

1675 JV Assoc. LLC v Anderson
2022 NY Slip Op 30290(U)
January 5, 2022
Supreme Court, New York County
Docket Number: Index No. 656541/2021
Judge: Laurence L. Love
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LAURENCE LOVE PART 63M

Justice

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1675 JV ASSOCIATES LLC
Plaintiff,

- v -

WILLIE ANDERSON,
Defendant.

-----X

INDEX NO. 656541/2021
MOTION DATE Jan. 4, 2022
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 11, 14, 15, 16 were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

Upon the foregoing documents, it is

The following read on plaintiff's Emergency Order to Show Cause, originally returnable December 16th and adjourned per defendants request to January 4, 2022 at 11:00 am. A virtual Microsoft Teams appearance was held with a court reporter and both sides present.

Plaintiff seeks an Order, per CPLR 6301, granting access to remove a sidewalk shed and roof protections that were installed on the Defendant's property located at 1243 Fteley Avenue, Bronx, New York, and identified on the Tax Maps of the City of new York as Block 3780, Lot 50, pursuant to an Agreement between the parties dated February 2019 (see NYSCEF Doc. No. 18).

Plaintiff submits the affidavit of Joseph Stila, Project Manager for Monadnock Construction Inc., the general contractor retained by 1675 JV Associates LLC for the construction of an affordable housing complex located at 1240 Metcalf Avenue, Bronx, New York.

"I am fully familiar with the facts and circumstances. In order to safeguard the adjacent premises located at 1243 Fteley Avenue,

Bronx, New York ... during the Project, Chapter 33 of the New York City Building Code required JV to install certain temporary protections on the Adjacent Premises during construction. The sidewalk shed in the rear yard of the Adjacent Premises is roughly 400 square feet. The Department of Buildings had the opportunity to inspect the protections during the Project and our construction team never received a violation for failing to maintain the protections in accordance with the Code. Often, events outside of our construction team's control occur that jeopardize the integrity of temporary protections. While temporary protections serve as a means of protection during active construction projects, the protections should not remain in place longer than necessary. The portion of the Project ... was completed in or about March 2021. As per the Code and our site safety management team, the temporary protections installed on the Adjacent Premises can be and must be removed immediately. By allowing the protections to remain on the Adjacent Premises when no protective measures are required and no maintenance of those protections are allowed to occur, the protections may become dislodged or otherwise lose their integrity. Unstable protections may then fall on nearby pedestrians or nearby properties. It is imperative that the protections be removed from the Adjacent Premises" (see NYSCEF Doc. No. 5 Pars. 2, 3, 5, 8, 11 – 13, 15, 17, 18).

Defendant submits an alleged affidavit from Julio Torres, which is unsigned.

"I am familiar with the facts ... as a former owner of 1259 Fteley Ave, Bronx, NY 10472, a neighboring property. The Plaintiff's construction caused severe damages to my house including cracks in the walls, sidewalks and backyard" (see NYSCEF Doc. No. 26 Pars. 1, 3).

Defendant also submits an alleged affidavit from a J.G., whose full name is not given, does not appear to be signed nor notarized and only has a "Jason G" as a signature (see NYSCEF Doc. No. 27). Although such a document is of no value on its face as it is from an unknown person who fails to present any expert knowledge the substance of the document itself creates more questions than answer. If the document is to be believed he essential claims the shed should remain as a means of providing an emergency exit yet is silent as to any claimed structural concerns of the building or substantive need for the sidewalk shed.

Defendant has not submitted an affidavit or any expert or government documentation to support any of their contentions. A letter from Defendant seeks “Request For Immediate Resolution and Compensation” has been submitted. Said letter seeks \$207,950 in relation to “loud noise,” “rat infestation,” and other “countless egregious problems” (see NYSCEF Doc. No. 20).

Defendant makes representations in papers and oral argument that the building at 1243 Fteley Avenue, Bronx, New York is structurally unsound, with cracks in the foundation, is “leaning” and in danger of collapse. Defendant goes on to apparently claim that it is essential to keep the sidewalk shed to prevent a building collapse. On its face such an argument is perplexing since a stand alone sidewalk shed could not possibly prevent a building collapse. For the Court to accept on one had that the building has been in alleged danger of collapse since at least April of 2021 per the building owner yet be presented with no expert opinion and/or buildings department documentation of this claim speaks for itself. Out of an abundance of caution this court did pass the potential building collapse complaint on to the New York City Department of Buildings..

The purpose of a sidewalk shed is to provide public safety due to ongoing construction. Once said construction and danger concludes there is no other need for such a shed. The opposition presented by defendant appears to raise potential claims against plaintiff but none are related to the removal of the sidewalk shed in question.

After oral argument and a review of all documents submitted it is

ORDERED that Plaintiff 1675 JV Associated LLC is GRANTED access to remove a sidewalk shed and roof protections that were installed on the Defendant’s property located at

1243 Fteley Avenue, Bronx, New York, and identified on the Tax Maps of the City of new York as Block 3780, Lot 50.

1/5/2022
DATE


LAURENCE LOVE, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE