

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

-----X
THE CITY OF NEW YORK,

Plaintiff,

-against-

GENNARO BROOKS-CHURCH and LORETTA
GENDVILLE

Defendants.
-----X

Index No. 452578/2020

Assigned to:
Hon. J. Machel Sweeting,
J.S.C.

**STIPULATION OF
SETTLEMENT AND
CONSENT JUDGMENT**

WHEREAS, Plaintiff THE CITY OF NEW YORK (the “City”) via its Office of Special Enforcement (“OSE”) commenced the above-captioned consumer deception and common law nuisance action (the “Short-Term Rental Action”) on December 16, 2020, filing its summons and verified complaint (NYSCEF Doc. No. 1) and contemporaneous order to show cause with accompanying papers seeking a Temporary Restraining Order (“TRO”) and Preliminary Injunction enjoining Defendants GENNARO BROOKS-CHURCH and LORETTA GENDVILLE (the “Defendants” and, together with the City, the “Parties”) from further illegal short-term advertising or occupancy of permanent dwelling units anywhere in the City of New York (NYSCEF Doc. Nos. 2-76);

WHEREAS, based on the City’s pre-suit investigation, the City alleged that since 2016 the Defendants ran an illegal and hazardous transient (less than 30-day) rental operation involving at least nine buildings in the City containing permanent residential dwelling units that can only lawfully and safely be occupied for 30 consecutive days or more, setting up multiple fake accounts on www.Airbnb.com (“Airbnb”) in family members’ and employees’ names to deceptively offer and conduct unlawful and hazardous accommodations to tourists without disclosing the illegality or the dangers of such short-term rentals;

WHEREAS, this Court granted the City's application for a Temporary Restraining Order pending the hearing of the Motion for Preliminary Injunction on December 17, 2020 (NYSCEF Doc. No. 77) enjoining Defendants from:

- (a) Interfering with the Plaintiff right to have immediate and unhindered access for its FDNY Fire Protection Inspectors and DOB Building Inspectors, including but not limited to those personnel assigned to the Mayor's Office of Special Enforcement, to lawfully enter the Subject Buildings¹ or any other buildings in the City of New York, where Defendants may have advertised, offered, maintained, operated occupancy for less than thirty consecutive days, in their normal course of duty, for the purpose of inspecting the buildings and any parts thereof, and any signs or service equipment contained therein or attached thereto, at all reasonable times, pursuant to relevant and applicable regulations and unobstructed by Defendants, to determine the buildings' compliance with the provisions of the New York City Building Code, the New York City Fire Code, as well as all other relevant provisions of the Admin. Code, the Multiple Dwelling Law, any currently applicable administrative orders, and other applicable laws and rules; and
- (b) Illegally using or occupying transiently in violation of the laws, or permitting illegal transient use or occupancy of any units or spaces in the Subject Buildings, or in any other buildings in the City of New York, except those units or spaces currently so occupied, which must be vacated within twenty-four hours of issuance of which must be vacated within twenty-four hours of issuance of this Court's order, and from further permitting the residential use or occupancy of such currently occupied units immediately after the current occupants leave; and
- (c) Permitting the illegal transient use or occupancy of any additional units or spaces at the Subject Buildings, or in all other buildings in the City of New York; and
- (d) Registering any new persons at the Subject Buildings or in any other buildings in the City of New York for illegal transient occupancy of less than a thirty-days; and
- (e) Booking, offering or advertising any units at the Subject Buildings or in any other buildings in the City of New York for illegal transient use; and

¹ The nine Subject Buildings are:

- 1. 121 EAST 54TH STREET, BLOCK 4641, LOT 37, Kings County, City and State of New York;
- 2. 158 DOUGLASS STREET, BLOCK 416, LOT 28, Kings County, City and State of New York;
- 3. 22 2ND STREET, BLOCK 460, LOT 10, Kings County, City and State of New York;
- 4. 571 BARBEY STREET, BLOCK 4061, LOT 16, Kings County, City and State of New York;
- 5. 115 BEADEL STREET, BLOCK 2836, LOT 39, Kings County, City and State of New York;
- 6. 149 PROSPECT AVENUE, BLOCK 1051, LOT 56, Kings County, City and State of New York;
- 7. 280 COURT STREET, BLOCK 326, LOT 52, Kings County, City and State of New York;
- 8. 338 UNION STREET OR 305 SMITH STREET, BLOCK 436, LOT 10, Kings County, City and State of New York; and
- 9. 333 SMITH STREET, BLOCK 443, LOT 6, Kings County, City and State of New York.

