

**Matter of NERE LIC Dev. LLC v 53 Pitt Dev. LLC**

2018 NY Slip Op 33480(U)

January 29, 2018

Supreme Court, New York County

Docket Number: 150074/2019

Judge: Carol R. Edmead

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This opinion is uncorrected and not selected for official publication.

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

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In the Matter of the Application of:

Index No.: 150074/2019

NERE LIC DEVELOPMENT LLC,  
Petitioner,

for an Order and Judgment pursuant to Section 881 of the  
Real Property Actions and Proceedings Law for access to  
adjoining property,

**ORDER**

v.

53 PITT DEVELOPMENT LLC,  
Respondent,

-----X

The Petitioner NERE LI Development LLC (“Petitioner”) brought this proceeding by way of Order to Show Cause pursuant to RPAPL Section 881 for a temporary license to access the property owned by the Respondent 53 Pitt Development LLC (“Respondent”) and located on 58 Pitt St, New York, NY designated in the Tax Map of the City of New York as Block 343, Lot 67 (“Adjacent Premises”), in order to perform certain protective work to the Adjacent Premises and install temporary protections thereto in connection with construction of a new development on the Project Owner’s adjacent property located on 208 Delancey St., New York, 10002, and designated in the Tax Map of the City of New York as Block 343 Lot 68 (the “Project Premises”). The Project Owner was represented by counsel who appeared on January 25, 2019, but the Adjacent Owner failed to appear, and no opposition papers were ever filed.

Now, on reading the filed pleadings herein and the papers submitted in support of the Order to Show Cause, it is,

**ORDERED**, that the Petitioner, its employees, and agents, are granted a temporary license to enter and perform protective work on the Adjacent Premises and install and maintain temporary protections, at Petitioner's sole cost, subject to the following terms and conditions:

**The Temporary Protections**

1. Installation and maintenance of roof protections on the Adjacent Premises, in accordance with all applicable laws and regulatory permits, but such shall not be installed without 3 days prior written notice thereof provided to the Respondent.
2. Installation and maintenance of sidewalk sheds protections on the Adjacent Premises, in accordance with all applicable laws and regulatory permits, but such shall not be installed without 3 days prior written notice thereof provided to the Respondent.
3. Installation and maintenance of overhead protections on the Adjacent Premises, in accordance with all applicable laws and regulatory permits, but such shall not be installed without 3 days prior written notice thereof provided to the Respondent.
4. Installation and maintenance of window protections on the Adjacent Premises, in accordance with all applicable laws and regulatory permits, but such shall not be installed without 3 days prior written notice thereof provided to the Respondent.

**Insurance**

5. Prior to the time that Petitioner enters onto the Adjacent Premises to carry out the temporary protections as permitted herein, the Petitioner's General Contractor designated to perform said protections shall designate the Respondent as an additional insured on the contractor's general liability policy.

### **Duration and Removal**

6. The temporary protections as permitted herein shall be removed by the Petitioner within 7 business days after said protection is no longer required by applicable law. If the Petitioner cannot reasonably remove the temporary protections within 7 business days after such is no longer required by applicable law, then the Petitioner shall inform the Respondent in writing and the Respondent may petition this Court for appropriate relief with respect to such delay.

7. Any damage to the Respondent's Adjacent Premises that is caused by the Petitioner or its employees or agents in connection with entry onto the said premises and in connection with the temporary protections shall be corrected within a reasonable time and the premises shall be restored to the same or substantially similar condition that existed prior to commencement of the installation of the temporary protections and all materials used in the requisite construction, and any resultant debris, shall be removed from the Adjacent Premises.

### **Fees**

8. The Respondent shall be afforded a monthly license fee of \$500.00 for the Petitioner's entry and work relating to the temporary protections as permitted herein, which shall be made and delivered to the Respondent, no later than the 15<sup>th</sup> of every month, to "53 Pitt Development, LLC, 123 Bowery, 4<sup>th</sup> Floor, New York, New York, 10002." The payment of the monthly license fee shall begin upon the first month which the Petitioner enters the Adjacent Premises to perform work related to the temporary protections and until such temporary protections are removed as stated in ¶ 6 herein.

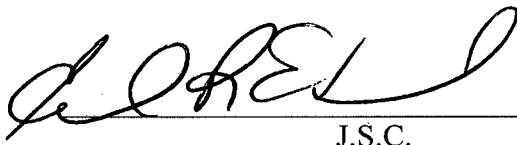
9. In the event that the Respondent incurs attorneys' fees as a result of the Petitioner's work related to the temporary protections, the Petitioner shall bear the cost of those reasonable attorneys' fees. If the Respondent seeks to recover those attorneys' fees from the Petitioner, then

upon demand by the Petitioner, the Respondent shall forward all itemized invoices for reasonable attorneys' fees to the Petitioner.

**IT IS FURTHER ORDERED** that the Petitioner shall serve a copy of this Order upon the Respondent by personal service within 7 days of the date of this Order.

Dated: New York, NY  
January 29, 2018

ENTER



J.S.C.

**HON. CAROL R. EDMED**  
**J.S.C.**

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