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2 MFY Legal Services, Inc., New York, NY, *for*
3 *Amicus Curiae MFY Legal Services, Inc., supporting*
4 *Debtor-Appellant.*

5

6 BARRINGTON D. PARKER, JR., *Circuit Judge:*

7 In this appeal we consider whether the value inherent in a
8 New York City tenant's rent-stabilized lease as a consequence of the
9 protections afforded by New York's Rent Stabilization Code
10 ("RSC"), N.Y. Comp. Codes R. & Regs. tit. 9, §§ 2520.1 *et seq.*, make
11 the lease, or some portion of its value, exempt from the tenant's
12 bankruptcy estate as a "local public assistance benefit" within the
13 meaning of New York Debtor and Creditor Law ("DCL") § 282(2).
14 We conclude that the New York Court of Appeals is better
15 positioned to resolve this unsettled issue of New York law and,
16 consequently, we certify it to that Court.

17

I. BACKGROUND

18 At some point prior to the mid-1970's, Debtor-Appellant,
19 Mary Veronica Santiago-Monteverde, signed a lease with her
20 husband for an apartment in lower Manhattan. Following the
21 enactment of New York's rent stabilization law in 1974, the
22 apartment became rent-stabilized. The RSC "regulat[es] rents and
23 provid[es] occupants with statutory rights to tenancy renewals" as
24 well as occupancy and anti-eviction protections. *Manocherian v.*
25 *Lenox Hill Hosp.*, 84 N.Y.2d 385, 389 (1994); *see* N.Y. Comp. Codes R.
26 & Regs. tit. 9, §§ 2520.1 *et seq.*; N.Y.C. Admin Code §§ 26-501 *et seq.*
27 New York State law also authorizes municipalities to formulate and
28 apply rent stabilization regulations and New York City has done so.
29 N.Y. Unconsol. Law § 8605; N.Y.C. Admin Code §§ 26-501 *et seq.*

1 After the death of her husband, Santiago-Monteverde
2 experienced financial difficulties and eventually sought relief under
3 Chapter 7 of the Bankruptcy Code. During the pendency of
4 bankruptcy proceedings, she has continued to pay her rent and has
5 remained current on her lease obligations. In her initial bankruptcy
6 filing, she listed her apartment lease on Schedule G as a standard
7 unexpired lease. Shortly thereafter, the owner of her apartment
8 approached the Trustee-Appellee, John S. Pereira, and offered to buy
9 Santiago-Monteverde's interest in the lease. When Pereira advised
10 Santiago-Monteverde that he planned to accept the offer, she
11 amended her filing to list the value of her lease on Schedule B as
12 personal property exempt from the bankruptcy estate under DCL
13 § 282(2) as a "local public assistance benefit."

14 The Trustee moved to strike Santiago-Monteverde's claim of
15 exemption. The bankruptcy court granted the motion on the ground
16 that the rent-stabilization program did not qualify as a "local public
17 assistance benefit." *In re Santiago-Monteverde*, 466 B.R. 621 (Bankr.
18 S.D.N.Y. 2012). The bankruptcy court noted that "all of the items
19 listed in section 282(2)," such as social security, disability, and
20 unemployment benefits, "are payments of one sort or another that a
21 debtor has the right to receive or in which the debtor has an
22 interest." *Id.* at 623-24. In contrast, the bankruptcy court concluded
23 that the "benefit of paying below market rent . . . is a quirk of the
24 regulatory scheme in the New York housing market, not an
25 individual entitlement" comparable to the other items in § 282(2). *Id.*
26 at 625.

27 Santiago-Monteverde appealed to the district court. The
28 district court affirmed the bankruptcy court. The district court
29 concluded that it was "not necessary to reach the question of
30 whether" the exempt benefits were limited only to payments to a
31 debtor, because "the value in securing a lawful termination of the

1 rent-stabilized lease . . . is a collateral consequence of the regulatory
2 scheme and not a ‘local public assistance benefit.’” *In re Santiago-*
3 *Monteverde*, No. 12 Civ. 4238 (PKC), 2012 WL 3966335, at *2 (S.D.N.Y.
4 Sept. 10, 2012). The district court also adverted to the absence of any
5 evidence that the legislature had “intended to confer upon the
6 tenant a public assistance benefit consisting of the value of
7 terminating the rent-stabilization regime.” *Id.*

8 Santiago-Monteverde appeals. Her principal contention is
9 that the protections of the rent stabilization program, and the
10 concomitant value created in her rent-stabilized lease, amount to a
11 “local public assistance benefit” that is exempt from her bankruptcy
12 estate.

13 II. DISCUSSION

14 “We exercise plenary review over a district court’s rulings in
15 its capacity as an appellate court in bankruptcy, independently
16 reviewing the bankruptcy court’s factual findings for clear error and
17 its legal conclusions *de novo*.” *In re Quebecor World (USA) Inc.*, 719
18 F.3d 94, 97 (2d Cir. 2013) (internal quotation marks omitted). Where
19 the case requires us to interpret state law, “[w]e review the district
20 court’s interpretation and application of state law *de novo*.” *In re*
21 *Thelen LLP*, 736 F.3d 213, 219 (2d Cir. 2013) (internal quotation marks
22 omitted), *certified question accepted* 22 N.Y.3d 1017 (Dec. 12, 2013).

23 Section 522(b) of the Bankruptcy Code permits the debtor to
24 exempt certain specified property from the bankruptcy estate.
25 *CFCU Cmty. Credit Union v. Hayward*, 552 F.3d 253, 258 (2d Cir. 2009).
26 Section 522(d) of the Code provides a list of categories of property
27 that a debtor may exempt. However, the Code also permits states, if
28 they choose, to create their own lists of exemptions as an alternative
29 to the exemptions found in Section 522(d). “New York has ‘opted
30 out’ of the federal exemption scheme, . . . choosing instead to

1 provide its own exclusive set of permissible exemptions for debtors
2 domiciled in the state.” *Id.* Under New York law, a debtor may
3 exempt, among other things, her “right to receive or . . . interest in . .
4 . a social security benefit, unemployment compensation or *a local*
5 *public assistance benefit.*” N.Y. Debt. & Cred. Law § 282(2) (emphasis
6 added).

7 The question confronting us is whether the rent stabilization
8 regime provides such a benefit. The New York Court of Appeals has
9 explained that the rent stabilization program was created “to
10 ameliorate, over time, the intractable housing emergency in the City
11 of New York” by “protect[ing] dwellers who could not compete in
12 an overheated rental market, through no fault of their own.”
13 *Manocherian*, 84 N.Y.2d at 389; *see also id.* (rent stabilization created
14 “to remedy a persisting emergency housing shortage”).

15 The RSC “regulate[s] the two terms at the core of the landlord-
16 tenant relationship: rent and duration.” *Resolution Trust Corp. v.*
17 *Diamond*, 18 F.3d 111, 119 (2d Cir. 1994), *cert. granted, judgment*
18 *vacated on other grounds sub nom. Solomon v. Resolution Trust Corp.*, 513
19 U.S. 801 (1994) and *cert. granted, judgment vacated on other grounds sub*
20 *nom. Pattullo v. Resolution Trust Corp.*, 513 U.S. 801 (1994). “The
21 regulations govern the initial rent, restrict rent increases, mandate
22 lease renewal, and, upon the tenant’s vacating of the premises, allow
23 the tenancy to pass statutorily to certain members of the tenant’s
24 household,” if certain conditions are met. *Id.* (internal citations
25 omitted). “Landlord compliance with this scheme is enforced
26 chiefly by limiting the grounds for eviction” *Id.*

27 Under the RSC, these terms substantially favor tenants,
28 requiring lease renewal in almost all circumstances, and affording
29 strong anti-eviction protections. The implementing regulations state
30 that “[a]s long as the tenant continues to pay the rent to which the

1 owner is entitled, no tenant shall be denied a renewal lease or be
2 removed from any housing accommodation by action to evict or to
3 recover possession, by exclusion from possession, or otherwise, nor
4 shall any person attempt such removal or exclusion from possession,
5 except on one or more of the grounds specified in this Code.” N.Y.
6 Comp. Codes R. & Regs. tit. 9, § 2524.1(a). The “grounds specified in
7 this Code” are limited, and do not mention a debtor’s bankruptcy.
8 *See id.* §§ 2524.3, 2524.4. 2524.5. As a result of these provisions, rent-
9 stabilized tenants who have not defaulted on their leases enjoy
10 significant protections. Santiago-Monteverde’s main contention is
11 that this constellation of protections adds “value” to a rent stabilized
12 lease above the value of a market rate lease, and that the
13 concomitant value of these protections amounts to an exempt “local
14 public assistance benefit” under DCL § 282(2).