- (f) Disposing of, modifying, or in any other manner interfering with the digital or paper documents, photographs and records maintained in connection with the management, operation, use and occupancy of the Subject Building or in any other buildings in the City of New York;

WHEREAS, on March 3, 2021 (NYSCEF Doc. No. 90), upon Defendants' consent, pending the final determination of this Short-Term Rental Action, the Court issued an order granting the City a preliminary injunction against Defendants enjoining them from (a) illegal transient use or occupancy, or permitting the illegal transient use or occupancy of the Subject Buildings, or any other buildings in the City of New York, (b) bookings, offering, or advertising any illegal transient occupancy in the Subject Buildings or in any other buildings in the City of New York; and (c) disposing of, modifying, or in any other manner interfering with the digital or paper documents, photographs and records Defendants maintain or possess in connection with the management, operation, use and occupancy of the Subject Buildings or in any other buildings in the City of New York;

WHEREAS, the City acting through its Law Department commenced a separate unlawful eviction action (the "Unlawful Eviction Action") against Defendants regarding 1214 Dean Street (the "Dean Property") in Brooklyn on November 17, 2021 in the New York Supreme Court, New York County under Index No.: 452268/2020 (collectively the Short-Term Rental Action and the Unlawful Eviction Action shall be the "Actions");

WHEREAS, four tenants of the Dean Property moved to intervene in the Unlawful Eviction Action, asserting claims against Defendants in an intervenor complaint filed therein;

WHEREAS, contemporaneously with the execution of this stipulation of settlement, the Defendants and the City are executing a stipulation of settlement of the Unlawful Eviction Action which includes the transfer of the Dean Property and payment of the City Settlement Payment (as defined therein) (the "Unlawful Eviction Settlement");

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

WHEREAS, simultaneously with the execution of this stipulation of settlement for the Short-Term Rental Action, the OAG and Defendants are entering into an Assurance of Discontinuance that contains separate relief to resolve the OAG Investigation and payment of the OAG Settlement Payment (as defined in the Unlawful Eviction Settlement) relating to and in connection with the OAG Investigation (collectively the City Settlement Payment and the OAG Settlement Payment are the “Settlement Payments”);

WHEREAS, without waiving any defenses or Defendants admitting to any statements, findings, allegations, facts, or liability in connection with the violations alleged by the City in the recitals and in its complaint in the Short-Term Rental Action, *inter alia* that Defendants engaged in (1) illegal transient use or occupancy, or permitting the illegal transient use or occupancy of the Subject Buildings or (2) booking, offering, or advertising any illegal transient occupancy in the Subject Buildings, the OAG, City, and Defendants wish to resolve the Short-Term Rental Action (the “Short-Term Rental Settlement”);

WHEREAS, Defendants, the City, and the OAG desire to resolve these Actions and the OAG Investigation;

WHEREAS, all terms and conditions of the Unlawful Eviction Settlement and the OAG Assurance are incorporated into this Short-Term Rental Settlement;

NOW, THEREFORE, IT IS HEREBY STIPULATED, ORDERED, ADJUDGED, and DECREED as follows:

I. JURISDICTION

1. This Court has jurisdiction of this action and of each of the Parties and shall retain exclusive jurisdiction to interpret any dispute arising under the Short-Term Rental Settlement, and to enforce it in accordance with its terms.

II. APPEARANCE BY DEFENDANTS

2. Defendants GENNARO BROOKS-CHURCH and LORETTA GENDVILLE appear by their attorneys, Cozen O'Connor, located at 3WTC, 175 Greenwich Street, 55th Floor, New York, NY, 10007, who represent that they are fully authorized to enter into the Short-Term Rental Settlement on behalf of Defendants.

III. DEFINITIONS

3. For purposes of this Short-Term Rental Settlement, the following terms shall have the following meanings:

a. "Advertisement" shall mean all labels, promotional materials, statements, visual descriptions, or other representations of any kind disseminated in print, orally or electronically by or on behalf of Defendants, jointly or individually, to consumers, including, but not limited to, mailings, postcards, signs, banners, billboards, newspaper print advertisements, telephone solicitations, television advertisements, radio advertisements, and internet advertisements, whether targeting the United States or foreign markets.

b. "Advertise" and "advertising" shall mean the publication or placement of an Advertisement.

c. "Applicable Law" shall include, but not be limited to, the New York Multiple Dwelling Law, the New York City Construction Codes, including the New York

City Building Code (“Building Code”), Fire Code, and Housing Maintenance Code, the New York City Consumer Protection Law (“Consumer Protection Law”), the New York City Zoning Resolution, the Emergency Housing Rent Control Law, the Housing Stability and Tenant Protection Act of 2019, and all other applicable laws and regulations of the State and the City of New York, as the same may be amended, revoked or changed from time to time, with respect to the operation and maintenance of the type of properties that Defendants operate and manage.

d. “Effective Date” shall mean the date that this Short-Term Rental Settlement is “So Ordered” by the Court.

IV. BINDING EFFECT OF THIS STIPULATION OF SETTLEMENT

4. This Short-Term Rental Settlement shall be binding on the Parties hereto and their respective successors, heirs, and assigns, except for any sales to a bona-fide third party purchaser of any Subject Buildings.

5. Any agreement entered into by Defendants for the sale, transfer, assignment, or grant of any dwelling units within the Subject Buildings owned, in whole or in part, or operated by Defendants, except for any sales to a bona-fide third party purchaser, shall include an acknowledgement stating that the purchaser, transferee, assignee, or grantee, has received a copy of this Short-Term Rental Settlement and is bound thereby.

V. INJUNCTIVE RELIEF

6. Defendants and their principals, agents, property managers, employees, and/or authorized representatives shall not engage in acts in violation of the Unlawful Eviction Law, Admin. Code §26-521(a).

7. Defendants and their principals, agents, property managers, employees, and/or authorized representatives shall comply fully with the Consumer Protection Law and its implementing Rules with regard to their ownership and operation of the Subject Buildings, and ownership and operation of, and/or advertisement of occupancy in, any other buildings in the City of New York.

8. Defendants and their principals, agents, property managers, employees, and/or authorized representatives are permanently and perpetually enjoined from using, occupying, advertising, booking, making reservations for, renting, permitting, conducting, maintaining, and/or otherwise operating, a dwelling unit or units, or establishment, located anywhere in the City of New York, for transient residential rentals or occupancies of less than 30 consecutive days — unless such rentals or use are allowed by existing Applicable Law, heretofore or hereafter enacted, and by the certificate of occupancy (“C of O”) for the building, I-card, or letter of no objection in which the dwelling unit is located. In the event a tenant voluntarily vacates a unit/apartment before the expiration of 30 days from the commencement of her or his occupancy, except where that apartment/unit can lawfully be rented for fewer than 30 consecutive days, that apartment/unit will not be re-rented until 30 days have expired from the date the tenant commenced occupancy.

9. Defendants shall not publish Advertisements for transient residential rentals or occupancies of less than 30 consecutive days of any units/apartments that violate the terms of Applicable Law, which from time to time may be changed, amended or modified.

10. Defendants and their agents and representatives shall not make any representations to consumers, tenants, or subtenants, oral or otherwise, which are inconsistent with the restrictions in this Short-Term Rental Settlement.

11. Any lease, sub-lease, or other agreement for occupancy of any portion of the Subject Buildings that Defendants and their agents and representatives enter into shall contain the following language regarding the express prohibition against unlawful transient occupancies:

Landlord hereby advises Tenant and Tenant acknowledges that Landlord and/or Landlord's Property Manager and Tenant are all prohibited from leasing or licensing the unit/apartment in violation of New York Multiple Dwelling Law Section 4(8) and New York City Housing Maintenance Code Section 27-2004(8)(a), relating to the use and occupancy of the demised premises as short-term hotels for stays less than thirty consecutive days by the same person or family.

Tenant, lease, licensee or other occupant specifically acknowledges that this lease is entered into on the condition that the provisions of the Article/Section shall be deemed and construed as material obligations of the Tenant under this Lease and a material inducement to Landlord to offer this Lease (or Rental Agreement) to Tenant and to execute this Lease (or Rental Agreement) with Tenant. Failure to comply with the provisions of this Article/Section shall constitute a material default subjecting Tenant to lease termination.

Prohibited Conduct: Tenant shall not permit or acquiesce in the advertising, booking reservations, or operating and maintaining the dwelling unit, dwelling units, or Premises, as applicable to this Lease for periods of less than thirty consecutive days which would be considered a violation of the New York Multiple Dwelling Law and New York City Housing Maintenance Code, unless otherwise authorized by applicable law.

VI. SETTLEMENT TERMS

12. Without admitting fault, liability, or any facts alleged in the complaints filed under the Actions, in the OAG Investigation, in the injunctive relief granted, or in the recitals herein, Defendants agree to resolve the Actions in accordance with the terms herein.

13. As set forth in the Unlawful Eviction Settlement Defendants shall transfer free and clear of all debt and monetary encumbrances the Dean Property to a nominee of the City in accordance with the terms of the Unlawful Eviction Settlement.

14. In addition to the transfer of the Dean Property, Defendants hereby agree to pay the City and the OAG the total sum of Two Hundred and Fifty Thousand Dollars (\$250,000) to be paid equally to the City and OAG as the Settlement Payments set forth in the Unlawful Eviction Settlement and the Assurance respectively in full satisfaction of any and all claims, rights of action, or otherwise that the City and OAG currently have arising out of the Actions in accordance with the terms therein under the Unlawful Eviction Settlement and the Assurance Agreement respectively.

15. The Settlement Payments do not include any fines or penalties which may have been or will be assessed by the New York City Office of Administrative Trials and Hearings (“OATH”), New York City Environmental Control Board (“ECB”), or the New York City Department of Buildings (“DOB”), against the Dean Property prior to the transfer of Dean Property to a nominee of the City, or against any of the Subject Buildings.

16. The Settlement Payments include any and all claims for reimbursement of the cost to the City and the OAG for all of their respective investigations, and to commence and maintain the Short-Term Rental Action, including, but not limited to, any claims for attorneys’ fees.

17. It is understood and agreed by and between the Parties that the Settlement Payments constitutes liquidated damages and assessed fines under the Consumer Protection Law, and therefore, in accordance with 11 U.S.C. § 523(a)(7), is not subject to discharge in bankruptcy.

VII. RELEASE

18. In consideration of the injunctive relief, payment of the Settlement Payments in accordance with the Unlawful Eviction Settlement, and the other obligations upon Defendants provided for in this Short-Term Rental Settlement, the City and OAG through the Assurance Agreement release Defendants from any and all civil or administrative claims that arise or relate

directly from and to the violations alleged in the complaints in both Actions that occurred or may have accrued up to the Effective Date, except as specified in paragraph 15.

19. In consideration of the obligations upon the City provided for in this Short-Term Rental Settlement, Defendants release the City from any and all civil or administrative claims that arise directly from violations alleged in the complaint and with respect to any and all matters addressed in this Short-Term Rental Settlement that occurred or may have accrued up to the Effective Date.

20. The execution of this Short-Term Rental Settlement shall in no way impair or limit the City from enforcing any Applicable Law, or any other provisions of the law with respect to any future violations.

VIII. MISCELLANEOUS PROVISIONS

21. The Parties agree to cooperate fully and execute any and all supplementary documents and to take all additional reasonable actions which may be necessary or appropriate to give full force and effect to the terms and intent of this Short-Term Rental Settlement.

22. All notices or reports to be delivered to the City pursuant to the terms of this Short-Term Rental Settlement shall be sent or delivered to the Mayor's Office of Special Enforcement, 22 Reade Street, 4th Floor, New York, New York 10007, attn.: Aron M. Zimmerman, Esq. (email: azimmerman@ose.nyc.gov), or to the attention of such other individual as OSE shall later designate. All such notices may be sent by electronic mail, or by regular or certified mail.

23. All notices to be delivered to Defendants pursuant to the terms of the Short-Term Rental Settlement shall be delivered to Defendants; attn.: Gennaro Brooks-Church at 22 2nd Street, Brooklyn, New York 11232 (email: Gennarobc@gmail.com, and Loretta Gendville at 158 Douglas, Brooklyn, New York 11217 (email: Lgendville@gmail.com) with a copy to Defendants'

counsel: Cozen O'Connor, 3WTC, 175 Greenwich Street, 55th Floor, New York, NY, 10007, attn: Kenneth Fisher (email: kfisher@cozen.com), or to the attention of such other individual as Defendants' or Defendants' counsel shall later designate. All such notices shall be sent by electronic mail with a copy by first class or certified mail.

24. 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, 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 of this Agreement.

25. The Parties may execute this Short-Term Rental Settlement in counterparts, and the execution of counterparts shall have the same effect as if the parties had signed the same instrument. Any Party's signature applied hereto, whether in wet ink, digitally, electronically, or via facsimile, shall be deemed an original. The Parties hereto consent to receipt and delivery by electronic means of this Short-Term Rental Settlement and any related documents.

26. This Short-Term Rental Settlement contains the entire, complete and fully integrated statement of each and every term and provision agreed to by the Parties, shall supersede all other prior agreements between the Parties regarding the matters set forth herein, and is not subject to any condition not provided for in the Short-Term Rental Settlement. This Short-Term Rental Settlement shall not be modified, except in writing signed and executed by all the Parties and adopted by the Court. In entering this Short-Term Rental Settlement, none of the Parties has made or relied upon any warranty or representation not specifically set forth in this document.

Notwithstanding the above, this Short-Term Rental Settlement shall be read in concert with the OAG Assurance of Discontinuance and the Unlawful Eviction Action Settlement.

27. The execution of this Short-Term Rental Settlement by the City shall not be deemed to show approval by the City of any of Defendants' business practices and Defendants shall make no representation to the contrary.

28. Defendants have had the opportunity to consult with counsel regarding the terms and execution of this Short-Term Rental Settlement. Counsels for the Parties have reviewed and revised this Short-Term Rental Settlement, and any rule of construction, by which any ambiguities are to be resolved against the drafting party, shall not be applied in the interpretation of this Short-Term Rental Settlement.

29. If a court of competent jurisdiction declares any provision of this Short-Term Rental Settlement invalid or determines that any of the provisions in this Short-Term Rental Settlement are unconstitutional, then any such provisions so affected will become void, but the remainder of this Short-Term Rental Settlement shall remain in place.

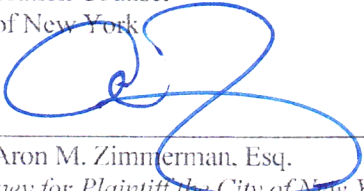
30. Nothing herein shall be construed to limit the authority of the City to exercise its enforcement powers except with regard to claims arising out of or pertaining to the complaint as of the Effective Date.

31. 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 City, 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.

32. The Parties agree that this Short-Term Rental Settlement shall be submitted to the Court, by the City, to be "So Ordered" by a Justice of the Supreme Court of the State of New York.


Dated: New York, New York
February 16, 2022

GEORGIA M. PESTANA
Corporation Counsel
City of New York

By: 
Aron M. Zimmerman, Esq.
Attorney for Plaintiff the City of New York
Special Assistant Corporation Counsel
NYC Mayor's Office of Special Enforcement
22 Reade Street, 4th Floor
New York, NY 10007
Tel.: (646) 576-3517
E-mail: azimmerman@ose.nyc.gov

Dated: New York, New York,
February __, 2022

COZEN O'CONNOR

By: 
Kenneth K. Fisher, Esq.
Attorneys for Defendants
3WTC, 175 Greenwich Street, 55th Floor
New York, NY 10007
Tel.: (212) 883-4962
Email: kfisher@cozen.com

Dated: New York, New York
February __, 2022

By: 
Gennaro Brooks-Church

Dated: New York, New York
February __, 2022

By: 
Loretta Gendville

SO ORDERED:

HON. J. MACHELLE SWEETING, J.S.C.

Index No. 452578/2020

ACKNOWLEDGMENT

STATE OF NEW YORK)
COUNTY OF 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 AGREEMENT and acknowledged to me that she executed the same in his capacity, and that by his signature on the AGREEMENT, the individual, executed the AGREEMENT.

Mark

NOTARY PUBLIC
MARC ARONSON

Notary Public, State of New York

No. 02AR6186212

Qualified in Kings County

Commission Expires April 28, 2014

STATE OF NEW YORK)
COUNTY OF 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 AGREEMENT and acknowledged to me that he executed the same in his capacity, and that by his signature on the AGREEMENT, the individual, executed the AGREEMENT.

Mark

NOTARY PUBLIC

Notary Public, State of New York

No. 02AR6186212

Qualified in Kings County

Commission Expires April 28, 2021