



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

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ESRT OBSERVATORY TRS, L.L.C. and ESRT  
EMPIRE STATE BUILDING, L.L.C.,  
:  
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:  
Plaintiffs, : Index No.  
:  
-against- :  
:  
ALLEN HENSON, : COMPLAINT  
:  
Defendant. :  
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Plaintiffs ESRT Observatory TRS, L.L.C. and ESRT Empire State Building, L.L.C. (together, “ESB” or “Plaintiffs”), by their undersigned attorneys, Stern Tannenbaum & Bell LLP, as and for their complaint against defendant Allen Henson (“Henson” or “Defendant”), allege as follows:

**Parties and Background**

1. Plaintiff ESRT Observatory TRS, L.L.C. is a New York limited liability company with offices located at 350 Fifth Avenue, New York, New York. ESRT Observatory TRS, L.L.C. operates the observation deck (the “Observatory”) on the 86<sup>th</sup> floor of the landmark Empire State Building (the “Building”), located at 350 Fifth Avenue, New York, New York 10018.
2. Plaintiff ESRT Empire State Building L.L.C. is a New York limited liability company with offices located at 350 Fifth Avenue, New York, New York. ESRT Empire State Building L.L.C. is the owner of the land and Building.

3. Upon information and belief, defendant Henson is a resident of New York with an address at 133 Avenue C, New York, New York 10009.

4. Upon further information and belief, Henson is a professional photographer who, among other things, organizes and participates in photo shoots of topless women in and about locations in New York City.

5. On the afternoon of August 9, 2013, Defendant entered the Observatory accompanied by a professional female model (the "Model"). The Model removed her top and modeled for topless photos which were taken by Henson for commercial purposes. ESB was never notified about the plan for the photo shoot and Defendant did not seek or obtain permission for the topless photo shoot from ESB at any time.

6. As a result of Defendant's unauthorized, objectionable, and impermissible topless photo shoot, and as set forth in more detail below, ESB seeks compensatory and punitive damages against Defendant and further seeks to permanently enjoin Defendant from entering the Building and/or the Observatory at any time in the future.

#### **Statement of Facts**

7. The Building is one of New York's premier tourist attractions. On the Observatory, visitors can see a 360 degree view of New York City from one of the highest points in the City. Every year, more than four million visitors from around the world pay to view New York City and its environs from the Observatory. In order to continue to attract visitors, including families, to the Building and the Observatory, and assure their well-being, ESB has to maintain both the image and the fact that the Building and the Observatory are a safe, secure and appropriate place for families and tourists.

8. ESB has devoted significant time and money to insure that the Observatory is a safe and secure family attraction. As such, objectionable and inappropriate behavior is forbidden on the premises. The admission ticket for the Observatory states, in pertinent part, that ESB “may refuse admission or expel any person whose conduct is objectionable.”

9. In addition, ESB has specific rules that it requires commercial photographers and filmmakers to follow in order to apply for and obtain permission from ESB to use the Building and the Observatory in commercial film and photo shoots. As set forth on the section of ESB’s official website titled “Film & Photo Shoots”:

**The Empire State Building receives requests to use its trademarked image in films and photo shoots throughout the year.**

**We will consider requests that:**

- **Showcase ESB positively, respectfully and responsibly**
- Feature ESB, and not just views/skyline shots from its Observatory

**To request permission for filming or a photo session, please submit the following information:**

- Film / production company
- Contact name, title
- Telephone number
- E-mail address
- Requested date and times (include set up and breakdown times)
- Project name and description, including the inclusion/usage of Empire State Building
- List equipment and crew number
- Include any special needs or requirements for the shoot

**Based on the volume of requests, responses may take up to two weeks. Keep in mind that requests are subject to licensing and location fees and agreements.**

(emphasis added.)

10. In direct defiance of ESB's requirement for admission to the Observatory and for the use of the Observatory for a commercial photo shoot, Defendant, without seeking or receiving permission from ESB, engaged in an objectionable and inappropriate topless photo shoot at this family friendly attraction as part of Henson's recent self-styled "boobs around town project."

11. Specifically, on the afternoon of August 9, 2013, Defendant and the Model entered the Building with the intention of engaging in an impermissible topless photo shoot. The Model entered the Building wearing a top and neither she nor Henson provided ESB with any indication that they intended to engage in unauthorized, inappropriate, and/or objectionable activity at the Observatory. Defendant and the Model then proceeded to the 86<sup>th</sup> floor of the Building, where the Observatory is located. At the time that Defendant and the Model entered the Observatory, it was crowded with visitors, including children. After entering the Observatory, The Model removed her top and Henson took photographs in full view of visitors, including families with children.

12. The incident subsequently received significant coverage in the media.

13. ESB had to divert management time, resources and attention to deal with the inappropriate objectionable conduct and potentially dangerous situation that Defendant created, and it also had to increase and reassign security personnel to the Observatory.

14. Defendant's actions, which were done for his own commercial purpose, were unlawful and tortious and caused ESB damage to its business and its reputation as a safe and secure family friendly tourist attraction.

**AS AND FOR A FIRST CAUSE OF ACTION**

**(Trespass)**

15. ESB repeats each and every allegation contained in paragraphs 1 through 14 above as though fully set forth herein.

16. At all relevant times, ESB maintains possession of and operates the Observatory.

17. On August 9, 2013 Defendant and the Model were permitted to enter onto ESB's property but exceeded the restrictions of such permission by engaging in unauthorized, inappropriate, and objectionable activities when Defendant and the Model conducted a commercial topless photo shoot at the Observatory.

18. As a result of the foregoing, ESB suffered damages in an amount to be proven at trial, but believed to exceed \$100,000.

19. Defendant's actions were willful, wanton and in reckless disregard of the rights of ESB, the visitors to the Observatory, and the public at large.

20. As a result, Defendant is liable to ESB for punitive damages in the amount of at least \$1 million.

**AS AND FOR A SECOND CAUSE OF ACTION**

**(Permanent Injunction)**

21. ESB repeats each and every allegation contained in paragraphs 1 through 20 above as though fully set forth herein.

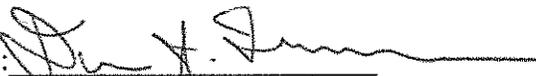
22. Defendant intentionally violated rules of the Observatory, intentionally engaged in unauthorized, objectionable, and inappropriate conduct in full view of ESB's customers, tenants, visitors, including families with children, and employees, and caused ESB to suffer economic losses and damage to its reputation.

23. Although ESB reserves the right to deny admission to Defendant without court order, it is possible and even likely that Defendant would again enter the Building without ESB's knowledge to engage in unauthorized, impermissible, and objectionable conduct. Therefore, ESB is entitled to a judgment permanently enjoining Defendant from entering the Building and/or the Observatory at any time in the future.

**WHEREFORE**, Plaintiffs demand judgment against Defendant (i) on their first cause of action, for compensatory damages in an amount to be determined at trial, but believed to exceed \$100,000, plus interest, together with disgorgement of any amounts of money that Defendant has received based on the topless photo shoot of August 9, 2013, punitive damages of at least \$1 million, and costs and disbursements of this action, including reasonable attorneys' fees; (ii) on their second cause of action, permanently enjoining Defendant from entering the Building and/or the Observatory at any time in the future; and (iii) for such other and further relief as this Court deems just and proper.

Dated: New York, New York  
January 10, 2014

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