

Matter of MRR 1326 LLC v 124 E. 57th St. LLC
2021 NY Slip Op 30808(U)
March 16, 2021
Supreme Court, New York County
Docket Number: 150773/2021
Judge: Arthur F. Engoron
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (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.

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

----- X

In the Matter of the Application of:

MRR 1326 LLC,

Petitioner,

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

-against-

124 EAST 57TH STREET LLC,

Respondent.

----- X

Index No.: 150773/2021

Decision, Order and License

Part 37

Motion Sequence No. 1

Arthur F. Engoron, Justice

In compliance with CPLR 2219(a), this Court states that the following papers, numbered 1, 2 and 3 were used in this RPAPL Section 881 Proceeding:

	Papers Numbered:
Moving Papers	1
Opposition Papers	2
Answer and Counterclaims	3

Upon the foregoing papers, and upon oral argument having been heard on March 9, 2021, the instant petition is hereby granted to the extent that the Court hereby issues the following license:

MRR 1326 LLC (“Project Owner”) is the developer of the premises located at 126 East 57th Street and 686 Lexington Avenue, New York, New York (collectively, the “Project Premises”), which is adjacent to the premises located at 124 East 57th Street, New York, New York (the “Adjacent Premises”) on the western side of the 126 East 57th Street portion of the Project Premises. The Adjacent Premises is owned by 124 East 57th Street LLC (“Adjacent Owner”).

Project Owner plans on demolishing the existing buildings at the Project Premises (the "Project"). In connection with the Project, Project Owner intends to: (i) perform a pre-construction survey of the Adjacent Premises (the “Survey”); (ii) install temporary protection over the roof and rear terrace of the Adjacent Premises (including over a portion of the rear fire escape) (the "Temporary Protections"); (iii) install weather protection on the exposed exterior wall of the Adjacent Premises (the “Weather Protection”); and (iv) install tie-backs into the party wall between the Project Premises and the Adjacent Premises to support and protect such party wall (the “Tie-Backs”).

Project Owner is hereby granted a license to: (i) perform the Survey; (ii) install, maintain, and remove the Temporary Protections as identified in Drawing Nos. DM-000.01, 001.00, 002.00,

003.00, 004.00, 005.01, 100.01, 101.01, 103.01, 104.00, 110.01, 111.01, 120.01, 121.01, 130.01, 131.00, 140.00, 141.00, 150.00, 151.00, 200.00, 201.00, 202.00, 300.00, 301.01, 302.00, 303.00, and 304.00, dated January 12, 2021, prepared by Ancora Engineering and signed and sealed by James Patterson, P.E. and approved by the New York City Department of Buildings (“DOB”) (NYSCEF Doc. No. 14) (the “Protection Drawings”, hereby incorporated by reference herein) and Drawing Nos. SSP-000.00, 001.00, 002.00, 100.00, 200.00 and 201.00, dated March 10, 2021 and prepared by Ancora Engineering (the “SSP”, annexed hereto as Exhibit “A”, as counsel for Respondent requested a copy of the SSP to supplement the Protection Drawings); (iii) install the Weather Protection; and (iv) install the Tie-Backs, in accordance with the Protection Drawings, each as described in the instant petition.

In connection with the license granted herein, Project Owner shall install clear panels on the Temporary Protections installed on the deck over the rear terrace of the Adjacent Premises, provided that the New York City Department of Buildings (“DOB”) approves of the installation of such clear panels in lieu of the protections currently set forth in the Protection Drawings. At Adjacent Owner’s request, Project Owner shall install one (1) vibration monitor on the party wall inside or immediately adjacent to (at Adjacent Owner’s option) the Adjacent Premises during the demolition phase of the Project. Adjacent Owner shall be included as a recipient of alerts from the vibration monitor and Project Owner shall provide Adjacent Owner with data from the vibration monitor upon request (provided that such data is available to Project Owner). In connection with the installation of the Weather Protection, Project Owner shall install one of the three (3) Weather Protection specification options annexed to the petition as Exhibit K (NYSCEF Doc. No. 12, Exhibit D thereto (pages 74-89 of 118)) (any one of such 3 specifications at Adjacent Owner’s option) or shall install a different commercially reasonable Weather Protection specification submitted by Adjacent Owner to Project Owner no later than one week following the date of this order and approved by Project Owner’s engineer, such approval not to be unreasonably denied, conditioned or delayed. Adjacent Owner’s engineer shall be granted access to the Project Premises to inspect the condition of the exposed wall of the Adjacent Premises provided that such engineer shall coordinate such inspection with Project Owner and shall comply with all safety requirements at the Project Premises including, without limitation, execution of a release and providing a certificate of insurance to Project Owner.

This license hereby covers and extends to the Project Owner and its successors, contractors, subcontractors, construction managers, architect and engineering consultants, employees and agents (the “Construction Team”) who may access the Adjacent Premises as may be reasonably required in order to perform the Survey; to install, maintain, and remove the Temporary Protections; to install the Waterproofing; and to install the Tie-Backs, in accordance with the terms of this license and as required by all laws, codes, rules, regulations and requirements of DOB.

Project Owner shall only access the interior of the Adjacent Premises in connection with the following: (i) performing the Survey; (ii) to inspect and/or repair any damages directly caused by the Project; and/or (iii) to place the vibration monitor (at Adjacent Owner’s request as set forth above). At Adjacent Owner’s option in connection with the Survey, Adjacent Owner may retain a survey consultant, such consultant to be approved by Project Owner (such approval not to be unreasonably denied, conditioned or delayed), to access the Adjacent Premises to perform Survey

at Project Owner's sole cost and expense, provided that Project Owner receives a copy of the Survey report simultaneously upon Adjacent Owner's receipt.

When accessing the interior of the Adjacent Premises pursuant to this license, Project Owner shall comply and/or cause any members of its Construction Team entering the Adjacent Premises to comply with all applicable COVID-19 laws, including then-current protocols set forth by the Centers for Disease Control and Prevention and the reasonable COVID-19 requirements of Adjacent Owner and its tenants.

Adjacent Owner shall cooperate to effectuate the terms of this license, including, without limitation, providing all necessary executed applications, consents, sign-offs and other documents required by any governmental authority having jurisdiction over the Project, including the DOB.

The License is effective immediately and shall continue for six (6) months from the date Project Owner commences access to install the Temporary Protections on the Adjacent Premises (the "Term"), and to the extent an extension of the License Term is required, Project Owner will contact Adjacent Owner to request an extension; however, to the extent the parties cannot agree to the terms of such an extension, Project Owner may contact this Court at least 30 days prior to the end of the Term to request an extension. Project Owner will cause the removal of the Temporary Protections from the Adjacent Premises as soon as permitted by the DOB.

To the fullest extent permitted by law, Project Owner agrees to indemnify and hold harmless Adjacent Owner, its members, partners, directors, officers and employees ("Indemnitees"), from and against all costs, damages, claims, causes of action and liabilities, arising out of or related to claims for personal injury, property damage or wrongful death made against Adjacent Owner in connection with the Project or Project Owner's access to the Adjacent Premises, except to the extent caused by Adjacent Owner's or the Indemnitees' negligence or willful misconduct. Notwithstanding the foregoing, this indemnity shall not apply to claims for lost rents as a result of the Project or access unless such loss rent claims are the direct result of Project Owner's having caused damage to the Adjacent Premises such that a governmental authority having jurisdiction over the Project orders a partial or whole vacatur of the Adjacent Premises.

Project Owner shall maintain and shall cause its demolition contractor and scaffolding subcontractor to maintain commercial general liability insurance with the minimum limits set forth on the sample certificate of insurance filed by Respondent (NYSCEF Doc. No. 46) (which minimum amounts can be achieved through a combination of primary and excess policies). Project Owner shall designate 124 East 57th Street LLC and its members, directors, officers and employees as additional insureds under its commercial general liability policy, and, prior to accessing the Adjacent Premises to install the Temporary Protections, Weather Protection and/or Tie-Backs, shall provide Adjacent Owner with a certificate of insurance evidencing same together with either: (i) a specific endorsement naming such parties as additional insureds; or (ii) a blanket endorsement and an insurance agreement executed by the party providing the insurance on a form to be reasonably agreed upon by the parties.

Project Owner shall pay Adjacent Owner a license fee of \$3,000 per month (pro-rated for partial months), such fee commencing upon the installation of the Temporary Protections and ending on

the removal of the Temporary Protections. Given that Adjacent Owner did not hire an engineer to review and/or comment on the Protection Drawings there will be no award of engineering fees to Adjacent Owner. Given that Adjacent Owner did not provide formal legal comments to Project Owner's proposed license agreement, the Court exercises its discretion not award attorneys' fees to Adjacent Owner.

Given that Project Owner's, its demolition contractor's and scaffolding subcontractor's maintenance of proper insurance (including naming Respondent as an additional insured thereon) for the duration of the Project will sufficiently protect Respondent, its request for a temporary protection bond is hereby denied.

In light of this Decision, Order and License, Respondent's counterclaims (NYSCEF Doc. No. 20) are hereby denied as moot and unavailing.

This Court agrees to continue jurisdiction over this case and may be reached at 646-386-4375 if any problems arise.

SO ORDERED:

ENTER:

Date: March _16_, 2021

Hon. Arthur F. Engoron, J.S.C.