organization have experienced harassment including frivolous eviction proceedings, unlawful refusals to renew leases, and refusal to make repairs for long term tenants despite the fact vacant units are being renovated. She affirms that several members of the Tenants Council have already filed harassment complaints against Vantage, and claims that others are likely to require the protection of Local Law No. 7 in the future. Proposed intervenor ANIID is a membership group including over 90 community organizing and housing development groups within the 5 boroughs. ANIID asserts that it and its members confront landlord harassment on a continual basis and that, if plaintiffs prevail in their action, ANIID and its members will be impeded in their efforts to defend tenants against landlord harassment.

CPLR 1013 states:

Upon timely motion, any person may be permitted to intervene in any action when a statute of the state confers a right to intervene in the discretion of the court, or when the person’s claim or defense and the main action have a common question of law or fact. In exercising its discretion, the court shall consider whether the intervention will unduly delay the determination of the action or prejudice the substantial rights of any party.

CPLR 1014 provides:

A motion to intervene shall be accompanied by a proposed pleading setting forth the claim or defense for which intervention is sought.

In determining whether to grant permissive leave to intervene, the court should consider whether movant’s claim could be adversely affected if intervention were not allowed, whether common issues of law and fact exist, and whether no prejudice may be shown if the intervention were allowed. (*Teichman v. Community Hospital of Western Suffolk* (87 N.Y.2d 514, 522 [1996])). Also to be considered is whether the proposed intervenor possesses a “real and substantial interest” in the outcome of the proceeding. (*Agostino v. Soufer*, 284 AD2d 147 [1<sup>st</sup> Dept 2001]). Where the movant possesses a real and substantial interest, intervention should be liberally granted.

(*Plantech Housing Inc. v. Kevin Conlan*, 426 N.Y.D.2d 8 [2<sup>nd</sup> Dept. 1980] [holding that denial of intervention was an abuse of discretion where proposed intervenor was affected in a “real and substantial way”]; *See also UBS Financial Services, Inc. v. Gibson* 2007 WL 4152240 at \*5 [ N.Y. Cty. Sup. Ct. 2007].

Local Law 7 was enacted in order to protect tenants from harassment by owners and landlords. As such, groups such as ANHD, and its members, have a real and substantial interest in the instant litigation and common issues of law and fact exist. Finally, plaintiffs would not be prejudiced by the intervention. Movants brought this motion within one month after City served its answer, and it is undisputed that discovery had not yet begun in plaintiffs’ action as of October 28, 2008.

Wherefore it is hereby

ORDERED that the motion to intervene is granted as to Perez and ANHD; and it is further

ORDERED that defendant Perez and ANIID’s answer, in the proposed form annexed to the moving papers, shall be deemed served upon service of a copy of this order with notice of entry.

This constitutes the decision and order of the court. All other relief requested is denied.

DATED: February 4, 2009



EILEEN A. RAKOWER, J.S.C.

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NEW YORK