

<b>City of New York v Freid</b>
2019 NY Slip Op 33276(U)
September 23, 2019
Supreme Court, New York County
Docket Number: 451883/17
Judge: James E. d'Auguste
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# SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. JAMES E. d'AUGUSTE  
Justice

PART 55

City of New York  
-v-  
Hank Freid et al

INDEX NO. 451883/17  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. 004

The following papers, numbered 1 to \_\_\_\_\_, were read on this motion to/for \_\_\_\_\_

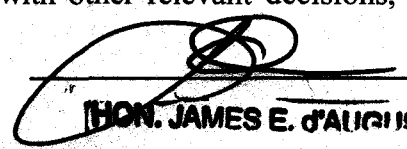
Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____	No(s). _____
Answering Affidavits — Exhibits _____	No(s). _____
Replying Affidavits _____	No(s). _____

Upon the foregoing papers, it is ordered that this motion is as follows.

The Court declines to sign the order to show cause seeking a temporary restraining order, which was previously denied the outset of this action.

In this nuisance abatement proceeding, the City of New York seeks an order prohibiting short-term rentals at three locations in Manhattan. Unlike a typical nuisance abatement proceeding involving transient occupancies, these properties have been operating openly as hotel-type short-term accommodations for approximately 70 years. They also apparently provide appropriate fire safety protections to transient tenants for buildings of their respective dates of construction. The Court directed a preliminary injunction hearing in order to decide factual discrepancies and resolve, by testimony and documentation, certain ambiguities in the certificates of occupancies, which are the primary documents that will determinate the outcome of the motion for preliminary injunction. The Court has conducted multiple days of hearings with a single day of testimony remaining to be completed. The City *consented* to the hearing being adjourned to November because one of the principal attorneys suffered a grave medical condition requiring immediate attention. Having agreed to adjourn the conclusion of the preliminary injunction hearing mere days ago, the City cannot fairly request a temporary restraining order because the preliminary injunction decision is going to be delayed. Finally, the recent federal decision dismissing a constitutional challenge to the consumer protection law prohibiting the advertisement of illegal short-term rentals, along with other relevant decisions, will be addressed in the preliminary injunction decision.

Dated: 9/23/19

  
\_\_\_\_\_, J.S.C.  
HON. JAMES E. d'AUGUSTE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

1. CHECK ONE: .....  CASE DISPOSED  NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER
- DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

At Individual Assignment Part 55 of the Civil Branch of the Supreme Court of the State of New York, held in and for the County of New York at the Courthouse, 111 Centre Street, New York, New York, on the \_\_\_\_ day of September, 2019.

PRESENT:

Hon. JAMES E. d'AUGUSTE, J.S.C.

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

Index No. 451883/2017

Plaintiff,

ORDER TO SHOW CAUSE

-against-

HANK FREID; IMPULSIVE GROUP LLC; BRANIC INTERNATIONAL REALTY CORP; TERRILEE 97TH ST. LLC.; HELMS REALTY CORP.; THE LAND AND BUILDING KNOWN AS 2686 BROADWAY BLOCK 1874, LOT 45, County, City and State of New York; THE LAND AND BUILDING KNOWN AS 2688 BROADWAY BLOCK 1874, LOT 44, County, City and State of New York; THE LAND AND BUILDING KNOWN AS 2690 BROADWAY BLOCK 1874, LOT 43, County, City and State of New York; THE LAND AND BUILDING KNOWN AS 256-258 WEST 97<sup>TH</sup> ST., BLOCK 1868, LOT 59, County, City and State of New York; THE LAND AND BUILDING KNOWN AS 230 WEST 101<sup>ST</sup> ST. Block 1872, Lot 54, County, City and State of New York; JOHN AND JANE DOE NUMBERS 1 THROUGH 20, fictitiously named parties, true names unknown, the parties intended being the managers or operators of the business being carried on by Defendants and any person claiming any right, title or interest in the real property which is the subject of this action,

Defendants.

-----X

UPON (1) the annexed Affirmation with exhibits of Special Assistant Corporation Counsel Aron M. Zimmerman, dated September 18, 2019 ("Zimmerman Affirmation"), and the delineated relevant documents filed previously in this action and incorporated into the Zimmerman Affirmation as if fully set forth therein; (2) the Affidavit with exhibits of New York

City Department of Buildings (“DOB”) Assistant Chief Inspector Vladimir Pugach, sworn to on September 18, 2019 (“Pugach Affid.”); and (3) the Affirmation of Emergency Pursuant to Rule 202.7(f) by Aron M. Zimmerman, Esq., dated September 18, 2019; together with (4) the accompanying Memorandum of Law in Support,

LET the defendants or their attorneys appear and show cause at Part 55 of this Court, to be held at the Courthouse, 111 Centre Street, Room 684, New York, NY on \_\_\_\_\_, 2019, at \_\_\_:00 o’clock \_\_\_\_M. of that day, or as soon thereafter as counsel may be heard,

WHY an order as sought by the City in Motion Sequence No. 1 should not be made pursuant to Multiple Dwelling Law § 306, CPLR 6301 and 6311, and New York City Administrative Code (“Admin. Code”) §§ 7-707, 20-703(d), 27-2122, and 28-205.1, enjoining the defendants and each of them, their agents, employees, representatives and all persons acting individually or in concert with them during the pendency of this action from:

1. Using or occupying, or permitting the use or occupancy of, any of the units in the buildings located at 256-258 West 97<sup>th</sup> St., Block 1868, Lot 59, County, City and State of New York (the “Terrilee Building”), and 230 West 101<sup>st</sup> St., Block 1872, Lot 54, County, City and State of New York (the “Helms Building”), for transient occupancy and/or as a transient hotel, hostel, or apartment hotel;
2. Booking, offering, or advertising, both on websites they actually control and on internet websites controlled by others, any units at the Terrilee and Helms Buildings for transient occupancy; and
3. 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 Terrilee and Helms Buildings, or,

ALTERNATIVELY, WHY an order should not be made granting renewal of the City’s June 28, 2017 application for a temporary restraining order pursuant to CPLR 2221(e).

MEANWHILE and pending the hearing of this motion, the defendants and each of them, their agents, employees, representatives and all persons acting individually or in concert

with them are enjoined pursuant to Multiple Dwelling Law § 306, CPLR 6313, and Admin.

Code §§ 7-710 and 7-711, 20-703(d), 27-2122, 28-103.13, and 28-205.1 from:

1. Using or occupying, or permitting the use or occupancy of any residential units in the Terrilee and Helms Buildings for less than 30 consecutive days as prohibited by the laws of the City and State of New York, except those units currently so occupied, which must be vacated within twenty-four (24) hours of issuance of this Court's order, and from further permitting the use or occupancy of such currently occupied units for less than 30 consecutive days immediately after the current occupants leave;
2. Permitting the use or occupancy of any additional residential units at the Terrilee and Helms Buildings for less than 30 consecutive days;
3. Registering any new persons at the Terrilee and Helms Buildings for less than 30 consecutive days; and
4. Booking or advertising any units at the Terrilee and Helms Buildings for less than 30 consecutive days, either on their own internet sites or on other travel-related internet sites not directly operated by defendants.

LET service of a copy of this order to show cause, together with the papers upon which it is based, on defendants by service electronically on their counsel of record in this action, be deemed good and sufficient service on the defendants represented on the day the order is signed. Proof of service shall be filed with the Court on or before the return date indicated above.

ENTER:

\_\_\_\_\_  
J.S.C.

Service acknowledged:

Counsel for Defendant HANK FREID \_\_\_\_\_

Counsel for Defendant IMPULSIVE GROUP LLC \_\_\_\_\_

Counsel for Defendant TERRILEE 97TH ST. LLC. \_\_\_\_\_

Counsel for Defendant HELMS REALTY CORP. \_\_\_\_\_

Counsel for *in rem* Defendant 256-258 WEST 97<sup>TH</sup> ST \_\_\_\_\_

Counsel for *in rem* Defendant 230 WEST 101<sup>ST</sup> ST \_\_\_\_\_