

**Board of Mgrs. of the Artisan Lofts Condominium v  
Board of Mgrs. of the 137 Reade St. Condominium**

2022 NY Slip Op 31118(U)

April 7, 2022

Supreme Court, New York County

Docket Number: Index No. 150720/2022

Judge: Laurence Love

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This opinion is uncorrected and not selected for official publication.

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

<b>PRESENT:</b>	<u>HON. LAURENCE LOVE</u>	<b>PART</b>	<b>63M</b>
	<i>Justice</i>		
-----X		<b>INDEX NO.</b>	<u>150720/2022</u>
THE BOARD OF MANAGERS OF THE ARTISAN LOFTS CONDOMINIUM,		<b>MOTION DATE</b>	<u>02/25/2022</u>
Petitioner,		<b>MOTION SEQ. NO.</b>	<u>001</u>

- v -

THE BOARD OF MANAGERS OF THE 137 READE  
STREET CONDOMINIUM, BYRON EUGENE LEWIS AS  
TRUSTEE OF THE BYRON EUGENE LEWIS REVOCABLE  
LIVING TRUST DATED 10/6/2004

**DECISION + ORDER ON  
MOTION**

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37

were read on this motion to/for JUDGMENT - DECLARATORY.

Upon the foregoing documents, the instant petition is decided as follows:

Petitioner, the managing entity of a condominium located at 157 Chambers Street, New York, New York, commenced the instant Petition by filing same on January 26, 2022 and simultaneously moved by Order to Show Cause seeking an Order, granting Petitioner a temporary license to access the Adjacent Premises located at 137-139 Reade Street, 141 Reade Street, and 143 Reade Street, New York, New York, also known as Block 140, Lot 7503, in order to: (i) conduct a preconstruction survey of the Adjacent Premises; (ii) install, maintain and remove temporary protections over the roofs, skylights, and mechanical equipment at the Adjacent Premises (collectively, the "Roof Protection"); (iii) access the roof terrace of Unit PHC (owned by the Byron Eugene Lewis Revocable Trust) and common stairway at the Adjacent Premises to install, maintain and remove the Roof Protection; and (iv) access through the Basement to install (where Unit 1C is owned by the Byron Eugene Lewis Revocable Trust), maintain and remove roof

protection for the rear yard for the Adjacent Premises and a temporary pipe scaffold (the “Temporary Scaffold”) to be installed in the east side of the rear yard of the Adjacent Premises; and (v) access the airspace above the Adjacent Premises in order to install, maintain, utilize and remove suspended scaffolding over the Adjacent Premises to perform the required remediation work and inspections of the façade of the Project Premises (the “Scaffold Access”) (the Scaffold Access together with the Roof Protection are hereinafter the “Adjacent Premises Access”) for a period of approximately eight (8) months. This Court signed the instant Order to Show Cause on February 2, 2022, setting a return date of February 14, 2022. Respondents submitted their opposition on February 10, 2022. At oral argument on February 25, 2022, counsel for Petitioner and 137 Reade Street confirmed that there is an agreement in place between said entities subject to Mr. Lewis’ objections. As such, the sole issue remaining is access to the roof terrace of Unit PHC by the common stairway at the Adjacent Premises to install, maintain and remove the Roof Protection; and access through the Basement to install, maintain and remove roof protection for the rear yard.

Pursuant to RPAPL § 881:

When an owner or lessee seeks to make improvements or repairs to real property so situated that such improvements or repairs cannot be made by the owner or lessee without entering the premises of an adjoining owner or his lessee, and permission so to enter has been refused, the owner or lessee seeking to make such improvements or repairs may commence a special proceeding for a license so to enter pursuant to article four of the civil practice law and rules. The petition and affidavits, if any, shall state the facts making such entry necessary and the date or dates on which entry is sought. Such license shall be granted by the court in an appropriate case upon such terms as justice requires. The licensee shall be liable to the adjoining owner or his lessee for actual damages occurring as a result of the entry.

