

**N&E Bulcao Family Trust Dated December 13, 2011 v
343 Plandome Rd., Inc.**

2024 NY Slip Op 31707(U)

May 16, 2024

Supreme Court, New York County

Docket Number: Index No. 153424/2024

Judge: Arthur F. Engoron

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARTHUR F. ENGORON PART 37

Justice

INDEX NO. 153424/2024

THE N&E BULCAO FAMILY TRUST DATED DECEMBER 13, 2011 BY NICHOLAS S. BULCAO AND ERIN M. BULCAO AS TRUSTEES, THE KORNFELD DUPUIS FAMILY TRUST DATED NOVEMBER 17, 2017 BY GARY SCOTT KORNFELD AND THERESA MARIE DUPUIS AS TRUSTEES,

MOTION DATE 04/11/2024

MOTION SEQ. NO. 001

Petitioner,

DECISION + ORDER ON MOTION

- v -

343 PLANDOME ROAD, INC.,

Respondent.

The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 15, 16, 20, 21, 22, 23

were read on this motion for RPAPL 881

Upon the foregoing papers, and after oral argument on May 14, 2024, the petition is hereby granted to the extent that the Court hereby issues the following license:

The N&E Bulcao Family Trust Dated December 13, 2011 by Nicholas S. Bulcao and Erin M. Bulcao as trustees (the "N & E Bulcao Family Trust") and The Kornfeld Dupuis Family Trust Dated November 17, 2017 by Gary Scott Kornfeld and Theresa Marie Dupuis as trustees (the "Kornfeld Dupuis Family Trust," together with N & E Bulcao Family Trust are collectively referred to as "Petitioners" or "Project Owner"), the developer of the premises located at 43 Barrow Street, New York, New York and designated in the Tax Map of the City of New York as Block 587, Lots 53 (the "Project Premises"), which is adjacent to the premises located at 70 7th Avenue South, New York, New York and designated in the Tax Map of the City of New York as Block 587, Lot 61 (the "Adjacent Premises"). The Adjacent Premises is owned by respondent, 343 Plandome Road, Inc. ("Adjacent Owner").

Project Owner intends to perform demolition, excavation and foundation work and to renovate the building on the Project Premises (the "Project"). In connection with the Project, Project Owner intends to: (a) conduct a pre-construction survey of the Adjacent Premises (the "Preconstruction Survey") (b) install, maintain and remove vibration monitors, optical survey targets and crack gauges (collectively, the "Monitoring Equipment") in and on the building located on the Adjacent Premises; and (c) install, maintain and remove temporary protections on the main roof and first floor roof of the Adjacent Premises including any mechanical equipment

located thereon (the “Temporary Protections, together with the Monitoring Equipment and the Preconstruction Survey are collectively referred to as the “Adjacent Premises Access”).

Project Owner is hereby granted a license to: (a) conduct the Preconstruction Survey; (b) install, maintain and remove the Temporary Protections on the main roof and first floor roof of the Adjacent Premises including any mechanical equipment located thereon as identified in Drawing Nos. Drawing Nos. SK-001; SK-002; SK-003; SK-004; SK-005; and SK-006 (the “Adjoining Property Protection Plan”), dated March 28, 2024 and prepared by Site Safety LLC (NYSCEF Doc. No. 8); (c) install, maintain and remove vibration monitors, optical survey targets and crack gauges in and on the building located on the Adjacent Premises in accordance with the monitoring plan dated December 3, 2023 and prepared by Bronzino Engineering P.C. (NYSCEF Doc No. 10).

This license hereby covers and extends to the Project Owner and its successors, contractors, subcontractors, construction managers, architect and engineering consultants, employees and agents (the “Construction Team”) who may access the Adjacent Premises as may be reasonably required in order to conduct the Preconstruction Survey and install, maintain, and remove the Temporary Protections and Monitoring Equipment in accordance with the terms of this license and as required by all laws, codes, rules, regulations and requirements of the New York City Department of Buildings (“DOB”).

Project Owner shall only access the interior of the Adjacent Premises in connection with the following: (i) to inspect and/or repair any damages directly caused by the Project; (ii) for access to the rear yard and roof in connection with the Adjacent Premises Access; (iii) to install, maintain and remove the Monitoring Equipment; and/or (iv) conduct the Preconstruction Survey.

Project Owner shall access the Adjacent Premises to perform the Adjacent Premises Access between the hours of 8:30 a.m. to 5:00 p.m., Monday through Friday, on business days, exclusive of all State and Federal holidays, and no other days, unless agreed to by Adjacent Owner. Adjacent Owner agrees to provide access to the Adjacent Premises for the Adjacent Premises Access upon three (3) business days’ notice from Project Owner, pursuant to the notice requirements below, unless otherwise agreed to by Adjacent Owner. In the event of an emergency, Project Owner may enter the Adjacent Premises and provide immediate notice after such emergency.

The Adjacent Owner shall cooperate to effectuate the terms of this license, including, without limitation, providing all necessary executed applications, consents, sign-offs and other documents required by any governmental authority having jurisdiction over the Project, including the DOB within seven (7) days of receipt of same from Project Owner.

Commencing upon the installation of the Temporary Protections, Project Owner shall pay Adjacent Owner a monthly license fee of Six Hundred and Fifty Dollars (\$650.00) per month (the “License Fee”) until the Temporary Protections are removed from the Adjacent Premises. Should the Temporary Protections remain installed for a period of more than eighteen (18) months, Project Owner shall pay Adjacent Owner an increased monthly license fee of Eight

Hundred Dollars (\$800.00) per month (the “Increased License Fee”) until the Temporary Protections are removed from the Adjacent Premises.

The License is effective as of this date and shall continue for eighteen (18) months from the installation of the Temporary Protections (the “Term”). To the extent Project Owner requires access for more than eighteen (18) months, the Term shall be extended and Project Owner shall make the Increased License Fee as set forth above. Project Owner will cause the removal of the Temporary Protections from the Adjacent Premises as soon as permitted by the DOB.

Upon entry of this Order and presentation of Adjacent Owner’s invoices for its attorney’s fees, Project Owner shall reimburse Adjacent Owner for its reasonable attorneys’ fees in the amount of Two Thousand Five Hundred Dollars (\$2,500.00) within thirty (30) days.

After entry of this Order, upon presentation of invoices for its engineering fees, Project Owner shall reimburse Adjacent Owner for its reasonable engineering fees incurred in connection with the Adjacent Premises Access up to the amount of Three Thousand Five Hundred Dollars (\$3,500.00) within thirty (30) days of Project Owner’s receipt of such invoices.

Project Owner shall indemnify, defend, and hold harmless Adjacent Owner (the “Indemnitees”) from and against any and all causes of action, damages, claims, demands, judgments, liens, litigation, liability, penalties, orders, losses, costs, or expenses, including reasonable attorneys’ fees, to the extent attributable to property damage, personal injury or wrongful death, which may at any time be asserted against or incurred by the Indemnitees or any one or more of them arising from the negligent acts of the Project Owner in connection with the Adjacent Premises Access except to the extent caused by the Adjacent Owner’s negligence.

Project Owner shall maintain or cause its construction manager or general contractor to maintain, during the Project a commercial general liability insurance policy with limits as required by the DOB. Project Owner shall ensure that Adjacent Owner is named as an additional insured on such insurance policy and Project Owner shall provide Adjacent Owner with a certificate of insurance evidencing compliance with this Paragraph.

All notices, demands or requests made pursuant to, under, or by virtue of the license granted hereunder, must be in writing and sent to the party to which the notice is being made (i) by nationally recognized overnight courier, or delivered by hand with receipt acknowledged in writing, or (ii) by e-mail as follows:

If to Project Owner

The N&E Bulcao Family Trust DTD 12/13/24
and Kornfeld Dupuis Family Trust DTD 11/17/17
c/o SUK Design Group LLC
232 Madison Avenue, Suite 500,
New York, NY 10016
Attn: John Gordon, AIA
Nick Bulcao
Michael Falgione
Email: jgordon@sukdesign.com
nick@airspace.com
michael.falgione@airspace.com

with a copy to

Quinn McCabe LLP
9 East 40th Street, 14th Floor
New York, New York 10016
Attn: Chris McCabe, Esq.
Eric Thorsen, Esq.
Email: cmccabe@qmlegal.com
ethorsen@qmlegla.com
Telephone: (212) 447-5500

If to Adjacent Owner:

343 Plandome Road, Inc.
70 7th Avenue South
New York, NY 10014

with a copy to

Kaplan & Chun, P.C.
610 East 5th Street Store,
New York, NY 10009
Attn: Howard Chun, Esq.
Email: howardchun@kaplanchun.com

All notices (i) shall be deemed given upon the date of receipt of such notice or refusal to accept delivery of such notice and (ii) may be given either by a party or by such party's attorney set forth above.

This Court agrees to continue jurisdiction over this case and may be reached at 646-386-3222 and/or if any problems arise.

MAY 16 2024

HON. ARTHUR F. ENGORON



5/16/2024

DATE

ARTHUR F. ENGORON, 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