

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

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NYC HOSTS, JOHN DOE Nos. 1-8,

Index No.

Plaintiffs,

SUMMONS

-against-

Plaintiffs designate New York County as the venue pursuant to CPLR 509 and based on Defendant's threatened commission of tortious conduct in New York County.

AIRBNB, INC.,


Defendant.
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TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorneys within twenty (20) days after service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Dated: New York, New York
May 10, 2018

SINGH & RANI LLP

By: 
Reena Rani

5 Penn Plaza, 23rd Floor
New York, NY 10001
Tel: 212-729-6920
Attorneys for Plaintiffs

Addresses for Service of Process

Airbnb Law Enforcement Team
Attorneys for Defendant
888 Brannan Street
San Francisco, CA 94103
Attention: Law Enforcement Investigations Manager
(via email to: Leoinfo@airbnb.com)

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

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NYC HOSTS, JOHN DOE Nos. 1-8

Index No.

Plaintiffs,

COMPLAINT

-against-

AIRBNB, INC.,

Defendant.
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Plaintiffs, by and through their attorneys, SINGH & RANI LLP, as and for their complaint against Defendant Airbnb, Inc., respectfully allege as follows:

Preliminary Statement

1. This is an action for a declaratory judgment and permanent injunction.
2. Plaintiffs seek a declaratory judgment that defendant Airbnb, Inc. (“Airbnb”) does not have the right to produce their names and other personal and confidential information to the New York City Mayor’s Office of Special Enforcement (“OSE”).
3. Plaintiffs also seek a permanent injunction enjoining Airbnb from turning over their names and other personal and confidential information to the OSE so as to enforce their rights to privacy and to prevent irreparable harm to themselves.

The Parties

4. Plaintiff NYC HOSTS is an informal, unincorporated association consisting of individuals that defendant Airbnb denominates within its business model, “hosts.”
5. Plaintiff JOHN DOE Nos. 1 through 8 are individual Airbnb “Hosts” and members of the Association, whose identities are being kept confidential so as to not to moot the ultimate relief sought in this action.

6. Upon information and belief, Defendant Airbnb, Inc. is and at all times relevant has been a corporation organized and existing under the laws of the State of Delaware and having a principal place of business located at 888 Brannan Street, San Francisco, California 94117.

Airbnb's Operation

7. Airbnb operates a website for people to rent out lodging.

8. Upon information and belief, Airbnb has over 4 million listings in 65,000 cities and 191 countries.

9. Upon information and belief, Airbnb's revenue comes from up to a 20% commission of guests' payments plus 3% of what the host receives.

10. According to its website, Airbnb was founded in August of 2008 and based in San Francisco.

11. Airbnb holds itself out as a "trusted community" marketplace for people to list, discover, and book unique accommodations around the world, online or from a mobile phone.

12. Each of the individual plaintiffs in this action has been a "host" on the Airbnb website and has rented out an apartment or apartments they he or she controls.

13. Owing to the fact that Airbnb is web-based, none of the individual plaintiffs signed a formal written contract with Airbnb.

14. Rather, each of the individual plaintiffs checked off an "Agreed to" box on a "Click Contract" that Airbnb required each individual plaintiff to sign in order to be a "host."

15. None of the individual plaintiffs, each of whom "signed" a "Click Contract," have or have been furnished with written copies of these "Contracts."

16. Airbnb unilaterally amended the terms of such contracts from time to time, but the individual plaintiffs had no say in what the terms would be and could only opt out of the new term by abandoning their business relationship with Airbnb altogether.

Airbnb Is Subpoenaed by the OSC and Threatens To Disclose Plaintiffs' Names and Other Personal and Confidential Information

17. Without any prior notice, and without having had any opportunity to protect or enforce their rights pursuant to legal process, each of the individual plaintiffs received notification from Airbnb's Law Enforcement Team on Friday evening, May 4, 2018, that "Airbnb Inc. is in receipt of an official legal request that purports to require production of certain records associated with your account" and that "pursuant to Airbnb Ireland Inc's policy, we provide this notice to the account holder whose records appear to be the subject of the legal request", adding that "the legal order appears to have been sent by The City of New York- Office of Special Enforcement."

18. The notification from the Airbnb stated: "in the event that you or your representative apply to a court to prevent or delay or impose conditions on the potential production of records, please let us know immediately, and please also forward a copy of your application to [the Airbnb corporate address]"... "otherwise, [Airbnb] will produce the documents requested on May 10th".

19. Based upon a message from Airbnb representative "Alice" dated May 7, 2018 to one of the plaintiffs, Airbnb stands ready to produce the "user name and listing ID, name, email and phone number, account creation date and signup IP" of each of the plaintiffs to the OSE.

20. Upon information and belief, Airbnb stands ready to additionally and potentially produce the (a) social media account information; (b) Website user name, Host ID, Listing ID; (c) unit/apartment number(s); and (d) tax identification number(s) for each of the individual plaintiffs unless otherwise ordered by the Court.

