

**Matter of 589 Halsey Realty LLC v Scarlett**

2025 NY Slip Op 34151(U)

October 22, 2025

Supreme Court, Kings County

Docket Number: Index No. 521111/2025

Judge: Peter P. Sweeney

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS, PART 73  
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Index No.: 521111/2025  
Motion Date: 10-16-25  
Mot. Seq. No.: 1

In the Matter of the Application of

589 Halsey Realty LLC,

Petitioner,

**DECISION/ORDER**

For an Order and Judgment pursuant to RPAPL § 881  
granting petitioner a license to enter the  
adjoining property of the Respondent, |

-against-

Natalia Scarlett,

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The following papers, which are e-filed with NYCEF as items 1-27, were read on this  
petition:

The Petitioner, 589 Halsey Realty LLC, commenced this special proceeding for an Order  
and Judgment pursuant to RPAPL 881 for a temporary license to enter the adjoining property of  
the Respondent, Natalia Scarlett, located at 591 Halsey Street, Brooklyn, New York (Block  
1662, Lot 81) (the "Adjoining Property, to install required protective measures and perform  
protective work on the Petitioner's adjacent property located at 589 Halsey Street, Brooklyn,  
New York (Block 1662, Lot 82) (the "Property") and for other related relief. For the reasons  
stated below, it is hereby:

**ORDERED AND ADJUDGED**, that the Petition is GRANTED for the reasons set forth  
below:

**I. STANDARDS FOR DECIDING AN RPAPL § 881 APPLICATION:**

An RPAPL § 881 petition is a summary proceeding, which may be decided in the same  
matter as a motion for summary judgment (*Matter of Battaglia v. Schuler*, 60 A.D.2d 759, 759-  
760, 400 N.Y.S.2d 951, 400 N.Y.S.2d 951 [4th Dept. 1977], *Emigrant Bank v. Solimano*, 209  
A.D.3d 153, 161, 175 N.Y.S.3d 299, 307 (2022)). The court is empowered, and required, to make

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a summary determination upon the pleadings and papers to the extent that no triable issues of fact are raised (*Buckley v. Zoning Bd. of Appeals of City of Geneva*, 189 A.D.3d 2080, 2081, 139 N.Y.S.3d 732, 734 (2020); C.P.L.R. 409(b), *Friends World Coll. v. Nicklin*, 249 A.D.2d 393, 394, 671 N.Y.S.2d 489, 490 (1998); *Bahar v. Schwartzreich*, 204 A.D.2d 441, 443, 611 N.Y.S.2d 619, 621 (1994)). Conversely, if the record does demonstrate that triable issues of fact are raised, the court must hold an evidentiary hearing relevant to the determination of the proceeding (*Mele v. Motor Vehicle Accident Indemnification Corp.*, 186 A.D.3d 1375, 1376, 129 N.Y.S.3d 1 (2020); *Ingraham v. Maurer*, 39 A.D.2d 258, 260, 334 N.Y.S.2d 19). In the matter before the Court, the Court finds that there are not triable issues of fact, and that the petition can be decided as a matter of law.

## II. THE ISSUE OF STANDING AND NECESSARY PARTIES

The Respondent argues that the Petition must be dismissed because the Petitioner failed to name the owner of the Adjoining Property, Tameka Scarlett, who is the remainderman. The Court rejects this argument. The petitioner named only the life tenant, Natalia Sarlett. The Respondent relies on RPAPL 903(2) and (3), which lists necessary defendants in a partition action, as authority for her contention that the person entitled to the reversion, remainder, or inheritance is a necessary party. This argument must be rejected for the simple reasons that this is a special proceeding for a temporary license pursuant to RPAPL § 881, not a partition action subject to RPAPL 903.

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. 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."

There is no language in the statute setting forth who are necessary parties to a special proceeding under the statute. The respondent has cited no authority supporting his contention that the remainderman of a life estate is a necessary party. Indeed, the absence of such language is indicative that the remainderman does not have to be named (see *Colon v. Martin*, 35 N.Y.3d 75, 78, 149 N.E.3d 39, 42–43).

In the Court's view, only the party that holds the present possessory interest that would be affected by the temporary access is a necessary party to such a proceeding. A life estate is an ownership right that expires on the death of the life tenant. A life tenant is "entitled to possession, control and enjoyment of the property for the duration of his or her life" and is considered "tantamount to the owner of the property" (see *Kurek v. Luszyk*, 28 N.Y.S.3d 550, 551 (2d Dep't 2015) (quoting 56 N.Y. Jur. 2d, *Estates, Powers, and Restraints on Alienation* § 35). Conversely, "the remainderman or reversioner has no right to possession or any present right of enjoyment...(id., citing (56 N.Y. Jur 2d, *Estates, Powers, and Restraints on Alienation* § 186; see *Novakovic v. Novakovic*, 25 Misc.3d 94, 890 N.Y.S.2d 758 [App.Term, 2d, 11th & 13th Jud.Dists.2009] ). The Court finds that Natalia Scarlett, as the life tenant, possesses the exclusive right to possession and is the sole necessary party to this RPAPL881 proceeding.

### III. WHETHER THE RPAPL § 881 LICENSE SHOULD BE GRANTED:

The Petitioner seeks access to install Required Protective Measures (roof protection, scaffolding with safety netting, fencing, horizontal netting, and overhead protection) and perform Protective Work (exterior finishing and weather protection). A proceeding pursuant to RPAPL 881 is addressed to the sound discretion of the court, which must apply a reasonableness standard in balancing the potential hardship to the applicant if the petition is not granted against the inconvenience to the adjoining owner if it is granted (see *Matter of Queens Coll. Special Projects Fund, Inc. v. Newman*, 154 A.D.3d 943, 943–944, 62 N.Y.S.3d 517). 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 needed protections for the adjoining property, 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 (*see id.* at 944); *Queens Theater Owner, LLC v. WR Universal, LLC*, 192 A.D.3d 690, 690–91, 139 N.Y.S.3d 844, 845).

#### **A. Necessity and Reasonableness**

The Petitioner has established that the access is necessary: The work is mandated by the New York City Building Code to protect the Adjoining Property and persons thereon. The Building Code requires protection from damage and injury during construction , protection of adjoining roofs , installation of scaffolding , installation of construction fencing , safety netting , and ensuring the weatherproof integrity of adjoining walls. The work cannot be made by the owner or lessee without entering the premises of an adjoining owner. Further, the proposed license is narrowly tailored, limited in scope to the areas necessary for compliance, and limited in time to a maximum of sixty (60) days.

#### **B. Balancing of Hardships**

The Petitioner faces a substantial hardship if the license is denied, including project delay and significant costs (interest, taxes, and extended general conditions). The inability to place the DOB-required protection would cause the Project to sit idle and be delayed. The inconvenience to the Respondent is minimal in comparison. Denying the license due to the Respondent's resistance would "spell doom to the development process", which courts seek to avoid (*see Rosma Dev., LLC v. South*, 5 Misc. 3d 1014(A), 2004 WL 2590558, at \*4 (Sup. Ct. Kings Cty. 2004).

#### **C. Fees**

While equity requires a court to award an RPAPL 881 respondent its reasonable technical experts' fees and attorneys' fees (*see Matter of Pansia Estate*, 204 A.D.3d at 36–38, 164 N.Y.S.3d 551), a court may providently exercise its discretion to deny the award of such fees in certain cases (*see 1643 First LLC v. 1645 1st Ave. LLC*, 224 A.D.3d 623, 624–25, 208 N.Y.S.3d 550, 552; *Matter of Spence v. Strauss Park Realty, LLC*, 211 A.D.3d 446, 447, 180 N.Y.S.3d 90 [1st Dept. 2022]; *Matter of Meopta Props. II, LLC v. Pacheco*, 185 A.D.3d 511, 512, 125 N.Y.S.3d 861 [1st Dept. 2020]). Contrary to petitioner's contention, it has not been

demonstrated that the Court should depart from the general rule. Accordingly, the respondent is awarded reasonable attorneys' and expert fees in amounts to be determined.

**IV. CONSIDERATION OF UNSWORN EVIDENCE**

The Court notes the unsworn letter from Theodore Yen, P.E., dated September 8, 2025, which attempts to raise issues of alleged damage to the foundation and alleyway, fire hazard, and deficiencies in the Petitioner's plans. As this document is not a sworn affidavit or affirmation under penalty of perjury, it does not constitute competent evidence to controvert the sworn affidavit of Petitioner's engineer, Eric Foster, P.E. While the Court cannot rely on the letter for its findings of fact, the Petitioner remains obligated to perform all work safely, in compliance with all codes, and to rectify any damages caused by its construction.

Based on the foregoing reasons, it is hereby:

**ORDERED AND ADJUDGED**, that the Petition is **GRANTED**, and Respondent's motion to dismiss is **DENIED**; it is further

**ORDERED AND ADJUDGED**, that the Petitioner, its contractors, agents, and employees, are s granted a temporary and limited license to enter the Adjoining Property for the limited purpose of installing and maintaining the Required Protective Measures and performing the Protective Work as set forth in the Petition and the approved site safety plans; it is further

**ORDERED and ADJUDGED** that the duration of the license shall be for a period of up to sixty (60) days from the date of the first entry onto the Adjoining Property; it is further

**ORDERED and ADJUDGED** that as a condition to access, the respondent shall be awarded a reasonable licensing fee to be set by the Court; it is further

**ORDERED and ADJUDGED** that as a condition to access, the respondent shall be awarded reasonable compensation for expert and attorney's fees in an amount to be set by the Court; it is father

**ORDERED and ADJUDGED** that as a condition of entry, the Petitioner shall provide the Respondent with a Certificate of Insurance, naming the Respondent as a certificate holder and an additional insured, with coverage limits in the amount of 2 million dollars; it is further

**ORDERED and ADJUDGED** that the Petitioner shall be liable for any actual damages to the Adjoining Property occurring as a result of the entry; it is further

**ORDERED and ADJUDGED** that the Respondent, Natalia Scarlett, and all persons acting on her behalf, are prohibited from interfering with the Petitioner's installation, maintenance, and removal of the Required Protective Measures or the performance of the Protective Work; it is further

**ORDERED and ADJUDGED** that the relief sought in the Respondent's Counterclaim is denied; and it is further

**ORDERED**, that the Petitioner shall Settle an Order on Notice within 15 days of the date of this order. The parties are directed to contract each other and attempt to come to terms on the amounts of the licensing fee, the expert fees and attorneys' fees. If the parties cannot agree on these terms, the parties are directed to submit memorandums justifying their positions as to these matters. The respondent is also directed to submit all bills and receipts for attorneys' and expert fees.

This Constitutes the decision and order of the Court.

Dated: October 22, 2025

ENTER

**PPS**

KINGS COUNTY CLERK  
FILED  
2025 OCT 23 A 10:24

**PETER P. SWEENEY, J.S.C.**

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020