In determining the issue of whether to grant petitioners a license pursuant to RPAPL 881, the court must apply a “standard of reasonableness.” *Bd. of Managers of Artisan Lofts Condo. v. Moskowitz*, 114 A.D.3d 491, 492 (1st Dept. 2014). A license under RPAPL § 881 should be granted “when necessary, under reasonable conditions, and where the inconvenience to the adjacent property owner is relatively slight compared to the hardship of his neighbor if the license is refused.” *Id.* See also *New York Pub. Library v. Condo. Bd. of the Fifth Ave. Tower*, 170 A.D.3d 544, 545, 95 N.Y.S.3d 200, 201 (1st Dept. 2019). In determining whether to grant a license pursuant to RPAPL § 881, the factors a court should consider are: “the nature and extent of the requested access, the duration of the access, the protections to the adjoining property that are needed, the lack of an alternative means to perform the work, the public interest in the completion of the project, and the measures in place to ensure the financial compensation of the adjoining owner for any damage and inconvenience resulting from the intrusion.” *Queens College Special Projects Fund, Inc v Newman*, 154 A.D.3d 943, 944 (2d Dep’t 2017)

Pursuant to the New York City Building Code (the “Code”) Sections 3309.10 and 3309.13, Petitioner is required to install, maintain and subsequently remove temporary protection over the roofs, skylights, bulkhead, vents and mechanical equipment of the Adjacent Premises. Without the demanded license, the façade repairs mandated by Local Law 11 cannot be performed. In a letter dated September 29, 2021, Petitioner contacted the Respondent Board to request access to the Adjacent Premises. A subsequent letter was mailed to the Board at a different address on October 5, 2021. On November 4, 2021, Petitioner contacted Mr. Lewis detailing the access needed. On November 11, 2021, the parties met, discussing protections for Respondents’ premises. By email dated November 24, 2021, Petitioner sent the Board a proposed draft license agreement. Thereafter, Petitioner contacted respondents by e-mail on December 3, 2021 and December 8,

2021. On December 16, 2021, Mrs. Lewis emailed Petitioner's representative a series of questions relating to the Adjacent Premises Access. On December 17, 2021, Petitioner's representative relayed Petitioner's detailed responses to Mrs. Lewis's questions. By email and letter dated December 22, 2021, Petitioner's counsel advised the Board that Petitioner would need to pursue litigation given the lack of responsiveness and delay by the Board. On January 6, 2022, Respondent Lewis' counsel e-mailed respondent denying all access.

As described in the affidavit of Patrick M. Orrico, R.A., Petitioner's contractor's workers require access the roof deck of Unit PHC and access through the Basement to install, maintain and remove roof protection and a temporary pipe scaffold (the "Temporary Scaffold") to be installed in the east side of the rear yard of the Adjacent Premises so that Petitioner's contractor's workers can access the second-floor terraces to the east of the yard of the Adjacent Premises in order to place Temporary Protections on in order to install, maintain and remove the Temporary Protections. Petitioner's contractor will need approximately fifteen (15) working days to complete the installation of the Temporary Protections and Temporary Scaffold in the rear yard and on the second story terraces of the Adjacent Premises and fifteen (15) working days to remove the Temporary Protections and Temporary Scaffold.

Respondent, the Byron Eugene Lewis Revocable Trust opposes arguing, (i) Petitioner has not satisfied a condition precedent to seeking a license under RPAPL § 881, in that Mr. Lewis did not definitively refuse Petitioner access; (ii) Petitioner has not considered alternate approaches to perform its façade repairs and; (iii) Petitioner has failed to address structural deficiencies related to the installation of the protections to perform its façade repair. Said arguments are supported by the Affidavit of Nathaniel B. Smith, P.E. The usefulness of said affidavit is debatable as it was

first provided in opposition to the instant action and not during the discussions of alternatives which took place prior to the filing of this Petition.

