

E-FILE

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

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RYUJI KITAMURA and SANFORD LANDA,
individually and on behalf of all others similarly situated,

Index # 08-603562

Plaintiffs,

IAS Part 60 (Fried, J.)

- against -

THE TRUMP CORPORATION, TRUMP PARC
CONDOMINIUM, and WILLIAM D. MARONEY,
IN HIS CAPACITY AS PRESIDENT OF THE
BOARD OF MANAGERS OF TRUMP PARC
CONDOMINIUM,

Defendants.

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**ORDER AND FINAL JUDGMENT APPROVING SETTLEMENT AND PAYMENT OF
ADMINISTRATIVE FEES AND COSTS, AND AWARDING ATTORNEYS' FEES AND
EXPENSES AND INCENTIVE FEES**

WHEREAS:

A. On August 5, 2010, Plaintiffs applied to the Court pursuant to Civil Practice Law and Rules ("CPLR") Article 9 for an order implementing the settlement of this litigation (the "Action") in accordance with the settlement agreement dated July 28, 2010 (the "Settlement Agreement") that, together with the exhibits annexed thereto, sets forth the terms and conditions for a proposed settlement of this Action (the "Settlement") and for a judgment dismissing this Action with prejudice upon the terms and conditions set forth in the Settlement Agreement.

B. In the Order Preliminarily Approving Settlement, dated August 5, 2010 (the "Preliminary Order"), this Court, among other things: (i) certified the following class for purposes of Settlement only:

All former owners of residential units of Trump Parc Condominium (“TPC”), 106 Central Park South, New York, NY during the period July 1, 1994 through June 30, 2008, who have not been paid their *pro rata* share of the real estate tax and interest refunds paid to TPC (the “Refunds”) in connection with its Tax Certiorari Proceeding for tax years 1994/1995 through 2007/2008 (the “Class”)¹;

(ii) preliminarily approved the Settlement; (iii) scheduled a hearing for November 16 , 2010 (thereafter adjourned by the Court to December 15, 2010) to consider whether to approve the Settlement as being fair, reasonable and adequate, to enter final judgment thereon and to consider any application by Settlement Class Counsel for payment of the Settlement Administrator’s fees and costs, an award of attorneys’ fees and expenses, and an award of incentive fees to Plaintiffs (the “Fairness Hearing”); and (iv) directed that Notice of the pendency of the Action, the proposed Settlement and the Fairness Hearing, substantially in the form annexed as Exhibit B to the Settlement Agreement (the “Notice”), be disseminated to all Class Members who could be identified with reasonable effort, along with a summary notice for publication, substantially in the form annexed as Exhibit D to the Settlement Agreement (the “Summary Notice”), and that the Notice, the Settlement Agreement with exhibits, and the Class Action Complaint be posted on the website of Settlement Class Counsel, www.wweinsteinlaw.com (follow the link for Cases).

C. Settlement Class Counsel have submitted an Affidavit from the Settlement Administrator appointed in the Preliminary Order attesting that the Notice and Summary Notice were disseminated in accordance with the Court’s Preliminary Order, and an affirmation by

¹ The following proceedings were included within Consolidated Index No. 210132/94: Index Nos. 210132/94, 210002/95, 210784/96, 211898/97, 210163/98, 210058/99, 210526/00, 209017/01, 211401/02, 203417/03, 203664/04, 200846/05, and 200602/06. These proceedings and the 2007/2008 tax certiorari proceeding with Index No. 258942/07 are collectively referred to in the Settlement as the “Tax Certiorari Proceeding.”

Settlement Class Counsel attesting that the required documents were posted to the website of Settlement Class Counsel in accordance with the Court's Preliminary Order.

D. No Class member has timely requested exclusion from the Class.

E. The Court held a Fairness Hearing on December 15, 2010 and has considered all prior proceedings in the Action, the Settlement Agreement and the exhibits annexed thereto, any submissions made in connection with the proposed Settlement and all proceedings during the Fairness Hearing.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. To the extent not defined herein, this Order and Final Judgment (the "Final Judgment") incorporates by reference the definitions in the Settlement Agreement, and all terms not otherwise defined herein shall have the same meanings as set forth in the Settlement Agreement.

