No. APL-2022-00049

State of New York
Court of Appeals

TAX EQUITY NOW NY LLC,

Plaintiff-Appellant,

v.

CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF FINANCE, STATE OF NEW YORK, and NEW YORK OFFICE OF REAL PROPERTY TAX SERVICES,

Defendants-Respondents.

BRIEF FOR RESPONDENTS STATE OF NEW YORK AND NEW YORK STATE OFFICE OF REAL PROPERTY TAX SERVICES IN RESPONSE TO AMICUS CURIAE

LETITIA JAMES
Attorney General
State of New York
Attorney for State Defendants
28 Liberty Street
New York, NY 10005
(212) 416-8028
(212) 416-8962 (*f*)
mark.grube@ag.ny.gov

BARBARA D. UNDERWOOD
Solicitor General
ESTER MURDUKHAYEVA
Deputy Solicitor General
MARK S. GRUBE
Senior Assistant Solicitor General
of Counsel

Dated: December 26, 2023

Supreme Court, New York County, Index No. 153759/17
First Department No. 2019-3610

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases **Page(s)**

Laws

PRELIMINARY STATEMENT

The State of New York and the New York Office of Real Property Tax Services (collectively, the "State Defendants") submit this brief in response to the amicus curiae brief filed by the National Association for the Advancement of Colored People New York State Conference (NAACP-NY).

Contrary to NAACP-NY's argument, plaintiff Tax Equity Now NY (TENNY) has failed to state a viable Fair Housing Act claim against the State Defendants. NAACP-NY discusses at length the relatively lower effective property tax rates paid by owners of condos and co-ops as compared to owners of rental buildings and argues that this difference disparately impacts minorities. But, as NAACP-NY acknowledges, this purported disparity arises from the *City*'s assessment practices and not from any action by the State Defendants or any requirements of state law. NAACP-NY is also wrong to claim that TENNY may state a Fair Housing Act claim based on the disparate impact of statutory caps on assessment increases for certain categories of residential property absent any

concrete showing of a robust causal connection between the statutory caps and the claimed disparities.

ARGUMENT

PLAINTIFF FAILED TO STATE A FAIR HOUSING ACT CLAIM AGAINST THE STATE DEFENDANTS

NAACP-NY identifies two aspects of New York City's property tax system that purportedly violate the Fair Housing Act, but, like the plaintiff, fails to articulate an actionable claim against the State Defendants.

First, NAACP-NY argues (NAACP-NY Br. at 11-19) that rental apartments are taxed at higher rates than condos and co-ops and that this unequal taxation has a disparate impact on minorities. But NAACP-NY fails to identify any role played by the State Defendants in this alleged violation. Rather, NAACP-NY acknowledges that the alleged disparity arises from the City's assessment practices, noting that "[t]he City does not calculate the market rental value of the apartments in condos and co-ops," but rather "compares condos and co-ops to rental buildings of a similar age."

Id. at 12. In the case of older buildings, these comparators are often rent regulated. *See id.*

As the State Defendants explained in their brief (at 29-30), state law does not dictate that the City use particular comparators to assess condos and co-ops. The law simply provides that assessments for condos and co-ops should not be higher because the property is "owned or leased by a cooperative corporation or on a condominium basis." RPTL § 581(1)(a). This provision ensures that owners of condos and co-ops are "taxed fairly compared to rental properties held in single ownership." *Matter of D. S. Alamo Assoc. v. Commissioner of Fin. of City of N.Y.*, 71 N.Y.2d 340, 347 (1988).

Second, NAACP-NY is wrong to claim (NAACP-NY Br. at 7-11) that the mere presence of statutory caps on assessment increases for certain properties suffices to state a Fair Housing Act claim against the State Defendants. (The caps referred to by NAACP-NY apply primarily to one-, two-, and three-family residential properties.) As the State Defendants have explained (at 27-29), the caps rationally provide stability and prevent abrupt increases in tax liability for longtime residents and homeowners in neighbor-

hoods with rapidly appreciating real estate prices, while allowing for market-based changes to gradually be phased in over time, *see Matter of O'Shea v. Board of Assessors of Nassau County*, 8 N.Y.3d 249, 255 (2007).

As an initial matter, the caps do not necessarily create disparities in effective tax rates between properties in different neighborhoods. TENNY acknowledges that the City can mitigate disparities in effective tax rates between properties in different neighborhoods by adjusting its assessment ratios; indeed, the City has done just that in the past. *See* Br. for Pl.-Resp't-Appellant at 27-28.

In any event, the mere presence of a disparity in effective tax rates between properties in different neighborhoods is inadequate to state a Fair Housing Act claim, and such a disparity is all that NAACP-NY purports to show (*see* NAACP-NY Br. at 7-9). As the U.S. Supreme Court has explained, Fair Housing Act liability may not be "imposed based solely on a showing of a statistical disparity." *Texas Dept. of Hous. & Community Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 540 (2015). Rather, a plaintiff must

make a "robust" showing that the challenged action "caus[ed] that disparity." *Id.* at 542. See Br. for State Defendants at 37-41. NAACP-NY, like TENNY, fails to show that the application of assessment caps, as opposed to various other factors that go into pertinent housing decisions, causes "financial barriers that inhibit the ability of minority residents to own homes," higher rates of foreclosure, or lower levels of rental property development. (Record (R.) 974.)

In short, the arguments of NAACP-NY do not rectify TENNY's failure "to allege facts at the pleading stage or produce statistical evidence demonstrating a causal connection" between the State Defendant's conduct and the racial disparities in housing in New York City. *See Inclusive Communities*, 576 U.S. at 543.

CONCLUSION

This Court should dismiss TENNY's appeal against the State Defendants, or, in the alternative, affirm the Appellate Division's decision and order dismissing the complaint as against the State Defendants.

Dated: New York, New York
December 26, 2023

Respectfully submitted,

LETITIA JAMES
Attorney General
State of New York
Attorney for State Defendants

By: */s/ Mark S. Grube*
MARK S. GRUBE
Senior Assistant Solicitor General

28 Liberty Street
New York, NY 10005
(212) 416-8028
mark.grube@ag.ny.gov

BARBARA D. UNDERWOOD
Solicitor General
ESTER MURDUKHAYEVA
Deputy Solicitor General
MARK S. GRUBE
Senior Assistant Solicitor General
of Counsel

AFFIRMATION OF COMPLIANCE

Pursuant to the Rules of Practice of the New York Court of Appeals (22 N.Y.C.R.R.) § 500.13(c)(1), Mark S. Grube, an attorney in the Office of the Attorney General of the State of New York, hereby affirms that according to the word count feature of the word processing program used to prepare this brief, the brief contains 839 words, which complies with the limitations stated in § 500.13(c)(1).

/s/ Mark S. Grube