The Court notes that Respondent Byron Eugene Lewis and his wife, Sylvia Lewis, are elderly individuals, who have experienced recent health problems and that the Basement Unit in question is used by Respondent as an office, to work on a Project of national importance. Furthermore, the Smithsonian National Museum of American History have made clear their intention to acquire Mr. Lewis's complete archives and collection from his days as one of the most prominent Black media executives in America. Unfortunately, as addressed in filings and reiterated during oral argument there is no specific timeframe currently available as to when the Smithsonian intends to take possession of these valuable materials. The Court further notes that in Mr. Lewis had previously granted Petitioner access to his Units, which he alleges caused him numerous problems. Although the documentation of this allegation and the fact that same was not noted until the instant matter cannot be ignored by the Court.

Based on the above specific facts the Court is cognoscente that the instant matter is not a garden variety RPAPL 881 action but requires special care to safeguard Mr. Lewis' important personal effects.

Contrary to Respondent's arguments, Access to both Units clearly has been refused up to the filing of the instant action based on a fair reading of the parties' communications. Any ongoing negotiations concerned the feasibility of alternative access points to the areas to be protected. Respondent suggests that Mr. Lewis's yard "is easily accessible to [Petitioner] by using a ladder from the connector roof on the first floor" and that Petitioner "can easily access [Mr. Lewis's] roof from many other roofs that they are connected to as part of the 137 Reade St. Condominium." The Court has examined the proposed alternative access points and finds that accessing the roofs in

such a way would create an unnecessary increased danger to Petitioner's workers and significantly increase the cost and effort involved. Further, the Court finds that Petitioner has adequately addressed any potential structural deficiencies. Clearly, the access through his basement unit and roof access are necessary.

ORDERED that Petitioner is granted access to the Adjacent Premises, pursuant to RPAPL § 881, in order to: conduct a preconstruction survey of the Adjacent Premises and install, maintain and remove temporary protections over the roofs, skylights, and mechanical equipment at the Adjacent Premises; and it is further

ORDERED that Petitioner is granted access the roof of Unit PHC via the common stairway at the Adjacent Premises to install, maintain and remove the Roof Protection for a maximum of fifteen days at the start and end of the Project; and it is further

ORDERED that Petitioner is granted access through the Basement to install, maintain and remove roof protection for the rear yard for the Adjacent Premises and a temporary pipe scaffold to be installed in the east side of the rear yard of the Adjacent Premises for a maximum of fifteen days at the start of the Project to install said protection and fifteen days at the end of the Project to remove said protection; and it is further

ORDERED that Petitioner is granted access the airspace above the Adjacent Premises in order to install, maintain, utilize and remove suspended scaffolding over the Adjacent Premises to perform the required remediation work and inspections of the façade of the Project Premises; and it is further

ORDERED that the Byron Eugene Lewis Revocable Living Trust shall be named as an additional insured on Petitioner's insurance policies; and it is further

ORDERED that Petitioner shall indemnify and hold harmless the Byron Eugene Lewis Revocable Living Trust against any and all claims or liability that may not be covered by said insurance policies; and it is further

ORDERED that as a condition precedent to the granting of the license, Petitioner shall pay contemporaneous license fees to the Byron Eugene Lewis Revocable Living Trust in the amount of \$3,500 during the total 30-day working days needed to complete the installation and removal of the scaffolding, plus \$900 per day for every day thereafter, and shall further reimburse the Byron Eugene Lewis Revocable Living Trust for any and all professional fees incurred by the Byron Eugene Lewis Revocable Living Trust in connection with Petitioner’s license; and it is further

ORDERED that Petitioner shall be responsible for all costs relating to installing, maintaining, and removing the Roof Protection, Temporary Scaffolding and Scaffold Access; and it is further

ORDERED that Petitioner shall not interfere with any of the items stored in Unit 1C; and it is further

ORDERED that Petitioner shall implement appropriate measures to prevent the airborne spread of silica or other particulate contamination.

4/7/2022  
DATE

  
LAURENCE LOVE, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE