

142 E. 71 Owners, Inc. v Invention Partners LLC

2026 NY Slip Op 31402(U)

March 27, 2026

Supreme Court, New York County

Docket Number: Index No. 164343/2025

Judge: Verna L. Saunders

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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. VERNA L. SAUNDERS, JSC PART 36

Justice

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INDEX NO. 164343/2025

142 EAST 71 OWNERS, INC.,
Petitioner,

MOTION SEQ. NO. 001

- v -

DECISION + ORDER ON MOTION

INVENTION PARTNERS LLC,
Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 9, 10, 11, 13, 14, 15, 16 were read on this motion to/for RPAPL 881

In this RPAPL 881 application, petitioner seeks an order, via Order to Show Cause, granting it a license to access respondent's premises for the purposes of installing, accessing, and maintaining roof protection and performing facade repair and restoration work to the southern facade of its property (the, "Work"). Petitioner is the owner of the premises located at 142 East 71st Street, New York, New York 10021. Respondent is the owner of the adjoining real property located at 973 Lexington Avenue, New York, New York 10021. Petitioner asserts that it is in the process of performing parapet and cornice replacement, spandrel beam repair work, and terrace re-roofing as part of its facade inspections and repairs required by New York City's Façade Inspection and Safety Program, also known as Local Law 11 (the, "Project"). According to petitioner, the renovation work to be performed in connection with the Project is being done pursuant to plans prepared by engineers licensed by the State of New York, including recommendation from respondent's engineering professionals. Petitioner asserts that it cannot commence the renovations because respondent has denied the request to install temporary protections on the adjoining property, in addition to failing to agree to a reasonable license fee, despite petitioner's good faith efforts over a period of two months (NYSCEF Doc. No. 1, petition).

Next, petitioner contends that respondent's insistence on a license fee of \$18,000.00 per month exceeds the typical roof protection installation license fees awarded in these actions. To the extent it seeks to install the roof protection on the adjoining property for a period of fourteen (14) months, petitioner argues that its proposed license agreement is narrowly tailored in that it only seeks to encroach on that area of the adjoining property necessary for compliance with New York City Department of Buildings ("DOB") regulations governing protection of adjoining properties. Lastly, petitioner urges the court to grant its proposed license, attached herein as Exhibit A (NYSCEF Doc. No. 5), instead of a license on consent, because previous negotiations have been futile (NYSCEF Doc. No. 6, memo of law).

Respondent, in opposition, argues that petitioner has failed to demonstrate its entitlement to a license. Respondent asserts that it would grant access once its interests are adequately

protected. To the extent the court is inclined to grant access, respondent asserts that such license should include just terms, including the payment of a license fee and attorney's fees incurred. With respect to the license fee, respondent claims that it has a commercial tenant in occupancy of the adjoining property whose rent is \$18,540.00 per month, and the tenant's ability to generate income will be negatively impacted by the erection of a sidewalk bridge. Respondent notes that a sidewalk bridge that petitioner previously erected blocked the visibility to respondent's then commercial tenant's restaurant, causing said tenant to vacate the premises. As such, it urges the court to factor in the rent likely to be lost as a result of petitioner's renovations when deciding the access license fee (NYSCEF Doc. No. 13, *opposition*).

In reply, petitioner reiterates arguments already advanced and also adds that the proposed license agreement contains just and equitable terms that respondent seeks. It adds that it does not need a license from respondent to erect a sidewalk bridge because said bridge would be situated on a public sidewalk. Lastly, petitioner posits that respondent's attempt to create a purported causal connection between the installation of sidewalk sheds and the failure of its previous commercial tenant's business is a red herring and should be ignored because respondent does not provide any evidence in support of same (NYSCEF Doc. No. 16, *reply*).

"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.*).

"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, 518-519 [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"]).

Here, the petition is granted because the application apprises the court of the "exact nature, timing and extent of the [work] requiring the license" (*Matter of Pav-Lak Indus., Inc. v Wilshire Ltd.*, 2009 NY Slip Op 33110[U], *5 [Sup Ct, NY County 2009], quoting *Deutsche Bank Trust v 120 Greenwich Dev. Assoc.*, 2005 NY Slip Op 50467[U] [Sup Ct, NY County 2005]). The inconvenience to respondent is relatively slight compared to the hardship that

