

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

Index Number : 154625/2013 HON. MARGARET A. CHAN
NYC PARK ADVOCATES, INC.
vs
NEW YORK CITY DEPARTMENT OF
Sequence Number : 001
SUMMARY JUDGMENT

PART 52
PART

INDEX NO.
MOTION DATE
MOTION SEQ. NO.

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits stipulation No(s). 1
Answering Affidavits — Exhibits No(s).
Replying Affidavits No(s).

Upon the foregoing papers, it is ordered that this motion is resolved and the action
is settled pursuant to the annexed stipulation

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

Dated: 12/12/14

HON. MARGARET A. CHAN, J.S.C.

- 1. CHECK ONE: CASE DISPOSED
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

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

----- x **STIPULATION AND ORDER
OF SETTLEMENT**

NYC PARK ADVOCATES, INC., COMMITTEE FOR
ENVIRONMENTALLY SOUND DEVELOPMENT,
INC., CLEO DANA, HAROLD SMITH, and ZINA
MICHAJLICZENKO,

Index No.:154625/2013

(Chan, J.)

Plaintiffs,

-against-

NEW YORK CITY DEPARTMENT OF PARKS AND
RECREATION, THE CITY OF NEW YORK, and
LINCOLN CENTER FOR THE PERFORMING ARTS,
INC.,

Defendants.

----- x

WHEREAS, NYC Park Advocates, Inc., Committee For Environmentally Sound Development, Inc., Cleo Dana, Harold Smith, and Zina Michajliczenko (collectively, "Plaintiffs") filed a summons and verified complaint on May 20, 2013, alleging violations of the New York State Public Trust Doctrine and City Charter Section 109; and

WHEREAS, the City of New York and the New York City Department of Parks and Recreation (collectively "City Defendants") and Lincoln Center for the Performing Arts, Inc. ("LCPA") (collectively with City Defendants "Defendants") filed verified answers dated July 15, 2013; and

WHEREAS, Plaintiffs filed a motion for summary judgment dated December 20, 2013; and

WHEREAS, City Defendants and LCPA filed notices of cross-motion for summary judgment dated March 4, 2014; and

WHEREAS, after briefing by the parties of their motions for summary judgment, this Court heard oral argument on May 14, 2014; and

WHEREAS, settlement conferences were held on June 18, September 17, November 6, and November 24, 2014; and

WHEREAS, the parties have entered into a Settlement Agreement dated December 12, 2014, a copy of which is annexed hereto for information purposes only; and

WHEREAS, the parties now desire to resolve the issues raised in this litigation, without admitting any fault or liability, in order to avoid the costs and delay of further litigation;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among the undersigned counsel for Plaintiffs and Defendants in the above-referenced action, as follows:

1. The verified complaint in this action is hereby discontinued and the action is hereby dismissed without prejudice and without costs, expenses, or fees by or to any party.
2. The claims of Plaintiffs as set forth in the complaint are hereby resolved, subject to approval of the Court, in accordance with the terms of the attached Settlement Agreement. Plaintiffs shall not bring any action or proceeding asserting claims substantially similar to those raised in their Verified Complaint dated May 16, 2013 during the term of the Settlement Agreement. Plaintiffs are not barred from enforcing the terms of said Settlement Agreement in a court of competent jurisdiction.

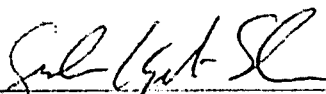
3. Neither this Stipulation nor the attached Settlement Agreement shall be construed as an admission or evidence of any wrongdoing, misconduct, or liability on the part of either Plaintiffs or Defendants.

4. A facsimile or copy of a signature hereto shall have the same force and effect as an original.

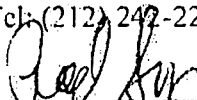
5. This Stipulation shall be filed by Defendants with the County Clerk pursuant to CPLR 2104 and CPI.R 3127 no later than ten (10) days after it is so ordered by the Court, and Defendants shall provide Plaintiffs with proof of the filing no later than five (5) days after it is filed.

Dated: December 12, 2014
New York, New York

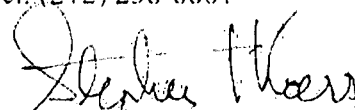
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BY: STEPHEN L. KASS
Attorney for Defendant Lincoln Center for the
Performing Arts, Inc.

SO ORDERED.


J. S. C.
HON. MARGARET A. CHAN

Settlement Agreement

Agreement dated December 12, 2014 among The City of New York, New York City Department of Parks and Recreation (“Parks Department”) (collectively “City Defendants”); Lincoln Center for the Performing Arts, Inc. (“LCPA”) (collectively with City Defendants (“Defendants”)); and NYC Park Advocates, Inc. (“NYCPA”), Committee for Environmentally Sound Development, Inc. (“CESD”), Cleo Dana, Harold Smith, and Zina Michajliczenko (collectively with NYCPA and CESD “Plaintiffs”).

WHEREAS, Damrosch Park (the “Park”) is dedicated parkland owned by the City of New York, is under the jurisdiction of the Parks Department, and is operated and maintained by LCPA pursuant to a 2010 License Agreement with a ten-year term expiring on June 30, 2020 (“2010 License Agreement”); and

WHEREAS, Plaintiffs commenced a civil action against Defendants in New York State Supreme Court, New York County, Index No. 154625/2013; and

WHEREAS, Plaintiffs allege violations of the New York State Public Trust Doctrine and the New York City Charter Section 109 in relation to Damrosch Park; and

WHEREAS, Plaintiffs allege that the Defendants have violated the New York State Public Trust Doctrine and New York City Charter Section 109 by, among other things, using Damrosch Park for certain non-park purposes, and that they have improperly removed trees and perennial plantings from the Kiley Gardens and other landscaped areas of the park; and

WHEREAS, Defendants deny those allegations; and

WHEREAS, dedicated parkland in New York is impressed with a public trust; and

WHEREAS, the City and LCPA share the goal of continuing to make Damrosch Park a lively resource for public recreation and other park-related uses and recognize that special events that limit public access to substantially all of Damrosch Park should be the exception rather than the norm, particularly during summer months; and

WHEREAS, New York City Fashion Week is a semi-annual event hosted by IMG Worldwide, Inc. (“IMG Fashion”) in Damrosch Park pursuant to a five-year sublicense agreement with LCPA that ends in February 2015;

WHEREAS, the City is actively working with IMG Fashion to arrange suitable alternative locations for New York City Fashion Week following the February 2015 Fashion Week event in Damrosch Park; and

WHEREAS, after New York City Fashion Week is relocated from Damrosch Park, the City and LCPA intend to further expand public access to the Park by not entering into agreements for commercial events substantially similar in nature, size and duration to Fashion Week and for which access is not generally available to the public; and

WHEREAS, nothing in this Agreement is intended to preclude the Plaintiffs from seeking appropriate judicial relief, including temporary or permanent injunctive relief, challenging any special event in Damrosch Park not raised by the Plaintiffs in this litigation; and

WHEREAS, the parties in this action believe that a settlement on the terms described below constitutes a reasonable resolution of competing interests and jointly recommend that the Court approve the settlement;

NOW THEREFORE, it is agreed by and among the undersigned counsel for the parties that the claims of Plaintiffs in this action shall be settled, subject to approval of the attached stipulation of settlement of the Court, on the following terms and conditions:

1. LCPA shall not renew the IMG Fashion sublicense agreement, which expires in February 2015, and the City shall not approve the use of Damrosch Park for New York City Fashion Week after that date. Upon the expiration of its sublicense agreement, IMG Fashion shall vacate the premises and remove all tents and other Fashion Week equipment from the Park.
2. All Damrosch Park planters shall be replanted with perennial shrubs and permanently installed trees pursuant to a landscape plan (including possible irrigation system upgrades and other repairs) to be developed by LCPA and the Parks Department ("Landscape Plan" or "Plan") during the six months following the date of this Agreement and implemented beginning in the next succeeding planting season (or if that is not feasible, as soon thereafter as feasible) provided, however, that flowering plants shall be planted in the square planters during the spring of 2015 regardless of the status of the Landscape Plan. A diagram of the location of Damrosch Park planters is annexed as Exhibit A. As part of the Plan, LCPA and the Parks Department shall also explore the feasibility of adding planters to the plaza seating area above the 62nd Street garage entrance. It is recognized that possible repair and replacement of portions of the irrigation system servicing the planters is both costly and time-consuming and that installation of permanent shrubbery and appropriately-sized trees may extend over several planting seasons.
3. In developing the Landscape Plan, for which planning shall begin in January 2015, LCPA and the Parks Department will consult with and solicit comments from the Community Board prior to the spring 2015 planting season. During this period, LCPA will also, as part of its overall community relations program, consult with and solicit comments from a range of community organizations in the Lincoln Center neighborhood as well as with the plaintiff organizations, CESD and NYCPA. The Parks Department and/or LCPA will request a meeting with the Community Board, with Plaintiffs invited, to discuss any concerns regarding the future operation of Damrosch Park. LCPA will also provide the Community Board with a copy of its annual January submission to the Parks Department listing proposed special events in Damrosch Park for the coming calendar year.
4. (a) The Parks Department shall not remove or authorize the removal of trees in Damrosch Park except for health and safety reasons consistent with the Parks Department's tree protection, forestry and other applicable rules, regulations, protocols or policies, or if it is necessary to implement the Landscape Plan. Defendants shall replant or replace any removed trees as promptly as feasible in accordance with applicable Parks Department requirements; and

(b) LCPA and the Parks Department shall make best efforts to minimize damage to perennial shrubs and plantings from special events. Should any damage occur (from ballasts, walkways, etc.), LCPA shall promptly replant any affected areas with comparable plantings.

5. LCPA shall designate an individual as a point of contact to receive and respond to any complaints or concerns from the community relating to events in Damrosch Park and shall provide Plaintiffs with both a telephone number and an email address for conveying such complaints or concerns to LCPA. Should LCPA change the identity or contact information for such individual, LCPA shall promptly provide the new name and/or contact information to Plaintiffs.

6. The Parks Department shall install an additional sign with the standard Parks Department logo identifying Damrosch Park as a City of New York park near the northeastern entrance to Damrosch Park. The Parks Department shall also install near a park entrance a sign displaying the rules of the Park consistent with the signage in other City parks under the jurisdiction of the Parks Department. The Parks Department shall make best efforts to install the logo and rules signs by May 2015. LCPA and the Parks Department shall also, after consulting with members of the Damrosch family by May 2015, create and install an appropriate plaque commemorating the contributions of Walter Damrosch and other members of that family to the city's musical life. The installation of any sign is subject to the approval of the Public Design Commission if required by law.

7. Pursuant to the 2010 License Agreement, LCPA shall provide the Parks Department with a copy of all current and future sublicense agreements for special events in Damrosch Park (as defined in the 2010 License Agreement § 13.1(e)) with any confidential business terms redacted. Parks Department will request copies of all current and future sublicense agreements for special events in Damrosch Park from LCPA.

8. When implementation of the Landscape Plan commences in 2015, and the signs, logo and plaque referred to above have been prepared, the Parks Department and LCPA will hold a public event, with a representative of the Plaintiffs invited to participate and the press invited to attend, to call attention to the enhanced plantings and Damrosch Park's role as a City of New York park serving the public.

9. The Parks Department shall continue to exercise its oversight responsibilities over Damrosch Park (including LCPA's stewardship of Damrosch Park's plantings and trees and the sublicenses, concessions and special events proposed by LCPA in Damrosch Park) in accordance with the terms and requirements of the New York City Charter, the 2010 License Agreement, and the Parks Department's tree protection protocol forestry permit requirements and the Public Trust Doctrine.

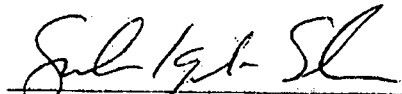
10. All notices required by this Agreement shall be delivered by email and first class mail to the parties in care of their respective counsel at the addresses specified below. Should the identity or contact information for any party's counsel of record change, that party shall deliver such notice to the other parties in the same manner as all other notices required by this Agreement.

11. This agreement and the parties' respective obligations hereunder shall terminate on June 30, 2020.

12. This Agreement shall be enforceable by Plaintiffs and Defendants in New York State Supreme Court, New York County including any request for temporary or permanent injunctive relief in accordance with New York law.

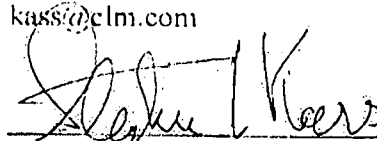
Dated: December 12, 2014
New York, New York

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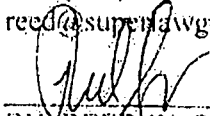
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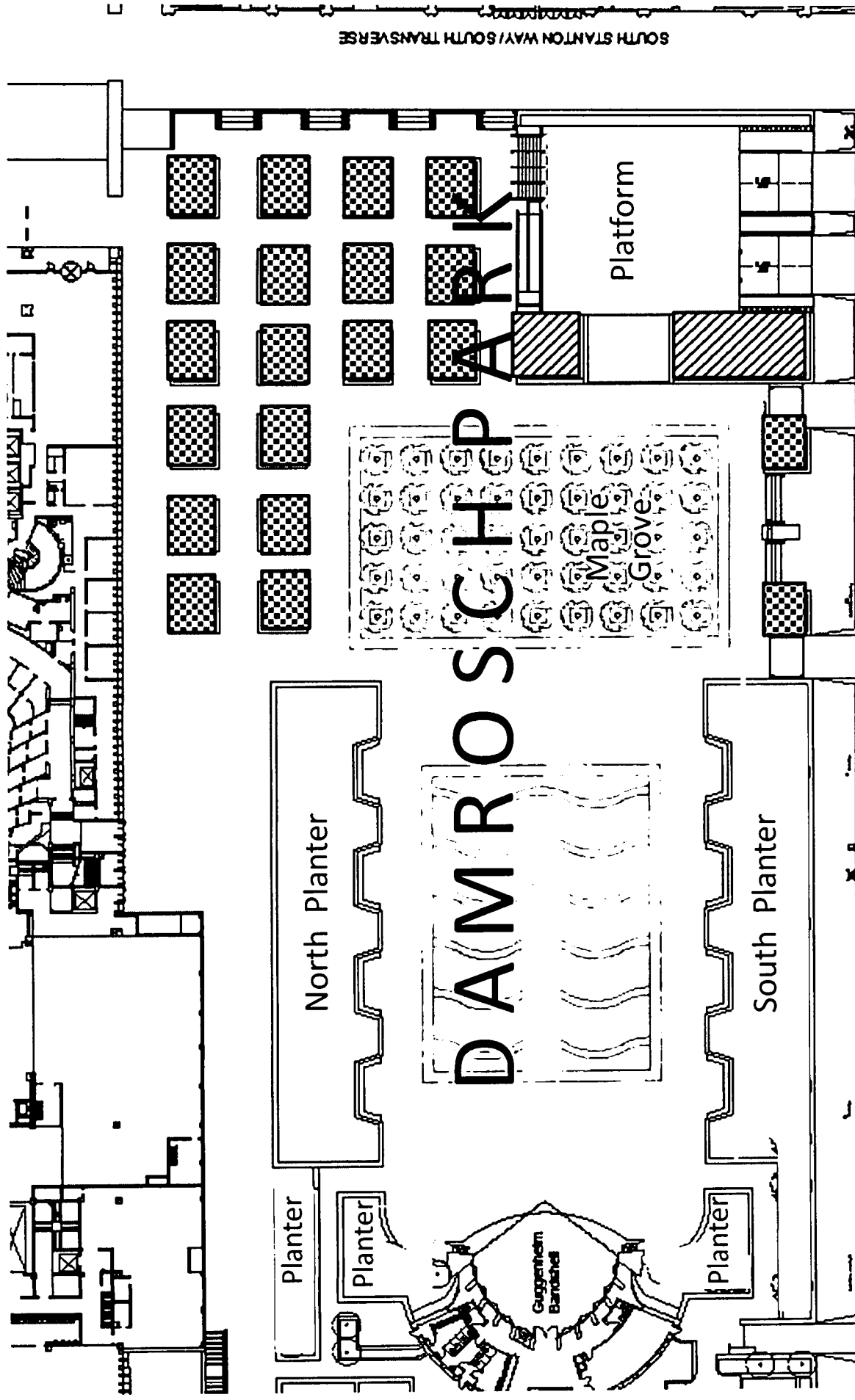
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EXHIBIT A



SOUTH STANTON WAY / SOUTH TRANSVERSE

Platform

DAMROSCH

Maple Grove

North Planter

South Planter

Planter

Planter

Planter

Guggenheim Barbecue

WEST 62ND STREET

KEY: Square Kiley Planters

Gravel Planters

Fresh Air Intake