

Matter of Gem-Quality Corp. v 390 Eastco, LLC

2016 NY Slip Op 30228(U)

January 8, 2016

Supreme Court, Bronx County

Docket Number: 260893/15

Judge: Wilma Guzman

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX
IAS PART 7**

Index No. 260893/15
Motion Calendar No. 16
Motion Date: 11/9/15

In the matter of the application of GEM-QUALITY CORP.
in the name of and as contractor of the NEW YORK CITY
HOUSING AUTHORITY for Order pursuant to Real
Property Action and Proceedings Law (RPAPL) § 881,

Petitioner,

-against-

390 EASTCO, LLC,

Respondent.

DECISION/ ORDER
Present:
Hon. Wilma Guzman
Justice Supreme Court,

Recitation, as required by Rule 2219(a) of the C.P.L.R., of the papers considered in the review of this motion to change venue

Papers

Numbered

Order to Show Cause, Affirmation in Support, and Exhibits Thereto.....	1
Affirmation in Opposition	2

Upon the foregoing papers and after due deliberation, the Decision/Order on this motion is as follows:

Petitioner's Order to Show Cause pursuant to RPAPL 881 to be provided reasonable and proper access to the property owned by respondent EASTCO, LLC, located at 390 East 153rd Street, in Bronx County to make necessary repairs to east wall of "Building 2" located at 370 East 153rd Street, owned by NYCHA is hereby granted. The EASTCO building stands adjacent to "Building 2". At the outset, it should be noted that this Court accepts the affirmation in support of motion submitted by NYCHA, as fee owner to Building 2, and their role in retaining petitioner, Gem-Quality Corp. as the General Contractor to perform the repairs on Building 2.

RPAPL § 881 states:

When an owner or lessee seeks to make improvements or repairs to real property so situated that such improvements or repairs cannot be made by the owner or lessee without entering the premises of an adjoining owner or his lessee, and permission so to enter has been refused, the owner or lessee seeking to make such improvements or repairs may commence a special proceeding for a license so to enter pursuant to article four of the civil practice law and rules. The petition and affidavits, if any, shall state the facts making such entry necessary and the date or dates on which entry is sought. Such license shall be granted by the court in an appropriate case upon such terms as justice requires. The licensee shall be liable to the adjoining owner or his lessee for actual damages occurring as a result of the entry.

Petitioner has set forth sufficient explanation as to why the work is necessary, the term of the work, and why the necessary repairs can't be completed in any other manner. Based upon the foregoing, the Petitioner has met its burden under RPAPL § 881 and the application for the license as to Respondents property is granted. Mindel v. Phoenix Owners Corp., 210 A.D2d 167 (1st Dept. 2007); see also, North 7-8 Investors LLC. v. Newgarden, 43 Misc 3d 623 (2014). *Contra*, Lincoln Spencer Apartments, Inc. v. Zeckendorf 68th Street Associates, 88 A.D3d 606, (1st Dept. 2011). In fact, on October 30, 2015, during the time in which the parties attempted to resolve this issue without court intervention, bricks fell from building 2 posing a safety issue to the community at large. Furthermore, upon review of the opposition papers submitted by Eastco, it is not disputed that the work was not necessary or could otherwise be completed without access to the Eastco building. Rather what is disputed is the amount of compensation for the necessary license. Any insurance coverage issue raised, at the time of submission of this motion, had since resolved. The issue of actual damages and indemnification, to which the respondent is entitled, is reserved for a hearing on such.

Accordingly, it is

ORDERED that petitioner's Order to Show Cause is hereby granted to the extent that Petitioner is awarded a license pursuant to RPAPL§881, to enter upon Respondents' property 390 East 153rd Street, as set forth herein, necessary for the purpose to repair the wall of Building 2 located at 370 East 153rd Street, Bronx, New York, upon the following terms and conditions:

1. *The petitioner, GEM Quality-Corp as the agent of New York City Housing Authority is granted limited access to the 390 East 153rd Street, Bronx New York, including the roof to make all necessary repairs to the east wall of Building 2, located at 370 East. 153rd Street,*

Bronx, New York .

2. *Petitioner shall maintain, at its sole cost and expense for the duration of the term of hte necessary repairs, an insurance policy consisting of the following:*
 - a. *for any liability Respondents may incur for property damage, personal injury, or wrongful death, including any liability under New York State Labor Law, as a result of Petitioner's work, caused by the negligence of Petitioner or its employees, agents, contractors or subcontractors and providing Respondents first party benefits to cover any damages to their properties, including damage caused by earth movement. Petitioner shall maintain this insurance for the duration of this license.*
 - b. *Commercial General Liability Insurance (\$2 million/\$4 million),
Business Automobile Liability Insurance (\$1million/\$1million)
Excess Liability Insurance (\$18 million/\$18 million)
Workers Compensation (\$1million/\$1million)
Pollution Coverage (\$5Million/\$5 Million)
New York State Disability (Statutory)
Said policies shall remain in full force and effect during the duration of the term of the repairs.*
3. *Petitioner shall immediately report, in writing to Respondents any damage to Respondents' property caused by Petitioner's work.*
4. *Petitioner shall obtain an engineer to prepare a property pre-condition report assuring the current structural integrity of the Building and Properties and that such engineer visit the Building and Properties at least once each month of the license and ascertain the structural integrity of each.*
5. *Respondents are afforded the right to seek a hearing before a special referee pursuant to CPLR§4314 at the end of the license for actual damages caused by Petitioner.*
6. *Petitioner shall reimburse Respondent, for the reasonable attorneys fees incurred to date in reviewing, drafting and attempting to negotiate a license agreement and that Eastco incurs in the future in enforcing the term and condition of this license; and it is further*

7. *The term of the license shall commence immediately and access is granted through and including March 30, 2016, or as such time as necessary if inclement weather affects the schedule to make said repairs, provided that the Petitioner applies to this Court for such further time and terms as may be deemed necessary*

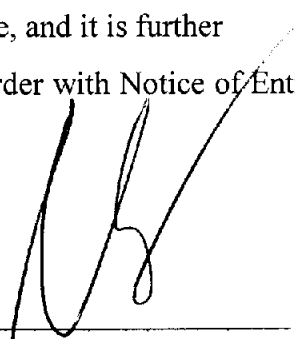
ORDERED that any disputes as to the amount of attorneys' fees to which Respondent may be entitled, shall be submitted to this Court and either party may move this Court to determine the reasonable amount of attorneys' fees incurred, and it is further

ORDERED that this Court retains jurisdiction over this matter to resolve any disputes over the interpretation, implementation or enforcement of this license, and it is further

ORDERED that Petitioner shall serve a copy of this Order with Notice of Entry upon all parties within thirty (30) days of entry of this Order.

JAN 08 2016

DATE


HON. WILMA GUZMAN, J.S.C.