2. The Court hereby determines that the Notice and Summary Notice and website posting complied with the requirements of CPLR 904, 907 and 908 and due process and were the best notice practicable under the circumstances and constituted due and sufficient notice to all persons entitled thereto, including individual notice to all Class Members who could be located through reasonable effort. The Notice and Summary Notice and website posting provided due and adequate notice of these proceedings, the Settlement, the application of Settlement Class Counsel for the payment of the Settlement Administrator's fees and costs, an award of attorneys' fees and expenses and an award of incentive fees to Plaintiffs, and the other matters set forth therein, to all persons entitled to such notice.

3. Due and adequate notice of the proceedings having been given to the Class Members, and a full opportunity having been offered to the Class Members to object to the

proposed Settlement, to participate in the Fairness Hearing thereon, or to request exclusion from the Class, it is hereby determined that all Class Members who have not requested exclusion are bound by this Final Judgment (whether or not any Class Member has objected to the Settlement).

4. No Class member has timely requested exclusion from the Class.

5. Pursuant to CPLR 907 and 908, the Court finds that the Settlement is in all respects fair, reasonable and adequate to each of the Releasing Parties and each Class Member, and the Settlement is hereby approved by the Court. In making this determination, the Court has considered, among other things, the benefits conferred on the Class by the Settlement, the risks faced by the Class in establishing liability and damages, and the value of settlement now in comparison to the likely probable duration, complexity and further expense of this litigation in the absence of a settlement. The Court further finds that the Settlement has been the product of arm's-length negotiations and has been entered into in good faith. The Parties thereto are directed to consummate the Settlement in accordance with the terms and conditions of the Settlement Agreement.

(a) In determining that the Settlement is in all respects fair, reasonable and adequate to each of the Releasing Parties and each member of the Class, and in approving the Settlement, the Court has considered that no objections have been raised by Class members to the Settlement.

6. The Class Action Complaint against Defendants in this Action is dismissed on the merits and with prejudice, with each party to bear his, her or its own costs, except for the payment of the fees and costs of the Settlement Administrator previously agreed to by the Parties and hereby approved by the Court, and the payment of the attorneys' fees and reimbursement of

expenses and the award of incentive fees to Plaintiffs as otherwise provided for in Paragraph 9 below and in Paragraph 3 of the Settlement Agreement.

7. (a) The named Plaintiffs in this Action and all other Class Members who have not been excluded therefrom, on behalf of themselves, their respective heirs, executors, attorneys and administrators, successors and/or assigns of any person(s) they represent in any and every capacity whatsoever (collectively the "Releasing Parties"), for good and sufficient consideration, the receipt of which is hereby acknowledged, shall be deemed to have fully, finally, and irrevocably released, relinquished and forever discharged Defendants and any person, firm, trust, corporation, or other entity related to, affiliated with, employed by, or acting as an officer, director, manager, attorney, insurer or agent for, any of the Defendants, including but not limited to each of the named Defendants, and also including all current owners of the units of TPC and former owners of the units of TPC who sold their units after receiving Refunds for a period of time prior to the time when they owned their units (the "Former Unit Owner Releasee(s)") (collectively, the "Released Parties"), from all claims (including "Unknown Claims," defined below), demands, rights, liabilities and causes of action of every nature and description whatsoever, asserted or that might have been asserted, including, without limitation, claims for breach of fiduciary duty or agency, conversion, fraud, or violations of state or federal statutes, regulations or principles of common law, by any Plaintiff or Class Member against Defendants or the Released Parties arising out of, relating to, in connection with or concerning in any respect or any aspect their entitlement to refunds of taxes and interest paid by the New York City Department of Finance to Defendant Trump Parc Condominium in the Tax Certiorari Proceeding against the New York City Department of Finance on behalf of the owners of units of Defendant Trump Parc Condominium for all or part of tax years 1994/1995 through and including

2006/2008. Notwithstanding the foregoing, no current owner of a unit of TPC or Former Unit Owner Releasee shall be released if a Class member's entitlement to Refunds for that unit was reduced on account of unpaid taxes owed by the current owner or Former Unit Owner Releasee that were collected by the New York City Department of Finance out of the total amount otherwise refunded by the New York City Department of Finance for such unit.

