

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D81059
Q/

_____AD3d_____

Argued - November 26, 2025

MARK C. DILLON, J.P.
WILLIAM G. FORD
LAURENCE L. LOVE
JAMES P. MCCORMACK, JJ.

2024-07970

DECISION & ORDER

In the Matter of QB Development Owner, LLC,
respondent, v Lucy Hensley, et al., appellants.

(Index No. 725901/23)

Victor Tsai, Flushing, NY, for appellants.

Duane Morris LLP, New York, NY (Jose A. Aquino and Peter Levantis of counsel),
for respondent.

In a proceeding, inter alia, pursuant to RPAPL 881 for a license to temporarily enter premises owned by Lucy Hensley and Luis Vielma for the purpose of removing an encroachment on those premises, Lucy Hensley and Luis Vielma appeal from stated portions of an order of the Supreme Court, Queens County (Joseph J. Esposito, J.), entered April 4, 2024. The order, inter alia, granted that branch of the petition which was for a license to temporarily enter the premises owned by Lucy Hensley and Luis Vielma to remove an encroachment on those premises.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The petitioner owns certain real property located in Queens (hereinafter the petitioner's property), and Lucy Hensley and Luis Vielma (hereinafter together the appellants) own the adjacent property (hereinafter the appellants' property). In January 2020, to facilitate construction of two buildings on the petitioner's property (hereinafter the project), the parties entered into a license agreement (hereinafter the first licence agreement), wherein the appellants agreed to allow the petitioner to access the appellants' property to conduct a pre-construction survey and install a construction fence, overhead protection, roof protection, monitors, and scaffolding on and above the appellants' property. In consideration, the petitioner agreed, among other things, to pay a monthly licensing fee to the appellants and to provide the appellants with insurance coverage and an indemnification agreement. The first license agreement was terminated in January 2023.

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In May 2023, the petitioner attempted to remove an encroachment on the appellants' property, which consisted of a portion of a concrete slab installed during the project, but the appellants stopped that work. On or about June 7, 2023, the New York City Department of Buildings advised the petitioner that it would not issue a final certificate of occupancy for the project until the encroachment was removed.

Following the parties' unsuccessful attempts to negotiate a new license agreement, the petitioner commenced this proceeding, inter alia, pursuant to RPAPL 881 for a license to temporarily enter the appellants' property for the purpose of removing the encroachment. In an order entered April 4, 2024, the Supreme Court, among other things, granted that branch of the petition. This appeal ensued.

RPAPL 881 allows an owner of real property planning to make improvements thereon to seek a license to enter the premises of an adjoining owner when such entry is necessary to make the improvements and the adjoining owner has refused such access (*see Matter of Voron v Board of Mgrs. of the Newswalk Condominium*, 186 AD3d 833, 834). In determining whether to grant a license pursuant to RPAPL 881, the court may consider the following factors: "the nature and extent of the requested access, the duration of the access, the protections to the adjoining property that are needed, the lack of an alternative means to perform the work, the public interest in the completion of the project, and the measures in place to ensure the financial compensation of the adjoining owner for any damage or inconvenience resulting from the intrusion" (*Matter of Voron v Board of Mgrs. of the Newswalk Condominium*, 186 AD3d at 835; *see Matter of Queens Coll. Special Projects Fund, Inc. v Newman*, 154 AD3d 943, 944). In general, "[c]ourts are required to balance the interests of the parties and should issue a license when necessary, under reasonable conditions, and where the inconvenience to the adjacent property owner is relatively slight compared to the hardship of his [or her] neighbor if the license is refused" (*Matter of Voron v Board of Mgrs. of the Newswalk Condominium*, 186 AD3d at 835 [internal quotation marks omitted]).

Here, the Supreme Court did not improvidently exercise its discretion in granting that branch of the petition which was pursuant to RPAPL 881 for a license to temporarily enter the appellants' property for the purpose of removing the encroachment. The petitioner established that the encroachment could be removed in three days without compromising the structure of the petitioner's property or the appellants' property and was necessary for the petitioner to obtain a final certificate of occupancy for the project. In addition, the petitioner established that the appellants would be paid a daily licensing fee and would be protected by being named as an additional insured on the petitioner's insurance policy and by the petitioner's agreement to pay for any physical damage to the appellants' property (*see Matter of Voron v Board of Mgrs. of the Newswalk Condominium*, 186 AD3d at 835; *Matter of Queens Coll. Special Projects Fund, Inc. v Newman*, 154 AD3d at 944).

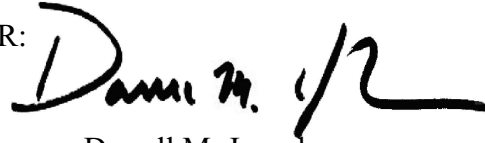
In opposition, the appellants failed to raise any issues of fact as to whether the proposed remediation was unreasonable or whether the balancing of the parties' interests required denial of the license. Contrary to the appellants' contention, the existence of the first license agreement did not render the instant petition academic (*see Franklin Carroll, LLC v Carroll Dev. Plaza, LLC*, 238 AD3d 714).

Accordingly, the Supreme Court did not improvidently exercise its discretion in granting that branch of the petition which was pursuant to RPAPL 881 for a license to temporarily enter the appellants' property for the purpose of removing the encroachment.

The appellants' remaining contentions are without merit.

DILLON, J.P., FORD, LOVE and MCCORMACK, JJ., concur.

ENTER:

A handwritten signature in black ink, appearing to read "Darrell M. Joseph", followed by a long horizontal flourish.

Darrell M. Joseph
Clerk of the Court