

<b>Snyder v 122 E. 78th St. NY LLC</b>
2015 NY Slip Op 31354(U)
July 22, 2015
Supreme Court, New York County
Docket Number: 159262/14
Judge: Donna M. Mills
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SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK: I.A.S. PART 58

-----X  
 RICHARD SNYDER,

Plaintiff,

- against -

122 EAST 78TH STREET NY LLC,  
 SWEENEY & CONROY INC.,  
 SEAN SWEENEY, ROBERT MURPHY and  
 SANFORD KORNFELD d/b/a SAK CONSULTING  
 SERVICES,

Defendants.  
 -----X

Index No. 159262/14  
**DECISION & ORDER**  
 (Motion Seq. 004)

**DONNA M. MILLS, J.:**

This is a dispute between the owners of adjoining upper east side properties over a lengthy and ongoing construction project at 122 East 78th Street. On November 19, 2014, the court issued a decision denying plaintiff Richard Snyder's application for injunctive relief and granting the cross motion of defendant 122 East 78th Street NY LLC (122 LLC) seeking a license, pursuant to RPAPL 881, to enter plaintiff's airspace to install temporary overhead protections for the construction work. The court directed counsel for defendant 122 LLC to settle an order attaching an appropriate license agreement. That order was signed on December 9, 2014. Slightly more than a month later, plaintiff is back in court, moving, by order to show cause (motion sequence 004), pursuant to CPLR 5104, to hold defendants in contempt of court for failing to abide by the court's decision and order, ordering compliance, and the recovery of his attorneys' fees. Defendant 122 LLC cross moves, pursuant to 22 NYCRR Part 130-1.1, to recover its attorneys' fees, costs and expenses incurred in opposing this motion.

Plaintiff moves for contempt, contending that defendants are in violation of the court's

order in the following three ways: (1) that defendants are not delivering the required weekly report of construction activities due by 5:00 p.m. every Friday; (2) that defendants have not provided free copies of all plans and drawings detailing the construction work being performed; and (3) plaintiff has not been provided with proof that he has been added as an additional insured to 122 LLC's commercial general liability insurance policy. Plaintiff also claims that defendants acted in bad faith by waiting until after the court's order was entered on December 9, 2014 to start taking actions to comply with the court's decision.

Addressing this latter argument first, there is no doubt that, given the litigation posture of the parties, it was a prudent move on the part of the defendants to wait until after the court's order was signed and entered and a license agreement in place before attempting to enter plaintiff's townhouse to install the vibration monitor or undertake installation of the scaffolding in the airspace above the rear yard of plaintiff's building. One day after the order was entered, counsel for 122 LLC served notice of entry on plaintiff's counsel and tendered payment of the first monthly license fee. The vibration monitor was installed on December 11, 2014, just a day later, and, the very next day, 122 LLC's construction workers had completed installation of the necessary scaffolding (Kishner 1/6/15 affirmation, Ex. C). If anything, the court finds that 122 LLC acted very promptly to comply with the court's order.

Regarding plaintiff's other contentions, the license agreement was required to include the following terms:

"Adjacent Owner [i.e., plaintiff] shall have the right, at his own expense, to have an engineer, architect or other professional inspect and/or monitor the work that has been performed to date and is being performed, on 24 hours written notice to counsel for Project Owner and Sweeney & Conroy, Inc. ("SCI"). Adjacent Owner shall also be provided with a free copy of any and all plans and drawings detailing

the work to be performed, and, beginning on the Commencement Date until the Expiration Date, Adjacent Owner and SCI shall prepare and deliver every Friday, by 5:00 p.m., a description of what work was performed that week, a summary of what work is being planned for the following week, and a percentage estimate of how much time is needed to complete construction of the exterior shell of the building on the Project Premises.”

(License Agreement, § 8 at 6-7; *see also* Decision at 15).

Defendants have provided to plaintiff’s counsel each week a one-page report entitled “Southwest Bracing Wall Field Report - # \_\_\_.” Each report properly reports the weekly weather conditions, since extreme winter weather can, of course, interfere with and delay construction activities and was specifically mentioned by the court as a legitimate reason to extend the license agreement. Plaintiff’s counsel takes issue with these weather reports, suggesting, without any proof whatsoever, that they are not accurate. The court notes the report dated January 30, 2015 appears to correctly report the loss of two works days due to the Winter Storm Juno, a blizzard that was expected to dump more than two feet of snow on New York City on January 26-27, 2015. The reports also briefly summarize the work completed that week, the work projected for the following week and gives a percentage of how much work has been completed on the concrete bracing wall installation phase. However, the decision and license agreement required descriptions of, and estimates of the time needed to complete, the construction of the exterior shell of the building, which is the point at which the court understood the scaffolding protecting plaintiff’s building would no longer be necessary. Defendants are directed to submit weekly reports that detail the status of that work.

Plaintiff’s counsel contends that defendants have not provided plans and drawings of what specific work is being done pertaining to the license agreement. However, that document

explicitly references the “Drawings Nos. Q-001.05, EQ 005.01 and EQ-006.00, dated April 10, 2014 (which drawings were previously submitted to the Court as Exhibit A to the Affidavit of John Hulme, R.A., sworn to on October 9, 2014)” (License Agreement, section 2 at 3).

Defendants are not required to create drawings which do not exist nor modify the existing drawings to address plaintiff’s claims of vagueness in DOB-approved plans. In addition, plaintiff was provided with a CD apparently containing hundreds of pages of drawings for the construction project by letter dated December 15, 2014 (*see* Block 1/28/15 affirmation, Ex. B; *see also* Kirshner 11/11/14 affirmation, Ex. G, filed in support of plaintiff’s recently-filed special proceeding entitled *Richard Snyder v 122 East 78th Street NY LLC*, Index No. 161227/14).

With respect to insurance coverage, the license agreement requires only the following:

“Project Owner shall maintain, at no cost to Adjacent Owner, a commercial general liability policy with the limits described in the Certificate of Liability Insurance, dated October 8, 2014, previously submitted to the Court as Exhibit C to the Affidavit of Sanford Kornfeld, sworn to on October 10, 2014 (the “Certificate of Insurance”). Adjacent Owner shall be named as an additional insured on such commercial general liability policy.”

(License Agreement, § 4 at 5; *see also* Decision at 13-14, n 2). Although the referenced certificate names plaintiff as both “an Additional Insured” and the “Certificate Holder,” plaintiff insists that 122 LLC should have provided him with a copy of the actual policy itself and proof that the policy is currently in effect. Normally, insurance coverage for additional insureds are demonstrated by certificates of insurance. If plaintiff wants additional proof, he is free to contact the insurance company or the producer to request a copy of the policy himself. If his efforts are unsuccessful, 122 LLC will be ordered to turn over a copy. However, since the policy referenced in the certificate dated October 8, 2014 expired on February 6, 2015. 122 LLC is directed to

provide plaintiff with an updated certificate of insurance for 2015-2016.

Defendant 122 LLC's cross motion for attorneys' fees, costs and expenses incurred in connection with opposing this motion is denied. It bears repeating that plaintiff has been subjected to a seemingly never ending noisy, dirty and invasive construction project that is now in its fourth year of activity. Nevertheless, the court cautions plaintiff and his counsel that this motion borders on frivolousness and that they will be on slippery ground should they engage in similar tactics in the future in the absence of solid factual support for allegations of impropriety by the defendants.

For the foregoing reasons, it is hereby

**ORDERED** that plaintiff's motion for contempt is denied, except that defendants are directed to submit weekly reports that detail the work and time needed to complete construction of the exterior shell of the building at 122 East 78th Street and provide plaintiff with a copy of an updated certificate of insurance for 2015-2016; and it is further

**ORDERED** that the cross motion of defendant 122 East 78th Street NY LLC to recover its attorneys' fees, costs and expenses incurred in opposing this motion is denied.

Dated: July 22, 2015

  
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J.S.C.

**DONNA M. MILLS, J.S.C.**