

4452 Broadway Mazal LLC v Renaissance Assoc.
2018 NY Slip Op 33302(U)
December 19, 2018
Supreme Court, New York County
Docket Number: 160144/2018
Judge: Debra A. James
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DEBRA A. JAMES

PART

IAS MOTION 59EFM

Justice

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INDEX NO.

160144/2018

4452 BROADWAY MAZAL LLC

MOTION DATE

12/18/2018

Petitioner,

MOTION SEQ. NO.

001

- v -

RENAISSANCE ASSOCIATES,

Respondent.

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 41, 42, 44

were read on this motion to/for

RPAPL § 881 LICENSE PETITION

DECISION

The petition for a license pursuant to RPAPL § 881 shall be granted. See Van Dorn Holdings, LLC v 152 W. 58th Owners Corp., 149 AD3d 518 (1st Dept. 2017); Moskowitz v Pavarini McGovern, LLC, 83 AD3d 438 (1st Dept 2011); and DDG Warren LLC v Assouline Ritz 1, LLC, 138 AD3d 539 (1st Dept. 2016).

ORDER

Upon the foregoing documents, it is

ORDERED that petitioner (Property) is hereby granted a license, pursuant to RPAPL 881, to enter upon a portion of respondent's land (Adjacent Property) to (1) perform a pre-construction survey of the Adjacent Property; (2) install, maintain and remove all vibration, crack and optical monitors

("Monitors") on the interior and exterior of the Adjacent Property; (3) dig tests pits on the Adjacent Property to address concerns raised by respondent's engineer; and (4) install and maintain, if necessary, temporary overhead protection, including but not limited to window protection, netting, scaffolding, and roof protection (Required Protective Measures) to the Adjacent Property in accordance with the plans and specifications appended to the Petition; and it is further

ORDERED that the installation of the Required Protective Measures will be carried out as aforesaid pursuant to the customary and standard practices used in the building construction industry as certified by an engineer licensed in the State of New York and retained by petitioner; and it is further

ORDERED that the granting of the foregoing license is subject to the following terms and conditions: (1) petitioner shall take the necessary steps, measures, and precautions to prevent and avoid any damage to the Adjacent Property, (2) upon the completion of the term of the license, the Adjacent 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 such license area, (3) petitioner shall save respondent harmless from any damages occurring within the license area, during the period of this

license, and a policy of commercial general liability insurance, including but not limited to, coverage for contractual liability, personal injury, bodily injury and property damage, which names respondent as additional insured, shall be maintained by petitioner during the period of this license, and (4) petitioner shall be held liable to respondent for any damages which it may suffer as a result of the granting of this license and all damaged property shall be repaired at the sole expense of petitioner; and it is further

ORDERED petitioner shall post with the Clerk of New York County an undertaking in the amount of \$ _____ to be determined by a JHO/Special Referee, to cover reasonable professional fees, including attorneys' fees incurred by respondent as the result of such license and petitioner's entry upon the Adjacent Property pursuant to such license, and upon the completion of the term of the license, such amount shall be paid by petitioner to respondent; and it is further

ORDERED that this matter having come on before this court on December 11, 2018, on motion of the petitioner for license pursuant to Real Property and Proceedings Law § 881 at oral argument of the written submissions, and the petitioner having been represented in connection therewith by James H. Rowland, Esq., and the respondent having been represented in connection therewith by Sheldon Lobel, Esq., pursuant to CPLR 4317, and it appearing to

the court that a reference to determine is proper and appropriate pursuant to CPLR 4317 (a), it is now hereby

ORDERED that a Judicial Hearing Officer ("JHO") or Special Referee shall be designated to determine the following individual issue of fact, which is hereby submitted to the JHO/Special Referee for such purpose

(1) the issue of the amount of an additional undertaking, to cover reasonable professional fees, including attorneys' fees incurred by respondent as the result of petitioner's entry upon the Adjacent Property pursuant to such license, to be posted with the Clerk of New York County, and such amount to be paid by petitioner to respondent upon termination of the license; and it is further

ORDERED that the powers of the JHO/Special Referee shall not be limited beyond the limitations set forth in the CPLR unless otherwise indicated; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119, 646-386-3028 or spref@nycourts.gov) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court at www.nycourts.gov/supctmanh at the "References" link), shall assign this matter at the initial appearance to an available

JHO/Special Referee to determine as specified above; and it is further

ORDERED that counsel shall immediately consult one another and counsel for petitioner shall, within 15 days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or e-mail an Information Sheet (accessible at the "References" link on the court's website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that the parties shall appear for the reference hearing, including with all witnesses and evidence they seek to present, and shall be ready to proceed with the hearing, on the date fixed by the Special Referee Clerk for the initial appearance in the Special Referees Part, subject only to any adjournment that may be authorized by the Special Referees Part in accordance with the Rules of that Part; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue(s) specified above shall proceed from day to day until completion and counsel must arrange their schedules and those of their witnesses accordingly.

<u>12/19/2018</u>		<u>DEBRA A. JAMES, J.S.C.</u>	
DATE			
CHECK ONE:	☒ CASE DISPOSED	☐ NON-FINAL DISPOSITION	
	☒ GRANTED ☐ DENIED	☐ GRANTED IN PART	☐ OTHER
APPLICATION:	☐ SETTLE ORDER	☐ SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐ INCLUDES TRANSFER/REASSIGN	☐ FIDUCIARY APPOINTMENT	☒ REFERENCE