

**SUPREME COURT FOR THE STATE OF NEW YORK  
COUNTY OF NEW YORK**

Maureen Koetz, individually and on behalf of all others similarly situated,

Plaintiff,

v.

MARINA TOWER ASSOCIATES, L.P.,  
GATEWAY PLAZA MANAGEMENT  
CORP., THE BATTERY PARK CITY  
AUTHORITY, and THE LEFRAK  
ORGANIZATION

Defendants.

Index No.

**CLASS ACTION COMPLAINT**

Plaintiff Maureen Koetz by her attorneys, Sanford Heisler LLP, brings this class action on behalf of herself and a class of similarly situated tenants of the Gateway Plaza housing complex, which is located in Battery Park City. She seeks damages and injunctive relief against Defendants Marina Tower Associates, L.P., Gateway Plaza Management Corp., The Battery Park City Authority, and The LeFrak Organization. Plaintiff alleges upon knowledge as to her own facts and upon information and belief to all others.

**SUMMARY AND OVERVIEW OF CLASS CLAIMS**

1. Nearly four decades ago, in 1975, the New York Legislature dragged this state's landlord-tenant law into the 20<sup>th</sup> century. The legislature enacted Real Property Law § 235-b and repealed a centuries'-old rule that a residential lease relieves the owner of any obligation to the tenant, other than delivering the naked right of possession.
2. The new law placed the tenant in parity legally with the landlord. As the Court of Appeals noted in a landmark ruling construing NYRPL § 235-b:

A residential lease is now effectively deemed a sale of shelter and services by the landlord who impliedly warrants: first, that the premises are fit for human habitation; second, that the condition of the premises is in accord with the uses reasonably intended by the parties; and, third, that the tenants are not subjected to any conditions endangering or detrimental to their life, health or safety (*Park West Mgt v. Mitchell*, 47 N.Y. 2d 316, 325 (1979)).

3. But, in Battery Park City § 235-b is honored more in the breach than in the observance.
4. How so? Ms. Koetz and the class of approximately 5000 are tenants in a multi-building complex in Battery Park City known as “Gateway Plaza.” Gateway is a poster child of uninhabitability. The units are poorly constructed, inadequately insulated, and riddled with defects in the heating and ventilation systems.
5. Gateway is inadequately heated and tenants endure oppressively cold conditions. Because of this, Plaintiff Koetz and class members must suffer freezing cold during the winter months.
6. To alleviate the frost, tenants are forced to buy heaters and pay additional electricity charges to the Defendants, the very parties responsible for not sufficiently heating the gateway plaza. Plaintiff and members of the Class are required to use excessive amounts of electricity to provide supplemental heat through portable heaters and the like. Such usage results in exorbitant utility charges for the Plaintiff and members of the Class.
7. Plaintiff Koetz therefore brings this class suit and seeks damages under § 235-b of the New York Real Property Law and for unjust enrichment, breach of contract and violation of New York General Business Law § 349.
8. The Defendants in their capacities as owner, ground lessees, landlords, and managers of Gateway Plaza have failed to maintain residential units fit for human habitation. Even though the Defendants have failed to maintain units fit for human habitation, they continue

to increase the rent for Class members and in doing so make a profit that constitutes unjust enrichment.

9. Defendants purchase electricity directly from Con Edison and then resell it to the tenants. Plaintiff and members of the Class end up paying considerably more per kilowatt-hour than comparable buildings elsewhere in New York City.

## **PARTIES**

### **(a) The Plaintiff**

10. Plaintiff Ms. Maureen Koetz is a residential tenant at Gateway Plaza, 355 South End Avenue, Apartment 30J. Ms. Koetz has devoted much of her life to public service, including service as Acting Assistant Secretary for Environment, Safety and Occupational Health for the U.S. Air Force. Plaintiff was also Counsel to the Environmental Protection Agency (EPA) and to U.S. Senator Peter Domenci. Until 2012, Plaintiff Koetz was the Vice President of the Gateway Plaza Tenants Association.

