

Cameron Sky, LLC v Board of Mgrs. of the New Yorker Condominium

2025 NY Slip Op 33435(U)

September 8, 2025

Supreme Court, New York County

Docket Number: Index No. 156696/2025

Judge: Alexander Tisch

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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. ALEXANDER TISCH PART 18

Justice

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INDEX NO. 156696/2025

CAMERON SKY, LLC,

MOTION DATE N/A

Petitioner,

MOTION SEQ. NO. 001

- v -

THE BOARD OF MANAGERS OF THE NEW YORKER
CONDOMINIUM,

DECISION & ORDER

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 1-30, 45-68
were read on this motion to/for JUDGMENT - DECLARATORY.

Upon the foregoing documents, petitioner seeks an order pursuant to RPAPL § 881 granting respondent condominium a retroactive limited license to erect and maintain a sidewalk shed/bridge in front of petitioner’s leased store for a limited time under terms inclusive of a \$2,800 monthly licensing fee.

RPAPL § 881 provides “[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 lessee, and permission 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 whether or not to grant a license pursuant to Real Property Actions and Proceedings Law § 881, courts generally apply a standard of reasonableness” (Matter of Board of Mgrs. of Artisan Lofts Condominium v Moskowitz, 114 AD3d 491, 492 [1st Dept 2014]).

“Courts are required to balance the interests of the parties and should issue a license ‘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.*, quoting Chase Manhattan Bank (Natl. Assn.) v Broadway, Whitney Co., 57 Misc 2d 1091, 1095 [Sup Ct, Queens County 1968], affd sub nom. Chase Manhattan Bank v Broadway, Whitney Co., 24 NY2d 927 [1969]). “Prior to the granting petitioner's application, Supreme Court must consider and resolve the issue as to whether there are less intrusive and equally effective methods of roof protection” (Matter of 400 E57 Fee Owner LLC v 405 E. 56th St. LLC, 193 AD3d 626, 626-27 [1st Dept 2021]).

“Although the determination of whether to award a license fee is discretionary, in that RPAPL 881 provides that a ‘license shall be granted by the court in an appropriate case *upon such terms as justice requires*’ (emphasis added), the grant of licenses pursuant to RPAPL 881 often warrants the award of contemporaneous license fees” (DDG Warren LLC v Assouline Ritz 1, LLC, 138 AD3d 539, 539-40 [1st Dept 2016]). “After all, ‘[t]he respondent to an 881 petition has not sought out the intrusion and does not derive any benefit from it . . . Equity requires that the owner compelled to grant access should not have to bear any costs resulting from the access’” (*id.* at 540, quoting Matter of North 7-8 Invs., LLC v Newgarden, 43 Misc 3d 623, 628 [Sup Ct, Kings County 2014]). Additionally, courts have conditioned licenses or otherwise awarded property owners reimbursement of certain professional fees (see, e.g., Matter of Van Dorn Holdings, LLC v 152 W. 58th Owners Corp., 149 AD3d 518, 518-19 [1st Dept 2017]),

quoting North 7-8 Invs., LLC, 43 Misc 3d at 630 [“A property owner compelled to grant a license should not be put in a position of either having to incur the costs of a design professional to ensure petitioner’s work will not endanger his property, or having to grant access without being able to conduct a meaningful review of petitioner’s plans”]).

Petitioner leases its store from 160 East 84th Street Associates, LLC (NYSEF Doc. No. 2). Respondent is the neighboring building that erected the scaffold that extends in front of 160 East 84th Street. Petitioner asserts that the erected scaffold, required under Local Law 11 to conduct façade repairs, has had a negative impact on its retail business because of loss of visibility and attractiveness.¹ Petitioner attempts to establish this impact by including “sales numbers” from 2022 to 2024 and photographs showing the obstruction (NYSCEF Doc. Nos. 4 and 5). Respondent, after erecting the scaffold, negotiated a licensing agreement with 160 East 84th Street Associates, LLC, which resulted in payments to four residential tenants in that building and to the lessor for intrusions on the roof of the building (NYSCEF Doc. No. 19).² However, no such licensing agreement was negotiated by respondent with petitioner despite numerous documented attempts by petitioner to engage respondent on this matter (NYSCEF Doc. No. 16). The scaffold has been in place since approximately February 2024 and is expected to remain until approximately February 2026.

Respondent cross-moves for dismissal pursuant to CPLR 409(b) and CPLR 3211(a)(1), (3), (7) and (8). Respondent primarily argues that the scaffold is only on a public sidewalk and does not abut the petitioner’s storefront nor impedes its entrance. Moreover, respondent contends RPAPL § 881 only applies when repairs or improvements cannot be effectuated

¹ Administrative Code of City of NY §§ 3307.6.2 and 3307.6.3 govern the requirements of sidewalk sheds.

² Petitioner’s lease with 160 East 84th precludes an abatement or diminution of rent or any other relief from the landlord for scaffolding, sidewalk bridging or other structure (NYSCEF Doc No. 2).

without entering the premises of an adjoining owner or his lessee, which did not occur here.

Further, petitioner has not established that there has been a loss of establishment loss of enjoyment and use of property by the petitioner.

Petitioner cites cases to support its correct position that a lessee/tenant can seek a RPAPL § 881 license, not just owners. See Matter of Van Dorn Holdings, LLC v 152 W. 58th Owners Corp., 149 AD3d 518 [1st Dept 2017]; The Bd. of Managers of the Barbizon/63 Condo v Bozzo, 2023 WL 137246 [Sup. Ct., New York County 2023]; East Edge BK LLC v Nedd, 2022 WL 3083484 [Sup. Ct., Kings County 2022]. However, these cases are distinguishable from the instant matter on the substance because they involve actual intrusions on abutting property including access to roofs and yards, not just the erection of sidewalk scaffolding on a public sidewalk alone. Petitioner in the instant matter is arguing that a scaffold that doesn't even touch the petitioner's leasehold but is merely in front of it is the equivalent of an actual intrusion on property. Other cited cases involve scaffolding that caused physical damage or was required because of debris falling on to property that are not relevant here. See Pinto Residence LLC v 12th Street Apartment Corp., 2014 WL 3977720 [Sup. Ct., New York County 2014]; Matter of 157 Leonard Street v Capella, 2024 WL 5114343 [Sup. Ct., Kings County 2024]. Petitioner also cites distinguishable cases that involve the discretionary erection of scaffolding, rather than because of Local Law 11. See Matter of Rosma Dev., LLC v South 2004 NY Slip Op 51369 [Sup. Ct. Kings County 2004]; Grammar v 10 W 93rd St. Hous. Dev. Fund Corp., 2015 NY Slip Op 31519 [Sup. Ct. New York County 2015].

There are numerous cases that specifically reject petitioner's contention that a scaffold or sidewalk shed/bridge on a public sidewalk alone requires a license. See 660 Lexington Ave. Dev. LLC v NYC 55 Corp., 2024 NY Slip Op 32233 [Sup. Ct., New York County 2024]; Matter

of West 157 W 18 Owner, LLC v Board of Mgrs. of the Slate Condominiums, 2024 NY Slip Op 30396 [Sup. Ct., New York County 2024]; 22 Irving Place Corp. v 30 Irving LLC, 57 Misc.3d 253 [Sup. Ct., New York County 2017]. The court in 22 Irving Place Corp. rejected a similar argument to that of the petitioner concerning the reduction of light to the impacted building because of a sidewalk bridge holding that the reduced light is incidental to the legally required structure.

Petitioner proffers no case law that directly supports an expansion of RPAPL § 881 for the reasons it seeks, loss of business because of reduced visibility of a retail business because of a scaffold. The Court declines to expand the applicability of the law to cover this regrettable but likely common situation. Further, the evidence provided by petitioner of alleged loss of business because of the scaffold, even if accepted by the Court as competent evidence, by itself fails to conclusively establish that such loss is because of the scaffold. The Court has considered petitioner’s remaining arguments and finds them unavailing.

Accordingly, it is hereby ORDERED that petitioner’s application granting a retroactive license to respondent is denied, and it is further ORDERED that respondent’s cross-motion to dismiss the petition is granted, and this proceeding is dismissed.

This shall constitute the decision and order of this Court.

9/8/2025
DATE


ALEXANDER TISCH, J.S.C.

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