15 A bankruptcy trustee is authorized to “assume or reject
16 any . . . unexpired lease of the debtor.” 11 U.S.C. § 365(a). We have
17 held that a rent-stabilized tenancy is the product of a “lease” under
18 federal law, *Diamond*, 18 F.3d at 119, and thus would appear to be
19 covered by § 365, *but see B.N. Realty Assocs. v. Lichtenstein*, 238 B.R.
20 249, 254-56 (S.D.N.Y. 1999) (quoting Bankruptcy Court’s conclusion
21 that rent-stabilized leases fell within an exception to § 365, but
22 resolving the case on other grounds); *but see also* Brief of *Amicus*
23 *Curiae* MFY Legal Services at 14-20 (arguing that the inability of a
24 creditor to reach the value of the debtor’s rent stabilized apartment
25 outside of bankruptcy bars the trustee from assuming the lease, *see*
26 11 U.S.C. § 365(a), (c)).

27 Moreover, New York cases have assumed that a trustee
28 possesses the authority under 11 U.S.C. § 365 to assume or reject a
29 rent-stabilized debtor’s lease and have discussed the effect of a
30 rejection. *See 187 Concourse Assocs. v. Bunting*, 670 N.Y.S.2d 686, 688
31 (Civ. Ct. 1997) (citing several cases from New York courts discussing

1 the impact of a bankruptcy trustee's rejection of a rent-stabilized
2 lease). Additionally, several bankruptcy courts have held that a
3 trustee's authority under § 365 extends to rent-stabilized leases. *See*
4 *In re Toledano*, 299 B.R. 284, 292 (Bankr. S.D.N.Y. 2003); *In re Yasin*,
5 179 B.R. 43, 49 (Bankr. S.D.N.Y. 1995). Thus, there is (albeit limited)
6 authority for the proposition that a rent-stabilized debtor's lease
7 may be assumed and assigned by the trustee pursuant to 11 U.S.C.
8 § 365(a).

9 In this appeal, however, we must consider an additional and
10 analytically different issue: May a rent-stabilized tenant prevent the
11 assumption and assignment of his or her lease by claiming that the
12 lease (or its value) is a "local public assistance benefit" exempt from
13 the bankruptcy estate? The Trustee implicitly argues that his
14 assumption and assignment of the lease eliminate the protections
15 afforded under the RSC and, therefore, that he may sell the lease to
16 the landlord for the value that exists in the elimination of those
17 protections. Santiago-Monteverde argues that the lease (or its value)
18 is a "local public assistance benefit" because the value of the lease (in
19 whole or in part) is traceable to the protections afforded to her under
20 the RSC. As noted by the parties and the *amici*, resolving these
21 questions may implicate other questions of New York law, including
22 whether a tenant's rights under the RSC are property or personal
23 rights. *See, e.g.*, Brief of *Amicus Curiae* New York City Bankruptcy
24 Assistance Project at 7-13 (arguing that rent-stabilized tenant's rights
25 are statutory personal rights rather than property rights that,
26 therefore, cannot be administered as part of the bankruptcy estate).

27 No New York cases directly address these contentions. New
28 York courts addressing the interaction of the Bankruptcy Code and
29 the RSC have indicated that the rejection of a rent-stabilized lease by
30 the trustee does not void or terminate the lease, and does not
31 eliminate the protections of the RSC. *See 187 Concourse Assocs.*, 670

1 N.Y.S.2d at 688 (explaining that “bankruptcy lease rejection neither
2 voids the lease, nor terminates the lease” and that “[t]he debtor-
3 tenant, with a rejected unexpired rent stabilized lease, may continue
4 to occupy the premises, unless a properly instituted summary
5 holdover proceeding occurs” (citations omitted)). But these decisions
6 do not address the assumption and assignment of a lease and, thus,
7 do not resolve this appeal.