### **(b) The Defendants**

11. Defendant Marina Tower Associates, L.P. (“Marina Tower”) is a domestic limited partnership organized and under the laws of the State of New York, Marina Tower is the ground lessee of a group of high-rise apartment buildings located at 345, 355, 365, 375, 385 and 395 South End Avenue, New York, New York, Tax Block 16, Lot 100, commonly known as “Gateway Plaza” (the “Gateway Plaza” or the “Property”) and landlord of the Plaintiff Koetz and members of the Class.

12. Defendant Gateway Plaza Management Corp. (“Gateway Management”) is a New York State domestic corporation and the managing agent of the Property.

13. Defendant Battery Park City Authority (“Battery Park City Authority”) is a public benefit corporation and the owner and ground-lessor of the Property.

14. Defendant LeFrak Organization, Inc. (“LeFrak Organization”) is a private, domestic corporation that owns the six Gateway Plaza residential buildings at issue in this case. Led by multi-billionaire, Richard LeFrak, the LeFrak Organization’s most notable holdings include the 5,000-unit apartment complex LeFrak City in Queens and more than 16 million square feet of commercial and residential properties in Newport, New Jersey. The LeFrak Organization formed Defendants Marina Tower and Gateway Plaza Management, and controls the operations of these parties.

### **FACTUAL ALLEGATIONS**

15. By a Memorandum of Lease Modification, dated July 1, 2009 (the “Ground Lease”), Marina Towers retained Gateway Management to serve as managing agent for the Property for the purpose of, *inter alia*, maintaining the Property, collecting rent from the tenants, and otherwise oversee the day-to-day operations of the Property.

16. Plaintiff Koetz and members of the Class are lessees and tenants of residential units in the Property under individual lease agreements with Marina Towers (and/or with Marina Towers’s predecessor(s)-in-interest) and thereby became tenants of Marina Towers when it acquired the Ground Lease.

17. Plaintiff and members of the Class pay rent to Marina Towers and/or Gateway Management pursuant to their individual leases.

18. Plaintiff and members of the Class buy electricity from Marina Towers pursuant to an “Electricity Rider” attached to their individual leases which provides that tenants must purchase all electricity from Marina Towers.

19. The Electricity Rider stipulates that Marina Towers must sell electricity to tenants pursuant to the rules and regulations established by Battery Park City Authority. The electric charges are charged as additional rent.

***The Breach of the Warranty of Habitability***

**(a) Heatless in Battery Park City**

20. The insulation, windows, and heating and ventilation system in the Property are defective and completely insufficient to maintain habitable temperatures in the Apartments during the winter months.

21. The structure of the Gateway Plaza buildings provides no insulation for the Apartments and the units' metal framed windows transform the building into a conductor for the cold in frigid weather. These structures also lack any internal heating mechanism: Defendants merely provide tenants with an external heating device to insert into a hole in the units' walls.

22. However, the heat pumping devices offered to Plaintiff Koetz and other tenants lack the capacity to effectively maintain a habitable temperature. Even the slightest increases or improvements in temperature require the tenants to use an inordinate amount of electricity, thereby drastically increasing their utility bills.

23. Moreover, Defendants improperly install these heating devices in tenants' units, allowing cold air to flow freely through the crevices where they meet the wall. Plaintiff Koetz and other tenants relied on foam strips and duct taping these gaps to mitigate the currents of cold air that reduce the temperatures of apartments to below 55 degrees.

24. The deteriorated state of Ms. Koetz's windows leads to water leakage, while other members of the class experience significant frost and ice accumulating on the inside of their

units. These faulty, leaky windows force tenants to regularly scrape ice from the interior of their windows to avoid the melting frost from causing further water damage.

25. Plaintiff Koetz regularly places towels on her windowsills to prevent internal damage to her Apartment. Nevertheless, water from the windowsills seeps into the adjacent drywall and causes it to rot. Such damage often leads to the walls underneath the windowsills cracking.

26. All of these factors force Ms. Koetz and tenants to unreasonably utilize their heating systems and their own space heaters to create habitable temperatures.

27. Plaintiff Koetz and other defendants experience substantially higher electricity bills than tenants in buildings with comparable apartments and heating needs.

28. Defendants have failed to address Plaintiff Koetz and other tenants' frequent complaints about their energy bills and the ineffective heating systems. In February 2012, the LeFrak Organization informed tenants that all of their heating units, insulation, and windows would be repaired or replaced by December 2013. However, as of January 2014, Defendant failed to install any new windows, provide any insulation repairs, and barely 200 of the 3,500 heating units have been replaced.

29. Upon information and belief, Marina Towers charges tenants more for electricity than the amount it pays to Con Edison. As a result, Marina Towers is profiting off the already unreasonably high electricity payments made by Plaintiff Koetz and tenants, and is therefore being unjustly enriched by its own breach of the warranty of habitability.

## CLASS ALLEGATIONS

30. Plaintiff brings this class action pursuant to Article 9 of the New York Civil Practice Law and Rules (“CPLR”) on behalf of all Gateway Plaza residential tenants from March 7, 2008, to the present (the “Class”).

31. The Class is so numerous that joinder of all members is impracticable. Upon information and belief Gateway Plaza has more than 1,700 units.

32. There are questions of law and fact common to the class, including: (1) whether Defendants’ have breached the warranty of habitability; (2) whether Defendants have breached their lease contracts with Plaintiff Koetz and the class; (3) whether Defendants have violated New York General Business Law § 349; (4) whether the breach of the warranty of habitability has resulted in the overpayment of electrical utilities and to what extent; (5) whether members of the Class are entitled to a rent abatement or refund of rent for Defendants’ failure to remedy the defects; and (6) whether members of the class are otherwise entitled to a refund of any rent increases attributed to Defendants’ purported attempts to fix the defects giving rise to this action;

33. Plaintiff will fairly and adequately protect the interests of the Class and is committed to prosecuting this action.

34. Plaintiff is a member of the Class.

35. Ms. Koetz has retained competent counsel experienced in litigation of this nature.

36. Plaintiff’s claims are typical of the claims of other members of the proposed Class because she aims to recover damages based on overpayment of rent, electrical charges and other related damages.

37. Defendants have acted or refused to act on grounds that apply generally to the Class, so that final judgment is appropriate respecting the Class as a whole.

**FIRST CLAIM FOR RELIEF**  
**(Violation of NY RPL §235-b against all Defendants)**

38. Plaintiff re-alleges and incorporates by reference the allegations in the previous paragraphs of this Complaint.

39. Because of the acts complained of herein, Defendants have violated New York Real Property Law §235-b.

40. Defendants' failure to repair the faulty windows, insulation, and heating and air-conditioning systems results in temperatures in the units which are dangerous, hazardous and detrimental to the life, health and safety of the Plaintiffs and members of the Class and have thus rendered the units unfit for human habitation in violation of the warranty of habitability under New York Real Property Law §235-b.

41. The structural and unit deficits of the complex and Defendants' refusal to remedy them forces Plaintiff Koetz and tenants to either operate their ineffective heating units constantly or endure freezing temperatures. Defendants' breach of the warranty of habitability thereby dramatically drives up tenants' electricity bills.

42. Plaintiff requests a judgment in the amount of the overpayment in electric charges, and loss of use of significant portions of rented space, that are a direct result of Defendants' breach of the warranty of habitability established by New York Real Property Law §235-b.

**SECOND CLAIM FOR RELIEF**  
**(Unjust Enrichment Against Defendant Marina Tower)**

43. Plaintiff re-alleges and incorporates by reference the allegations in the previous paragraphs of this Complaint.

44. As the sole provider of electricity service to the Property, Marina has been unjustly enriched by rent increases to Gateway tenants, as well as by overconsumption and overpayment of electrical service necessitated by the breach of the warranty of habitability.

45. Accordingly, Plaintiff, and the Class she seeks to represent, is entitled to a judgment against Marina Towers in the amount of any profits earned by Marina Towers due to rent increases on apartments during the period of breach of the warrant of habitability, and in the amount of any profits earned by Marina Towers that are the result of the overconsumption of electricity caused by Defendants' breach of the warranty of habitability (established by the New York Real Property Law §235-b).

**THIRD CLAIM FOR RELIEF  
(Violation of N.Y. G.B.L. § 349 Against All Defendants)**

46. Plaintiff repeats and re-alleges the preceding paragraphs of the Complaint as if fully incorporated herein.

47. By the actions alleged above, Defendants have engaged in deceptive acts or practices directed against Plaintiffs and the Class in violation of initial N.Y. G.B.L. § 349.

48. Under 349(h), Plaintiff and the Class are entitled to damages and other relief in an amount and form to be determined in a court of law.

**FOURTH CLAIM FOR RELIEF  
(Breach of Lease Agreement Against All Defendants)**

49. Plaintiff repeats and re-alleges the preceding paragraphs of the Complaint as if fully incorporated herein.

50. By failing to adequately heat the units in Gateway Plaza Complex, Defendants have breached the lease agreements they entered into with Plaintiff Koetz and the Class.

51. As a direct consequence of such breach, Plaintiff and the Class are entitled to damages in an amount to be determined in a court of law.

**FIFTH CLAIM FOR RELIEF**  
**(Injunctive Relief Against All Defendants)**

52. Plaintiff re-alleges and incorporates by reference the allegations in the previous paragraphs of this Complaint.

53. Defendants' breach of the warranty of habitability established by the New York Real Property Law §235-b is ongoing and is hazardous and detrimental to the life, health and safety of Plaintiff and members of the Class.

54. Plaintiff and members of the Class are being, and will continue to be, irreparably harmed absent an injunction directing Defendants to cure their breach of the warranty of habitability by, *inter alia*, curing the defects in the windows, insulation, and HVAC systems in the Property so that the temperature in the Apartments can be maintained at habitable temperatures.

55. Plaintiff and members of the Class have no adequate remedy at law.

56. Plaintiff and members of the Class are entitled to a judgment enjoining Defendants from continuing to breach the warranty of habitability established by the New York Real Property Law §235-b and directing Defendants to take the steps necessary to cure the breach.

**SIXTH CLAIM FOR RELIEF**  
**(Attorneys' Fees, Costs and Disbursements against Marina Tower and the LeFrak Organization)**

57. Plaintiff re-alleges and incorporates by reference the allegations in all previous paragraphs of this Complaint.

58. Paragraphs 19 and 21 of the Lease provides that Marina Tower is entitled to the recoupment of legal fees, costs and disbursements incurred in enforcing its rights under the Lease.

59. Pursuant to New York Real Property Law §234, Plaintiff and the Class are entitled to a reciprocal right to the recovery of such fees, costs and disbursements.

60. Accordingly, Plaintiff and the Class are entitled to a judgment against Marina Towers in the amount of its attorneys' fees, costs and disbursements in an amount to be determined at a hearing or trial.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment:

- A. Against Defendants, jointly and severally, in the amount of the overpayment in electric charges that are a direct result of Defendants' breach of the warranty of habitability established by New York Real Property Law §235-b;
- B. Against Defendants, jointly and severally, in the amount of any rental profits from avoided capital improvement costs, ground lease subsidies, tax payment subsidies, and continuous rent increases during the time of breach in the warranty.
- C. Against Marina Towers in the amount of any profits earned by Marina Towers that are a result of the overconsumption of electricity caused by Defendants' breach of the warranty of habitability established by the New York Real Property Law §235-b;
- D. Monies in the sum of \$100,000,000 (one hundred million) plus interest for items A-C immediately above.

- E. Enjoining Defendants from continuing to breach the warranty of habitability established by the New York Real Property Law §235-b and directing Defendants to take the steps necessary to cure the breach;
- F. Against Marina Towers in the amount of its attorneys' fees, costs and disbursements in an amount to be determined at a hearing or trial; and
- G. Granting such other and further relief as this Court deems just and proper.

DATED: New York, New York  
April 1, 2014

**SANFORD HEISLER, LLP**

By: \_\_\_\_\_

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