

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

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THE CITY OF NEW YORK,

Index No. 452268/2020

Plaintiff,

**STIPULATION OF
SETTLEMENT**

-against-

LORETTA GENDVILLE and GENNARO BROOKS-
CHURCH,

Defendants.

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WHEREAS, the City of New York (the “City”), and its Law Department and its Office of Special Enforcement (“OSE”) filed the above-captioned matter in the New York Supreme Court, New York County and a second action in New York County, The City Of New York vs. Gennaro Brooks-Church and Loretta Gendville, Supreme Court, NY. Co., Index No. 452578/2020 , (the “OSE action”);

WHEREAS, the New York Office of the Attorney General (“OAG”) commenced an investigation into the real estate practices of the Defendants;

WHEREAS, the OAG and Defendants have entered into an Assurance of Discontinuance simultaneous with the signing of this stipulation of settlement that contains separate relief and also incorporates relief found herein;

WHEREAS, LORETTA GENDVILLE and GENNARO BROOKS-CHURCH (the “Defendants”), the City and OAG desire to resolve these actions and investigation (collectively, the “Actions”);

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among the undersigned, as follows:

1. This Agreement settles all the monetary claims for penalties or otherwise asserted in these Actions and arising from the OAG investigation. The Effective Date of this Agreement shall be the date of its execution by all parties .

2. Defendants shall transfer free and clear of all debt and encumbrances, certain real property, consisting of all those plots, pieces, or parcels of real property situated, lying, and being in the City and State of New York, known by the address 1214 Dean Street, Brooklyn, New York and as Block 1213, Lot 16 on the tax map of the City of New York, Kings County ("Land"), and all buildings and improvements situated on the Land ("Improvements" and together with the Land, the "Dean Property") to Restoring Urban Neighborhoods, LLC ("RUN LLC"), or another designated nominee of the City (the "Designated Grantee"), which Designated Grantee (if different from RUN LLC), shall be confirmed by the City to Defendants upon no less than ten (10) days prior notice of the transfer of the Dean Property in accordance with this Agreement..

- a. Defendants shall, upon the Effective Date, execute a General Warranty Deed in form and substance satisfactory to the City conveying fee simple title to the Dean Property to the Designated Grantee(the "Deed") and deliver the Deed to counsel for the Defendants to be held in escrow in accordance with the terms of this Agreement. In the event that the City notifies the Defendants that a party other than RUN LLC will be the Designated Grantee, the Defendants shall promptly upon receipt of such notice deliver to counsel for the Defendants a deed in all respects the same as the Deed except that it shall identify such newly designated party as the grantee in such deed and such modified deed shall thereupon be the Deed under this Agreement.

- b. Defendants shall convey good and marketable title without monetary encumbrances of the Dean Property to the Designated Grantee on June 1, 2022 or such other date as the City, the Designated Grantee, and the Defendants may mutually agree upon, provided such date is not earlier unless agreed to by Defendants (the “Transfer Date”). The Dean Property shall be conveyed to the Designated Grantee subject to the terms of the Deed and in its “as is” condition, subject to any building code, housing code, or multiple dwelling law violation that may exist on the Transfer Date, but free and clear of all leases, licenses, and any other rights of tenants or other occupants, and all monetary liens¹, charges, violations and penalties imposed against Dean Street, all of which shall have been paid by Defendants prior to the Transfer Date.
- c. Defendants shall be prohibited from selling, transferring, disposing of, assigning, or conveying, the Dean Property or any interest therein, or financially encumbering the same without in each instance the advance written approval by the City .
- d. Defendants shall not cause any event of default under its mortgage to Freedom Mortgage Corporation in the amount of \$625,500 and dated as of April 1, 2016 and recorded on April 12, 2016 in the Office of the City Register, Kings County as CRFN2016000127342, granting a lien on the Dean Property (the “Mortgage”), and the note secured thereby or any other mortgage encumbering the Dean Property.

¹ All ECB/OATH and DOB fines imposed against the Property after the Effective Date shall be paid prior to the Transfer Date, **except** any monetary liens imposed against the Property by DOB and/or ECB (i) after the Effective Date for a failure to comply with the commissioner’s order for OATH/ECB Summons 35336495H issued on August 15, 2018; (ii) OATH/ECB Summons 35531067P for failure to comply with the commissioner’s order for OATH/ECB Summons 35336495H issued on April 30, 2021; and (iii) a DOB violation for failure to correct issued on December 12, 2018 relating to the OATH/ECB Summons 35336495H.

- e. Defendants shall take all reasonable steps to maintain the Dean Property, including, at a minimum, a weekly inspection of the Dean Property. Defendants shall not remove or demolish all or any portion of the Improvements or otherwise materially alter the Dean Property.
- f. Prior to the conveyance of the Dean Property, RUN LLC and/or the Designated Grantee may undertake such due diligence as it may reasonably require, including survey, appraisal, Phase I environmental, or property inspection/initial needs assessment in connection with the transfer of the Dean Property. Defendants agree to cooperate in providing reasonable access to the Dean Property to RUN LLC or such other party to perform its due diligence pursuant to a license agreement in a commercially reasonable form to be agreed upon by the City and the parties to such license agreement and to conduct a final inspection of the Dean Property on or immediately prior to the Transfer Date. Notwithstanding the results or findings of such due diligence, the Designated Grantee shall take the Dean Property subject to and in its “as is” condition except as otherwise set forth in this Agreement relating to monetary penalties, and Defendants shall have no obligation to correct, remediate, or perform any work relating to any findings of the Designated Grantee.
- g. Defendants shall maintain property insurance to insure the Dean Property with limits no less than those currently in effect. If there is a loss that gives rise to a claim against the insurer, Defendants shall pay any such proceeds to the City or assign its rights to such proceeds to the City or, at the City’s option to a party designated by the City, and the City shall accept the transfer of the Dean Property to the Designated Grantee and the payment of such loss proceeds as full settlement

and compliance with Defendants obligation to transfer the Dean Property under this Agreement. However, the delay in payment of any loss proceeds by the insured until a date that is after the Transfer Date shall not be deemed a default of Defendant's timely obligations to transfer the Dean Property or impose any additional liquidated damages thereof.

- h. Defendants represent that they are not currently able to satisfy the Mortgage for the Dean Property. Defendants shall promptly take all reasonable steps necessary to satisfy the Mortgage and ensure that both the Mortgage has been satisfied and discharged and the Dean Property is free of all monetary encumbrances by the Transfer Date.
- i. In addition to the Deed, the Defendants shall provide to the Designated Grantee the following on the Transfer Date in connection with the transfer of the Dean Property: any and all keys, key cards or other access devices for the Dean Property then in the Defendants possession; all affidavits, certifications, and other documents as the title company insuring the Designated Grantee's title to the Dean Property shall reasonably require; all authorizations or other instruments necessary to evidence the authority of the Defendants and the person executing the Deed to execute and deliver the Deed and all other documents necessary for the transfer of the Dean Property; the Defendants' respective certificates that they are each not a "foreign person" in the form set forth in Treasury Regulation Section 1.1445-2(b); fully executed New York State and New York City transfer tax returns and all other tax forms and disclosure statements required in connection with the transfer of the Dean Property along with payment of all transfer taxes and recording fees required

to be paid in connection with the transfer of the Dean Property; to the extent the Defendants have them in their possession, any equipment warranties or operating manuals.

- j. The Defendants shall cooperate in completing such other documents and taking such other customary actions as the City and/or the Designated Grantee may reasonably require to effectuate the transfer of the Dean Property.

3. Four tenants at 1214 Dean Street moved to intervene in this action (Index No. 452268/2020), asserting claims against Defendants in an intervenor complaint filed therein (NYSCEF Doc. No. 11). Defendants have settled with the intervenor-tenants as of the Effective Date.

4. In addition to the transfer of the Dean Property, the Defendants hereby also agree to pay the City the sum of One Hundred and Twenty-Five Thousand Dollars (\$125,000) in full satisfaction of any and all claims, rights of action, or otherwise that the City currently has arising out of the Actions (the "City Settlement Payment"). This City Settlement Payment shall be paid within 365 days from the Effective Date (the "City Payment Date"). If the City Settlement Payment is not paid by the City Payment Date, Defendants shall owe the City Settlement Payment plus interest thereafter on any unpaid balance of the City Settlement Payment after the City Payment Date calculated at 9% per annum.

