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**U.S. District Court
Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:20-cv-04062-CM**

Elmsford Apartment Associates, LLC et al. v. Cuomo
Assigned to: Judge Colleen McMahon
Cause: 28:1331dp Fed. Question: Violation of Due Process

Date Filed: 05/27/2020
Date Terminated: 06/29/2020
Jury Demand: None
Nature of Suit: 950 Constitutional - State Statute
Jurisdiction: Federal Question

Plaintiff

36 Apartment Associates, LLC

represented by **Mark A. Guterman**
Lehrman, Lehrman & Guterman, LLP
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White Plains, NY 10601
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ATTORNEY TO BE NOTICED

Plaintiff

Elmsford Apartment Associates, LLC

represented by **Mark A. Guterman**
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

66 Apartment Associates, JV

represented by **Mark A. Guterman**
(See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant

Andrew Cuomo
as Governor of the State of New York

represented by **Matthew Lawrence Conrad**
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LEAD ATTORNEY
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Amicus

Housing Court Answers

represented by **Roland Nimis**

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 349 E.149th Street
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ATTORNEY TO BE NOTICED

Amicus**Mount Vernon United Tenants**

represented by **Roland Nimis**
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ATTORNEY TO BE NOTICED

Amicus**United Tenants of Albany**

represented by **Roland Nimis**
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ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
05/27/2020	<u>1</u>	COMPLAINT against Andrew Cuomo. (Filing Fee \$ 400.00, Receipt Number ANYSDC-19996460)Document filed by 36 Apartment Associates, LLC, 66 Apartment Associates, JV, Elmsford Apartment Associates, LLC. (Attachments: # <u>1</u> Civil Cover Sheet). (Guterman, Mark) (Entered: 05/27/2020)
05/27/2020	<u>2</u>	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. No Corporate Parent. Document filed by 36 Apartment Associates, LLC, Elmsford Apartment Associates, LLC.. (Guterman, Mark) (Entered: 05/27/2020)
05/28/2020		***NOTICE TO ATTORNEY REGARDING PARTY MODIFICATION. Notice to attorney Mark A. Guterman. The party information for the following party/parties has been modified: 36 Apartment Associates, LLC, 66 Apartment Associates, JV, Elmsford Apartment Associates, LLC, Andrew Cuomo. The information for the party/parties has been modified for the following reason/reasons: party role was entered incorrectly; party text was omitted;. (pc) (Entered: 05/28/2020)
05/28/2020		***NOTICE TO ATTORNEY REGARDING DEFICIENT CIVIL COVER SHEET. Notice to attorney Mark A. Guterman to RE-FILE Document No. <u>1</u> Complaint,. The filing is deficient for the following reason(s): the form used for the civil cover sheet is not the S.D.N.Y. Civil Cover Sheet form dated June 2017; the event wrong event type was used to file the civil cover sheet;. Re-file the document using the event type Civil Cover Sheet found under the event list Other Documents and attach the correct PDF. Use civil cover sheet issued by S.D.N.Y. dated June 2017. The S.D.N.Y. Civil Cover Sheet dated June 2017 is located at http://nysd.uscourts.gov/file/forms/civil-cover-sheet.. (pc) (Entered: 05/28/2020).
05/28/2020		***NOTICE TO ATTORNEY REGARDING CIVIL. CASE OPENING STATISTICAL ERROR CORRECTION: Notice to attorney Mark A. Guterman. The following case opening statistical information was erroneously selected/entered: County code Albany; Fee Status code due (due);. The following correction(s) have been made to your case entry: the County code has been modified to Westchester; the Fee Status code has been modified to pd (paid);. (pc) (Entered: 05/28/2020)
05/28/2020		CASE OPENING INITIAL ASSIGNMENT NOTICE: The above-entitled action is assigned to Judge Colleen McMahan. Please download and review the Individual Practices of the assigned District Judge, located at https://nysd.uscourts.gov/judges/district-judges .

		Attorneys are responsible for providing courtesy copies to judges where their Individual Practices require such. Please download and review the ECF Rules and Instructions, located at https://nysd.uscourts.gov/rules/ecf-related-instructions.. (pc) (Entered: 05/28/2020)
05/28/2020		Magistrate Judge Kevin Nathaniel Fox is so designated. Pursuant to 28 U.S.C. Section 636(c) and Fed. R. Civ. P. 73(b)(1) parties are notified that they may consent to proceed before a United States Magistrate Judge. Parties who wish to consent may access the necessary form at the following link: https://nysd.uscourts.gov/sites/default/files/2018-06/AO-3.pdf . (pc) (Entered: 05/28/2020)
05/28/2020		Case Designated ECF. (pc) (Entered: 05/28/2020)
05/28/2020	3	CIVIL COVER SHEET filed..(Guterman, Mark) (Entered: 05/28/2020)
06/01/2020	4	FILING ERROR - DEFICIENT SUMMONS REQUEST PDF ERROR - REQUEST FOR ISSUANCE OF SUMMONS as to Andrew Cuomo, As Governor of the State of New York, re: 1 Complaint,. Document filed by 36 Apartment Associates, LLC, 66 Apartment Associates, JV, Elmsford Apartment Associates, LLC..(Guterman, Mark) Modified on 6/2/2020 (pne). (Entered: 06/01/2020)
06/02/2020		***NOTICE TO ATTORNEY REGARDING DEFICIENT REQUEST FOR ISSUANCE OF SUMMONS. Notice to Attorney Mark A. Guterman to RE-FILE Document No. 4 Request for Issuance of Summons. The filing is deficient for the following reason(s): the name of the defendant must be entered in the 'To' field of the summons request PDF. Re-file the document using the event type Request for Issuance of Summons found under the event list Service of Process - select the correct filer/filers - and attach the corrected summons form PDF. (pne) (Entered: 06/02/2020)
06/02/2020	5	REQUEST FOR ISSUANCE OF SUMMONS as to Andrew Cuomo, As Governor of the State of New York, re: 1 Complaint,. Document filed by 36 Apartment Associates, LLC, 66 Apartment Associates, JV, Elmsford Apartment Associates, LLC..(Guterman, Mark) (Entered: 06/02/2020)
06/03/2020	6	ELECTRONIC SUMMONS ISSUED as to Andrew Cuomo..(jgo) (Entered: 06/03/2020)
06/04/2020	7	EMERGENCY MOTION for Temporary Restraining Order . Document filed by 36 Apartment Associates, LLC, 66 Apartment Associates, JV, Elmsford Apartment Associates, LLC..(Guterman, Mark) (Entered: 06/04/2020)
06/04/2020	8	DECLARATION of Mark A. Guterman, Esq. in Support re: 7 EMERGENCY MOTION for Temporary Restraining Order .. Document filed by 36 Apartment Associates, LLC, 66 Apartment Associates, JV, Elmsford Apartment Associates, LLC. (Attachments: # 1 Exhibit Complaint, # 2 Exhibit Directive, # 3 Exhibit Directives).(Guterman, Mark) (Entered: 06/04/2020)
06/04/2020	9	DECLARATION of Stephen J. Lehrman in Support re: 7 EMERGENCY MOTION for Temporary Restraining Order .. Document filed by 36 Apartment Associates, LLC, 66 Apartment Associates, JV, Elmsford Apartment Associates, LLC..(Guterman, Mark) (Entered: 06/04/2020)
06/04/2020	10	MEMORANDUM OF LAW in Support re: 7 EMERGENCY MOTION for Temporary Restraining Order . . Document filed by 36 Apartment Associates, LLC, 66 Apartment Associates, JV, Elmsford Apartment Associates, LLC..(Guterman, Mark) (Entered: 06/04/2020)
06/04/2020	11	LETTER addressed to Judge Colleen McMahon from Mark A. Guterman, Esq. dated 06/04/2020 re: Scheduling argument on proposed TRO. Document filed by 36 Apartment

		Associates, LLC, 66 Apartment Associates, JV, Elmsford Apartment Associates, LLC.. (Guterman, Mark) (Entered: 06/04/2020)
06/04/2020	12	ORDER: The Court will hold a telephone conference in this matter tomorrow, Friday, June 5, 2020, at 11:00 a.m. To join the conference, the parties are to dial in at: 888-363-4749; the Access Code is: 9054506. This is an open proceeding and the public and press are welcomed to dial in, but must remain silent. Telephone Conference set for 6/5/2020 at 11:00 AM before Judge Colleen McMahon. (Signed by Judge Colleen McMahon on 6/4/2020) (mml) (Entered: 06/05/2020)
06/05/2020	13	NOTICE OF APPEARANCE by Matthew Lawrence Conrad on behalf of Andrew Cuomo..(Conrad, Matthew) (Entered: 06/05/2020)
06/05/2020		Minute Entry for proceedings held before Judge Colleen McMahon: Telephone Conference held on 6/5/2020. DECISION: Status conference. Summary judgment briefing and argument logistics discussed. Defendant to file opposition papers by June 18, 2020. Plaintiffs' reply, if any, to be filed by June 22, 2020 at 5:00 p.m. Argument to take place via telephone conference on June 24, 2020 at 10:00 a.m. (Submitted by Alex Zuckerman). (Court Reporter Carol Ganley). (mde) (Entered: 06/08/2020)
06/09/2020	14	ORDER: The Court will hold a telephone conference in this matter, Wednesday June 24, 2020, at 10:00 a.m. To join the conference, the parties are to dial in at: 888-363-4749; the Access Code is: 9054506. This is an open proceeding and the public and press are welcomed to dial in, but must remain silent. (Telephone Conference set for 6/24/2020 at 10:00 AM before Judge Colleen McMahon.) (Signed by Judge Colleen McMahon on 6/9/2020) (mro) (Entered: 06/09/2020)
06/15/2020	15	AFFIDAVIT OF SERVICE. Andrew Cuomo served on 6/8/2020, answer due 6/29/2020. Service was made by Mail. Document filed by 36 Apartment Associates, LLC; 66 Apartment Associates, JV; Elmsford Apartment Associates, LLC..(Guterman, Mark) (Entered: 06/15/2020)
06/15/2020	16	MOTION to File Amicus Brief . Document filed by Housing Court Answers, Mount Vernon United Tenants, United Tenants of Albany..(Nimis, Roland) (Entered: 06/15/2020)
06/15/2020	17	MEMORANDUM OF LAW in Opposition re: 16 MOTION to File Amicus Brief . . Document filed by 36 Apartment Associates, LLC, 66 Apartment Associates, JV, Elmsford Apartment Associates, LLC..(Guterman, Mark) (Entered: 06/15/2020)
06/17/2020	18	ORDER granting 16 Motion to File Amicus Brief. Housing Court Answers, Mount Vernon United Tenants, and United Tenants of Albany filed a motion for leave to file an amicus curiae brief in opposition to Plaintiffs' motion for summary judgment. (Dkt. No. 16.) Plaintiffs oppose the motion, while Defendant takes no position. The proposed amici having a significant interest in the outcome of this litigation, their motion is GRANTED. The Clerk of Court is directed to close the motion at Docket Number 16. SO ORDERED. (Signed by Judge Colleen McMahon on 6/17/2020) (mml) (Entered: 06/17/2020)
06/18/2020	19	MEMORANDUM OF LAW in Opposition re: 7 EMERGENCY MOTION for Temporary Restraining Order . . Document filed by Housing Court Answers, Mount Vernon United Tenants, United Tenants of Albany..(Nimis, Roland) (Entered: 06/18/2020)
06/18/2020	20	CROSS MOTION for Summary Judgment . Document filed by Andrew Cuomo..(Conrad, Matthew) (Entered: 06/18/2020)
06/18/2020	21	MEMORANDUM OF LAW in Opposition re: 20 CROSS MOTION for Summary Judgment ., 7 EMERGENCY MOTION for Temporary Restraining Order . <i>and in Support of Cross-Motion for Summary Judgment.</i> Document filed by Andrew Cuomo..(Conrad, Matthew) (Entered: 06/18/2020)

06/22/2020	22	LETTER addressed to Judge Colleen McMahon from Mark A. Guterman, Esq. dated June 22, 2020 re: Extension of filing deadline. Document filed by 36 Apartment Associates, LLC, 66 Apartment Associates, JV, Elmsford Apartment Associates, LLC..(Guterman, Mark) (Entered: 06/22/2020)
06/23/2020	23	DECLARATION of Mark A. Guterman, Esq. in Support re: 7 EMERGENCY MOTION for Temporary Restraining Order .. Document filed by 36 Apartment Associates, LLC, 66 Apartment Associates, JV, Elmsford Apartment Associates, LLC. (Attachments: # 1 Exhibit Administrative Order, # 2 Exhibit Report excerpt).(Guterman, Mark) (Entered: 06/23/2020)
06/23/2020	24	REPLY MEMORANDUM OF LAW in Support re: 7 EMERGENCY MOTION for Temporary Restraining Order . . Document filed by 36 Apartment Associates, LLC, 66 Apartment Associates, JV, Elmsford Apartment Associates, LLC..(Guterman, Mark) (Entered: 06/23/2020)
06/23/2020	25	MEMO ENDORSEMENT on re: 22 Letter, filed by 66 Apartment Associates, JV, 36 Apartment Associates, LLC, Elmsford Apartment Associates, LLC. ENDORSEMENT: - Extension granted. - Conference will go forward Wednesday as scheduled. - 17 pages fine. (Signed by Judge Colleen McMahon on 6/23/2020) (mml) (Entered: 06/23/2020)
06/24/2020		Minute Entry for proceedings held before Judge Colleen McMahon: Oral Argument held (Telephone) on 6/24/2020 re: 14 Order. DECISION: Oral argument on cross motions for Summary Judgment. Submitted by: Alex Zuckerman. (Court Reporter Alena Lynch). (mde) (Entered: 06/24/2020)
06/24/2020	26	ORDER: During oral argument on the parties' cross motions for summary judgment, held via telephone on June 24, 2020, Plaintiffs asserted that the court closures related to the challenged executive order violate their right to petition the government for a redress of grievances under the First Amendment to the U.S. Constitution. See. e.g., Sure-Tan, Inc. v. NLRB, 467 U.S. 883, 896-897, 104 S.Ct. 2803, 81 L.Ed.2d 732 (1984); ACA Int'l v. Healey, No. CV 20-10767-RGS, 2020 WL 2198366, at *9 (D. Mass. May 6, 2020). The parties may submit concurrent letter briefs on Plaintiffs' claim under the Petition Clause. The briefs are not to exceed three pages and must be filed no later than June 26, 2020. SO ORDERED. (Brief due by 6/26/2020.) (Signed by Judge Colleen McMahon on 6/24/2020) (mml) (Entered: 06/24/2020)
06/26/2020	27	LETTER addressed to Judge Colleen McMahon from Mark A. Guterman, Esq. dated June 26, 2020 re: Petition Clause Claim. Document filed by 36 Apartment Associates, LLC, 66 Apartment Associates, JV, Elmsford Apartment Associates, LLC..(Guterman, Mark) (Entered: 06/26/2020)
06/26/2020	28	LETTER addressed to Judge Colleen McMahon from Matthew L. Conrad dated June 26, 2020 re: Petition Clause. Document filed by Andrew Cuomo..(Conrad, Matthew) (Entered: 06/26/2020)
06/29/2020	29	LETTER addressed to Judge Colleen McMahon from Mark A. Guterman, Esq. dated June 29, 2020 re: Pending motions. Document filed by 36 Apartment Associates, LLC, 66 Apartment Associates, JV, Elmsford Apartment Associates, LLC. (Attachments: # 1 Exhibit Decision, Soos v. Cuomo).(Guterman, Mark) (Entered: 06/29/2020)
06/29/2020	30	ORDER DENYING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT denying 7 Motion for TRO; granting 20 Motion for Summary Judgment. Plaintiffs' motion for summary judgment is DENIED in full. Defendant's motion for summary judgment is GRANTED in full. The Clerk of Court is directed to close the motion at Docket Number 7, and close this case. (Signed by Judge Colleen McMahon on 6/29/2020) (mml)

		Transmission to Orders and Judgments Clerk for processing. (Main Document 30 replaced on 6/29/2020) (mml). (Main Document 30 replaced on 6/29/2020) (cf). (Entered: 06/29/2020)
06/29/2020	31	CLERK'S JUDGMENT re: 30 Order on Motion for Summary Judgment in favor of Andrew Cuomo against 36 Apartment Associates, LLC, 66 Apartment Associates, JV, Elmsford Apartment Associates, LLC. It is hereby ORDERED, ADJUDGED AND DECREED: That for the reasons stated in the Court's Order dated June 29, 2020, Plaintiffs' motion for summary judgment is DENIED in full. Defendant's motion for summary judgment is GRANTED in full; accordingly, the case is closed. (Signed by Clerk of Court Ruby Krajick on 6/29/2020) (Attachments: # 1 Right to Appeal) (km) (Entered: 06/29/2020)

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