

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

PRESENT: HON. NICHOLAS F. GLENN
Justice

PART 46

City of NY
- v -
Paul D. Young

INDEX NO. 404741/06
MOTION DATE 12/21/06
MOTION SEQ. NO. 001
MOTION CAL. NO. _____

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

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

*Discontinue pursuant to
the agreement stipulation,
previous filed with
the Court Clerk*

FILED
JAN 05 2007
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 1/4/07

[Signature]

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

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

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

----- X
THE CITY OF NEW YORK and THE NEW YORK CITY
DEPARTMENT OF HEALTH AND MENTAL
HYGIENE,

Plaintiffs,

-against-

PAUL D. YOUNG, PETER H. HOCHSCHILD, EL
MIRAGE a/k/a STUDIO 253, EL MIRAGE CORP.,
STUDIO 253 INC., THE LAND AND BUILDING
KNOWN AS 253 EAST HOUSTON STREET, TAX
BLOCK #355, TAX LOT #53, County of New York, City
and State of New York, and "JOHN DOE" and "JANE
DOE," fictitious names; true names unknown, the parties
intended being any and all persons and/or entities claiming
any right title or interest in the premises which is the
subject of this action.

Defendants.
----- X

013208
**SO ORDERED
STIPULATION OF
SETTLEMENT AND
DISCONTINUANCE WITH
PREJUDICE**

Index No. 404741/06

NEW YORK COUNTY CLERKS OFFICE
DEC 21 2006
FILED

WHEREAS, the plaintiffs THE CITY OF NEW YORK and THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE (collectively "City Plaintiffs") commenced an action against defendants EL MIRAGE a/k/a STUDIO 253, EL MIRAGE CORP. and STUDIO 253 INC., (collectively the "El Mirage Defendants) and defendants Paul D. Young and Peter H. Hochschild (collectively "253 Owners Defendants") as well as other defendants, seeking a judgment permanently enjoining an alleged public nuisance on the basement and first floor at 253 East Houston Street, New York, New York, Block 355, Lot 53, County of New York, City and State of New York (the "Subject Premises"), and closing the Subject Premises for

a period of one (1) year from the posting of judgment; awarding plaintiffs penalties, costs, and disbursements; and

WHEREAS, the City Plaintiffs, and EL MIRAGE Defendants and 253 Owners Defendants wish to reach an agreement settling the action as it pertains to them;

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for City Plaintiffs, and the attorneys for EL MIRAGE Defendants and pro se defendant Paul H. Young and pro se defendant Peter H. Hochschild as follows:

1. The parties consent to the terms of this Stipulation in full settlement of the action as it pertains to them.

2. Without admitting the truth of the allegations contained in the complaint herein, the EL MIRAGE Defendants in the interest of settlement, agree that while they occupy the subject premises, they, their agents, assigns, employees (while performing activities in connection with their employment for the EL MIRAGE Defendants), and/or representatives, be permanently and perpetually enjoined from conducting, maintaining and/or operating the subject premises as a public nuisance as defined by Section 17-142 of the New York City Administrative Code ("Administrative Code") and/or Section 240.45 of the New York State Penal Law..

3. The EL MIRAGE Defendants agree they shall vacate the Subject Premises, and further agree that henceforth the El Mirage Defendants shall not operate any business or perform any activity at the Subject Premises.

4. The EL MIRAGE Defendants agree that they, their agents and/or employees (while performing activities in connection with their employment for the EL MIRAGE Defendants) shall not conduct, maintain or permit a business at the Subject Premises

or anywhere in the City of New York which allows sexual activity as prohibited by New York State Sanitary Code Section 24-2.2 (10 NYCRR 24-2.2) .

5. The El Mirage Defendants agree that until November 15, 2007, that if they intend to open a new business, including but not limited to a new club or social club within the municipal boundaries of the City of New York, that such new business shall be subject to the approval of The City of New York. Notice of the intention to open such a new business shall be provided to the attorney for the Plaintiffs by overnight mail at the New York City Law Department, Office of the Corporation Counsel, Administrative Law Division, 100 Church Street, New York, New York 10007 and by fax at (212) 791-9714. Said notice shall include the full name of the proposed business, the address of the proposed business, a description of the activities that the new business intends to perform. The Plaintiffs shall not withhold their approval unless the proposed business or its principals are financially or otherwise substantially associated with establishments where illegal sexual activity or any unlawful activity has been known to take place. The Plaintiffs shall have five (5) business days from the time of receipt of the notice to object in writing to the attorney for the said Defendants by overnight mail, stating in detail the reason for such objection. If the Plaintiffs do not respond to such notice within five (5) business days of receipt of the notice, approval shall be deemed given. By consenting to or failing to object to any proposed business, the Plaintiffs shall not be deemed to have guaranteed or assured the legality of the proposed business.