8 No New York courts have interpreted the phrase “local public
9 assistance benefit” in the context of DCL § 282(2). Although two
10 bankruptcy court decisions have permitted the assumption and
11 assignment of rent-stabilized leases or rights similar to RSC
12 protections, with the consequent elimination of tenant protections,
13 neither decision addressed the argument presented in this appeal for
14 an exemption under DCL § 282(2). See *In re Toledano*, 299 B.R. at 294;
15 *In re Stein*, 281 B.R. 845, 848 (Bankr. S.D.N.Y. 2002).

16 Given the significance of these issues to landlords and tenants,
17 as well as the complete absence of authority concerning the impact
18 of DCL § 282(2) on rent stabilized leases, we hesitate to attempt to
19 resolve these issues without first obtaining the views of the New
20 York Court of Appeals.

21 C. CERTIFICATION

22 Pursuant to Rule 27.2 of our Local Rules and New York State
23 law, we may certify “determinative questions of New York law
24 [that] are involved in a case pending before [us] for which no
25 controlling precedent of the Court of Appeals exists.” N.Y. Comp.
26 Codes R. & Regs. tit. 22, § 500.27(a); Local R. 27.2; see also N.Y. Const.
27 art. VI, § 3(b)(9) (directing the New York Court of Appeals to adopt a
28 rule permitting it to answer questions of New York law certified to it
29 by, among other courts, “a court of appeals of the United States”).

1 “Before certifying such a question, we must answer three
2 others: (1) whether the New York Court of Appeals has addressed
3 the issue and, if not, whether the decisions of other New York courts
4 permit us to predict how the Court of Appeals would resolve it; (2)
5 whether the question is of importance to the state and may require
6 value judgments and public policy choices; and (3) whether the
7 certified question is determinative of a claim before us.” *In re Thelen*
8 *LLP*, 736 F.3d at 224 (internal quotation marks omitted). In this case,
9 we answer all three questions in favor of certification.

10 First, neither the Court of Appeals nor lower New York courts
11 have addressed (1) the meaning of “local public assistance benefit”
12 in the context of DCL § 282(2), (2) whether the protections provided
13 by the RSC are personal or property rights, or (3) the effect of the
14 assignment of a tenant’s lease during bankruptcy on her rights
15 under the RSC. This prevents us from making any confident
16 prediction of how the New York Court of Appeals would resolve
17 this issue.

18 Second, the issue of the proper interpretation and interaction
19 of the DCL and RSC is “of importance to the state” and will in fact
20 involve “value judgments and public policy choices” concerning the
21 existence and scope of property rights, as well as the application of
22 emergency housing legislation that was carefully designed to
23 balance the rights and interests of renters and building owners.
24 *Manocherian*, 84 N.Y.2d at 389-90.

25 Finally, the resolution of this question will determine the
26 outcome of this appeal, as it is the only question presented to this
27 Court.

1

III. CONCLUSION

2 The following question is hereby certified to the Court of
3 Appeals of the State of New York pursuant to 2d Cir. Local R. 27.2
4 and N.Y. Comp. Codes R. & Regs. tit. 22, § 500.27(a), as ordered by
5 the United States Court of Appeals for the Second Circuit.

6 Whether a debtor-tenant possesses a property interest in
7 the protected value of her rent-stabilized lease that may
8 be exempted from her bankruptcy estate pursuant to
9 New York State Debtor and Creditor Law Section 282(2)
10 as a “local public assistance benefit”?

11 In certifying this question, we understand that the New York
12 Court of Appeals, if it accepts the case, may reformulate or expand
13 the certified question as it deems appropriate. We do not intend this
14 articulation of the above specified question to limit the scope of the
15 analysis by the Court of Appeals.

16 It is hereby ORDERED that the Clerk of the Court transmit to
17 the Clerk of the New York Court of Appeals this opinion as our
18 certificate together with a complete set of briefs, appendices, and the
19 record filed by the parties in this Court. This panel will retain
20 jurisdiction of the present appeal for resolution after disposition of
21 the certified question by the New York Court of Appeals or once
22 that court declines to accept certification.