

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OCCUPY WALL STREET, an unincorporated
association by and through Christine Crowther and
Diego Ibañez, as its *de facto* Treasurers, AMANDA
ROSE HENK, MICHELE LEE HARDESTY,
FRANCES MERCANTI-ANTHONY, JAIME
TAYLOR, and ELIZABETH FAGIN

12 CV 4129 (GBD)

Plaintiffs,

**STIPULATION OF
DISCONTINUANCE AND
SETTLEMENT**

-against-

THE CITY OF NEW YORK, MICHAEL
BLOOMBERG, in his official capacity as Mayor of the
City of New York RAYMOND KELLY, in his official
capacity as Police Commissioner, JOHN DOHERTY, in
his official capacity as Sanitation Commissioner, JOHN
DOE and RICHARD ROE and other presently
unidentified officials, employees and/or agents of the
City of New York in their official and individual
capacities

Defendants/Third-Party Plaintiffs,

- against -

BROOKFIELD OFFICE PROPERTIES, INC.,

Third-Party Defendant.

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WHEREAS, on or about May 24, 2012, Plaintiffs commenced this action seeking

i) a declaratory judgment that Defendants' seizure and destruction of Plaintiffs' books and library furnishings and equipment at Zuccotti Park on November 15, 2011 violated Plaintiffs' rights under the First, Fourth, and Fourteenth Amendments to the Constitution of the United States and 42 U.S.C. § 1983, *et. seq.*, and Article I, Sections 6, 8, and 12 of the New York State

Constitution; ii) damages sustained as a result of the violations alleged as well as punitive damages; and iii) attorneys' fees, costs and expenses; and

WHEREAS, on or about June 14, 2012 Defendants answered the Complaint and denied committing any violations of law; and

WHEREAS, on or about June 26, 2012 Defendants served a Third Party Complaint on Brookfield Office Properties, Inc. alleging *inter alia*, that if the Plaintiffs sustained any injury or had their rights violated, Brookfield Office Properties, Inc. was partially or wholly responsible; and

WHEREAS, on or about August 15, 2012 Brookfield Office Properties, Inc. answered the Third Party Complaint and denied any responsibility for any injury sustained by Plaintiffs as alleged in the Complaint; and

WHEREAS, there is no dispute between Plaintiffs and Defendants as regards the importance of books and libraries to Plaintiffs' efforts to promote an educated and informed citizenry; and

WHEREAS, the Plaintiffs and Defendants have agreed to settle this action pursuant to the terms set forth below, and Brookfield Office Properties, Inc. has agreed to indemnify Defendants as set forth below.

NOW, THEREFORE, this matter is settled on the following terms:

1. The above-referenced action, including the third-party action, is discontinued with prejudice and without costs, expenses, or any additional fees, except those set forth in paragraphs "3," "4" and "6" below.

2. Defendants acknowledge and believe it unfortunate that, during the course of clearing Zuccotti Park on November 15, 2011, books were damaged so as to render them

unusable, and additional books are unaccounted for. Defendants further acknowledge and believe it unfortunate that certain library furnishings and equipment likewise were damaged so as to render them unusable, and other library furnishings and equipment may be unaccounted for. Plaintiffs and Defendants recognize that when a person's property is removed by the City it is important that the City exercise due care and adhere to established procedures in order to protect the legal rights of the property owners.

3. The City of New York ("the City"), on behalf of all Defendants, shall pay to the Occupy Wall Street, Library Working Group Forty-Seven Thousand Dollars (\$47,000) ("the settlement amount") in full settlement of all of Plaintiffs' claims for damages. Payment of the settlement amount shall be made by forwarding a check in the amount of \$47,000 directly to Plaintiffs' attorney at 260 Madison Avenue, 22nd Floor, New York, New York 10016 and made jointly payable to Occupy Wall Street, Library Working Group and Siegel Teitelbaum & Evans, LLP. So that the City can make payment of the settlement amount, Plaintiffs shall forward the following to the undersigned counsel for the City: 1) a "So Ordered" copy of this stipulation; 2) the Taxpayer ID number used by Occupy Wall Street; 3) the Taxpayer ID number used by Plaintiffs' counsel; 4) an executed affidavit of no liens for each named Plaintiff; and 5) a release executed by each named Plaintiff.

4. Defendants shall pay Plaintiffs' attorneys' fees of One Hundred Eighty-Five Thousand Dollars (\$185,000) pursuant to 42 U.S.C. § 1988, and One Thousand Three Hundred Forty-Nine Dollars and Fifty-Eight Cents (\$1,349.58) for costs and expenses incurred in this matter. Payment of the total amount of fees and costs (\$186,349.58) shall be made by forwarding a check in that amount directly to Plaintiffs' attorney at 260 Madison Avenue, 22nd Floor, New York, New York 10016 and made payable to Siegel Teitelbaum & Evans, LLP.

5. Upon receipt of the payments required in paragraphs "3" and "4" above, Plaintiffs shall release Defendants and all departments, officials, employees, representatives and agents of the City, past and present, from any and all claims and right to damages for injury to property owned by Plaintiffs which are or could be asserted arising out of the acts and omissions alleged in the Complaint filed in the instant action, provided the claims are for injury to property owned by Plaintiffs. Plaintiffs have executed, or will execute, releases to be held by the City, which will take effect upon payment of the settlement amounts.

6. Third-Party Defendant, Brookfield Office Properties, Inc. in settlement of the third-party action initiated by the Defendants/Third-Party Plaintiffs on or about June 26, 2012 shall indemnify the City in the amount of Fifteen Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents" ("15,666.67"), by delivering a check made payable to the City of New York in the amount of Fifteen Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents" ("15,666.67") to the undersigned counsel for the City.

7. Upon receipt of the payments required in paragraphs "6" above, Third-Party Plaintiffs shall release the Third-Party Defendant and all employees, representatives and agents of the Third-Party Defendant, past and present, from any and all claims and right to damages which are or could be asserted arising out of the acts and omissions alleged in the Third-Party Complaint filed in the instant action.


8. This Stipulation of Discontinuance and Settlement 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 action shall be deemed to exist, to bind the parties hereto, or to vary the terms and conditions contained herein.

9. This Stipulation, and the settlement it represents, shall not be admissible in any other litigation or settlement negotiation.

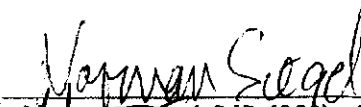
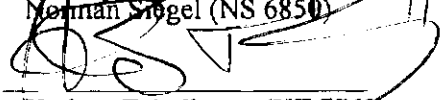
10. This Stipulation may be submitted to the Court to be so ordered, docketed and filed without further notice to any party.

Dated: New York, New York
April 4, 2013


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By: 
Sheryl Neufeld
Senior Counsel

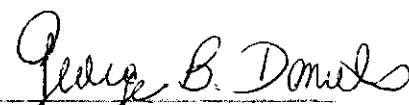
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By: 
Douglas H. Flaum
Richard G. Leland

SO ORDERED:


Hon. George B. Daniels
United States District Judge

APR 09 2013

Dated: _____ 2013
New York, New York