

269-273 14th St. NY Corp. v Stein

2020 NY Slip Op 32827(U)

July 28, 2020

Supreme Court, Kings County

Docket Number: 520144/2017

Judge: Richard Velasquez

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 66 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 28th day of July, 2020

PRESENT:
HON. RICHARD VELASQUEZ
Justice.

-----X
269-273 14TH ST NY CORP.,

Petitioner,

Index No.: 520144/2017
Decision and Order
SEQ# 005 & 006

For an order pursuant to Section 881 of the Real Property Actions and Proceedings Law Granting a License for Access to Adjoining Property,

-against-

MICHAEL STEIN, VALERIE BUDZIK, and
JACQUELINE PHUNG,

Respondents.
-----X

The following e-filed papers read herein:

NYCEF Doc. Nos.

Notice of Motion/Order to Show Cause/
Petition/Cross Motion and
Affidavits (Affirmations) Annexed _____
Opposing Affidavits (Affirmations) _____
Reply Affidavits (Affirmations) _____

195-204; 206-217
218; 220-229

After having heard Oral Argument on July 10, 2020 and upon review of the submissions herein the court finds as follows:

Petitioner's moves by Order to show cause for an Order a) reinstating Petitioner's license to enter Respondents' property pursuant to the terms and conditions set forth in

the Court's Order dated March 1, 2018; b) Extending the term of the License through the latter of the existing expiration of the License and four months after the date of its reinstatement; and c) Awarding to Petitioner such other, further, and different relief as the Court may deem just and proper. (MS#5). Respondents cross-move for an Order, pursuant to RPAPL §881, (1) revoking *nunc pro tunc* Petitioner's license to access Respondent's property; (2) compelling Petitioner to compensate Respondent for damages caused to Respondent's property and for the cost to complete certain work Petitioner was obligated to perform; (3) awarding Respondent her reasonable attorneys' fees and costs. (MS#6).

ARGUMENTS

Petitioners in support of their Order to Show Cause to reinstate their license to enter pursuant to RPAPL 881, contend they have provided proof of insurance coverage and the license to enter property should be reinstated.

Respondents in support of their cross-motion contend this court should revoke petitioners license to enter under RPAPL 881 because petitioner failed to maintain insurance coverage while conducting work on the project and that any such insurance coverage they did have was inadequate. Respondents further contend the court compel the petitioner to compensate Respondent for damages caused to Respondents property and for the cost to complete certain work petitioner was obligated to perform. Petitioners oppose the same and contend with regard Respondents request for compensation those issues are currently being litigated in a related matter.

ANALYSIS

It is well settled "under RPAPL § 881, Section 881 provides that a license shall

be granted "upon such terms as justice requires." "Such terms as justice requires extends to the nature and extent of access that is necessary, the duration such access may be necessary, as well as what protections may be necessary to safeguard the adjoining owner's property. The statute and case law provide that petitioner is strictly liable for any damage it may cause to respondent's property." See (RPAPL 881; *Sunrise Jewish Ctr. of Val. Stream v Lipko*, 61 Misc 2d 673 [Sup Ct, Nassau County 1969]; *MK Realty Holding, LLC v Schneider*, 39 Misc 3d 1209[A], 2013 NY Slip Op 50551[U] [Sup Ct, Queens County 2013]; quoting, *Inv'rs, LLC v. Newgarden*, 43 Misc 3d 623, 627, 982 NYS2d 704 (Sup. Ct. Kings County 2014) Additionally, "other conditions the court may impose include posting a bond, obtaining insurance coverage, agreeing to indemnify the adjacent landowner and paying for the use of the license." (*Ponito Residence LLC v 12th St. Apt. Corp.*, 38 Misc 3d 604 [Sup Ct, NY County 2012]; *Deutsche Bank Trust v 120 Greenwich Dev. Assoc.*, 7 Misc 3d 1006[A], 2005 NY Slip Op 50467[U] [Sup Ct, NY County 2005]; quoting, *2225 46th St., LLC. v. Giannoula Hahralampopoulos*, 55 Misc. 3d 621, 625, 46 NYS3d 772 (NY Sup 2017).

In the present case, the Petitioner has demonstrated that they have obtained insurance coverage and met all the terms and conditions set forth in the Court's Order dated March 1, 2018, and their license to enter the property should be reinstated. Contrary to respondents contentions Petitioners insurance policy does cover respondent or her engineer as "Additional insureds" see (Gerolimatos Affi. Exhibit 9, NYSCEF Doc 223. Additionally, Respondents request for an Order compelling Petitioner to compensate Respondent for damages caused to Respondent's property and for the cost to complete certain work Petitioner was obligated to perform is currently

being litigated in a related action and will not be addressed by this court.

Accordingly, Petitioners Order to Show Cause for an Order a) reinstating Petitioner's license to enter Respondents' property pursuant to the terms and conditions set forth in the Court's Order dated March 1, 2018; b) Extending the term of the License for four months after the date of its reinstatement; is hereby granted, date of reinstatement shall begin on the date of entry of this order, for the reasons stated above. (MS#5). It is further Ordered, the Petitioners post a bond in the amount of \$500. Respondents cross-motion is hereby denied. Any reliefs not specifically addressed in this order are hereby denied. (MS#6).

This constitutes the Decision/Order of the court.

Dated: Brooklyn, New York
July 28, 2020


HON. RICHARD VELASQUEZ

So Ordered
Hon. Richard Velasquez

JUL 28 2020

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KINGS COUNTY CLERK
FILED