

**PUBLIC CITIZEN LITIGATION GROUP**

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**BY ECF**

October 2, 2017

Honorable Richard J. Sullivan  
United States District Court  
500 Pearl St.  
New York, New York 10007-1312

**Re:** *Galland v. Johnston*, No. 14-cv-4411 (RJS)

Dear Judge Sullivan:

I write in response to the letter from Claude Galland (Docket Entry No. 104), seeking leave to appeal your denial of his motion to dismiss the libel claims.<sup>1</sup>

The only reason why Mr. Galland cannot appeal from the dismissal of his libel claims at the present time is that the breach of contract claim remains to be decided. Assuming that Mr. Galland is implicitly requesting leave to pursue an interlocutory appeal from the dismissal of one of his two claims, the Johnston defendants respectfully ask that this request be denied. Instead of allowing an interlocutory appeal, this Court should seek resolution of the remaining contract claim, in one of two ways.

First, if, Mr. Galland and his wife moved to dismiss their contract claim with prejudice pursuant to Rule 41(a)(2), and if the Court were to grant that motion, the Court could then enter an appealable final judgment. *Hanlin v. Mitchelson*, 794 F.2d 834, 837 (2d Cir. 1986). Defendants would not object to a motion for dismiss the contract claim with prejudice. In the alternative, defendants are prepared to stipulate a dismissal of the contract claims with prejudice to enable the appeal that Mr. Galland desires to pursue.

Second, if the Gallands do not dismiss their contract claim, defendants are prepared to submit a motion for summary judgment on the contract claims. The motion will argue (1) that the “no

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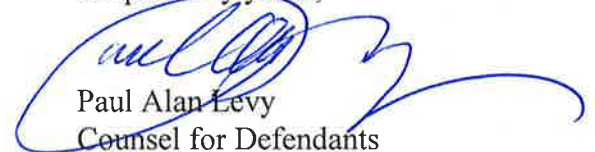
<sup>1</sup> Because Mr. Galland’s letter was written in the first person singular, it is not clear whether Violaine Galland joins in her husband’s request. In any event, because he is not a lawyer, Mr. Galland may not represent her in this Court. Ms. Galland must sign all pleadings submitted on her behalf, just as she signed the complaint. Moreover, plaintiff paristudios, not being a natural person, cannot appear in this action without counsel. In the event that no counsel enters an appearance for paristudios, it should be dismissed as a plaintiff. *Grace v. Bank Leumi Trust Co. of N.Y.*, 443 F.3d 180, 192 (2d Cir. 2006)

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complaints” clause is void pursuant to the Consumer Review Fairness Act, 15 U.S. Code § 45b, which became effective on March 14, 2017; (2) that the clause violates New York Consumer Law, N.Y. Gen. Bus. Law § 349(a); *People v. Network Associates, Inc.*, 758 N.Y.S.2d 466 (Sup. Ct. 2003); and (3) that it is procedurally and substantively unconscionable. *Gillman v. Chase Manhattan Bank, N.A.*, 534 N.E.2d 824, 828 (N.Y. 1988). Defendants will also argue (4) that the “no-complaints” sentence in the “forum clause” of the Gallands’ form contract does not forbid consumer reviews such as the one that defendant Judi Johnston placed on VRBO. This construction is an appropriate reading of the language of the pertinent sentence in light of the surrounding language and canons of construction that require that the contract be construed against the Gallands as the drafters of the contract, *Jacobson v. Sassower*, 489 N.E.2d 1283, 1284 (N.Y. 1985), that waivers of First Amendment rights will not be found without explicit language, *Legal Aid Soc’y v. City of N.Y.*, 114 F. Supp. 2d 204, 227 (S.D.N.Y. 2000), and that contracts should not be construed in ways that defy the reasonable expectation of the parties, *Snug Harbor Square Venture v. Never Home Laundry, Inc.*, 675 N.Y.S.2d 365, 366 (App. Div. 1998).

Therefore, in the event that the Gallands do not elect to dismiss their contract claim, defendants seek the Court’s permission to file a motion for summary judgment on the contract claim.

Respectfully yours,



Paul Alan Levy  
Counsel for Defendants

cc (by first class mail):  
Claude Galland  
Violaine Galland