

384 Audubon LLC v Demedetskaya

2025 NY Slip Op 35049(U)

December 29, 2025

Supreme Court, New York County

Docket Number: Index No. 165427/2025

Judge: James d'Auguste

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
COUNTY OF NEW YORK: PART 55

-----X

384 AUDUBON LLC,

Plaintiff,

- v -

Yael Demedetskaya, Andrey Demedetskiy,

Defendants.

INDEX NO. 165427/2025

MOTION DATE 12/01/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

-----X

Hon. James d'Auguste:

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, 22, 23, 24, 25, 26, 27, 28, 29, 30

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

BACKGROUND

Plaintiff is the owner of the property located at 384 Audubon Avenue, New York, New York (“Plaintiff’s Property”) and Defendants are the deed owners of the adjacent property located at 382 Audubon Avenue, New York, New York (“Defendants’ Property”). NYSCEF Doc. No. 3 ¶¶ 3-4.

Plaintiff has submitted an affidavit by its representative which states that, in October 2025, Defendants began performing excavation work (“Defendants’ Work”) at Defendants’ Property near the shared property line between Plaintiff’s Property and Defendants’ Property. *Id.* ¶ 6. Defendants’ Work was conducted without a permit or an engineer’s report concerning the safety of Defendants’ Work. *Id.* ¶¶ 9, 11. Defendants’ Work has affected the structural support of Plaintiff’s Property. *Id.* ¶ 7.

Defendants' Work caused the New York City Department of Buildings ("DOB") to issue a stop work order ("SWO") and a full vacate order ("VO") on Plaintiff's Property and Defendants' Property. *Id.* ¶¶ 8, 10, 12 and Ex. C, E, F. The SWO and the VO confirmed that: (a) Defendants have performed excavation work at least seven feet below grade; (b) Defendants have not received a permit for Defendants' Work; (b) the excavation work was performed without sheeting or shoring to protect the structural integrity and foundation of Plaintiff's Property; (c) Defendants have not made Defendant's Property, Plaintiff's Property, and Defendants' Work safe; (d) Defendants have not filed an engineer's report with the DOB; and (e) Defendants have not repaired the damage observed by the DOB at the time of their inspection. *Id.* ¶¶ 11, 13 and Ex. E, F.

According to Plaintiff, the ongoing work at Defendants' Property has raised concerns related to the structural stability and safety of Plaintiff's Property. *Id.* ¶ 14. No monitoring equipment has been installed on Plaintiff's Property, neither a pre-construction survey of Plaintiff's Property conducted prior to Defendants commencing Defendants' Work, nor did defendants seek or request access to Plaintiff's Property for a pre-construction survey or to install monitoring or other protective equipment during Defendants' Work. *Id.* ¶¶ 14-17. As a result of the foregoing, Plaintiff hired an engineering firm to assess the impact of Defendants' Work on Plaintiff's Property, which firm prepared a report that supported Plaintiff's and the DOB's concerns. *Id.* ¶¶ 18-20, Ex. G.

Based on the foregoing facts, Plaintiff moved by order to show cause for a temporary restraining order ("TRO") and a preliminary injunction. Plaintiff's motion proposed a TRO and preliminary injunction that were largely identical, both seeking to enjoin Defendants from performing construction work at Defendants' Property, to require Defendants to immediately

provide Plaintiff with access to inspect Defendants' Property, and to require Defendants to cease performing any work in violation of the SWO and the New York City Building Code (the "Code").

Regarding the TRO, the Court sought to balance the rights of the parties to protection from, on the one hand, unsafe excavation activities and, on the other hand, unnecessarily broad *ex parte* judicial restraints (even if temporary). Taking into account the fact that the DOB was already actively involved in preserving the safety of the properties, the Court issued a limited TRO requiring Defendants to cease performing any work in violation of the SWO pending the return date of the motion for a preliminary injunction (*i.e.*, December 23, 2025). NYSCEF Doc. No. 18.

In response to Plaintiff's moving papers, Defendants submitted an affidavit of defendant Andrey Demedetskiy, which states that after Defendants received the SWO and VO, they vacated the Defendants' Property, ceased all work there, and engaged an engineer to resolve the relevant issues. NYSCEF Doc. No. 24 ¶¶ 8-12. Defendants have also submitted an attorney's affirmation that cannot be considered as evidence, but nonetheless asserts legal arguments. NYSCEF Doc. No. 23. In that affirmation, Defendants argue that Plaintiff has not demonstrated irreparable harm, a likelihood of success on the merits, or a balance of equities in its favor.

On the return date, Special Master Andrew J. Lorin, Esq., conferenced the motion and heard arguments from counsel. In accordance with his recommendations, and the Court's independent review of the motion papers, the Court hereby grants the motion to the extent set forth below.

ANALYSIS

Regarding irreparable harm, Plaintiff has sufficiently established that Defendants improperly commenced construction work without having fulfilled all of the requirements imposed by law (and enforced by the DOB) that have been developed to protect the health and safety of people living on or adjacent to property subject to construction work. *Id.* Doc. No. 3 ¶¶ 8, 10, 12 and Ex. C, E, F. Plaintiff has also submitted evidence indicating that Defendants' Work has impacted the structural stability and safety of Plaintiff's Property. *Id.* ¶¶ 14-20. Given the potential dangers and harm to person and property that can result from an unstable edifice, as well as Defendants' admitted earlier disregard of the relevant DOB requirements, Plaintiff has successfully established that it is subject to a significant risk of irreparable harm unless, going forward, Defendants comply with all DOB requirements.

Regarding a likelihood of success on the merits, Plaintiff has sufficiently demonstrated (and Defendants have largely conceded) that Defendants started construction work without first complying with all DOB requirements, such as conducting a pre-construction survey, and installing monitoring and other protective equipment. *Id.* Doc. No. 3 ¶¶ 14-17. Plaintiff has further submitted evidence indicating that Defendants' Work has impacted the structural stability and safety of Plaintiff's Property. *Id.* ¶¶ 14-20. Although Defendants contest the impact of the illicit excavation work on Plaintiff's Property, Plaintiff has, at this early stage of the litigation, plausibly shown a likelihood of at least some injury to Plaintiff's Property.

Finally, given Defendants' illicit commencement of excavation on Defendants' Property, the balance of equities favors Plaintiff, which has not been accused of any improper conduct in connection with the properties at issue in this case.

In light of the foregoing, Plaintiff is entitled to a preliminary injunction. The question then becomes: what is the scope of injunctive relief that Plaintiff is entitled to?

Plaintiff's motion seeks an order requiring Defendants to cease and desist performing construction "work at Defendant's Property and on the foundation of Plaintiff's Property ... without the Plaintiff's express authorization and consent." NYSCEF Doc. No. 18 at 2. However: (1) all evidence indicates that Defendants' Work has, in fact, ceased at Defendant's Property; (2) Plaintiffs have not shown that Defendants worked directly on the foundation of Plaintiff's Property; (3) while Defendants' Work may not legally restart until Defendants undertake all of the safety requirements imposed by the DOB and the SWO has been lifted, Plaintiffs have not shown that the relevant law requires Plaintiff's express authorization and consent for Defendants' Work to restart. Accordingly, Plaintiffs' motion in this regard seeks injunctive relief that it is not entitled to, and the Court declines to impose same.

Plaintiff's motion also seeks an order requiring Defendants to provide Plaintiff access to Defendant's Property to inspect Defendants' Work and its various consequences. *Id.* While it seems sensible for Plaintiff, at some point, to gain access to Defendant's Property, the DOB is currently in the best position, in consultation with the parties, to determine the timing and method of performing an inspection safely. Accordingly, it would be premature for the Court to order an inspection. Nonetheless, should the time become ripe for an inspection to go forward and should a party need judicial intervention to allow same, an application to the Court for such relief may be appropriate at that time.

Finally, Plaintiff's motion seeks an order requiring Defendants to cease performing any work in violation of the SWO and the Code. As noted, the Court previously issued a TRO that temporarily required Defendants to cease performing any work in violation of the SWO.

However, the TRO did not broadly require Defendants to cease performing any work in violation of the Code because the DOB was already actively involved in preserving the safety of the properties and in regulating Defendants' compliance with the Code.

The Court believes that this balancing of interests should be maintained in connection with the preliminary injunction order. Plaintiff is concerned that Defendants will, in the future, violate the SWO, but Defendants have, since the imposition of the SWO, retained both counsel and engineering professionals to cooperate with the DOB and seek to satisfy the DOB that it has fulfilled the Code's requirements for undertaking further construction work on Defendants' Property. Plaintiff has failed to proffer any evidence that Defendants have violated or intend to violate the SWO (and, of course, should that change, Plaintiff may further apply to the Court for relief in that regard).

Accordingly, the Court will enter a preliminary injunction that continues to require Defendants to cease performing any work in violation of the SWO. However, the Court will not broadly require Defendants to cease performing any work in violation of the Code because the DOB remains actively involved in preserving the safety of the properties and in regulating Defendants' compliance with the Code. Such a broad order could work mischief in the event that the DOB lifts the SWO and Defendants' Work is properly re-commenced. The parties may then have a good faith dispute as to whether certain non-critical future work violates the Code and Defendants would then be at general risk of violating an express court order. Instead, should such a situation arise in the future, Plaintiff may apply to the Court for appropriate relief in those particularized circumstances.

Accordingly, for the foregoing reasons, it is hereby

ORDERED that Plaintiff's motion (NYSCEF Motion Sequence No. 001) is granted in part to the extent that Defendants are enjoined until further order of this Court from performing any work in violation of the SWO; and it is further

ORDERED that Defendants are directed to serve an answer to the complaint within 20 days after service of a copy of this decision and order with notice of entry.¹

12/29/2025

DATE



James d'Auguste, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE:

¹ The Court appreciates the invaluable assistance of Special Master Andrew J. Lorin, Esq., in connection with this matter.