5. This Agreement also settles all the civil claims (including all monetary penalties), rights of action, or otherwise that OAG may pursue arising out of its investigation that is memorialized in the Assurance of Discontinuance the Defendants and OAG are signing simultaneous with this agreement. In addition to the transfer of 1214 Dean Street to the Designated Grantee and the payment of the City Settlement Payment in accordance with this Agreement, the

Defendants have agreed to pay OAG the sum of One Hundred and Twenty-Five Thousand Dollars (\$125,000) in accordance with the terms of the Assurance of Discontinuance signed between Defendants and the OAG (the “OAG Settlement Payment”, together with the City Settlement Payment shall be, the “Settlement Payments”).

6. Payment of the Settlement Payments shall be made as follows:

- a. City Settlement Payment shall be made payable to the City of New York and wired in accordance with instructions provided to Defendants.
- b. OAG Settlement Payment shall be made by wire transfer which shall be made payable to the “State of New York”, and shall reference Assurance No. 22-002; payments shall be addressed to the attention of Brent Meltzer, State of New York, Office of the Attorney General, Housing Protection Unit Bureau, 28 Liberty Street, 21st Floor, NY, NY 10005.

7. Defendants shall not engage in acts in violation of the Unlawful Eviction Law.

8. Defendants shall agree to the Stipulated Order and Settlement in this action as attached as Exhibit A.

9. If the City reasonably believes there is a default of any provision of this Agreement, the City shall provide Defendants with thirty (30) days’ written notice thereof, which notice shall include an affirmation by someone with knowledge of the facts and specificity as to the basis for asserting a default, and upon Defendants’ receipt, Defendants may cure such default. Notice to cure any such default is sufficient if sent by email to Defendants, and a copy by email to their attorney. If an alleged default of this Agreement is not cured within thirty (30) days of the City’s written notice of such default subject to force majeure, then Defendants shall be in default under this Agreement.

10. For each month after the Transfer Date that Defendants are in default of transferring the Dean Property as required by the Agreement subject to force majeure, there shall

be liquidated damages assessed against the Defendants of \$25,000 a month until such time as the Dean Property is transferred in accordance with this Agreement (which amount shall be pro-rated if transferred prior to the end of any month), which liquidated damages shall not exceed an aggregate of \$500,000. The liquidated damages compensate for, *inter alia*, increases to the City's costs to convert the building into affordable housing and the delay in benefits to the City of increasing the supply of affordable housing. Defendants agree not to challenge the liquidated damages as disproportionate.

11. The City and the Defendants agree that a failure to comply with this Agreement after notice and an opportunity to cure, may be enforced by the filing an entry of a monetary judgment by the Clerk of the Court without further prior written notice to Defendants of the City's intention to file and enter such monetary judgment pursuant to CPLR 3215(i)(1) as applicable and after such time to cure such default has expired. The monetary judgment shall be calculated as follows:

- a. Liquidated damages due and owing to the extent unpaid , as described in Paragraph 10;
- b. \$125,000, to the extent such amount is due and owing and has not been paid to the City in accordance with Paragraph 4;
- c. \$572,000 representing the pay-off amount due on the Mortgage as most recently reported by the mortgagee thereunder as of the Effective Date (including any interest accrued and any other costs and fees charged by such mortgagee) (the "Mortgage Amount"). Prior to the entry of such monetary judgment and upon receipt of a notice to cure Defendants shall provide the City with a copy of the lender payoff letter as of the date of the notice to

confirm the balance of the unpaid Mortgage Amount (plus any interests accrued and costs charged by the lender) which shall be adjusted accordingly in accordance therein. Any payments made to the City by Defendants in satisfaction (either partial or whole) of the Mortgage Amount shall be credited and applied to the unpaid balance of the Mortgage in accordance with the terms herein or upon the Court awarding specific performance to the City under Paragraph 12 herein.²

- d. Interest to the date of entry of judgment on all above sums that are due under this Agreement, except to the extent interest is included in the above sums and for interest that may be due on subsection (c) above related to the mortgage payoff for the Dean Property.

12. If the Dean Property is not conveyed by the Transfer Date, and upon the expiration of the cure period as per Paragraph 9, the City may move in this action or commence a separate action for specific performance, and provided that, and only if the Court denies specific performance of the transfer of the Dean Property to the Designated Grantee, the City may plead and move in the alternative for a monetary judgment in the amount of Two Million Two Hundred and Sixty Thousand Dollars (\$2,260,000) representing the agreed upon value of the Dean Property as liquidated damages (the "Property Value Amount"). In the event the Court *sua sponte*, denies specific performance of the transfer of the Dean Property to the Designated Grantee, and in the alternative the Court awards to the City the Property Value Amount, the City shall accept the Property Value Amount (without interest) in full satisfaction of the transfer of the Dean Property

² It is the intention of the parties that the Dean Property be transferred to the Designated Grantee and that the Mortgage Amount is to be entered in favor of the City for the sole purpose of enforcing the City's rights to receive the Dean Property free and clear of the Mortgage.

and the Mortgage Amount and shall not be entitled to the transfer of the Dean Property or payments towards the Mortgage Amount under Paragraph 11(c) and any amounts paid to the Mortgage Amount to date by Defendants shall thereto be credited towards the unpaid balance of the monetary judgment entered under Paragraph 11, if any. It is the intention of the parties hereto that the Dean Property be transferred to the Designated Grantee but in the event the Court denies such intent, then the parties agree that the City shall receive only the Property Value Amount as it relates to the Dean Property, in addition to the payments (to the extent unpaid) under Paragraph 4 and the liquidated damages accrued through the date of the Court's decision under Paragraph 10. Defendants shall not oppose such action, amended action or motion, on any grounds, including venue or the merits, except if such delay in transfer is subject to force majeure or lender delays.. In any new action that the City may bring, Defendants' counsel shall accept service of the summons and complaint or petition, or shall notice the City upon receipt that service should be made upon other retained counsel, or if no counsel has been retained by Defendants, then Defendants. The City shall not be required to post an undertaking for any relief, including preliminary relief it may obtain.

13. The parties consent to the Court's continuing jurisdiction to enforce compliance with the terms of this Agreement.

14. Defendants' transfer of the Dean Property and payment in full of the Settlement Payments (with interest and liquidated damages if applicable) shall be deemed full satisfaction of any and all claims, rights of action, or otherwise that the City currently has arising out of the two Actions. Upon such compliance, the City shall file Stipulations of Discontinuance in the two Actions within ten (10) days.

15. This Agreement does not resolve any other violations of law, ordinance, or regulation, or any administrative order not specifically referenced. Nor does this Agreement resolve any violations of law, ordinance, regulation, or administrative order arising after the Effective Date. Nothing in this Agreement waives Defendants' obligations to comply with law, ordinances, regulations, administrative orders or violations and furthermore nothing in this Agreement shall bar the City from issuing violations, or from taking other appropriate actions with respect to any of the conditions at any properties owned by the Defendants, to the extent that any conditions continue to exist (but which are not currently being cured or will be cured in accordance with the terms herein) or arise in the future. The City represents that it is not currently considering, investigating or pursuing any matter arising out of the circumstances set forth above. Defendants reserve all of their rights and defenses thereto.

16. Failure of the City to enforce any of its rights upon default of this Agreement shall not be deemed a waiver of the right to do so.

17. This agreement is not intended, and should not be construed, as an admission of liability by the Defendants and is not intended for use or to be relied upon by any third party, other than the OAG, in any other proceeding. No person who is not a signatory to this agreement is intended to be a third-party beneficiary of this agreement.

18. This Agreement contains all the terms and conditions agreed upon by the parties hereto, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Agreement regarding the instant Actions shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein. Notwithstanding the above, this Agreement shall be read in concert with the OAG Assurance of Discontinuance and the Stipulation and Order in the OSE action.

19. Notice under this Agreement shall be provided:

If to Loretta Gendville: 158 Douglass Street
Brooklyn, New York 11217
Lgendvill@gmail.com

If to Gennaro Brooks-Church: 22 2nd Street,
Brooklyn, New York 11232
Gennarobc@gmail.com

If to Defendants' Counsel: Cozen O'Connor
3 WTC, 175 Greenwich Street, 55th Floor
New York, New York 10007
Attn: Kenneth K. Fisher
(212) 883-4962
KFisher@cozen.com

If to OAG: Brent Meltzer
Office of the New York Attorney General
28 Liberty Street, 21st Floor
New York, NY 10005
(212) 416-6096
Brent.meltzer@ag.ny.gov

If to the City of New York: Alan H. Kleinman, Esq.
Senior Counsel
Affirmative Litigation Division
New York City Law Department
100 Church Street, 20th Floor
New York, NY 10007
(212) 356-2033
akleinma@law.nyc.gov

and

Aron M. Zimmerman, Senior Counsel
NYC Mayor's Office of Special
Enforcement
22 Reade Street, 4th floor
New York, NY 10007
(646) 576-3517
azimmerman@ose.nyc.gov

20. A facsimile, copy or PDF image of this Stipulation shall be considered as effective and valid as the original.

Dated: New York, New York
February __, 2022


GEORGIA M. PESTANA

Corporation Counsel of the City of New York
100 Church Street, Room 20-100
New York, New York 10007
akleinma@law.nyc.gov
212.356.2033

Alan H Kleinman

Digitally signed by Alan H
Kleinman
Date: 2022.02.14 13:47:54 -05'00'

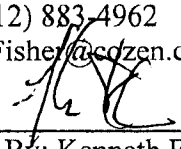
By: Alan H. Kleinman



LORETTA GENDVILLE

COZEN O'CONNOR

3 WTC, 175 Greenwich Street, 55th Floor
New York, New York 10007
Attorney for Defendants
(212) 883-4962
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By: Kenneth F. Fisher



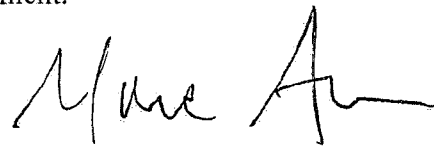
GENNARO BROOKS-CHURCH

ACKNOWLEDGMENT

STATE OF NEW YORK)

COUNTY OF 1 Kings) : ss.:

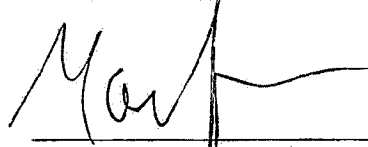
On the 10 day of February in the year 2022 before me, the undersigned, a Notary Public in and for the State of New York, personally appeared Loretta Gendville, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to in the within Short-Term Rental Settlement and acknowledged to me that she executed the same in his capacity, and that by her signature on the Short-Term Rental Settlement, the individual, executed the Short-Term Rental Settlement.


NOTARY PUBLIC
MARC ARONSONNotary Public, State of New York
No. 02AR6186212Qualified in Kings County
Commission Expires April 28, 2022

STATE OF NEW YORK)

COUNTY OF 1 Kings) : ss.:

On the 10 day of February in the year 2022 before me, the undersigned, a Notary Public in and for the State of New York, personally appeared Gennaro Brooks-Church, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to in the within Short-Term Rental Settlement and acknowledged to me that he executed the same in his capacity, and that by his signature on the Short-Term Rental Settlement, the individual, executed the Short-Term Rental Settlement.



NOTARY PUBLIC

MARC ARONSON

Notary Public, State of New York
No. 02AR6186212Qualified in Kings County
Commission Expires April 28, 2022

EXHIBIT A

STIPULATION OF DISCONTINUANCE

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

-----X

THE CITY OF NEW YORK,

Plaintiffs

Index No. 452268/2020

-against-

LORETTA GENDVILLE and GENNARO
BROOKS-CHURCH,

**STIPULATION OF
DISCONTINUANCE**

Defendants.

-----X

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, the attorneys of record for the parties to the above entitled action, that whereas no party hereto is an infant or incompetent person for whom a committee has been appointed and no person not a party has an interest in the subject matter of the action, the above-entitled action be, and the same hereby is, discontinued with prejudice, without costs or disbursements to any party as against any other.

This stipulation may be filed with the Clerk of the Court without further notice to any party. This Stipulation may be completed in counterparts; a facsimile, pdf, or other

electronic copy may be filed with the same force and effect as that of an original.

Dated: New York, New York

February , 2022

Kenneth K. Fisher
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Andrew C. Punzo
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By: Marnie R. Kudon

By: Alan H. Kleinman
Assistant Corporation Counsel