

**Matter of 25 Tenants Corp. v 7 Sutton Sq., LLC**

2015 NY Slip Op 30526(U)

April 13, 2015

Supreme Court, New York County

Docket Number: 150034/15

Judge: Donna M. Mills

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This opinion is uncorrected and not selected for official publication.

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

PRESENT : DONNA M. MILLS  
*Justice*

PART 58

*In the Matter of the Application of*  
*25 TENANTS CORPORATION,*

INDEX NO. 150034/15

Petitioner,  
For an order pursuant to Section 881 of the Real  
Property actions and Proceedings Law Granting a  
License for Access to Adjoining Property,  
-against-  
7 SUTTON SQUARE, LLC, CHALICE  
INVESTMENTS LIMITED, GENE PULLO AND  
DEBORAH PINTO-PULLO,  
Respondents.

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 001

MOTION CAL NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion for \_\_\_\_\_.

PAPERS NUMBERED

Notice of Motion/Order to Show Cause-Affidavits- Exhibits.... 1

Answering Affidavits- Exhibits \_\_\_\_\_ 2

Replying Affidavits \_\_\_\_\_ 3

CROSS-MOTION: \_\_\_\_\_ YES  NO

Upon the foregoing papers, it is ordered that this motion is decided as follows:

Petitioner, 25 Tenants Corporation (hereinafter "Petitioner"), move this Court for an Order pursuant to RPAPL § 881 for an Order granting Petitioner a license to enter upon the real property of Respondents so that Petitioner may erect certain safety measures required to prosecute certain remediation work in order to protect the Petitioner's residents and the Respondents' person and property.

Petitioner is the owner of the building known s 25 Sutton Place, New York, NY,

designated as Block 1373, Lot 0062 (the "Building"). The Building is a fifteen story residential building located on the corner of 58<sup>th</sup> St. and Sutton Place in New York City. Respondent 7 Sutton Square, LLC ("7 Sutton") is reportedly the owner of the land and building located to the east of the Building, known as 7 Sutton Square, New York, NY, designated as Block 1372, Lot 60. Respondent Chalice Investments is reportedly the owner of the land and building located to the east of the Building, known as 4 Riverview Terrace, New York, NY, designated as Block 1372, Lot 58. Respondents Gene Pullo and Deborah Pinto-Pullo ("Pullo Respondents") are reportedly the owners of the land and building located to the east of the Building, known as 5 Riverview Terrace, New York, NY, designated as Block 1372, Lot 57.

After reports of water intrusion into the Building by a tenant-shareholder whose unit rests along the east elevation of the Building. Petitioner hired Rand Engineering and Architecture, DPC ("Rand") to perform a leak investigation. Rand's investigation determined that there was significant water infiltration along the east elevation of the Building. To correct existing defects, and prevent further damage, Rand recommended remedial measures. Some of the work that Rand recommended be done, would require entry on to, and continued intrusion into the Respondents' respective properties, as the sidewalk shed, for instance, would cover the entire alley and abut the rear of the buildings on the Respondents' properties.

Petitioner and Respondents have engaged in negotiations over license agreements to allow Petitioner access to the Respondents' property. Only the Pullo Respondents have submitted partial written opposition to Petitioner's § 881 application.

Section 881 provides that a license shall be granted "upon such terms as justice requires." Such terms as justice requires extends to the nature and extent of access that is necessary, the duration such access may be necessary, as well as what protections may be necessary to safeguard the adjoining owner's property.

The statute and case law provide that Petitioner is strictly liable for any damage they may cause to Respondent's property. *RPAPL 881; Sunrise Jewish Center of Valley Stream Inc. v. Lipko*, 61 Misc.2d 673, 305 N.Y.S.2d 597 (Sup.Ct., Nassau, 1969); *MK Realty Holding LLC v. Schneider*, 39 Misc.3d 1209(A), 2013 WL 1482745 (Sup.Ct., Queens, 2013). Nonetheless, the court is not limited to requiring bonds and insurance to ensure that Petitioner will be able to compensate Respondent for any damage. Justice also requires that the terms of the license provide for safeguards to prevent damage from occurring, particularly where a Respondent is compelled to grant access to his home. *537 West 27th St. Owners LLC v. Mariners Gate LLC*, 2009 N.Y. Slip Op. 32360(U), 2009 WL 3400277 (Sup.N.Y.).

In this regard, it must be remembered that Section 881 compels a property owner to grant access for the benefit of another. The Respondent to an 881 petition has not sought out the intrusion and does not derive any benefit from it. The Court must be mindful of the fact that it is called upon to grant access after the parties have failed to reach an agreement, and must not allow either party to overreach and use the Court to avoid negotiating in good faith.

The risks and costs involved in the use that a Petitioner makes of its neighbor's property should be wholly borne by the Petitioner. Equity requires that the owner compelled to grant access should not have to bear any costs resulting from the access,

including steps necessary to safeguard their property.

The only objection to Petitioner's 881 application is from the Pullo Respondents who argue that access to the roof of their building should not be granted. They claim that the Petitioner's plans are, inter alia, to place two heavy hoists upon their roof is dangerous and unnecessary.


After weighing the interests of the adjoining property owners, the Court finds that the Petitioner is entitled to access the Respondents' property pursuant to RPAPL § 881. The affidavit of the Rand architect sufficiently explains the necessity of the work and describes the work to be done. In addition, Petitioner states that it will obtain adequate insurance and name Respondents as additional insureds. Finally, the Court notes that RPAPL § 881 affords the Respondents adequate legal rights and remedies in that it subjects the licensee to full liability for damages for "actual damages occurring as a result of the entry." (RPAPL § 881; *Sunrise Jewish Ctr. of Valley Stream, Inc. v. Lipko*, 61 Misc.2d 673, 676 [Sup Ct, Nassau County 1969]; *Chase Manhattan Bank v. Broadway, Whitney Co.*, 57 Misc.2d at 1095–1096.)

Accordingly, this application by the Petitioner for a judgment granting it a license for access to the Respondents' property is granted, and Petitioner's contractor, is granted a license to enter the Respondents' property for the purposes of making repairs to the easterly wall of Petitioner's property, to wit, to prevent leaks and further damage to its Building, for no more than eight months, beginning on the 10th day after service of a copy of this order and judgment upon the Respondents upon the following terms and conditions:

- (i) Petitioner is directed to pay the Respondents the sum of \$2,500.00 each prior to commencement of the work, unless the parties have agreed to another amount;
- (ii) Petitioner shall not unreasonably interfere with the Respondents' necessary access to their property and shall take the necessary steps, measures, and precautions to prevent and avoid any damage to the Respondents' property;
- (iii) Petitioner shall procure and maintain a policy of insurance covering liability and property damage, or equivalent bond with a corporate surety, in an amount of not less than \$1 million naming the Respondents as additional insureds during the period of this license;
- (iv) Petitioner shall be held liable to the Respondents for any damages which they may suffer as a result of the granting of this license and all damaged property shall be repaired at the sole expense of Petitioner;
- (v) Petitioner shall notify the Respondents in writing when it has completed the work under the license;
- (vi) upon the completion of the term of the license, the Respondent's property within such license area shall be returned to its original condition, and all materials used in construction and any resultant debris shall be removed from the license area;
- (vii) any such other terms and conditions that Petitioner and Respondents may agree to in writing.

Dated: 4-13-15

Check one:  FINAL DISPOSITION

  
\_\_\_\_\_  
J.S.C.  
**DONNA M. MILLS, J.S.C.**  
 NON-FINAL DISPOSITION