

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

ISHMAIL DIMSON, MIGUEL RODRIGUEZ, EDWARD CROSS, LAURANE YEARWOOD, MARY ALSTON, PATRICIA NELSON, STEVEN CHERNOFF, NANCY DELIA-SMITH, TAISHA INESTI, ELAINE WILSON, ARTHUR SCHWARTZ, BETSY MUNOZ-BERMUDEZ, JOANN SINDONE, CAROL VACCA, LEONIE GREEN, MYRTLE SMITH, NANCY VASQUEZ, KATHLEEN BADYNA, DEREK MCKISSICK and HORACE VINCENT, on behalf of themselves and all others similarly situated,

Plaintiffs,

-against-

DONALD J. TRUMP, in his personal capacity, E. TRUMP & SON COMPANY, MARYANNE TRUMP BARRY, ROBERT S. TRUMP, deceased, SHAWN HUGHES, the Executor of the Estate of ROBERT S. TRUMP, deceased, in his capacity as Executor, JOHN W. WALTER, deceased, JOHN or JANE DOE, the Executor of the Estate of JOHN W. WALTER, deceased, in his or her capacity as Executor, TRUMP ORGANIZATION LLC, ALL COUNTY BUILDING SUPPLY & MAINTENANCE CORP., MIDLAND ASSOCIATES LLC, ARGYLE APARTMENTS LLC, BEACH HAVEN APARTMENTS ASSOCIATES LLC, BEACH HAVEN GROUP LLC, BELCREST PARK ASSETS LLC, BRIAR WYCK APARTMENTS LLC, CHELSEA PARK ASSETS LLC, EDGERTON APARTMENTS DEL LLC, FALCON APARTMENTS DEL LLC, FIESTA PARK ASSETS LLC, FONTAINEBLEAU TOWERS DEL LLC, GREEN PARK ESSEX APARTMENTS DEL LLC, GREEN PARK SUSSEX APARTMENTS DEL LLC, GRYMES HILL APARTMENTS DEL LLC, KENDALL APARTMENTS DEL LLC, LAWRENCE GARDENS APARTMENTS DEL LLC, LAWRENCE TOWERS DEL LLC, NAUTILUS APARTMENTS DEL LLC, SHORE HAVEN APARTMENTS DEL LLC, SOUTHAMPTON APARTMENTS DEL LLC, SUSSEX APARTMENTS ASSOCIATES DEL LLC, STATEN ISLAND 18 ACRES LLC, WESTMINSTER APARTMENTS LLC, WESTMINSTER APARTMENTS LLC, WEXFORD APARTMENTS DEL LLC, WILSHIRE APARTMENTS DEL LLC, WINSTON APARTMENTS DEL LLC, APARTMENT MANAGEMENT ASSOCIATES LLC, D.S.J. REALTY, L.L.C., JOHN or JANE DOE 1-100 and XYZ CORPORATION 1-100,

Defendants.

Index No.: 518776/20

AFFIRMATION
IN SUPPORT

ANTHONY P. MASTROIANNI, an attorney duly admitted to practice before the courts of the State of New York, hereby affirms the following under penalties of perjury:

INTRODUCTION

1. I am associated with Parker Waichman LLP, attorneys for Plaintiffs, on behalf of themselves and all others similarly situated (“Plaintiffs”) and am fully familiar with the facts and circumstances of this matter as they pertain to the application at bar.

