

Beaux Arts II LLC v East 44th St., LLC

2025 NY Slip Op 34317(U)

November 3, 2025

Supreme Court, New York County

Docket Number: Index No. 152995/2025

Judge: Verna L. Saunders

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. VERNA L. SAUNDERS, JSC PART 36

Justice

INDEX NO. 152995/2025

BEAUX ARTS II LLC, Plaintiff,

MOTION SEQ. NO. 001

- v -

DECISION + ORDER ON MOTION

EAST 44TH STREET, LLC, Defendant.

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 40, 41, 42, 72, 73, 74, 75

were read on this motion to/for INJUNCTION/RESTRAINING ORDER

This action arises from disputes concerning the superstructure phase of defendant's construction of a 41-story residential building complex. Plaintiff, a historic building so designated by the New York City Landmarks Preservation Commission, moves the court for preliminary injunction enjoining and an order restraining defendant from performing construction work that will cause water intrusion or infiltration into plaintiff's property. Defendant owns the real property adjacent to plaintiff's property and it is in the process of constructing a 41-story residential building complex. In the instant motion, brought via Order to Show Cause with a Temporary Restraining Order request, plaintiff alleges that without approved plans from the Department of Buildings ("DOB") and after unsuccessful access license negotiations, defendant's construction activities have caused dust and debris to accumulate in the basement and ground floor levels of plaintiff's property, creating a visible fog that is polluting the air and rendering it hazardous for its residents to breathe. According to plaintiff, it issued numerous Cease-and-Desist notices to defendant, demanding that all drilling work be stopped until defendant could prevent further damage to plaintiff's property. Plaintiff asserts that upon inspection, its engineers confirmed cracks and identified that defendant had installed Monitoring Equipment including prisms, vibrations monitors, and crack gauges on plaintiff's property without notice or consent.

Here, plaintiff asserts the following causes of action in the summons and complaint: a permanent injunction (first cause of action) for defendant's failure to implement or provide protections required by the New York City Building Code ("Building Code"); nuisance (second cause of action), trespass (third cause of action); injunction pursuant to RPAPL 871 (fourth cause of action); negligence (fifth cause of action); and strict liability (sixth cause of action). As relevant here, plaintiff moves solely for an order, pursuant to CPLR 6301, preliminarily restraining defendant from performing any construction work that causes water intrusion and debris unto plaintiff's property. Plaintiff also urges the court to issue an order enjoining

defendant from accessing or trespassing on plaintiff's property (NYSCEF Doc. No. 42)¹ (NYSCEF Doc. No. 1, *summons and complaint*).

In its memorandum of law, plaintiff argues that it is entitled to a preliminary injunction because it is likely to succeed on the merits, will suffer irreparable injury absent the issuance of a preliminary injunction, and asserting that a balance of the equities tip in plaintiff's favor. Plaintiff contends that in order to maintain the status quo, defendant must be prevented from performing further construction work that negatively impacts plaintiff's property. Plaintiff also contends that defendant's drilling work has damaged plaintiff's property to the extent that any further work will compromise the property's structural integrity and endanger plaintiff's residents' safety therein. Plaintiff notes that financial compensation is an insufficient remedy as it cannot prevent further damage to the foundation and walls of plaintiff's property absent the injunction sought. Plaintiff asserts that defendant's pattern of disregarding plaintiff's Cease-and-Desist notices indicate that defendant will continue to engage in construction activities that will cause further damage to plaintiff's property. Specifically, as to the likelihood of success on the merits, plaintiff posits that defendant's construction activities are performed in disregard of DOB safety regulations causing water infiltration and new cracks to appear on plaintiff property.

Plaintiff claims that defendant's construction activities, which are reckless and dangerous as they do not waterproof or protect plaintiff's property as against infiltration, are also intentional in nature, as they are performed despite a DOB assessed stop work order issued on January 7, 2025. Plaintiff asserts that in addition to defendant's installation of monitoring equipment on plaintiff's building without consent, defendant's contractors were observed "performing the unauthorized sidewalk shed work" to aid the drilling work that caused the dust and water intrusion unto plaintiff's property. Plaintiff states that these facts support a finding of a permanent injunction, nuisance, trespass, and negligence.

