

16 Wade Sq. LLC v Decicco

2021 NY Slip Op 31920(U)

February 16, 2021

Supreme Court, Bronx County

Docket Number: 31114/2020E

Judge: Llinet M. Rosado

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX, PART 25

16 WADE SQUARE LLC,

Petitioner,

Index No.: 31114/2020E

DECISION AND ORDER

-against-

SALVATORE DECICCO and GIOVANNA DECICCO,

Respondents.

The petitioner, 16 WADE SQUARE LLC, commenced the special proceeding herein for temporary and limited access by the petitioner on to the adjacent property owned by respondents SALVATORE DECICCO and GIOVANNA DECICCO, and located at 588 East 182nd Street, Bronx, New York, pursuant to RPAPL § 881 and New York City Building Code §§ 3309.1, 3309.2, 3307.4.7, 3307.6.2, 3307.6.3, and 3309.9. The petitioner is performing certain demolition work at its property located at 586 East 182nd Street, Bronx , New York. In order to perform said work, the petitioner is required to install, maintain, and remove, as applicable, temporary overhead protection and weatherproof protection (collectively “the protective work”) The petitioner’s and respondents’ properties are so situated that the protective work cannot be performed unless the petitioner is permitted to enter upon respondents’ adjacent property.

RPAPL § 881 provides the Court the discretion to craft an appropriate remedy “upon such terms as justice requires.” *Tsoumpas 1105 Lexington Equities, LLC v 1109 Lexington Avenue, LLC*, 189 AD3d 524, 133 NYS3d 800 (1st Dept. 2020). “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.” *N. 7-8 Inv’rs, LLC v. Newgarden*, 43 Misc. 3d 623, 627, 982 N.Y.S.2d 704 (Sup. Ct. 2014).

In support of the petition, the petitioner submitted a true and correct copy of the Deed of the petitioner's property and a true and correct copy of the Deed of the respondents' property. The petitioner also submitted the affidavit of Peter Stroh, P.E., detailed site safety plans, and insurance naming the respondents as additional insureds.

The petitioner attempted to obtain a license directly from the respondents by contacting the respondents by letter, dated July 8, 2020, via Certified Mail at the registered address, in an attempt to enter into an agreement with the respondents to permit access in order to perform the protective work. Subsequently, the petitioner mailed a final notice letter, dated September 3, 2020, via Certified Mail to the respondents stating that if no response was received by September 17, 2020, the petitioner would be compelled to proceed with a court action. The Court initially granted the petition to the extent that a virtual hearing was scheduled for February 2, 2021. The respondents failed to appear at the hearing and have failed to oppose the Order to Show Cause, appear at this proceeding, answer the Verified Petition, and/or request additional time to do so.

The petitioner has set forth sufficient explanation as to why the work is necessary, the term of the work, and why the necessary repairs can't be completed in any other manner. This Court concludes that the petitioner is prepared to do all that is feasible to avoid injuries resulting from its entry upon respondents' property. *Mindel v Phoenix Owners Corp.*, 210 AD2d 167 (1st Dept. 1994). Based upon the foregoing, the petitioner has met its burden under RPAPL § 881 and the petition is granted upon the terms and conditions set forth below.

Accordingly, it is

ORDERED that the petitioner's Order to Show Cause is hereby granted to the extent that the petitioner is awarded a license pursuant to RPAPL§881 and New York City Building Code

§§ 3309.1, 3309.2, 3307.4.7, 3307.6.2, 3307.6.3, and 3309.9 to enter upon the respondents' property, 588 East 182nd Street, in order to install, maintain, and remove the protective work; and it is further

ORDERED that the petitioner and/or construction team, have the immediate right and are granted a license to enter upon and access the property located at 588 East 182nd Street, Bronx, New York, Block 3063, Lot 56, upon five (5) days written notice to the respondents at 588 East 182nd Street, Bronx, New York, in order to install, maintain, and remove, as applicable, certain safety protections only insofar as required by the New York City Building Code, including but not limited to temporary overhead protections, weatherproof protection/waterproofing, roof protection, monitoring and any other protections that are reasonably necessary in accordance with RPAPL § 881 and New York City Building Code §§ 3309.1, 3309.2, 3307.4.7, 3307.6.2, 3307.6.3, and 3309.9; and it is further

ORDERED that the petitioner shall maintain and provide, at its sole cost and expense, for the duration of the term of the protective work, the required Department of Buildings' insurance coverage for the protective work and name both of the respondents as additional insureds; and it is further

ORDERED that the petitioner will indemnify and hold the respondents harmless from and against any claims arising out of the protective work; and it is further

ORDERED that the petitioner accepts responsibility for all cost, expense, loss, and liability related to the protective work and any damage it may cause to the respondents' property; and it is further

ORDERED that the petitioner will repair and restore the respondents' property to its pre-existing condition if any damage is caused by the petitioner's protective work; and it is further

ORDERED that the petitioner will provide the respondents with the protection plans, including those approved by the Department of Buildings to the extent applicable; and it is further

ORDERED that the respondents are afforded the right to seek a hearing before a special referee pursuant to CPLR§4314 at the end of the license for actual damages caused by the petitioner; and it is further

ORDERED that the term of the license shall commence upon five (5) days' written notice to respondents at 588 East 182nd Street, Bronx, New York and access is granted through and including February 23, 2023, or as such time as necessary if inclement weather affects the schedule to install, maintain, and remove, as applicable, the temporary protective work provided that the petitioner applies to this Court for such further time and terms as may be deemed necessary; and it is further

ORDERED that the respondents are enjoined from interfering with or failing to grant the petitioner access to perform the protective work and the installation, maintenance and removal thereof in accordance with RPAPL§881 and New York City Building Code §§ 3309.1, 3309.2, 3307.4.7, 3307.6.2, 3307.6.3, and 3309.9; 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 the petitioner shall serve a copy of this Order with Notice of Entry upon all parties within thirty (30) days of entry of this Order.

This constitutes the decision and Order of the Court.

Dated: February 16, 2021



Hon. Llinét M. Rosado, J.S.C.

HON. LLINÉT M. ROSADO, J.S.C.