

875 W. 181 Owners Corp. v Duncraggen Realty Corp.
2023 NY Slip Op 30401(U)
February 3, 2023
Supreme Court, New York County
Docket Number: Index No. 654104/2022
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

-----X

875 W. 181 OWNERS CORP.,
Petitioner,

- v -

THE DUNCRAGGEN REALTY CORP.,
Respondent.

INDEX NO. 654104/2022
MOTION DATE 01/04/2023
MOTION SEQ. NO. 001

DECISION, ORDER +
JUDGMENT ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 15, 18
were read on this motion to/for MISCELLANEOUS

In this proceeding pursuant to RPAPL § 881, the petitioner, which owns the premises at
875 West 181st Street in Manhattan, seeks access to the adjacent property at 867 West 181st
Street in Manhattan, which is owned by the respondent, in connection with certain façade
repairs to a building located at the premises owned by the petitioner. That work is estimated to
continue for 60 to 90 workdays, or approximately five 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), aff'd 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 five 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 perform a pre-

construction survey and to install and maintain a temporary sidewalk shed/overhead protection on the respondent's westside yard.

The proof submitted by the petitioner includes the affidavit of Daniel Siegel, a licensed engineer, and the affidavit of Sano Navarro, the petitioner's managing agent, as well as building plans and drawings approved by the New York City Department of Buildings. 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 the respondent's westside yard, 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 procure and maintain general liability insurance with limits specified by the New York City Department of Buildings naming the respondent as an additional insured. According to Siegel, Navarro, 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 867 West 181st Street, New York, New York, and designated as Block 2179, Lot 80, 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 875 West 181st Street, New York, New York, and designated as Block 2179, Lot 1, 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 five (5) months; and it is further

ORDERED that the petitioner shall serve a copy of this order with notice of entry on the respondent within ten (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.



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

2/3/2023

 DATE

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