Next, plaintiff contends that, to the extent the building's structural integrity is threatened and dust from defendant's construction activities poses immediate and long-term threat to the building's residents, it has established that it will suffer irreparable harm absent the grant of a preliminary injunction. According to plaintiff, significant amounts of dust and debris have clouded the basement and ground floor units of plaintiff's property, causing a resident and their family to relocate to a hotel and request a rent abatement. Plaintiff insists that, absent injunctive relief, no adequate remedy at law will make plaintiff whole as defendant's drilling will continue to create or exacerbate the cracks in plaintiff's walls and foundation. Lastly, plaintiff relies on the facts asserted above to posit that the balancing of the equities weighs in its favor because as a landmarked property, it has been significantly damaged and is at risk of further damage due to defendant's drilling work. (NYSCEF Doc. No. 34, *plaintiff's memo of law*).

In support of its argument, plaintiff furnishes a copy of water infiltration photo, monitoring equipment photo, correspondence with defendant about identified construction defects, a copy of DOB violations, a photo of a sidewalk shed, a geotechnical and monitoring review letter, and reports from "GZA", plaintiff's geotechnical engineers (NYSCEF Docs. Nos. 4-33).

¹ After a hearing on the Temporary Restraining Order portion of the application, a moratorium on drilling pursuant to an Interim Order was extended through April 30, 2025.

In opposition, defendant argues that plaintiff has not established a likelihood of success on the merits. According to defendant, the allegations of negligence are unfounded as it has been conducting all drilling activities pursuant to DOB approved plans. Defendant notes that in addition to being in compliance with all the requirements under the Building Code, the DOB has appeared at the site on three occasions, between February 7, 2025, and March 9, 2025, and has not issued a full or partial stop work order.

Further, defendant avers that plaintiff has failed to establish irreparable harm insofar as the harms alleged, dust, noise, and water infiltration are compensable. Defendant insists that measures were agreed upon between the parties to address these issues, and there has been no allegations of poor air quality or dust intrusion on plaintiff's property in January 2025. Defendant insists that it has undertaken expansive efforts to mitigate the risk of any future water intrusion, airborne dust, and/or debris. According to defendant, plaintiff's efforts to enjoin defendant from accessing or altering plaintiff's property is inappropriate because plaintiff's engineer recommends remedial actions that would require defendant to access plaintiff's property to protect plaintiff's exposed foundations. The instances of dust intrusion and water infiltration are singular incidents and cannot constitute a nuisance, claim defendant. Defendant further argues that a claim of trespass does not lie where, as here, it has commenced an RPAPL 881 proceeding—affirming its intent to access plaintiff's property lawfully. As such, defendant insists that the allegations of irreparable harm are speculative at best and exaggerated in both scope and substance, and therefore, the injunction must be denied.

Next, defendant argues that the balance of the equities weighs in its favor insofar as any delays in construction would not only jeopardize the building project but also expose it to potentially significant losses, liability to third parties, and loss of financing. Defendant asserts that plaintiff faces no comparable prejudice, and it can be compensated for any proven property damage through monetary relief. According to defendant, it has completed eighty percent (80%) of the drilling activities and most of the remaining drilling work will occur away from the area adjacent to plaintiff's property.

As such, defendant asserts that plaintiff's request to enjoin access to plaintiff's property while simultaneously recommending for work to be done for which access is required is inherently contradictory, and it should be denied as impractical and unenforceable pursuant to CPLR 6301. Defendant also posits that since there is a related RPAPL 881 petition² pending in a related action, plaintiff's injunctive relief sought in the instant motion is inappropriate because it risks conflicting court orders. Lastly, defendant asserts that petitioner must post an undertaking to compensate the enjoined party for damages incurred as a result of the injunction in the event it is determined that the beneficiary was not entitled to the injunction. (NYSCEF Doc. No. 71, *memo of law in opposition*).

In reply, plaintiff argues that the injunctive relief sought is not overbroad insofar as it is narrowly tailored to prevent defendant from engaging in construction work that will cause water intrusions and dust/debris onto plaintiff's property. Plaintiff reiterates that the injunctive relief

² In the related action (Index No. 159906/2024), the court denied that petitioner's request for a court-ordered license.

would not cause all outstanding construction activities to cease insofar as defendant can implement means and methods to mitigate the construction issues alleged here.

