

<b>Matter of 76 Cooper LLC v Stewart</b>
2021 NY Slip Op 31767(U)
May 24, 2021
Supreme Court, Kings County
Docket Number: 508475/2021
Judge: Peter P. Sweeney
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and remove, as applicable, (a) temporary roof and overhead protection on the roof of Respondents' Property, (b) cantilevered scaffold over the roof of Respondents' Property, and (c) a controlled access zone in the rear yard of Respondents' Property, which zone shall prohibit Respondents' use of its rear yard Monday through Friday during the hours of 8 AM to 5 PM, all as necessary to complete Petitioner's project in accordance with RPAPL § 881, as required by the New York City Department of Buildings ("DOB") and Chapter 33 of the New York City Building Code, and as described in Exhibit 1 to the Affidavit of Khalid Algende (NYSCEF Doc. No.: 6) (a, b, and c collective, the "Respondents' Property Protections").

2. The Respondents' Property Protections shall be installed, maintained, and utilized for a period of four (4) months from the installation thereof (the "License Term"). Should Petitioner require additional time and/or access beyond the License Term, Petitioner and Respondent shall negotiate in good faith to extend the License Term on substantially similar terms as herein provided. Should the parties be unable to reach an agreement as to an extension of the License Term, Petitioner shall be permitted to make an application to this Court for an extension of the License Term.

3. On the first business day of every month during which Petitioner access and/or maintains the Respondents' Property Protections at the Respondents' Property, Petitioner shall pay to Respondents a license fee in the amount of Two Thousand Dollars (\$2,000.00) per month (the "License Fee"). For the purpose of compensation, the actual time period of access shall conclude only when the Petitioner returns full possession of the property back to the Respondents in unimpeded condition, clean of any and all debris.

4. Petitioner shall cause Titan Realty & Construction LLC or its general contractor for its project to maintain in full force and effect at all times during the License Term a general liability insurance policy with limits of \$2,000,000 per occurrence, \$4,000,000 in aggregate, and umbrella

and/or excess liability policies with limits of \$4,000,000 per occurrence and in the aggregate and \$500,000.00 for property damage, covering any liability Respondent may incur for property damage, personal injury, or wrongful death. Petitioner shall provide evidence of the above-prescribed limits naming Respondents as additional insured prior to accessing Respondents' Property. Upon Petitioner's transmittal to Respondents of the foregoing insurance documentation, Petitioner shall immediately be permitted to access Respondents' Property to install the Respondents' Property Protections. Should such policies expire or be cancelled, all replacement policies carried pursuant to the terms of this Agreement shall be effected under valid and enforceable policies issued by reputable and independent insurers permitted to do business in the State of New York. A lapse in insurance coverage will be considered a material breach of this Judgment and Order and shall result in the revocation of Petitioner's access to Respondents' Property.

5. All reasonable measures will be taken by the Petitioner and the Permitted Parties to minimize any disruption or inconvenience caused by the Respondents' Property Protections to Respondents' occupants, tenants, sub-tenants and guests. The Respondents' Property Protections and Petitioner's work shall not interfere with Respondents' access to, or egress from Respondents' Property. Dust, noise and other effects of the Respondents' Property Protections and Petitioner's work shall be controlled using appropriate methods customarily utilized.

6. Petitioner acknowledges and agrees that it shall repair, restore and remediate any damage to the Respondents' Property caused by the Petitioner or its employees, agents contractors or subcontractors, at its sole cost and expense, to a condition equivalent to the conditions documented in the Pre-Construction Survey or prior to Petitioner's entry, as soon as practical but no later than ten (10) business days after this Respondents' Property Protections are removed.

7. In addition to all other costs set forth in this Agreement, Petitioner shall, at its sole expense, apply for all applicable municipal and governmental approvals, licenses, permits and certificates required in connection with the performance of the Respondents' Property Protections and cause same to be performed in compliance with all Applicable Laws.

8. Petitioner shall, to the fullest extent permitted by law, indemnify, defend and hold Respondents harmless from and against all costs, expenses, liabilities, claims, judgments, liens, litigation, penalties, damages, costs and fees (including reasonable engineering fees and attorneys' fees) in connection with personal injury or death, physical damage, property damage, and/or fines or violations to the Respondents' Property or to any third-party to the extent caused by the Respondents' Property Protections and the License to access the Respondents' Property being granted herein ("Exposure"). Respondents agree to cooperate fully with Petitioner and its counsel in the defense of any such Exposure at Petitioner's sole cost and expense. Respondents shall give notice to Petitioner of any Exposure, within ten (10) calendar days of Respondents' notice thereof. Petitioner is not obligated to indemnify or hold Respondents harmless from and against that portion or proportion of any Exposure which is caused by the negligence or misconduct of Respondents or any person or entity for which Respondents are responsible. Petitioner agrees to defend, indemnify and/or hold harmless the Respondents for all abatements, setoffs or other similar amounts actually awarded to lessees occupying the Respondents' Property by a court of competent jurisdiction, but only to the extent such awards are a result of an order to vacate caused by the Respondents' Property Protections and issued by any municipal agency having jurisdiction over the Respondents' Property.

9. Petitioner shall, at its sole cost and expense, pay directly to the governmental or administrative agency any fines or penalties imposed upon Respondents or Respondents' Property as a result of such violations within (10) business days of Petitioner's receipt of notice of such fine

or penalty. If Respondents have already paid such fines or penalties, Petitioner shall reimburse Respondents for same within said time frame. Failure to adhere to this provision shall result in the revocation of this license.

10. Petitioner shall remove or bond any mechanic's lien filed against Respondents' Property caused by the Respondents' Property Protections and/or the Work within sixty (60) days of Respondents' notice of the filing of such mechanic's lien, which notice shall include a copy of the mechanic's lien. Failure to adhere to this provision shall result in the revocation of Petitioner's access to Respondents' Property.

11. Petitioner shall reimburse Respondents within seven (7) days of the execution of this Order, Two Thousand Dollars (\$2,000.00) for legal fees incurred prior to the date of this Order and Respondents' providing a Form W-9 for the party to whom payment shall be made under this paragraph.

ENTER:



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PETER P. SWEENEY, J.S.C.