petitioner will experience if the license is refused (see *Matter of 400 E57 Fee Owner LLC v. 405 E. 56th St. LLC*, 193 AD3d 626, 626 [1st Dept 2021]). Moreover, respondent does not oppose the grant of access provided the license agreement contains just and equitable terms. With respect to the license fees, respondent fails to proffer case law in support of its speculative claim that its commercial tenant would suffer business loss as a result of petitioner's renovations (see *Cameron Sky, LLC v Bd. of Managers of the New Yorker Condo.*, 2025 NY Slip Op 33435[U], *5 [Sup. Ct., New York County 2025]). A license fee of \$18,000.00, as sought by respondent, is significantly greater than the fees awarded in cases with similar facts as here. A review of other license fees reveals amounts significantly less than the \$18,000.00 demanded by respondent: \$3,000.00 for an adjoining penthouse unit totaling over 1,700 square feet with a rooftop terrace (*Panasia Estate, Inc. v 29 W. 19 Condominium*, 204 AD3d 33, 35 [1st Dept 2022]); \$2,000.00 for an adjoining penthouse (*Van Dorn Holdings LLC v 152 W. 58th Owners Corp.*, 149 AD3d 518, 518 [1st Dept 2017]). Given the facts of the case, the court grants a monthly license fee of \$2,600.00. The court, however, declines to so-order petitioner's proposed license agreement attached to the application since the parties did not agree to same.

Turning now to the engineering fees and attorney fees, respondent is entitled to a reimbursement, if supported by proof, of their professional fees incurred, insofar as it has been held that "[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" (*Van Dorn Holdings*, 149 AD3d at 519 citing *Matter of North 7-8 Invs., LLC v Newgarden*, 43 Misc 3d 623, 628 [Sup Ct, Kings County 2014]). Respondent is also entitled to their attorneys' fees incurred in this RPAPL 881 license proceeding (see *Matter of Panasia Estate Inc. v 29 W. 19 Condominium*, 224 AD3d 414, 414 [1st Dept 2024]). Since at this juncture the amount of engineering fees and attorney fees incurred to date cannot be determined with reasonable certainty, that issue will be referred to a special referee to hear and determine. Accordingly, it is hereby

ORDERED and **ADJUDGED** that petitioner is granted a license from April 15, 2026, through June 15, 2027, to temporarily enter onto respondent's property to install the roof protection, access and maintain the roof protection, and perform façade repair and restoration work to the southern façade of petitioner's property; and it is further,

ORDERED that petitioner is directed to pay respondent a fixed monthly license fee in the sum of \$2,600.00, with the first payment due within twenty (20) days of service of this order with notice of entry, with the remaining payments to be made no later than the fifth day of each month; and it is further,

ORDERED that, if petitioner does not complete the outstanding work within fourteen months, then it shall apply for an extension of its license, which extension will be granted only for good cause shown and with the potential increase of license fees to be decided upon the granting of such extension; 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 construction work to be undertaken affecting respondent property; and it is further

ORDERED that at the completion of the term of the license, respondent's property within the license area shall be returned to its original condition, and all materials used in renovation and any resulting debris shall be removed from therein; 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 the 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 \$2 million and excess limits of no less than \$8 million, and petitioner shall name each contractor it may hire, as well as respondent, as an additional insured on its policy insuring work resulting or arising from petitioner's project, and such coverage shall remain in place for the duration of the access license period; and it is further

ORDERED that petitioner shall be liable to respondent for any damages which it may suffer as a result of construction work done because of the granting of this license and all damaged property shall be repaired at petitioner's sole expense; 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 and engineering 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 caused 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 petitioner shall reimburse respondent for all reasonable attorneys' fees and engineering fees incurred by respondent in connection with license negotiations through the end of the license period, as well as the amount of any actual and provable damages owed by petitioner to respondent incurred directly as a result of the issuance of the license (if not covered by insurance); and it is further

ORDERED that the special referee shall hear and determine all reasonable attorneys' fees and engineering fees as well as any actual and provable damages owed by petitioner to respondent; and it is further

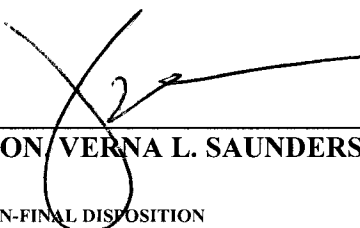
ORDERED that the parties shall agree to a detailed license agreement in conformity with the terms and conditions set forth in this decision and order; and it is further

ORDERED that, within twenty (20) days after this decision and order is uploaded to NYSCEF, counsel for petitioner shall serve a copy of this decision and order, with notice of entry, upon respondent as well as the Special Referee Clerk who shall hear and determine the reasonable attorneys' fees and engineering fees at the conclusion of the license period; and it is further

ORDERED that service upon the Special Referee Clerk and shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases*.

This constitutes the decision and order of the court.

March 27, 2026



HON. Verna L. SAUNDERS, JSC

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	