

**Redeemer Presbyt. Church E. Side v 160 E. 91  
Owners Corp.**

2022 NY Slip Op 34281(U)

December 15, 2022

Supreme Court, New York County

Docket Number: Index No. 158718/2022

Judge: Laurence L. 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**

**PRESENT: HON. LAURENCE L. LOVE PART 63M**

*Justice*

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REDEEMER PRESBYTERIAN CHURCH EAST SIDE

Petitioner,

- v -

160 EAST 91 OWNERS CORP.,

Respondent.

-----X

INDEX NO. 158718/2022

MOTION DATE 11/21/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 14, 15, 32, 33, 34, 35, 36, 37, 38

were read on this motion to/for MISCELLANEOUS.

Upon the foregoing documents, the Petition is resolved as follows:

Petitioner proceeds by Order to Show Cause seeking an Order “granting Petitioner a limited license, pursuant to RPAPL 881, to enter the property known as 160 East 91st Street, New York, New York, ... to (a) install, maintain, and remove temporary overhead protection in the form of a sidewalk bridge along the wall of the front façade of the adjacent property as required by [Department of Buildings] for a period of sixteen (16) months commencing on the date that this Court issues its license ..., (b) to install, maintain and remove three (3) monitors on the adjacent property in the locations previously agreed to by the parties as required by [Department of Buildings] for a period of eight (8) months commencing on the date that this Court issues its license, (c) to install, maintain and remove temporary overhead protection located in certain portions of the rear yard of the adjacent property that is located in certain portions of the rear yard of the adjacent property that is located within 20 feet of Petitioner’s premises, as required by [Department of Buildings] for over a period of sixteen (16) months commencing on the date that this Court issues its license ..., (d) to install, maintain and remove temporary lay down roof

protections on certain portions of the roof of the adjacent property located within 20 feet of the Petitioner's premises, as required by [Department of Buildings], for a period of sixteen (16) months commencing on the date that this Court issues its license ..., (e) install, maintain and remove temporary window and fire escape protection over windows and a fire escape, located on the lot line facing façade as required by [Department of Buildings] for a period of sixteen (16) months commencing on the date that this Court issues its license ... and (f) install, maintain, and remove temporary horizontal netting located in the airspace above the adjacent property as required by [Department of Buildings] for a period of sixteen (16) months commencing on the date that this Court issues its license" (see NYSCEF Doc. No. 14). Respondent, 160 East 91 Owners Corp. cross-moves seeking to stay the proceeding pursuant to CPLR 2201.

This Court held oral argument on the Petition via Microsoft Teams on November 21, 2022, where all sides were present.

Pursuant to RPAPL § 881, "[w]hen 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."

Petitioner submits the affidavit of Khalid Algende, Professional Engineer licensed in the State of New York, which states: "The adjacent property protection set forth in the site safety plan

is required by the Building Code and [Department of Buildings] to safely perform the project. In order to reasonably protect the adjacent property, its occupants, guests and the general public during the project, Petitioner needs access to enter the adjacent property to install, maintain and remove the adjacent property protection. Access to the adjacent property is required because, pursuant to the building code, as well as sound engineering practices, the adjacent property protection cannot otherwise be performed without such access” (see NYSCEF Doc. No. 3 Par. 6).

Petitioner further submits the “NYC Buildings – Site Safety Cover Sheet” (see NYSCEF Doc. No. 5), the property deed (see NYSCEF Doc. No. 6), and a proposed license agreement between licensor – 160 East 91 Owners Corp and licensee – Redeemer Presbyterian Church East Side (see NYSCEF Doc. No. 8).

At the same time, Respondent provides the affidavit of Michael J. Macaluso, Registered Architect in the State of New York, which states: “Failure to include all adjacent structures and the impacts to their light and air in the plans submitted to [Department of Buildings] may subject the plans to audit and perhaps rejection after the fact, as having been approved in error. The plans submitted by the Church to the [Department of Buildings] fails to depict the Co – op Building and the impact that the Church Tower will have on the Co – op Building. Therefore, the plans should have been rejected because, in approving the plans for the Church Tower, the Church failed to disclose to the [Department of Buildings] the detrimental effect to the affected apartments” (see NYSCEF Doc. No. 17 Pars. 24 – 25).

Diane Forgione, Secretary of Respondent – 160 East 91 Owners Corp., further submits an affidavit arguing that the effect of the building of the church “will have the effect of rendering certain apartments in the building owned by the Co – op inhabitable (sic – uninhabitable), without access to light and air, illegal for occupancy and worthless” (see NYSCEF Doc. No. 18 Par. 2).

“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” (see *Bd. of Mgrs. of the Artisan Lofts Condominium v. Bd. of Mgrs. of the 137 Reade St. Condominium*, 2022 NY Slip Op 31118[U], \*3 [Sup. Ct., NY County 2022 Love, J.]).

Petitioner’s memorandum of law states, “[Department of Buildings] has approved Petitioner’s project. [Department of Buildings] approval of Petitioner’s project must be afforded deference by this Court. See *Matter of Nazareth Home of the Franciscan Sisters v. Novello*, 7 NY3d 538, 544 [2006]) (stating that when interpreting and implementing statutes, an agency is ‘entitled to a high degree of judicial deference, especially when acting in the area of its particular expertise’” (see NYSCEF Doc. No. 32 P. 15).

The affirmation of Brian Stanton, Chief Financial Officer for Petitioner affirms, “Respondent’s sole objection to the grant of a limited license to install and maintain the adjacent property protections (which are temporary and intended only to protect Respondent and its occupants during construction of the Project) is the unrelated ground that the completed project will reduce the light available to the light well ... from Petitioner’s premises. Petitioner’s project is an as-of-right development. To date, all plans for the project and the adjacent property protection have been submitted to, and approved by, the [Department of Buildings]” (see NYSCEF Doc. No. 33 Pars. 5 – 6).

In this case the Court has been presented with what can be deemed a standard RPAPL 881 application, one in which the respondent went as far as to have previously entered into a demolition

license agreement on April 18, 2022 (NYSCEF document 7) without issue, only to now raise serious substantive issues related to the entire scope of the proposed project in a cross-motion post demolition.

It appears on its face that the Respondents have been aware of the overall project for some time, knew what plans were filed with and approved by the NYC Department of buildings and only now as Petitioner is preparing to proceed with the building protections has raised, for the first time, serious concerns over the potential impact on Respondent's property. If this court were to grant the cross-motion at this juncture, before the Department of Buildings has even had an opportunity to address the matter, the Court would be delaying the church project for unknown duration relying upon little if any substantive material.

Based on the above the Court cannot in good conscience consider Respondent's cross-motion at this time and is only proceeding on the 881 application. Respondents remain free to pursue other remedies through government agencies and or additional litigation.

Petitioner has provided the relevant documents and affidavits that show the necessity for a license to enter adjacent property to construct safety barricades and structures. Respondent's main argument that further progression of construction will result in a blockade of light and air, is not the issue at this time.

It is now

ORDERED that Petitioner – Redeemer Presbyterian Church East Side is granted a license, pursuant to RPAPL 881, to enter the property known as 160 East 91st Street, New York, New York, in order to (a) install, maintain, and remove temporary overhead protection in the form of a sidewalk bridge along the wall of the front façade of the adjacent property as required by [Department of Buildings] for a period of sixteen (16) months commencing on the date that this

Court issues its license, (b) to install, maintain and remove three (3) monitors on the adjacent property in the locations previously agreed to by the parties as required by [Department of Buildings] for a period of eight (8) months commencing on the date that this Court issues its license, (c) to install, maintain and remove temporary overhead protection located in certain portions of the rear yard of the adjacent property that is located in certain portions of the rear yard of the adjacent property that is located within 20 feet of Petitioner’s premises, as required by [Department of Buildings] for over a period of sixteen (16) months commencing on the date that this Court issues its license, (d) to install, maintain and remove temporary lay down roof protections on certain portions of the roof of the adjacent property located within 20 feet of the Petitioner’s premises, as required by [Department of Buildings], for a period of sixteen (16) months commencing on the date that this Court issues it license, (e) install, maintain and remove temporary window and fire escape protection over windows and a fire escape, located on the lot line facing façade as required by [Department of Buildings] for a period of sixteen (16) months commencing on the date that this Court issues its license, and (f) install, maintain, and remove temporary horizontal netting located in the airspace above the adjacent property as required by [Department of Buildings] for a period of sixteen (16) months commencing on the date that this Court issues its license. Respondents cross motion is Denied.

12/15/2022  
DATE

  
LAURENCE L. LOVE, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<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