

NY Landlords Say New Eviction Law Doesn't Resolve Claims

Law360 (September 7, 2021, 7:37 PM EDT) -- Several New York landlords and their trade association indicated on Tuesday that they do not plan to drop an appeal seeking to block pandemic-era eviction protections, arguing that a state law enacted last week didn't resolve their claims.

The landlords and the Rent Stabilization Association, or RSA, submitted a letter to the Second Circuit saying New York lawmakers failed to address the "bulk" of their constitutional arguments at a [special legislative session](#) on Sept. 1, during which they modified and extended statewide eviction protections through January 15.

Still at issue are "vague" hardship declaration forms that tenants can submit to stop an eviction case from proceeding until Jan. 15 without accompanying documentation, the landlord plaintiffs said.

The new state law, S50001, allows landlords to challenge these hardship forms in court, after an Aug. 12 [U.S. Supreme Court injunction](#) blocked Part A of the COVID-19 Emergency Eviction and Foreclosure Prevention Act on due process grounds.

But the landlord plaintiffs said Tuesday that the Legislature failed to address "numerous problematic features" of CEEFPA Part A.

Quoting the 1993 U.S. Supreme Court opinion in [Northeastern Florida Chapter of Associated General Contractors of America v. City of Jacksonville](#), they also argued that a government cannot replace a law "with one that differs only in some insignificant respect" in an attempt to avoid judicial review.

The RSA also announced on Friday that it plans to file a separate motion with the Second Circuit seeking to block enforcement of the eviction protections that New York enacted last week.

The defendant in the underlying suit, New York Chief Administrative Judge Lawrence K. Marks, submitted his own letter to the court on Friday, contending that the landlords' procedural due

process claim is no longer relevant in the wake of last week's legislative session.

"Most critically, S50001 now allows landlords to request a hearing if they attest to 'a good faith belief' that a tenant who has filed a hardship declaration 'has not experienced a hardship,'" Marks' Friday letter states. This change "renders moot plaintiffs' procedural due process claim, which was premised on Part A's failure to give landlords an opportunity to contest tenants' hardship declarations."

Both parties have until Sept. 14 to file supplemental briefs on whether the landlords' appeal should be able to proceed, according to an order issued Tuesday by Clerk of Court Catherine O'Hagan Wolfe.

Reached for comment on Tuesday, an RSA spokesperson pointed Law360 to President Joseph Strasburg's Friday statement.

"Making a few language changes to the prior law — whatever the Legislature could get passed on short notice — doesn't make it a new law," Strasburg said at the time.

The landlord plaintiffs **filed the underlying suit** in May, arguing that Part A of CEEFPA was unconstitutional. U.S. District Judge Gary R. Brown **handed them a loss** the following month, finding that state laws are not generally susceptible to due process claims.

But the plaintiffs subsequently **appealed** to the Second Circuit, and in August, won the U.S. Supreme Court injunction blocking CEEFPA Part A while their appeal is pending.

Counsel for the landlords declined to comment on Tuesday. New York Gov. Kathy Hochul's office did not immediately reply to a request for comment.

The landlords and RSA are represented by Randy M. Mastro, Akiva Shapiro, Jessica Benvenisty, Lauren Myers and William J. Moccia of [Gibson Dunn & Crutcher LLP](#).

Marks is represented by Linda Fang, Judith Naomi Vale and Steven Wu of the [New York State Office of the Attorney General](#).

The case is Pantelis Chrysafis et al. v. Lawrence K. Marks et al., case number 21-1493, in the [U.S. Court of Appeals for the Second Circuit](#).