6. The provisions of this Stipulation shall apply to El Mirage Defendants, as well as any successor corporation, partnership, joint venture, or other legal entity in which at least one of the El Mirage Defendants is a principal shareholder, serves on the board of directors,

or maintains a pecuniary interest, direct or indirect, or any subtenant(s) or assignee(s) of the EL Mirage Defendants.

7. Within twenty days of the Court "so ordering" this stipulation, the EL MIRAGE Defendants shall pay five thousand dollars (\$5,000.00) in settlement of this action. Such payment shall be by a certified check or bank teller's check made payable to "The City of New York," and must be mailed or hand-delivered to the City Plaintiffs' attorney at the New York City Law Department, Office of the Corporation Counsel, 100 Church Street, New York, New York 10007.

8. Without admitting the truth of the allegations contained in the complaint herein, the 253 Owner Defendants, in the interest of settlement, agree that they, their agents, assigns, employees (while performing activities in connection with their employment for the 253 Owner Defendants), and/or representatives, be permanently and perpetually enjoined from conducting, maintaining and/or operating the subject premises as a public nuisance as defined by Section 17-142 of the Administrative Code and/or Section 240.45 of the New York State Penal Law.

9. The 253 Owner Defendants as building owners agree that they, their agents and/or employees (while performing activities in connection with their employment for the 253 Owner Defendants) shall not conduct, maintain or permit a business at the Subject Premises or any property they own, manage or otherwise control anywhere in the City of New York which allows sexual activity, as prohibited by New York State Sanitary Code Section 24-22 (10 NYCRR 24-2.2).

10. The 253 Owner Defendants agree that until November 15, 2007, the sale or lease of the Subject Premises, or the sub-lease of the subject premises, shall be subject to the

approval of The City of New York. Notice of proposed owner(s) or tenant(s) shall be provided to the attorney for the Plaintiffs by overnight mail at the New York City Law Department, Office of the Corporation Counsel, Administrative Law Division, 100 Church Street, New York, New York 10007 and by fax at (212) 791-9714. Said notice shall include the full name and home address of the proposed owner(s) or tenant(s), or its principals if it be a corporation or partnership, the principal place of business of such individual or business entities, and the date of birth and social security number of all such individuals. The Plaintiffs shall not withhold their approval unless the purchaser is financially or otherwise substantially associated with establishments where illegal sexual activity or unlawful activity has been known to take place. The Plaintiffs shall have five (5) business days from the time of receipt of the notice to consent or object to the proposed owner(s) or tenant(s). Plaintiffs shall send their response to 253 Owner Defendants at 253 East Houston Street, Apartment 3, New York, New York, 10002 by overnight mail. If the Plaintiffs do not respond to the defendants' request within five (5) business days of receipt of the request, approval shall be deemed given. By consenting to or failing to object to any proposed owner or tenant, the Plaintiffs shall not be deemed to have guaranteed or assured the legality of the proposed owner(s) or tenant(s)' occupancy. If the Subject Premises are leased, the 253 Owner Defendants shall remain responsible for ensuring that the property is used and occupied in a safe and lawful manner, as required by law.

11. The provisions of this Stipulation shall apply to any successor partnership, for-profit corporation, joint venture, or other legal entity in which any of the 253 Owner Defendant is a principal shareholder, serves on the board of directors, or maintains a pecuniary interest.

12. Except to the extent set forth herein, this Stipulation shall in no way limit or diminish any rights or remedies which the City of New York may possess with respect to occurrences or conditions (other than those violations of New York State Sanitary Code § 24-2.2 that allegedly occurred at the subject premises prior to November 15, 2006 including, but not limited to, the occurrences or conditions referred to in the Stipulation herein and the complaint in the instant action) which may arise after execution of this Stipulation or which may have occurred prior thereto.

13. Each party hereto hereby releases and discharges each other party hereto, their executors, administrators, heirs, successors and assigns, from all causes of action, suits, damages, judgments, claims and demands, whatsoever, in law, or equity, which each party ever had, now has, or hereafter can, shall or may have, by reason of any matter, cause or thing whatsoever from the beginning of the world to the date of this release, against each other party, including without limitation all claims made against Defendants in the instant litigation in connection with the subject matter of this stipulation and the Complaint in this litigation.

14. Notwithstanding any other provision of this Stipulation, the EL MIRAGE Defendants and the 253 Owner Defendants shall indemnify, defend and hold the City Plaintiffs harmless against all claims regarding the personal property at or alleged to have been at the Subject Premises since November 16, 2006.

15. Notwithstanding any other provision of this Stipulation, this Stipulation shall in no way limit or diminish any rights or remedies which the 253 Owner Defendants may possess with respect to personal, real property or business claims they may have against the City of New York for occurrences or conditions (other than those claims related to or arising out of the violations of New York State Sanitary Code § 24-2.2 that allegedly occurred at the subject

premises prior to November 15, 2006 and the occurrences or conditions referred to in this Stipulation and the complaint in this action or claims related to the commencement or prosecution of this action) which may arise after execution of this Stipulation or which may have occurred prior thereto.

16. This Court shall retain jurisdiction of this action for a period of one year for the purpose of enforcing this stipulation. In the event that either party determines that Court intervention is required to enforce this stipulation, such party will give the other parties hereto five (5) business days notice prior to making any application to the Court. Such notice will be sent to the EL MIRAGE Defendants at fax number (212) 744-5048 and by overnight mail to c/o Joel Czarlinsky, 305 East 78th Street # 1RW, New York NY 10021, and to the El Mirage Defendants' counsel Paul O'Dwyer, Esq., by overnight mail to 134 West 26 Street, Suite 902, New York NY 10001, and via fax to (646) 230-7381, to the 253 Owner Defendants at 253 East Houston Street, Apartment 3, New York, New York, 10002 by overnight mail, and to the New York City Law Department, Office of the Corporation Counsel, Administrative Law Division, 100 Church Street, New York, New York 10007 and by fax at (212) 791-9714. This Stipulation shall be effective immediately upon execution and order of this Court. Upon compliance with the provisions of paragraph 7 above, this action will be discontinued with prejudice, without costs, expenses or attorneys fees, pursuant to CPLR 3217(a)(2) and any party may file this Stipulation with the Court.

17. This Stipulation shall be effective immediately upon execution and order of this Court. Upon compliance with the provisions of paragraph 7 above, this action will be discontinued with prejudice, without costs, expenses or attorneys fees, pursuant to CPLR 3217(a)(2) and any party may file this Stipulation with the Court.

18. Nothing contained herein shall be deemed to be an admission by the plaintiffs or the defendants that they have acted unlawfully or in any way violated any of the other party's rights, or the rights of any other person or entity, as defined in the constitutions, statutes, ordinances, rules or regulations of the United States, the State of New York, or the City of New York or any other rules, regulations or bylaws of any department or subdivision of the City of New York.

19. This Stipulation shall not be admissible in, nor is it related to, any other litigation or settlement negotiations, except for the limited purposes of asserting estoppel, res judicata ^{or other} possible subsequent litigation. _{defenses in}

20. Nothing contained herein shall be deemed to constitute a policy or practice of the City of New York, whether between the parties or otherwise.

21. This Stipulation 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 Stipulation regarding the subject matter of the instant proceeding shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.

22. The parties agree that no evidence of any matter raised for the purpose of agreeing to this Stipulation, including but not limited to any discussion, admission, concession or offer to settle, whether oral or written, made during any negotiation concerning this Stipulation, shall be used for any purpose in any judicial or administrative proceeding of any kind, including but not limited to its use in this proceeding or in any other litigation.

23. Plaintiffs and defendants have reviewed and revised this Stipulation, 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 Stipulation.

24. Plaintiffs and defendants confirm that they enter into this Stipulation freely and without coercion or duress, and acknowledge that they make all of the waivers in this Stipulation knowingly and intentionally. Plaintiffs and defendant represent that they understand the meaning and consequences of each and all of the provisions of this Stipulation.

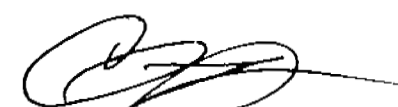
25. For the purposes of this Stipulation, facsimile signatures shall be deemed original signatures.

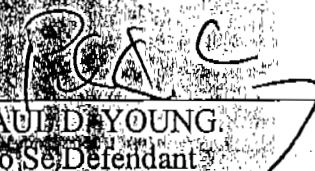
Dated: New York, New York
December 21, 2006

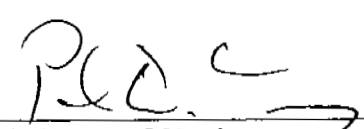

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So Ordered



J.S.C **NICHOLAS FIGUEROA**