

**Matter of 401 Broadway Bldg. LLC v 405 Broadway
Condominium**

2013 NY Slip Op 31673(U)

July 23, 2013

Sup Ct, NY County

Docket Number: 156033/2013

Judge: Debra A. James

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

PRESENT: DEBRA A. JAMES
Justice

PART 59

In the Matter of the Application of
401 Broadway Building LLC,
Petitioner,

Index No.: 156033/2013

Motion Date: 07/23/2013

For an Order pursuant to § 881 or the Real
Property Actions and Proceedings Law, for
access to the adjoining property,

Motion Seq. No.: 001

- v -

405 Broadway Condominium and Rafi Gibly,
Respondents.

The following papers, numbered 1 to 3 were read on this order to show cause for access pursuant to RPAPL § 881 _____.

| PAPERS NUMBERED |
|-----------------|
| 1 |
| 2 |
| 3 |

Order to Show Cause/Petition/Affidavits -Exhibits _____

Answering Affidavits - Exhibits _____

Replying Affidavits - Exhibits _____

Cross-Motion: Yes No

Upon the foregoing papers it is ordered that the petition for a license pursuant to RPAPL § 881 is granted. Moskowitz v Pavarini McGovern, LLC, 83 AD3d 438 (1st Dept 2011) is inapplicable to the instant proceeding on the question of fees as Moskowitz involved the enforcement of a license pursuant to a settlement agreement, and not access pursuant to RPAPL § 881. Matter of Rosma Dev, LLC v South, 5 Misc 3d 1014(A) (Kings County

Check One: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Supreme Court 2004) is distinguishable on its facts as the Rosma petitioner sought voluntarily to erect a structure abutting respondent's premises, rather than to conduct work mandated by law. The matter at bar is practically on all fours with 10 E End Ave Owners, Inc v two E End Ave Apt Corp, 35 Misc3d 1215(A) (New York County Supreme Court 2012), as such case, as here, involved the prosecution of work in compliance with petitioner's obligations under New York City Local Law 11. As in 10 E End Ave Owners, Inc, this court finds that fees are not warranted in connection with petitioner's application for a license to carry out the emergency work in compliance with Local Law 11.

Accordingly, it is hereby

ORDERED that petitioner is granted a license, pursuant to RPAPL § 881, to enter upon a portion of respondent's building, known as 405 Broadway, New York, New York, specifically respondent's roof, for the limited purpose of (i) placing protective covering on the roof of respondent's building, to protect the respondent's roof, including but not limited to the skylight thereon and (ii) erecting scaffolding that will be attached to the side of petitioner's building, known as 401 Broadway, New York, New York, each in order to allow petitioner to carry out required emergency Local Law 11 repairs to the facade and copper roof of petitioner's building in a manner that ensures the safety of all persons and property, which shall be

conducted in accordance with the Work Permits issued by the New York City Department of Buildings and the customary and standard practices used in the building exterior facade industry as certified by an architect licensed in the State of New York and retained by petitioner; and it is further

ORDERED that the grant of this license is subject to the following terms and conditions: petitioner shall (1) be entitled to such license for a period up to no later than February 1, 2014, the expiration date set forth in Work Permit Number 1400-2664-01-EQ-OT issued by the New York City Department of Buildings, commencing upon the entry of this order or as soon as the weather permits as certified by the licensed architect, whichever is later; (2) not unreasonably interfere with respondent's necessary access to its fire escape or chimney, and take the necessary steps, measures, and precautions to prevent and avoid any damage to respondent's building, including but not limited to the roof, skylight or balcony of non party unit owner Paolo Maldini; (3) notify respondent in writing when it has completed the work under the license; (4) upon the completion of the term of the license, return respondent's building within such license area to its original condition, and remove all materials used in construction and any resultant debris from the license area; (5) save respondent harmless from any damages occurring within the license area for the term of this license; (6) procure

and maintain during the period of this license a policy of liability insurance in an amount and within limits set forth in the Certificate of Liability dated June 28, 2013 appended to the herein petition which names respondent as additional insured; (7) be held liable to respondent for any damages which respondent may suffer as a result of the granting of this license and repair all damaged property at the sole expense of petitioner.

A hearing shall be held before this court at the expiration of the term of the license granted herein to determine the actual damages incurred by respondent as the result of petitioner's entry upon respondent's building pursuant to this license. Alternatively, respondent may submit any present or future claim for damages directly to petitioner's insurer, without prejudice to its rights to later seek damages before the court.

Petitioner and respondent may agree in writing to any other terms and conditions, including but not limited to jointly causing a photographic survey of the license area and its environs to be conducted as a record of the license area prior to petitioner's commencement of the work under this license.

This is the decision and order of the court.

Dated: July 23, 2013

ENTER:


DEBRA A. JAMES J.S.C.