

139-94 Apts. Corp. v 1460 Lexington LLC

2023 NY Slip Op 30380(U)

February 3, 2023

Supreme Court, New York County

Docket Number: Index No. 159665/2022

Judge: Nancy M. Bannon

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. NANCY M. BANNON PART 42

Justice

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139-94 APARTMENTS CORP.

Petitioner,

- v -

1460 LEXINGTON LLC,

Respondent.

-----X

INDEX NO. 159665/2022

MOTION DATE 12/01/2023

MOTION SEQ. NO. 001

DECISION, ORDER + JUDGMENT ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 17, 18 were read on this motion to/for MISC. SPECIAL PROCEEDINGS.

In this proceeding pursuant to RPAPL § 881, the petitioner, which owns the premises at 139 East 94th Street in Manhattan, seeks access to the adjacent property at 1460 Lexington Avenue in Manhattan, which is owned by the respondent, in connection with certain facade repairs to a building located at the premises owned by the petitioner. That work is estimated to continue for eight months. No opposition is submitted. The petition is granted

In order to establish prima facie entitlement to a license to enter the premises of an adjoining owner pursuant to RPAPL § 881, the petitioner must show that issuance of a license is necessary and reasonable under the circumstances. See Matter of Board of Mgrs. of Artisan Lofts Condominium v Moskowitz, 114 AD3d 491 (1st Dept. 2014); Matter of Lincoln Spencer Apartments, Inc. v Zeckendorf-68th Street Assoc., 88 AD3d 606 (1st Dept. 2011). The petitioner must also specify "the date or dates on which entry is sought." RPAPL § 881. In deciding such an application, the court is required to balance the interests of the parties and may issue a license only "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." Matter of Board of Mgrs. of Artisan Lofts Condominium v Moskowitz, supra at 492, quoting Chase Manhattan Bank [Nat. Assn.] v Broadway Whitney Co., 57 Misc.2d 1091, 1095 (Sup Ct, Queens Co. 1968), affd 24 NY2d 927 (1969).

The proposed access to the respondent's property is limited both in scope and duration. The petitioner seeks access to the respondent's property for only eight months during construction work on the exterior of the building located on its property, beginning as of the date that the court grants the license. The petitioner seeks the license in order to implement certain protective measures required by law for the benefit of the respondent's property, including the

installation of a temporary sidewalk bridge and protective materials over certain roofs, balconies, and terraces of the respondent's building.

The proof submitted by the petitioner includes the affidavit of Dennis Mele, a registered architect and president of a licensed engineering firm retained by the petitioner to oversee its façade repairs, as well as the New York City Façade Inspection Safety Program (FISP) report that mandated the repairs the petitioner seeks to perform, building drawings and specifications, and property protection plans. These submissions establish that the work proposed on the respondent's property is designed to protect that property during the construction on the petitioner's property, the proposed protections are necessary and required by the New York City Building Code, the protections will extend over most areas of property on the north side of the petitioner's building, including parts of the respondent's building, and the methods proposed are the standard and safe methods for protecting the respondent's property. Furthermore, pursuant to the license attached hereto, prior to the installation of such protections, the petitioner is required to maintain, or cause its construction manager to maintain, general liability insurance with limits specified by the New York City Department of Buildings naming the respondent as an additional insured. According to Mele and the verified petition, without the requested access to the respondent's property, the construction work on the petitioner's property will be delayed or prohibited because the New York City Department of Buildings will not permit work to continue without the required protections to the respondent's property in place.

The petitioner has thus established that issuance of a license is necessary and reasonable under the circumstances and that the inconvenience to the respondent is slight in comparison to the hardship to the petitioner if the license is refused. See Matter of Board of Managers of Artisan Lofts Condominium v Moskowitz, supra; Matter of Lincoln Spencer Apartments, Inc. v Zeckendorf-68th Street Assoc., supra.

Accordingly, it is


ORDERED and ADJUDGED that the petition pursuant to RPAPL § 881 is granted, and the petitioner is granted a license for access to the respondent's property for the purpose of completing construction work on the property owned by the petitioner to the extent that it may have access to the premises known as 1460 Lexington Avenue, New York, New York, and designated as Block 1523, Lot 56, on the Tax Map of the Borough of Manhattan, City of New York, in accordance with the license attached hereto during the performance of façade repairs on a building located on the premises known as 139 East 94th Street, New York, New York, and designated as Block 1523, Lot 14, on the Tax Map of the Borough of Manhattan, City of New York, for a period commencing five (5) days after service of a copy of this order upon the respondent with notice of entry and continuing for eight (8) months; and it is further

ORDERED that the petitioner shall serve a copy of this order with notice of entry on the respondent within 10 days of entry of this order and judgment, and it is further,

ORDERED that the Clerk shall enter judgment accordingly.

This constitutes the Decision, Order, and Judgment of the court.

2/3/2023
DATE



NANCY M. BANNON, J.S.C.
HON. NANCY M. BANNON

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