(b) "Unknown Claims" means any and all settled claims which any Plaintiff or Class Member or Releasing Party does not know or suspect to exist in his, her or its favor at the time of the release of the Released Parties, and any claims of the Releasing Parties which any Defendant does not know or suspect to exist in his, her or its favor, which if known by him, her or it might have affected his, her or its decision not to object to the Settlement Agreement or the Settlement. With respect to any and all claims, the Parties stipulate and agree that upon the Effective Date of the Settlement, Plaintiffs and Defendants shall expressly, and each Class Member shall be deemed to have, and by operation of this Final Judgment shall have, expressly waived any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or any other state, sovereign or jurisdiction, or principle of common law which is similar, comparable, or equivalent to Cal. Civ. Code §1542 which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

8. (a) Without further action by anyone, on and after the Effective Date of the Settlement, each of the Releasing Parties and each of the Released Parties shall be deemed to have, and by operation of law and this Final Judgment shall have, fully, finally and irrevocably released, relinquished and forever discharged the named Plaintiffs, Class Members, Settlement Class Counsel and their agents, and all other counsel representing Plaintiffs and the Class

Members in the Action from all claims arising out of, relating to, or in connection with the institution, prosecution, assertion or resolution of the Action and the Released Claims under any state, federal or foreign statute, regulation or principle of common law; provided, however, that nothing in this Final Judgment shall bar any action or release any claim to enforce the terms of the Settlement Agreement or this Final Judgment.

(b) Defendants, their respective counsel, and the Released Parties shall have no responsibility with respect to the distribution of the Net Settlement Fund. Additionally, no Class Member or other person shall have any claim against Plaintiffs, Settlement Class Counsel, and/or all other counsel representing Plaintiffs and Class Members in this Action, the Settlement Administrator or other agent designated by Settlement Class Counsel, so long as such Class Member's distribution of the Net Settlement Fund is made substantially in accordance with the Settlement Agreement and the Settlement or any further orders of the Court.

9. (a) The application by Settlement Class Counsel on behalf of all counsel representing Plaintiffs and Class Members in this Action for the award of attorneys' fees and reimbursement of expenses is granted, and said counsel are awarded legal fees of \$800,000, and expenses of \$27,361.52. Said fees and expenses shall be allocated among all counsel representing Plaintiffs and Class Members in this Action by Settlement Class Counsel (William R. Weinstein of Law Offices of William R. Weinstein, and Michael A. Katz) in a manner which, in Settlement Class Counsel's good faith judgment, reflects each Plaintiffs' counsel's contribution to the institution, prosecution and resolution of the Action, including the origination of the Action and introduction of the clients, as well as time and fees incurred and the work performed. Said awarded fees and expenses may be drawn down from the Settlement Fund and

paid to Settlement Class Counsel for further allocation and distribution on or after the Effective Date of the Settlement Agreement and Settlement.

(b) The application by Settlement Class Counsel for an award of incentive fees to Plaintiffs for their efforts in connection with the prosecution of the Action, to which no objection was filed, is granted, and Plaintiffs Ryuji Kitamura and Sanford Landa each are awarded an incentive fee of \$5,000 on account of their participation in the Action, to be paid from the Settlement Fund.

(c) The application by Settlement Class Counsel for an award of the Settlement Administrator's fees and costs for the continuing administration of the Settlement to be paid from the Settlement Fund, in the amount of \$45,785.51, is granted.

10. Neither the Settlement Agreement nor any proceedings taken in accordance with the terms set forth therein shall be construed or deemed to be evidence, or any admission or concession, either (a) on the part of Plaintiffs, of the lack of merit of this Action, or (b) on the part of Defendants, of any violation of any statute or regulation or principle of common law or of any liability or wrongdoing or that any person or entity has suffered any damages as a result of any matter that underlies any of the allegations or claims that were or could have been brought in the Action. Any such evidence, admission or concession is expressly denied and disclaimed by each of the Plaintiffs and each of the Defendants.

11. Without in any way affecting the finality of this Final Judgment, this Court shall retain continuing jurisdiction over this Action and the Parties to the Settlement Agreement in order to enter any further orders as may be necessary to effectuate the Settlement Agreement, the Settlement provided for therein, and the provisions of this Final Judgment.

Dated: New York, New York

12/15, 2010



J.S.C.
HON. BERNARD J. FRIED