

East 86 Realty LLC v 1661 First Ave. LLC

2025 NY Slip Op 35011(U)

December 23, 2025

Supreme Court, New York County

Docket Number: Index No. 153651/2025

Judge: Judy H. Kim

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JUDY H. KIM PART 04

Justice

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EAST 86 REALTY LLC,

Petitioner,

- v -

1661 FIRST AVENUE LLC,

Respondent.

-----X

INDEX NO. 153651/2025

MOTION DATE 03/19/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53

were read on this motion for MISC. SPECIAL PROCEEDINGS.

Upon the foregoing documents, the petition is granted.

Petitioner owns the property located at 1653 1st Avenue, a/k/a 349-361 East 86th Street, New York, New York 10028 (the "Property"). Respondent owns the neighboring property, located at 1661 1st Avenue (the "Adjacent Property"). Petitioner intends to begin construction of a new 23-story mixed-use building on its Property, for which it requires access to the Adjacent Property.

Petitioner commenced this special proceeding, pursuant to RPAPL §881, for a license to access the Adjacent Property so it can install, maintain, and remove sidewalk shed/overhead protection, window protection, roof protection, and weatherproofing at the Adjacent Property and perform certain construction work from the Adjacent Property and/or its airspace. Petitioner also seeks an order declaring that Respondent has unreasonably conditioned, denied, and refused

Petitioner access to the Adjacent Property and is therefore responsible for all damage to the Adjacent Property that may arise from its failure to grant access and an order prohibiting respondent from interfering with petitioner's work at the Adjacent Property.¹

In respondent's Answer,² which the Court accepts over objection, respondent asserts that it has declined to grant access because petitioner's proposed plans and license are insufficiently detailed (NYSCEF Doc No. 48). As pertinent here, respondent submits the affidavit of John D. Nakrosis, Jr. R.A., stating that petitioner's plans do not adequately address: protections for the skylights and hatches on the roof of the Adjacent Property; fire escape protections; protections for the shed in the rear of the Adjacent Property; the waterproofing of the Adjacent Property, above and below grade; how the gap between the parties' buildings will be filled; and how petitioner will address the increased water runoff onto respondent's roof once petitioner's building is complete (NYSCEF Doc No. 47, Nakrosis Aff at 1, 16-21, 23-24, 30).

Respondent also seeks an order directing petitioner to re-circulate its survey of pre-existing conditions, share its vibration monitoring information, agree in advance to vibration tolerance standards, and reimburse respondent's legal and engineering fees incurred in connection with the access sought by Petitioner. Finally, respondent asserts a counterclaim for damages sustained as a result of petitioner's prior use of the Adjacent Property as a staging ground for petitioner's demolition project.

¹ While petitioner also sought an order permitting it to conduct an "existing conditions preconstruction survey" of the Adjacent Property and install, maintain, and remove monitoring equipment, both the survey and monitoring equipment installation have since been completed.

² Respondent initially cross-moved to dismiss the petition, which was subsequently withdrawn.

DISCUSSION

A petition for access is governed by RPAPL §881, which provides that:

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.

“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” (*Queens Theater Owner, LLC v WR Universal, LLC*, 192 AD3d 690, 690 [2d Dept 2021] [internal citations omitted]). Respondent does not challenge petitioner’s need for access to make improvements to the Property or assert that petitioner’s need is outweighed by any inconvenience to respondent. Nor is there any dispute that it has not granted access to the Adjacent Property. Accordingly, the Court concludes, based on the foregoing and petitioner’s submissions—and particularly the affidavit of Carl Bradley Cronk, AIA—that petitioner is entitled to a license under the circumstances. However, before access can be granted it is necessary to resolve the concerns raised by Mr. Nakrosis, detailed above, which petitioner has not had an opportunity to substantively address at a hearing (*Thomas Anthony Holdings LLC v Goodbody*, 216 AD3d 538, 539-40 [1st Dept 2023]). The Court strongly encourages the parties’ engineers to confer before this hearing, to determine whether Mr. Nakrosis’s concerns can be addressed without the need for further Court

intervention. However, while respondent's counsel argues that petitioner's proposed license is, even beyond those issues raised by Nakrosis, insufficiently detailed, the Court does not credit its concerns.

Respondent's request for reimbursement of its legal fees is denied. Generally, "[e]quity requires that the owner compelled to grant access should not have to bear any costs resulting from the access" because "[t]he respondent to an [RPAPL] 881 petition has not sought out the intrusion and does not derive any benefit from it" (*Van Dorn Holdings, LLC v 152 W. 58th Owners Corp.*, 149 AD3d 518, 518-19 [1st Dept 2017] [internal citations and quotations omitted]). The Court concludes that this principle is inapplicable here, based on respondent's conduct during the seven months that elapsed between the commencement of this special proceeding and oral argument. Specifically, while the parties agreed to adjourn the hearing of this petition for respondent to provide "prompt and reasonable comments" to the proposed license agreement filed by petitioner (NYSCEF Doc No. 45), respondent instead submitted what was, in effect, its own proposed license, adding an additional hundred pages to petitioner's proposed license. This was in violation of at least the spirit of the parties' agreement and needlessly delayed the resolution of this special proceeding. In addition, while Mr. Narkosis noted as early as June 26, 2025 that he had concerns with petitioner's proposed plans, he declined to specify the nature of these concerns at that time at the direction of counsel (NYSCEF Doc No. 39, Nakrosis affirm at ¶9). Instead, he first detailed these concerns in an affirmation submitted one day before oral argument on the petition, thereby depriving petitioner of an opportunity to submit a response from its own engineer, which necessitated the further hearing ordered by this Court. These actions, viewed together, "evinced a failure to negotiate in good faith and, accordingly, the Court declines to award respondent

attorney's fees or costs associated with this action" (*Gotham Towne House Owners Corp. v 157 E. 57th St., LLC*, 2025 NY Slip Op 33845[U], 7 [Sup Ct, NY County 2025]). Respondent, however, is entitled to its reasonable engineering fees (*Van Dorn Holdings, LLC v 152 W. 58th Owners Corp.*, 149 AD3d 518, 519 [1st Dept 2017] ["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"]). The amount of such fees will also be determined at the upcoming hearing.

