

<b>JCM Jane St. Assoc. LLC v Jane St. NY LLC</b>
2017 NY Slip Op 32407(U)
November 14, 2017
Supreme Court, New York County
Docket Number: 156839/2017
Judge: Kathryn E. Freed
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED

PART 2

Justice

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JCM JANE STREET ASSOCIATES LLC

INDEX NO. 156839/2017

Petitioner,

MOTION DATE 9/7/17

- v -

JANE STREET NY LLC,

MOTION SEQ. NO. 001

Respondent.

INTERIM ORDER

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The following e-filed documents, listed by NYSCEF document number 2, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20

were read on this motion to/for MISCELLANEOUS

In this special proceeding pursuant to RPAPL 881, commenced by petition and order to show cause, petitioner JCM Jane Street Associates LLC, in order to proceed with the demolition of the property located at 11 Jane Street and the construction of a six-story building at 17 Jane Street, New York, NY, seeks a judgment awarding it a temporary license to enter onto 9 1/2 Jane Street for a period of 24 months to install and/or maintain certain items required by the Building Code and Department of Buildings, including: (i) remote-access vibration monitors, survey marks and/or crack gauges pursuant to NY City Building Code (Administrative Code of City of NY, tit 28, ch 7) § BC 3309.4.4, (ii) a sidewalk bridge, (iii) temporary overhead protection and roof protection pursuant to NY City Building Code (Administrative Code of City of NY, tit 28, ch 7) § BC 3309.10; (iv) weather protection; (v) flashing; and (vi) access to the airspace above 9 1/2 Jane Street. Respondent submits written opposition. After a review of the papers submitted, as well as the relevant statutes and case law, the petition is granted.

RPAPL 881 provides that, “[w]hen 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 statute mandates the issuance of a license “upon such terms as justice requires” (*Id.*), which language has been interpreted to require this Court “to balance the interests of the parties and [to] 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 neighbor if the license is refused’” (*Matter of Board of Mgrs. of Artisan Lofts Condominium v Moskowitz*, 114 AD3d 491, 492 [1st Dept 2014], quoting *Chase Manhattan Bank [Natl. Assn.] v Broadway, Whitney Co.*, 57 Misc 2d 1091, 1095 [Sup Ct, Queens County 1968], *affd* 24 NY2d 927 [1969]).

The plans submitted in support of petitioner’s application, as well as the affidavit of Steven Colletta, a Senior Vice President for Sciame Construction, LLC, the contractor that petitioner has hired, demonstrate the need to enter onto respondent’s property in order to install temporary protection during the demolition portion of petitioner’s project. In opposition, respondent has not come forward with anything to cast doubt on petitioner’s showing apart from allegations that petitioner did not negotiate in good faith. To the contrary, however, the record demonstrates that the parties were in contact before petitioner commenced this proceeding, but that the parties deemed one another’s demands unreasonable. Since the Court cannot deny the petition on the basis of an inadequate negotiation, it is inclined to grant the petition and issue a temporary license in favor of petitioner. It is in both parties’ best interests for them to negotiate

the precise terms of the license themselves, so this Court will have the parties to appear for a conference for that purpose before directing them to submit proposed orders.

While “the grant of licenses pursuant to RPAPL 881 often warrants the award of contemporaneous license fees” (*Matter of Van Dorn Holdings, LLC v 152 W. 58th Owners Corp.*, 149 AD3d 518 [1st Dept 2017], quoting *DDG Warren LLC v Assouline Ritz 1, LLC*, 138 AD3d 539 [1st Dept 2016]), this Court cannot discern on the papers the extent to which respondent will be actually harmed, if at all, and, if the parties cannot come to an agreement in that regard at the forthcoming conference, this Court will order a hearing on the issue (*see MB-REEC Houston Prop. Owner, LLC v Bd. of Mgrs. of 179 Ludlow Street Condominium*, 2016 WL 3632471, 158050/2015 [Sup Ct, NY County June 30, 2016, Cohen, J.]).

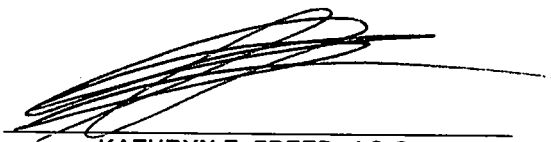
Finally, notwithstanding the ruling in *Matter of North 7-8 Invs., LLC v Newgarden* (43 Misc 3d 623 [Sup Ct, Kings County 2014]; *see also Matter of Van Dorn Holdings, LLC v 152 W. 58th Owners Corp.* 149 AD3d at 519), this is not one of the rare circumstances where the respondent has been placed in a position of having to hire design professionals in order to ensure that petitioner’s work will not damage its property. Indeed, respondent has offered nothing in response to the petition to cast doubt on the need for the protective measures or that there is anything faulty with petitioner’s plans. Thus, an award of attorneys’ fees to respondent is not appropriate. *See MB-REEC Houston Prop. Owner, LLC v Bd. of Mgrs. of 179 Ludlow Street Condominium, supra.*

Accordingly, it is ORDERED that the parties are directed to appear at 80 Centre Street, Room 280 on Wednesday, November 29, 2017 at 11:00 a.m., for a conference to discuss the parameters of the temporary license agreement that will be issued in favor of petitioner, as well as to discuss the license fee, if any, that petitioner will pay to respondent. If, at the conclusion of

the conference, the parties cannot come to an agreement, this Court will direct that proposed orders be submitted, and a hearing will be held on the issue of the amount of the licensing fee to be awarded to respondent.

11/14/2017

DATE



KATHRYN E. FREED, J.S.C.

CHECK ONE:

CASE DISPOSED  
GRANTED  
SETTLE ORDER  
DO NOT POST

DENIED

NON-FINAL DISPOSITION  
GRANTED IN PART  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: