

Widow's Bankruptcy Case Poses Risk to Rent-Stabilized Tenants



Ángel Franco/The New York Times

Mary Veronica Santiago, 79, in her rent-stabilized apartment. A court is weighing whether her lease can be treated as an asset.

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After her husband died, Mary Veronica Santiago fell behind on her bills, and the creditors began to call.

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So two years ago, she took refuge in bankruptcy, hoping to have her debts wiped away. But far from providing a fresh start and peace of mind, the Chapter 7 filing thrust Mrs. Santiago, 79, who lives in the East Village, into the center of a case that bankruptcy lawyers say poses a major risk to her and the millions of other New Yorkers who live in rent-stabilized apartments.

The issue, pending before the United States Court of Appeals for the Second Circuit, is whether a rent-stabilized lease can be treated as an asset in a personal bankruptcy, just like a car or a piece of land, and used to pay off creditors.

The trustee overseeing Mrs. Santiago's bankruptcy thinks so. If that position is upheld, bankruptcy lawyers who are closely monitoring the case say it would make it easier for landlords to evict rent-stabilized tenants if they file for bankruptcy, even when, like Mrs. Santiago, they pay their rent. At a time when housing affordability and income inequality have been driving the debate in the mayoral race, the bankruptcy case could add another element of uncertainty to New York City's efforts to preserve housing for people with low incomes.

Mrs. Santiago has lived for 50 years in a two-bedroom apartment near Tompkins

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Square Park, in a neighborhood where unregulated apartments rent for thousands more a month than Mrs. Santiago's rent of \$703. Her main income is a [Social Security](#) check and, under normal bankruptcy proceedings, her lawyers said, she would have avoided repaying the \$23,000 she owes because she had no assets.

"I got scared," she said, noting that her creditors "threatened that they were going to take me to court."

But as her case was nearing conclusion, her landlord stepped in with an offer to buy her rent-stabilized lease and produce the funds to pay off her debt. (Mrs. Santiago's landlord is not among her creditors, but he was notified of the bankruptcy as a matter of course.) The bankruptcy trustee in charge of marshaling her assets accepted the offer, and that decision, challenged by Mrs. Santiago's lawyers, has been upheld by both a [bankruptcy court](#) and a Federal District Court.

In New York City, there were 11,500 individual bankruptcy filings in the 12 months ending June 30, federal bankruptcy court figures show. How many of them involved people with rent-stabilized leases is not tracked by the court.

Rent stabilization laws, a defining element of New York real estate for decades, limit rent increases and allow automatic lease renewals and even survivor's rights to tenants. In recent years, rent-stabilized leases have been deemed assets in some bankruptcy proceedings.

Now, for the first time, a federal appeals court is being asked to weigh in. The widow's lawyers argue that a rent-stabilized lease is a public assistance benefit, just like Social Security or disability payments, and should be exempt from the bankruptcy estate. Treating it like an asset, the lawyers said in court documents, undermines the intent of rent-stabilization laws in New York designed to protect tenants deemed in need of assistance with housing.

"This is not what bankruptcy is about," said Kathleen G. Cully, one of Mrs. Santiago two pro bono lawyers. "What's next? Are they going to start going after food stamps?"

The case, *Mary Veronica Santiago-Monteverde v. John S. Pereira*, has drawn the interest of bankruptcy experts and legal aid lawyers who see it as a threat to the housing stability of many low-income New Yorkers. Mrs. Santiago's case was argued before the appeals court last month by Ronald J. Mann, a law professor at Columbia University and a bankruptcy specialist who has argued cases before the United States Supreme Court.

New York's unique rent laws and expensive real estate market make a rent-stabilized lease particularly prized. In New York City, 44 percent of the rental units are rent-stabilized and an additional 2 percent are governed by the more restrictive rent-control regulations, according to figures from the [Furman Center for Real Estate and Urban Policy](#) at New York University. At least 2.2 million people live in more than a million rent-regulated units in the city, the center said.

Legal aid lawyers who are also watching the Santiago case say the rent laws are essential to help maintain affordable housing in the city — the median income for rent-stabilized tenants is \$37,000, compared with \$52,260 for market-rate tenants, figures from the city's [Housing and Vacancy Survey](#) show. Some bankruptcy lawyers say they are advising clients with rent-stabilized leases not to file for Chapter 7 bankruptcy or risk being left homeless.

"It's an unfair money-grab," said [David B. Shaevy](#), the New York state chairman of the [National Association of Consumer Bankruptcy Attorneys](#). "To remove this foundation, this safety net, it's unconscionable."

The trustee in Mrs. Santiago's case, Mr. Pereira, has an obligation to marshal all assets to get her debt paid, said his lawyer, J. David Dantzer Jr. (The [trustees](#), who are not government employees, receive a commission on the assets they are able to gather.) He

said that New York law did not intend for leases to be exempt from bankruptcy estates and that any change to that effect should be left up to the state's lawmakers.

"This is about a fear of what could happen in the future to other tenants in rent-stabilization apartments," he said. "Our view is that that's a question for the New York Legislature, not the courts."

But no one should think that bankruptcy is a painless process, he said. "If you file for bankruptcy, there are consequences."

The trustee in Mrs. Santiago's case has proposed an arrangement in which the landlord would pay her debt, pay the trustee and his lawyer, and allow Mrs. Santiago to live out her years in her apartment at a similar rent under a non-rent-stabilized lease "with no succession rights" that could otherwise have allowed her to pass the apartment on to her 50-year-old son, a personal trainer who lives with her and helps support her.

Her lawyers opposed the proposal.

In the realm of consumer bankruptcies, Mrs. Santiago's is small. She owes mostly credit card companies, she said in an interview. But after her husband, Hector Santiago, died in 2011 she could not keep up with the payments.

The couple moved into their ground-floor apartment in a five-story brick building on East Seventh Street in 1963. Mr. Santiago was the superintendent of their building and of several others in the neighborhood.

The landlord is a limited-liability company whose owner, James V. Guarino, referred questions to his lawyer. The lawyer, Lawrence M. Gottlieb, said in an e-mail that the company "has no intentions of selling the lease or dispossessing Ms. Santiago or renting out the unit for market rent."

At home, in the cluttered apartment where her family has celebrated weddings, birthdays and holidays, and where her ill husband died at age 80, Mrs. Santiago said she regretted filing for bankruptcy. Her lawyers have reassured her that she has a good chance of prevailing, but first thing every morning, Mrs. Santiago said, she checks her front door for an eviction notice.

"I'm afraid to find a white paper on my door," she said with her head down, tearing up as she tugged at the edges of her plastic-covered chair.

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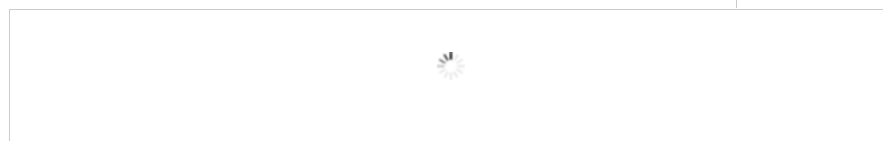
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