

City of New York v Metrobutler LLC
2022 NY Slip Op 33294(U)
September 27, 2022
Supreme Court, New York County
Docket Number: Index No. 453306/2021
Judge: Leslie A. Stroth
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LESLIE A. STROTH PART **52**

Justice

-----X

INDEX NO. 453306/2021

THE CITY OF NEW YORK,

Plaintiff,

MOTION DATE 05/31/2022

MOTION SEQ. NO. 002

- v -

METROBUTLER LLC, METROBUTLER INC,
METROBUTLER INC DBA MAKOMI

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166

were read on this motion to/for JUDGMENT - DEFAULT

UPON READING AND FILING: (1) the annexed Affirmation with exhibits of Special Assistant Corporation Counsel Pierre Rivera, dated May 26, 2022 ("Rivera Affirmation"); (2) the Summons and Verified Complaint, annexed to the Rivera Affirmation as Exhibit 1; (3) the Affidavits of Service, annexed to the Rivera Affirmation as Exhibit 2; (4) the Affirmation of Pierre Rivera of mailing of additional notice pursuant to CPLR 3215(g)(4), annexed to the Rivera Affirmation as Exhibit 3; (4) the accompanying Memorandum of Law in Support of Motion; and all other papers and proceedings had herein;

IT APPEARING that the summons and verified complaint in this action were initially served on Defendants, METROBUTLER LLC, METROBUTLER INC., and METROBUTLER INC. dba MAKOMI on October 27, 2021; and

IT FURTHER APPEARING that Plaintiff, The City Of New York (the "City") moved by order to show cause under Motion Sequence No. 1 in this action for a preliminary injunction; and

IT FURTHER APPEARING that the Court granted the City's Motion Sequence No. 1, without opposition, by Decision dated November 10, 2021 (NYSCEF Doc. No. 151) and thereby preliminarily enjoined defendants, their agents, employees, representatives, and all persons acting individually or in concert with them, during the pendency of this action, from using or occupying, or permitting the use or occupancy of, any permanent residential dwelling units in any permanent residential buildings in the City of New York for less than thirty consecutive days and furthermore, from booking, offering, or advertising any illegal short-term occupancy in any permanent residential buildings in the City of New York; and

IT FURTHER APPEARING that, pursuant to CPLR § 3215(g)(4), the plaintiff City served its Notice of Service of Summons and Verified Complaint, with an additional copy of the summons and verified complaint, upon Corporate Defendants METROBUTLER LLC, METROBUTLER INC., METROBUTLER INC. dba MAKOMI on November 10, 2021; and now, accordingly,

UPON the failures of Defendants METROBUTLER LLC, METROBUTLER INC., METROBUTLER INC. dba MAKOMI to answer Plaintiff THE CITY OF NEW YORK's Verified Complaint despite being duly served and to appear in this action,

IT IS HEREBY DECLARED THAT Plaintiff THE CITY OF NEW YORK is entitled to the entry of a default judgment against Defendants on all five Causes of Action therein; and, therefore,

IT IS FURTHER DECLARED:

1. That, as alleged by Plaintiff and not denied by Defendants, Defendants METROBUTLER LLC, METROBUTLER INC., METROBUTLER INC. dba MAKOMI had knowledge of the existence of the unlawful acts complained of in this action, and failed to take reasonable measures to abate such unlawful activity; and

2. That, as alleged by Plaintiff and not denied by Defendants, Defendants METROBUTLER LLC, METROBUTLER INC., METROBUTLER INC. dba MAKOMI managed, used, advertised, booked, and operated numerous apartments in permanent residential dwellings for illegal transient use and occupancy though prohibited by State and local laws so as to constitute deceptive trade practices and a public nuisance; and, accordingly,

IT IS HEREBY ORDERED:

1. That with respect to the FIRST CAUSE OF ACTION, pursuant to § 20-703 of the Administrative Code, Defendants METROBUTLER LLC, METROBUTLER INC., METROBUTLER INC. dba MAKOMI, their agents, employees or representatives, and every person or entity acting individually or in concert with them are:

- a. permanently enjoined from further violating the Consumer Protection Law and from committing the deceptive acts or practices alleged in the Verified Complaint; and
- b. punished by the imposition of statutory penalties for each violation of the Consumer Protection Law, in the amount of \$476,000.00 for Defendants' 952 knowing violations pursuant to Admin. Code § 20-703(b)¹ based on completed short-term rental stays resulting from Defendants' deceptive advertisements; and

¹ Recodified with an increase in penalties for knowing Consumer Protection Law violations from \$500 to \$3,500 per day effective January 24, 2022 at Admin. Code § 20-703(d)(1).

- c. compelled to pay in Court all monies, property or other things, or proceeds thereof, received as a result of Defendants' violations of the Consumer Protection Law in the amount of \$693,726.41 pursuant to Admin. Code § 20-703(c)² representing Disgorgement of Defendants' net ill-gotten gain in payments from Airbnb, Inc., and directing that the amount of money or the property or other things recovered be paid into an account from which shall be paid over to any and all persons who purchased the goods or services during the period of violation such sum as was paid by them in a transaction involving the prohibited acts or practices, plus any costs incurred by such claimants in making and pursuing their complaints; and further

2. That with respect to the SECOND CAUSE OF ACTION, pursuant to § 27-287.1 of the Administrative Code and § 121 of the Multiple Dwelling Law (the "Advertising Act"), Defendants METROBUTLER LLC, METROBUTLER INC., METROBUTLER INC. dba MAKOMI are:

- a. punished by the imposition of statutory penalties for each violation of the Advertising Act, in the total amount of \$310,000.00 for Defendants' 310 separate illegal advertisements for short-term rentals of permanent-only residential dwelling units; and further ORDERING

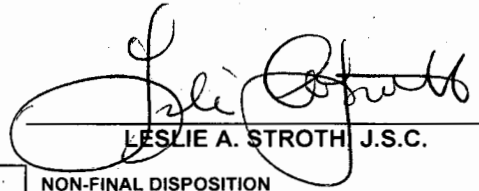
3. That with respect to the THIRD CAUSE OF ACTION, pursuant to Multiple Dwelling Law ("MDL") § 306, Defendants METROBUTLER LLC, METROBUTLER INC., METROBUTLER INC. dba MAKOMI, their agents, employees or representatives, and every person or entity acting individually or in concert with them are:

² Recodified effective January 24, 2022 at Admin. Code § 20-703(g)(3).

- a. permanently enjoined from further violating the MDL and from committing the deceptive advertising acts or practices alleged in the Verified Complaint that promote the use of dwelling units in a Class A multiple dwelling for other than permanent residence purposes; and further ORDERING
4. That with respect to the FOURTH CAUSE OF ACTION, pursuant to § 20(22) of the New York General City Law, Defendants METROBUTLER LLC, METROBUTLER INC., METROBUTLER INC. dba MAKOMI, their agents, employees or representatives, and every person or entity acting individually or in concert with them are:
 - a. permanently restrained from continuing to advertise, offer, and maintain the use or occupancy of dwelling units in Class A multiple dwellings for other than permanent residence purposes (i.e., short-term rental for less than thirty days) throughout New York City; and further ORDERING
 5. That with respect to the FIFTH CAUSE OF ACTION, pursuant to the common law doctrine of public nuisance, Defendants METROBUTLER LLC, METROBUTLER INC., METROBUTLER INC. dba MAKOMI, their agents, employees or representatives, and every person or entity acting individually or in concert with them are:
 - a. permanently and perpetually enjoined from conducting, maintaining or in any way permitting the common law public nuisance described in the Verified Complaint; and

b. punished by the imposition of punitive damages in the amount of \$1,000,000 for Defendants' willful and wanton perpetuation of a common law public nuisance.

9/27/2022
DATE


LESLIE A. STROTH J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED		<input type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED		<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER			GRANTED IN PART	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN			SUBMIT ORDER	<input type="checkbox"/>
					FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					REFERENCE	<input type="checkbox"/>