AS AND FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment)

21. Plaintiffs repeat and re-allege all prior paragraphs of this Complaint as if fully set forth herein.

22. In order to become “hosts” on the Airbnb website, each of the individual plaintiffs had to check off an “agreed to” box in a “Click Contract.”

23. None of the individual plaintiffs received formal written contracts.

24. None of the individual plaintiffs are aware of a provision in the Click Contracts that would permit Airbnb to divulge confidential personal financial information about the individual plaintiffs’ (or other hosts’) activities on the website to any third party without the individual plaintiffs’ permission and consent as well as some type of legal compulsion.

25. Absent a contractual right to reveal the individual plaintiffs’ identities and personal and confidential information, a court order to do so, or a valid subpoena, Airbnb cannot reveal this information.

26. In the matter of *Airbnb, Inc. v. Schneiderman*, 44 Misc. 3d 351, 989 N.Y.S.2d 786 (Sup. Ct. Albany County 2014), a prior court proceeding to quash a prior subpoena, Airbnb argued that disclosures such as the threatened action were impermissible due to confidentiality and privacy concerns.

27. Now, in threatening to turn over the individual plaintiffs’ information, Airbnb takes the opposite position.

28. Airbnb and the individual plaintiff “hosts” operate in a joint venture relationship.

29. A joint venture relationship is a form of partnership.

30. Accordingly, as partners, Airbnb owes the individual plaintiffs a fiduciary duty, that is, “the punctilio of an honor the most sensitive,” as declared by Chief Judge Cardozo in the landmark case of *Meinhard v. Salmon*, 249 N.Y. 458 (1928).

31. Airbnb’s threatened action clearly violates its fiduciary duty to the Plaintiffs to shield sensitive, private information from third parties.

32. Airbnb’s threated actions also likely violate federal privacy law under 18 U.S.C. § 2702(a)(3).

33. Additionally, upon information and belief, none of the individual plaintiffs’ renting of their units fits within the legal definition of a hotel, and a review of Airbnb’s own website shows that Airbnb itself does not believe that the service it provides entails placing guests with hotels.

34. There is clearly a justiciable controversy between Plaintiffs and Airbnb owing to Airbnb’s threatened imminent disclosure of Plaintiffs’ sensitive, private information to the OSE.

35. Plaintiffs are entitled to a declaration as follows:

Declaring that Defendant Airbnb, Inc. is not authorized to disclose the identities or other personal and confidential information about the Plaintiffs or the Plaintiffs’ activities on the Airbnb website to third parties without the Plaintiffs’ consent or a court order to do so.

AS AND FOR A SECOND CAUSE OF ACTION
(Injunction)

36. Plaintiffs repeat and re-allege all prior paragraphs of this Complaint as if fully set forth herein.

37. If Airbnb is permitted to turn over Plaintiffs’ personal and confidential information to the OSE, Plaintiffs will suffer irreparable harm.

38. The OSE is seeking to bring civil and/or criminal investigations and/or prosecutions against what it considers to be “large illegal hotels.”

39. While the Plaintiffs do not fit that category, and indeed do not run hotels at all, they still stand subject to investigation, and to wrongful emotional and financial expenses because of an agreement to which they were not parties and could not consent to.

40. Plaintiffs' reputations also stand to be besmirched.

41. And, once the so-called genie is out of the bottle, the Court has no means to put the genie back, as the U.S. Court of Appeals recognized in *Gambale v. Deutsche Bank AG*, 377 F.3d 133, 144 (2d Cir. 2004).

42. The equities also tip in favor the Plaintiffs because the harm they will suffer if injunctive relief is not granted is greater than the harm to Airbnb if injunctive relief is granted.

43. Plaintiffs stand to suffer public ridicule, emotional distress, pecuniary loss, and the specter of an investigation or prosecution when they have committed no wrong.

44. Airbnb, which seeks to protect itself by suing the Plaintiffs as sacrificial lambs, is not under subpoena or court order to turn over this information.

45. Airbnb will suffer no immediate harm because the OSE will recognize that the adjudication of this case must take place before it can take any action against Airbnb.

46. Plaintiffs have no adequate remedy at law.

47. Plaintiffs are entitled to an injunction enjoining Airbnb from disclosing the identities or other personal and confidential information about the Plaintiffs or the Plaintiffs' activities on the Airbnb website to third parties without the Plaintiffs' consent or a court order to do so.

WHEREFORE, Plaintiffs JOHN DOE Nos. 1-8 demand judgment as follows:

A. On Plaintiffs' First Cause of Action, a declaration that that Defendant Airbnb, Inc. is not authorized to disclose the identities or other personal and confidential information about the

Plaintiffs or the Plaintiffs' activities on the Airbnb website to third parties without the Plaintiffs' consent or a court order to do so;

B. On Plaintiffs' Second Cause of Action, an injunction enjoining Airbnb from disclosing the identities or other personal and confidential information about the Plaintiffs or the Plaintiffs' activities on the Airbnb website to third parties without the Plaintiffs' consent or a court order to do so;

C. Awarding Plaintiffs the costs and disbursements of this action; and

D. Awarding such other and further relief as the Court deems just and proper.

Dated: New York, New York

May 10, 2018

Respectfully submitted,

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