

**Minjak, LLC v 217 W 20th St. Lender LLC**

2025 NY Slip Op 33457(U)

September 11, 2025

Supreme Court, New York County

Docket Number: Index No. 152249/2025

Judge: Leslie A. Stroth

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. LESLIE A. STROTH PART 12M

Justice

-----X

MINJAK, LLC

Plaintiff,

- v -

217 W 20TH STREET LENDER LLC,

Defendant.

INDEX NO. 152249/2025

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 14, 18, 19, 20, 21, 22, 23, 24, 25, 27

were read on this motion to/for MISC. SPECIAL PROCEEDINGS

Petitioner is the owner of the apartment building located at 170 East 87th Street, New York, New York 10128. Pursuant to the New York City Department of Buildings' Façade Inspection and Safety Program ("FISP"), Petitioner is legally required to perform façade maintenance work on its building. Respondent, 164 Franklin Hotel, LLC, operates the adjoining property at 164 East 87th Street, New York, New York 10128 as The Franklin Hotel.

This proceeding arises from Petitioner's need to access portions of Respondent's property in order to conduct a pre-construction survey and to install protective measures necessary for the safe performance of its façade work (NYSCEF Doc No. 1). Petitioner has moved by Order to Show Cause (Motion Sequence 001) seeking: (a) a license to enter upon Respondent's property pursuant to RPAPL § 881; and (b) a declaratory judgment that Respondent bears the duty and financial responsibility to protect its property during the duration of Petitioner's façade work.

Petitioner contends that installation of protections on and over Respondent's property is legally required. Specifically, Petitioner asserts it must erect a sidewalk shed in front of the hotel,

install protections on the roof and over the rear glass atrium, and access the airspace above Respondent's premises to protect the structure, its occupants, and the public while the FISP work is performed. Petitioner further maintains that a pre-construction survey is necessary before installation of protections, all of which requires access to Respondent's property (NYSCEF Doc No. 8).

Petitioner further alleges that despite months of negotiations from June through December 2023 (Exhibit D), Respondent has engaged in delays and prolonged silence. Petitioner states it has already paid \$10,000 into escrow pursuant to the parties' June 22, 2023 agreement to cover Respondent's professional review fees, but that Respondent now demands an additional \$19,862.50 in fees, for a total of \$29,862.50. Petitioner also points to two further disputes, detailed in Respondent's February 5, 2024 correspondence: a demand for a license fee of \$10,000 per month and a demand for business interruption damages. Petitioner contends that such compensation is not contemplated by RPAPL § 881, although it acknowledges liability for any actual damages caused by the entry.

Respondent opposes the application. It argues that any order under RPAPL § 881 would be premature absent guarantees that Petitioner's scaffolding will not interfere with the hotel's handicap lift, that adequate but minimally disruptive precautions will be taken to protect the hotel's glass-roofed atrium, and that Petitioner will agree to pay a reasonable monthly license fee, reimburse Respondent for professional and legal fees, and compensate for demonstrable loss of income (NYSCEF Doc No. 19). Respondent maintains that Petitioner has acted in bad faith by offering a below-market license fee of \$2,500 per month, attempting to circumvent Respondent's counsel, and refusing to engage in meaningful negotiations regarding the terms of access.

Respondent further asserts that Petitioner failed to respond substantively to its proposed license agreements and instead resorted to threatening litigation.

The Court is granting only the first part of petitioner's application. RPAPL §881 provides:

“When 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.... Such a license shall be granted by the court in an appropriate case upon such terms as justice requires.”

“In determining whether or not to grant a license pursuant to RPAPL § 881, courts generally apply a standard of reasonableness. 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” (*Bd. of Managers of Artisan Lofts Condo. v. Moskowitz*, 114 A.D.3d 491 (1st Dept 2014)). “The factors which the court may consider in determining the petition include 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 or inconvenience resulting from the intrusion” (*Queens Coll. Special Projects Fund, Inc. v. Newman*, 154 A.D.3d 943 (2nd Dept 2017)).

Petitioner has demonstrated that a license to enter respondent's property is necessary to perform façade maintenance work at the ensure safety of the general public pursuant to FISP. Thus, the Court is granting petitioner a license to enter respondent's property pursuant to RPAPL

881 to install a sidewalk shed in front of the respondents' property at 164 East 87th Street, on the roof of the adjoining property, and above the rear atrium at the adjoining property while performing the FISP work, as well as access to the airspace over the adjoining property.

However, the Court is ordering that the parties meet and confer as to the terms of a revised draft license agreement within 30 days, including payment of respondent's attorney's and license fees, which this Court will so order if necessary.

The court has considered the remaining arguments of the parties and finds such unavailing.

Accordingly; it is hereby

ORDERED that the parties shall meet and confer as to the terms of a revised draft license agreement within 30 days of the date of this order, in which the parties determine payment of reasonable attorney's fees and license fees; and it is further

ORDERED that the branch of the Petition seeking a license to enter the Respondent's property pursuant to RPAPL § 881 is granted subject to the agreement set forth above. Petitioner shall only gain access pursuant to the terms of the agreed upon license.

The foregoing constitutes the decision and order of the court.

9/11/2025  
DATE

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED
<input type="checkbox"/>	GRANTED
<input type="checkbox"/>	SETTLE ORDER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN
<input type="checkbox"/>	DENIED

APPLICATION:

CHECK IF APPROPRIATE:

**HON. LESLIE A. STROTH**  
J.S.C.

<input type="checkbox"/>	NON-FINAL DISPOSITION
<input type="checkbox"/>	GRANTED IN PART
<input checked="" type="checkbox"/>	OTHER
<input type="checkbox"/>	SUBMIT ORDER
<input type="checkbox"/>	FIDUCIARY APPOINTMENT
<input type="checkbox"/>	REFERENCE