2. This affirmation is submitted in support of Plaintiffs’ application for an order granting Plaintiffs leave pursuant to CPLR 3025(b) to file and serve a Second Amended Complaint (a) adding as defendants DONALD J. TRUMP and MARYANNE TRUMP BARRY, the Co-Executors of the Estate of FRED C. TRUMP, in their capacity as Co-Executors, ELIZABETH TRUMP GRAU, TRUMP ORGANIZATION INC., BEACH HAVEN APTS. NO. 1, INC., SHORE HAVEN APTS. NO. 1, INC., SUSSEX HALL, INC., TRUMP VILLAGE CONSTRUCTION CORP., WEXFORD HALL, INC., TRUMP MANAGEMENT INC., APARTMENT MANAGEMENT ASSOCIATES INC., TRUMP VILLAGE APARTMENTS ONE OWNER, LLC, TRUMP VILLAGE APARTMENTS TWO OWNER LLC, TYSENS APARTMENTS LLC, JACK MITNICK, SPAHR LACHER & SPERBER, INC., SPAHR LACHER & SPERBER L.L.P., MAZARS USA LLP, CAMMEBY’S REALTY CORP., and PARKOFF OPERATING CORP. pursuant to CPLR 1003; (b) substituting as a defendant JOHN or JANE DOE, the Executor of the Estate of JOHN W. WALTER, deceased, in his or her capacity as Executor, with JOAN WALTER, the Executrix of the Estate of JOHN W. WALTER, deceased in her capacity as Executrix; (c) adding a cause of action for violations of 18 USC § 1962, The Racketeer Influenced and Corrupt Organizations Act (“RICO”) as to Defendants DONALD J. TRUMP and MARYANNE TRUMP BARRY, the Co-Executors of the Estate of FRED C.

TRUMP, in their capacity as Co-Executors, and individually, MARYANNE TRUMP BARRY, SHAWN HUGHES, the Executor of the Estate of ROBERT TRUMP, deceased in his capacity as Executor, ELIZABETH TRUMP GRAU, and JOAN WALTER, Executrix of the Estate of JOHN WALTER, deceased, in her capacity as Executrix (“Trump Defendants”); (d) adding all additional facts and allegations as contained in the proposed Second Amended Complaint annexed to the affirmation in support of the motion; and (e) upon the grant of leave to amend, (i) directing service of a Supplemental Summons and the Second Amended Complaint upon all new defendants as provided by law, and (ii) directing service of the Second Amended Complaint upon counsel for all appearing parties and to parties already served, but in default, by Federal Express; and for such other relief as the Court deems just and proper.

3. Notably, all defendants in this action, with the exception of defaulting defendants, DONALD J. TRUMP (“Donald Trump”) and STATEN ISLAND 18 ACRES (“Staten Island 18”), have appeared by counsel and entered stipulations consenting to further amendment of the pleadings, annexed as Exhibit “A”, which further supports granting the relief sought herein.

4. Your affirmant also submits that this application be heard as a matter of urgency. The failure to respond by Donald Trump and Staten Island 18 has obstructed Plaintiffs from prosecuting their claims against newly discovered defendants and asserting causes of action against the Trump Defendants for violations of RICO as elaborated in the proposed Second Amended Complaint. In light of the expiration of statutory tolling under Executive Order 202.8 on November 4, 2020, the statute of limitations for Plaintiffs’ fraud claims expire on June 1, 2021.¹

¹ The date of expiration is based on a two-year statute of limitations triggered by publication of the *New York Times* investigation “*Trump Engaged in Suspect Tax Schemes as He Reaped Riches From His Father*” by David Barstow, Susanne Craig and Russ Buettner on October 2, 2018, and inclusive of the two hundred forty-two day period of statutory tolling under Executive Order 202.8. See *Foy v. State*, No. 135085, 2021 WL 713696, at 2 [N.Y. Ct. Cl. Feb. 16, 2021] [“The amount covered by the original executive order and all extensions is 242 days”].

Donald Trump and Staten Island 18 should not be permitted to prejudice Plaintiffs and enjoy the benefit of draining the statute in failing to respond.

5. Furthermore, this putative class action concerns allegations of continuing fraud and rent overcharges inflicted on Plaintiffs and the Class, encompassing over 14,000 tenants of rent-regulated apartments in Brooklyn, Queens, and Staten Island. Accordingly, any delay imposed by Donald Trump and Staten Island 18 results in continued harm inflicted upon these tenants in their monthly rent bills. As a matter of public policy, the continuing damages suffered by so many plaintiffs should not be amplified by the obstruction of two defendants.

STATEMENT OF FACTS

6. On October 2, 2020, Plaintiffs commenced the within putative class action (“the action”) on behalf of themselves and all others similarly situated by the filing of a Summons and Complaint. In summary, the action seeks damages for fraudulent rent overcharges and acts of consumer fraud committed from 1992 to the present by members of the Trump family and other associated individuals and business entities on many thousands of rent-regulated tenants in the City of New York.

7. On December 1, 2020, Plaintiffs filed a Supplemental Summons and Amended Complaint as of right pursuant to CPLR 3025, annexed hereto as Exhibit “**B**”.

8. As set forth in the facts and allegations of the Amended Complaint, Plaintiffs are present and former tenants of thirty-six (36) residential apartment complexes in Brooklyn, Queens, and Staten Island that were originally built and owned by the Trump Defendants and various business entities incorporated by them (“Trump Portfolio”). The Trump Portfolio represents a significant share of affordable housing, consisting of over 14,000 units, and served as the cornerstone of the Trump Defendants’ family fortune.

9. In 1992, the Trump Defendants registered Defendant ALL COUNTY BUILDING SUPPLY & MAINTENANCE CORP. (“All County”) as a New York State corporation to purportedly serve as the central purchasing agent of capital assets, including appliances, fixtures, building materials, supplies, and other items used for renovation, improvement, and maintenance of the Trump Portfolio.

10. In reality, All County served as a vehicle for the Trump Defendants to illegally and unlawfully overcharge and misrepresent the rent obligations of rent-regulated tenants of the Trump Portfolio. All County artificially inflated the reported costs of the capital assets purchased for the buildings, and used the marked-up invoices to justify unlawful Individual Apartment Improvement and/or Major Capital Improvement rent increases for the rent-regulated apartments in the Trump Portfolio. These rent hikes fraudulently increased the base rent of the rent-regulated apartments, thus permitting the Trump Defendants to receive rent monies they were not entitled to as a matter of law from Plaintiffs and the putative Class, month after month and year after year.

11. The fraudulent increase of Plaintiffs’ rents was also the byproduct of a broader Trump family scheme behind All County. The family’s patriarch, Fred Trump, had an enormous amount of cash trapped in the Trump Portfolio, which he hoped to transfer to his family without incurring estate or gift tax liabilities. The Trump Defendants, became the “owners” of All County, which allowed them to pocket the entity’s fraudulent profits by purchasing goods at significantly reduced prices on the market and then artificially inflating the cost of the same goods when selling them back to the Trump Portfolio. In turn, the Trump Defendants charged the inflated cost of the goods back to their tenants as rent increases.

12. The harm inflicted by All County in the past likewise continues to the present because the base rents that had been fraudulently increased then now serve as the starting point for

all subsequent legal rent increases under the rent regulation laws. Accordingly, every base rent of each of the thousands of apartments in the Trump Portfolio are suspect as the by-product of the All County scheme.

13. Plaintiffs seek the instant relief after undertaking further investigation of the facts and allegations set forth in the Amended Complaint, and discovering additional parties relevant to the claims in the action who are liable for the insidious damages caused by All County. Additional information was also discovered to support causes of action for RICO violations arising from the Trump Defendants' use of a business enterprise responsible for the ownership, management, and operation of the Trump Portfolio to facilitate the illegal and unlawful rent increases by engaging in widespread mail fraud.

14. Annexed hereto as Exhibit "C" is a copy of Plaintiffs' Proposed Second Amended Complaint, incorporating all additional facts, allegations, and causes of action sought to be included by this application.

ARGUMENT

FURTHER AMENDMENT OF THE PLEADINGS

A. Amendments shall be freely given.

15. The general policy of the courts is to permit amendment of the pleadings, for almost any purpose. CPLR 3025(b), which governs the amendment of pleadings, specifically directs that leave to amend shall be *freely given*:

A party may amend his or her pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties. Leave shall be *freely given* upon such terms as may be just including the granting of costs and continuances. Any motion to amend or supplement pleadings shall be accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions to be made to the pleading.

CPLR 3025(b) [emphasis added]. The Court of Appeals has directed that “[l]eave to amend the pleadings ‘shall be freely given’ absent prejudice or surprise resulting directly from the delay. *McCaskey, Davies and Assocs., Inc. v. New York City Health & Hasps. Corp.*, 59 NY2d 755 [1983]. CPLR 1003, which governs the joinder of new defendants, further provides in pertinent part that “[p]arties may be added at any stage of the action by leave of court or by stipulation of all parties who have appeared [.]” *Jaramillo v. Asconcio*, 151 AD3d 947, 949 [2d Dept 2017].

16. Here, nearly all defendants have appeared and consented by stipulation to the filing of a further amended complaint and an additional forty-five (45) days in which to respond to such further amended complaint. *See* Exhibit A, copies of stipulations by Defendants E. TRUMP & SON COMPANY, MARYANNE TRUMP BARRY, ROBERT S. TRUMP, deceased, SHAWN HUGHES, the Executor of the Estate of ROBERT S. TRUMP, deceased, in his capacity as Executor, JOHN W. WALTER, deceased, JOHN or JANE DOE, the Executor of the Estate of JOHN W. WALTER, deceased, in his or her capacity as Executor, TRUMP ORGANIZATION LLC, ALL COUNTY BUILDING SUPPLY & MAINTENANCE CORP., MIDLAND ASSOCIATES LLC, ARGYLE APARTMENTS LLC, BEACH HAVEN APARTMENTS ASSOCIATES LLC, BEACH HAVEN GROUP LLC, BELCREST PARK ASSETS LLC, BRIAR WYCK APARTMENTS LLC, CHELSEA PARK ASSETS LLC, EDGERTON APARTMENTS DEL LLC, FALCON APARTMENTS DEL LLC, FIESTA PARK ASSETS LLC, FONTAINEBLEAU TOWERS DEL LLC, GREEN PARK ESSEX APARTMENTS DEL LLC, GREEN PARK SUSSEX APARTMENTS DEL LLC, GRYMES HILL APARTMENTS DEL LLC, KENDALL APARTMENTS DEL LLC, LAWRENCE GARDENS APARTMENTS DEL LLC, LAWRENCE TOWERS DEL LLC, NAUTILUS APARTMENTS DEL LLC, SHORE HAVEN APARTMENTS DEL LLC, SOUTHAMPTON APARTMENTS DEL LLC, SUSSEX

APARTMENTS ASSOCIATES DEL LLC, WESTMINSTER APARTMENTS LLC, WESTMINSTER APARTMENTS LLC, WEXFORD APARTMENTS DEL LLC, WILSHIRE APARTMENTS DEL LLC, WINSTON APARTMENTS DEL LLC, APARTMENT MANAGEMENT ASSOCIATES LLC, and D.S.J. REALTY, L.L.C.

17. Given that nearly all defendants have appeared and consented to a further amended complaint with additional time to respond; that no defendant has yet submitted an answer; and the only parties failing to consent to a further amended complaint are those in default, i.e., Donald Trump and Staten Island 18, there can be no claim of prejudice by any appearing defendant in allowing Plaintiffs to file a further amended complaint.

18. Therefore, the request for leave to file and serve the within proposed Second Amended Complaint should be granted.

B. Urgency necessitating the motion.

19. As a result of the recalcitrance of the defaulting defendants, Donald Trump and Staten Island 18, in failing to respond, Plaintiffs have been obstructed from amplifying their pleadings and with each passing day are losing time from the statute of limitations to assert claims against the newly discovered defendants and the cause of action under RICO against the Trump Defendants.

20. In addition to the diminishing statute of limitations, the continued delay of this action further harms those Plaintiffs and members of the putative Class who are present tenants of the Trump Portfolio, consisting of over 14,000 apartments, *who must continue to pay* illegal these unlawful rent increases month after month, suffering continued economic damages with each monthly rent bill.

21. No prior application has been made for the relief sought herein. However, Plaintiffs filed a motion on January 1, 2021, seeking entry of a default judgment as against numerous other defendants in default, including Staten Island 18, which to date is the only remaining defendant other than Donald Trump to have not appeared by stipulation and consented to the Second Amended Complaint sought here. The hearing date for that motion was administratively adjourned from January 29, 2021, and is presently scheduled for May 4, 2021.

22. Accordingly, Plaintiffs respectfully request that for the sake of judicial economy and convenience, and in light of the impending expiration of the statute of limitations on June 1, 2021, this request for relief be heard prior to or on the motion date scheduled for May 4, 2021.

WHEREFORE, your affirmant respectfully requests that the relief sought in this Order to Show Cause be granted in its entirety with such other relief as the Court deems just and proper.

Dated: Port Washington, NY
March 5, 2021



ANTHONY P. MASTROIANNI