

**Matter of Gotham Towne House Owners Corp. v
157 E. 57th St., LLC**

2025 NY Slip Op 33845(U)

October 6, 2025

Supreme Court, New York County

Docket Number: Index No. 160969/2024

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

-----X INDEX NO. 160969/2024

In the Matter of the Application of:

MOTION DATE N/A, N/A

GOTHAM TOWNE HOUSE OWNERS CORP.,

MOTION SEQ. NO. 001

Petitioner,

For an Order and Judgment pursuant to Section 881
of the Real Property Actions and Proceedings Law for
access to adjoining property,

DECISION AND ORDER

- against-

157 EAST 57TH STREET, LLC

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 1-26

were read on this motion to/for RPAPL 881 SPECIAL PROCEEDING

Petitioner is seeking a license pursuant to Real Property Actions and Proceedings Law (“RPAPL”) § 881 in order to perform exterior façade renovations on the premises located at 153 East 57th Street, New York, New York designated as Block 1312, Lot 28 on the Tax Map of the City of New York. Petitioner seeks access to the premises of the adjacent property located 157 East 57th Street, New York, New York designated as Block 1312, Lot 33 in order to: a) conduct a pre-construction survey of the 157 property prior to commencing the renovations and a post-construction survey upon completion of the renovations affecting the work on the adjacent premises; (b) install, maintain, utilize, and remove temporary protections and a controlled access zone on the roof, terrace and courtyard of the 157 property, including the mechanical equipment located thereon; and (c) access the airspace above the 157 property to install, maintain, utilize and remove pipe scaffolding and debris netting, and suspending scaffolding during the renovations, which access will be required for approximately six (6) months from the date that

the Court grants such license. The access is required to protect the 157 property as required by New York City Building Code and the New York City Department of Buildings. Petitioner has been denied such access by respondent.

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 documented numerous attempts to secure the consent of the respondent to enter the adjacent premises. On June 14, 2023, petitioner made its first attempt to reach respondent but did not receive a draft form access agreement until October 18, 2023 (*see* NYSCEF Doc. No. 4). Petitioner returned comments to the agreement on December 5, 2023, but received no response from respondent until March 20, 2024 (*see id.*). On June 3, 2024, respondent provided a new access agreement that reflected respondent’s need for reciprocal access to petitioner’s

premises for façade inspection work. Petitioner sent revisions on July 10, 2024. On September 24, 2024, the parties had a call and subsequently a purportedly final version of the license agreement was proffered, which included no licensing fees, insurance or indemnification provisions (see NYSCEF Doc No 5). On October 17, 2024, petitioner informed respondent that a proceeding would be required if the agreement could not be executed. Respondent made no response (see NYSCEF Doc. No. 4).

Respondent contends they no longer need a reciprocal license because their façade work has been completed and only required the closure of one terrace on the petitioner's premises for a two-month period, which they allege was performed with the consent of the petitioner's superintendent and the impacted apartment owner. Further, according to respondent, petitioner's demands are far more intrusive, including closure of respondent's courtyard, closure of four apartment terraces and the installation of pipe scaffolding and netting on the four terraces blocking sun and light plus use of respondent's air space to hang a drop scaffold and install roof protection on respondent's building. Hence, the mutual license agreement originally proffered by respondent is no longer equitable (see NYSCEF Doc No. 5). Without equivalent reciprocity, respondent contends it is inequitable for there to be no licensing fee, adequate insurance protection, or indemnification. Accordingly, respondent requests the following terms: (a) petitioner should be required to pay a monthly licensing fee of \$4,000 a month for the first five months of any license, and thereafter, \$6,000 a month; (b) petitioner should be required to pay for all of respondent's attorney fees incurred by respondent in connection with the requested access and this proceeding, in an amount not less than \$6,000; (c) petitioner should be required to comply with the indemnification provision set forth in the third counterclaim of respondent's answer (See NYSCEF Doc. No. 16); (d) petitioner should be required to comply with the

insurance provision in the fourth counterclaim of respondent's answer (See NYSCEF Doc. No. 16); (e) petitioner should be required to require its contractors and sub-contractors to execute the hold harmless agreement and comply with the hold harmless agreement set forth in the fourth counterclaim of the respondent's answer; (f) petitioner should be required to modify its site safety plans to include overhead protection of the building equipment on the 157 property and to permit respondent access to repair and maintain such building equipment; and (g) petitioner should not be permitted to access the interior portions of any apartments in the respondent's property, perform work to its building from any portion of respondent's property; or place a drop scaffold from respondent's property.

After oral argument, the Court determined a hearing was necessary to primarily determine what, if any, licensing fee is appropriate in light of the alleged work completed by respondent that impacted petitioner's property (See NYSCEF Doc. No. 26). The hearing was held on July 24, 2025. Petitioner produced three witnesses including Ocio Mandelli, the resident manager of petitioner's premises. Mandelli testified there were no requests from respondent for protections related to the façade work that was done on respondent's premises. He further testified it would have been impossible for respondent to access petitioner's premises without his knowledge. No record of such access in the commercial visitor log. Further, he asserted that a certificate of insurance would have been required for any construction related access and none was proffered. In fact, his only knowledge of the work on respondent's building was after the petition in this action was filed.

Petitioner produced two other witnesses. Noah Manny is the project engineer for Cally Engineering and testified about the petitioner's proposed project. Scott Smiler is a partner at Gallet Dwyer and Birkey, petitioner's counsel. Smiler testified, un rebutted, about the difficult

negotiations over the license including multiple instances of non-responsiveness. Both witnesses essentially testified to what was produced as part of the record in support of the petition.

Respondent produced David Malanga who is the director of property management for the Solil Management that owns the respondent premises. He testified about the façade work done on respondent's building and that respondent required and gained access to petitioner's premises. He further testified that the access was discussed with the superintendent and with a unit owner whose 15th floor terrace required access for up to two months. However, he was unable to recall the names of the people the access was discussed with. He didn't recognize Mandelli's name on cross examination. He also testified it was another person named John Fallon who spoke with and got permission from the unit owner on the 15th floor, not him. Malanga claimed it was a mistake when he was informed that there is no 15th floor terrace in petitioner's premises but rather on the 19th floor. He also could not provide the certificate of insurance for the work.

The Court concludes the proposed improvements to petitioner's property are necessary and reasonable.¹ Therefore, the Court orders a license is necessary and shall be granted pursuant to RPAPL § 881 for entrance on to respondent's property primarily for the purpose of protecting that property. However, the real dispute in the instant matter is what the contents of the license should be.

The Court finds that some kind of façade work occurred on the respondent property, but it is unclear from the hearing testimony what, if any, access was required to petitioner's property to complete the work. Petitioner's witness, Mandelli, insists no such access took place with the petitioner's knowledge although petitioner is claiming that the access justifies the license originally proffered by respondent with no licensing fees (see NYSCEF Doc No. 6).

¹ Respondent doesn't really challenge the reasonableness or necessity of the petitioner's proposed work.

Respondent's witness, Malanga, insists respondent availed itself of such access with permission of the petitioner and its tenant, which vitiates the need for a reciprocal agreement. In any case, the Court finds that whatever alleged access respondent availed itself of regarding petitioner's property, one terrace apparently, is not equivalent to the extensive access petitioner seeks from respondent in the form of four terrace closures, pipe scaffolding and netting, courtyard closure through a controlled access zone, drop scaffold and roof protection from respondent premises. Therefore, a licensing fee is necessary as are the additional indemnification and insurance provisions respondent seeks.

The Court also concludes respondent's repeated non response to petitioner's attempts to negotiate and secure a license evince a failure to negotiate in good faith and, accordingly, the Court declines to award respondent attorney's fees or costs associated with this action.

Accordingly, it is ORDERED and ADJUDGED that a license be granted by respondent pursuant to RPAPL § 881 to the extent stated herein, and it is further

ORDERED that the license provide for a pre-construction survey of the respondent premises prior to commencing the renovations and a post-construction survey upon completion of the renovations affecting the work on the 157 property, and it is further

ORDERED that the license provide for the installation, maintenance, utilization, and removal of temporary protections and a controlled access zone on the roof, terrace and courtyard of the 157 property including the mechanical equipment located thereon, and it is further

ORDERED that the license provide for access to the airspace above the 157 property to install, maintain, utilize and remove pipe scaffolding and debris netting, and suspending scaffolding during the renovations, which access will be required for six (6) months from the date that the Court grants the license, and it is further

ORDERED that the license provide for a licensing fee of \$2,000 for the first six (6) months of the license and \$3,000 per month thereafter should it be necessary, and it is further

ORDERED that the license provide for an indemnification provision as set forth in the third counterclaim of respondent's answer (see NYSCEF Doc. No. 16), and it is further

ORDERED that the license provide for an insurance provision as set forth in the fourth counterclaim of respondent's answer (see id.), and it is further

ORDERED that the license provide for a hold harmless agreement to be executed and complied with by petitioner's contractors and subcontractors as set forth in the fourth counterclaim of the respondent's answer (see id.), and it is further

ORDERED that the license provide for modification of site safety plans to include overhead protection of the building equipment on the 157 property and to permit respondent access to repair and maintain such building equipment, and it is further

ORDERED that the license provide petitioner not have access to the interior portions of any apartments in the respondent's building without prior notice to respondent, and it is further

ORDERED that petitioner shall notify respondent in writing if the work can not be completed within the six months from the granting of the license, and it is further

ORDERED that petitioner shall notify respondent in writing when the work is completed under the license and the temporary protections are removed from the licensed areas, and it is further

ORDERED that petitioner is solely responsible for the installation, maintenance and removing of the temporary protections, and it is further

ORDERED that respondent's demands for attorney fees and costs are denied, and it is further

ORDERED that petitioner is directed to upload a proposed license agreement that is in accordance with this decision and order on or before October 24, 2025, and it is further

ORDERED that any further relief sought in this petition is denied.

This shall constitute the decision and order of the Court. This matter shall be marked disposed.

10/6/2025

DATE



ALEXANDER TISCH, 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