Next, plaintiff contends that the injunctive relief sought here does not nullify the RPAPL 881 proceeding because that action concerns court-ordered access to plaintiff's property to install temporary protections solely relating to the project's superstructure phase. Plaintiff notes that the February 7, 2025, DOB's inspection was conducted at a time when defendant had stopped drilling adjacent to plaintiff's building and thus, the fact that the DOB did not issue a stop work order does not demonstrate that the drilling work complained of here was Building Code compliant. Plaintiff relies on the affirmation of Garrett Cusack, counsel for defendant, to support its argument that defendant's installation of a monitoring equipment prior to receiving plaintiff's consent constitutes trespass. Plaintiff also reiterates that defendant trespassed on its property by placing a sidewalk shed without a license agreement or consent from plaintiff.

Also, plaintiff posits that defendant's reliance on DOB-approved plans is misplaced, insofar as mere possession of the plans does not demonstrate that defendant is performing its work in accordance with those plans. In addition, plaintiff claims that any delays in defendant's construction work are caused by defendant's failure to do construction work in compliance with the Building Code. Plaintiff also challenges defendant's claim of losing an inordinate amount of money if the injunctive relief is granted, arguing that the injunctive relief is necessary to protect plaintiff's property. Lastly, plaintiff argues that defendant's request for an undertaking is meritless and punitive because the request is not supported by the record. According to plaintiff, it is undisputed that defendant failed to waterproof plaintiff's property (NYSCEF Doc. No. 75, *reply*).

"A preliminary injunction is an extraordinary provisional remedy which will only [be] issue[d] where the proponent demonstrates (1) a likelihood of success on the merits, (2) irreparable injury absent a preliminary injunction, and (3) a balance of equities tipping in its favor" (*Harris v Patients Med., P.C.*, 169 AD3d 433, 434 [1st Dept 2019]). "The relief of an injunction is a drastic remedy granted [only] in a clear case, reasonably free from doubt" (*Standard Realty Assoc., Inc. v Chelsea Gardens Corp.*, 105 AD3d 510, 510 [1st Dept 2013]).

Here, while plaintiff makes colorable arguments in support of the likelihood of success of the preliminary injunction at the very least on its nuisance, trespass, and negligence claims, the injunctive relief sought is nonetheless denied. Notwithstanding plaintiff's claim that as of March 7, 2025, it observed additional water intrusion through the cracks in the walls and foundations of plaintiff's property into the building's basement as a result of defendant's drilling work, the DOB report indicated that the DOB "observed no damage or structural defects" at plaintiff's property during its inspection on March 9, 2025. Plaintiff has also failed to demonstrate the extent of the structural damage sustained as a result of defendant's construction activity. Moreover, plaintiff does not dispute that the threat of the alleged injuries will be minimized as the remainder of defendant's construction activities will take place away from plaintiff's building. Furthermore, plaintiff's claim that a resident and his family have relocated due to defendant's construction activity, and have also requested a rent abatement, standing alone, does not constitute irreparable injury. The harms alleged, such as dust, debris, and water infiltration, if any, are compensable. Thus, plaintiff has failed to demonstrate that this prong is met.

Furthermore, plaintiff has failed to demonstrate on this record that the balance of equities weighs in its favor such that granting the drastic remedy of injunctive relief is warranted. All other arguments have been considered and are without merit. Accordingly, it is hereby

ORDERED that plaintiff's motion for injunctive relief is denied; and it is further

ORDERED that, within twenty (20) days after this decision and order is uploaded to NYSCEF, counsel for defendant shall serve a copy of this decision and order, with notice of entry, upon plaintiff; and it is further

ORDERED that the parties are directed to appear for a remote preliminary conference on January 7, 2026, details which shall be provided by the court no later than January 5, 2026.

This constitutes the decision and order of this court.

November 3, 2025

HON. VERA L. SAUNDERS, JSC

CHECK ONE:

CASE DISPOSED
GRANTED

DENIED

NON-FINAL DISPOSITION
GRANTED IN PART

OTHER