Accordingly, it is

ORDERED and **ADJUDGED** that the petition is granted; and it is further

ORDERED that petitioner is granted a license to access 1661 1st Avenue, New York, New York 10028 for a period of twenty-four months; and it is further

ORDERED that this license shall commence upon further order of the Court, after the resolution of the issues raised in the Nakrosis Affirmation, detailed above; and it is further

ORDERED that petitioner shall be granted access to the Adjacent Property in order to:

- install and maintain temporary protections over, on, and around the Adjacent Property, to wit: (i) a sidewalk shed extending approximately twenty feet in front of the Adjacent Property sidewalk; (ii) overhead protection and/or a controlled access zone extending approximately twenty feet from the shared property line in the rear yard of the Adjacent Property; (iii) roof protection extending approximately twenty feet from the shared property line on the Adjacent Building's roof; (iv) horizontal netting cantilevered over the Adjacent Property; and (v) if necessary, netted window protection on the rear windows of the Adjacent Building that are immediately adjacent to the Project Work;

- shore and/or install support under the Adjacent Property's property line foundation wall that is exposed by the Project Work, including subsurface tiebacks underneath the Adjacent Property;
- waterproof the Adjacent Property's property line wall that is exposed by the Project's demolition and excavation work and install horizontal and vertical flashing, including a seismic joint, at those areas where the Adjacent Property's building interfaces with the Project building's new property line façade; and
- perform certain property line façade Project Work from: (i) netted scaffold platforms on top of the overhead protection and/or sidewalk shed; (ii) scaffold platforms suspended from the Project's new building; and/or (iii) a netted scaffold or engineered enclosure system supported on needle beams cantilevered from the Project's new building structure; and it is further

ORDERED that petitioner shall pay respondent a monthly license fee in the sum of \$2,000.00 from the commencement of such access, which fee shall be paid on or before the fifth day of each month; and it is further

ORDERED that, if petitioner does not complete its work within twenty-four months from the commencement of the license it shall seek an extension of the license, by motion, which shall only be granted upon good cause shown; and it is further

ORDERED that petitioner will provide respondent with at least five business days' written notice before its initial access to the Adjacent Property; and it is further

ORDERED that all access and work shall only be conducted on weekdays during the hours of 8:30 a.m. through 5:00 p.m., unless such shorter period is required by applicable law, and it is further;

ORDERED that petitioner shall notify respondent in writing when its work has been completed and it has removed all protection from respondent's property; and it is further,

ORDERED that petitioner is solely responsible for the installation, maintenance, and removal of the temporary protection; and it is further

ORDERED that petitioner shall, at the completion of the term of the license, restore respondent's property within the license area to its original condition and all materials used in construction and any resultant debris shall be removed from the license area; and it is further,

ORDERED that petitioner shall not interfere with respondent's necessary access to its property and quality of life, and shall take all necessary steps, measures and precautions to prevent any damage to respondent's property; and it is further,

ORDERED that petitioner shall procure a commercial general liability policy insuring its work with limits of no less than \$5 million and excess limits of no less than \$10 million, and petitioner shall name each contractor it may hire, as well as respondent, as an additional insured on its policy insuring work arising from petitioner's project, and such coverage shall remain in place until the completion of petitioner's work; and it is further,

ORDERED that petitioner shall be liable to respondent for any damages which it may suffer as a result of the granting of this license and all damaged property shall be repaired at the sole expense of petitioner; and it is further,

ORDERED that petitioner shall indemnify and hold harmless respondent to the fullest extent permitted by law for any liability, claims, damages or losses, including attorneys' fees, respondent may incur as a result of petitioner's work, whether or not caused by the negligence of petitioner or its employees, agents, contractors or subcontractors; and it is further,

ORDERED that petitioner shall immediately report, in writing, to respondent any damage to respondent's property cause by petitioner's work; and it is further,

ORDERED that petitioner shall cure any violation placed against respondent's property by a governmental or administrative agency as a result of petitioner's work, and petitioner shall reimburse respondent for any fines or penalties imposed as a result of such violations; and it is further,

ORDERED that the amount of any actual and provable damages directly incurred by respondent as a result of the issuance of the license (if not covered by insurance), including the damages contemplated in respondent's counterclaim, shall be determined at a hearing at the conclusion of the license period; and it is further

ORDERED that petitioner's request for an order declaring that respondent has unreasonably conditioned, denied, and refused Petitioner access to the Adjacent Property and is responsible for all damage to the Adjacent Property that may arise from respondent's failure to grant access is denied; and it is further

ORDERED that petitioner and respondent are directed to appear, with their engineers, for a hearing in Part 4 on January 13, 2026, at 11:00 a.m., to determine the adequacy of petitioner's plans to: protect the Adjacent Property's roof skylights and hatches, fire escape, and shed; waterproof the Adjacent Property; fill the gap between the buildings; and address increased water runoff onto respondent's roof; and it is further

ORDERED that the January 13, 2026 hearing will also determine respondent's reasonable engineering fees incurred in connection with reviewing and commenting on petitioner's protection plans and in connection with this proceeding; and it is further

