

**Matter of 379 13th LLC v Slope Dev. Realty Corp.**

2020 NY Slip Op 31258(U)

May 8, 2020

Supreme Court, Kings County

Docket Number: 501945/2020

Judge: Pamela L. Fisher

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

At IA Part 94 of the Supreme Court of the State of New York, held in and for the County of Kings, at the courthouse located at 360 Adams Street, Brooklyn, New York 11201 on the 8<sup>th</sup> day of May 2020.

PRESENT: HON. PAMELA L. FISHER, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

-----X  
IN THE MATTER OF THE APPLICATION OF 379 13<sup>TH</sup> LLC,

Petitioner,

**DECISION/ORDER**

- against -

Index No: 501945/2020

SLOPE DEVELOPMENT REALTY CORP.,  
Respondent.

-----X

**Recitation, as required by CPLR 2219(a), of the papers considered in review of this**

Order to Show Cause/Petition .....	1,2
Affidavit in support .....	3
Affidavit/Affirmation in opposition.....	4,5
Affidavit/Affirmation in reply.....	6,7

**Upon the foregoing cited papers, the Decision/Order on Petitioner’s Order to Show Cause to for Temporary License pursuant to RPAPL 881 is granted on default as follows:**

Petitioner’s amended order to show cause dated February 3, 2020, for a temporary license to enter upon respondent’s property located at 381 13<sup>th</sup> Street, Brooklyn, New York 11215 is granted. Accordingly, it is hereby:

ORDERED, that petitioner owning the premises located at 379 13<sup>th</sup> Street, Brooklyn, New York 11215 (“Project Premises”), is granted license to enter upon and access Respondent’s premises located at 381 13<sup>th</sup> Street, Brooklyn, New York 11215 (“Adjacent Premises”), to wit, in order to: (a) preform a pre-construction survey of the Adjacent Premises prior to the commencement of the project; (b) erection, maintenance and repair of any necessary protection, including but not limited to, rooftop protection, scaffolding, sheds, bridges or other protective coverings in any yards and/or on the roof and as mandated by the Building Code; (c) complete

construction improvements for the limited purposes of waterproofing and completing the construction of the exterior wall, which was erected along the property line that separates the project premises and adjacent property, for a period of 45 days, and it is further

ORDERED, that the license shall be for a period of up to 45 days from the date of issuance of this order, subject to renewal upon application on notice to the court, and it is further

ORDERED, that Petitioner shall include respondent as an additional insured on its insurance policy for the duration of the project, and it is further

ORDERED, that Petitioner shall indemnify and hold respondent harmless to the fullest extent permitted by law for any liability, claims, damages or losses, including attorneys' fees they may incur as a result of Petitioner's work, whether or not caused by the negligence of Petitioner or its employees, agents' contractors or subcontractors; and it is further

ORDERED, that Petitioner shall cure any violation placed against Respondent's property by an governmental or administrative agency as a result of Petitioner's work. Petitioner shall reimburse Respondent for any fines or penalties imposed as a result of such violations; and it is further

ORDERED, that Petitioner shall take all steps necessary to remove any mechanics lien, or other encumbrance against Respondent's property arising from Petitioner's work or use of Respondent's space; and it is further

ORDERED, that Petitioner shall immediately report, in writing, to Respondent any damage to Respondent's property caused by Petitioner's work; and it is further

ORDERED, that 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, that Petitioner shall reimburse Respondent for the reasonable attorney's fees they have incurred to date in reviewing, drafting and attempting to negotiate a license agreement and that they incur in the future in enforcing the terms of this license; and it is further

ORDERED, that any disputes as to the amount of architects' or 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 architects' or attorneys' fees incurred, and it is further

ORDERED, that Petitioner shall pay Respondent a license of \$2,000 a month by the 5<sup>th</sup> day of each month of this license; and it is further

ORDERED, that Petitioner shall not unreasonably interfere with Respondent's necessary access to its property and shall take the necessary steps, measures, and precautions to prevent and avoid any damage to Respondent's property; and it is further

ORDERED, that upon the completion of the term of the license, Respondent's 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 the license area; and it is further

ORDERED, that Petitioner's, workmen and contractors are allowed access to Respondent's property only from Monday through Fridays, between the hours of 8:00 am to 6 p.m.; and it is further; and it is further

ORDERED, that the Respondent is enjoined from interfering with Petitioner's protective work and installation thereof pursuant to this access order; and it is further

ORDERED, that as this license is being issued during the COVID-19 pandemic, the license period of 45 days shall commence upon the permittance of construction work pursuant to New York State's executive orders and relevant provisions, and it is further

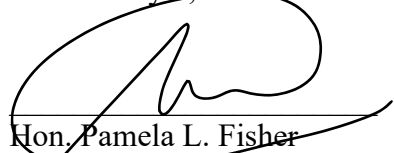
ORDERED, that the term of this license shall commence 5 days after Petitioner has provided to Respondent a copy of the insurance policy and compliance with the terms and provisions listed above; and it is further

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 a copy of this order is to be served on Respondent with notice of entry within 10 days of notice of this order.

This constitutes the decision and order of this court.

Dated: May 8, 2020



Hon. Pamela L. Fisher  
Justice Supreme Court