

**Board of Mgrs. of the Claremont S. Condominium v
Hudson Mews Apt. Corp.**

2026 NY Slip Op 31858(U)

April 30, 2026

Supreme Court, New York County

Docket Number: Index No. 154639/2026

Judge: Nicholas W. Moyne

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 41M

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THE BOARD OF MANAGERS OF THE CLAREMONT
SOUTH CONDOMINIUM

INDEX NO. 154639/2026

Petitioner,

MOTION DATE 04/10/2026

- v -

MOTION SEQ. NO. 001

HUDSON MEWS APARTMENT CORP.,

Respondent.

**DECISION + ORDER ON
MOTION**

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HON. NICHOLAS W. MOYNE:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 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

were read on this motion to/for MISC. SPECIAL PROCEEDINGS.

Upon the foregoing documents, it is

In this special proceeding pursuant to Real Property Actions and Proceedings Law (RPAPL) § 881, Petitioner Board of Managers of the Claremont South Condominium ("Claremont South") seeks a license to access the adjoining property owned by Respondent Hudson Mews Apartment Corp. ("Hudson Mews"). The petitioner seeks to perform exterior excavation and waterproofing repairs to its south foundation wall, which it claims has been damaged by tree root intrusion. The proposed work allegedly requires the permanent destruction of two 80-year-old mature maple trees, the demolition of a decades-old masonry planter, and the excavation of a trench approximately 45 feet long, 8 feet wide, and 9 to 10 feet deep within the respondent's courtyard.

The respondent vigorously opposes the petition, arguing that it never outright refused access, that the destructive exterior work is not strictly necessary as interior remediation alternatives exist, and that the petition fails to comply with the December 2025 amendments to RPAPL § 881 requiring compensation for the permanent diminution of property value. For the reasons set forth below, the petition is denied without prejudice to renew, and the parties are directed to engage in a mandatory fact-finding protocol.

The parties are adjacent property owners in the West Village. Hudson Mews is a residential cooperative whose defining amenity is a unique, private courtyard featuring a masonry retaining wall (planter box) and two mature maple trees. These trees and the planter box have existed since at least 1978, predating the 1988 construction of Claremont South by a decade. The 1988 construction drawings for Claremont South show that the developer elected to

build the new structure on top of an existing, older multi-wythe brick wall without installing positive-side (exterior) waterproofing.

In 2019, the petitioner began complaining of water infiltration, attributing it to the respondent's trees. The petitioner relied on a visual evaluation by Rand Architecture, which hypothesized that tree roots had penetrated the foundation wall. In response, the respondent retained certified arborist William Bryant Logan, who conducted a physical air-spade excavation of the roots in November 2019. Logan found that the roots were running along the exterior face of the wall, not penetrating it, and caused no visible buckling. The 2019 excavation also revealed a conduit passing through the petitioner's wall, presenting an alternative source for the water infiltration.

The dispute lay largely dormant until July 2025, when the petitioner approached the respondent with a contractor proposal to demolish the planter, remove the trees, and excavate the courtyard. Respondent's Board President, Noah Brick, responded on August 1, 2025, requesting documentation of any prior interior remediation that the petitioner had attempted and proposing an escrow agreement to fund a professional review. In March 2026, the petitioner retained new counsel who sent a "Final RPAPL 881 Notice" threatening litigation. Email correspondence between counsel shows that the respondent's counsel, Joseph Colbert, repeatedly asked for documentation of the alleged failed interior repairs and requested access for the respondent's engineers to inspect the interior cellar wall. Colbert explicitly stated that after receiving the information and inspection, "the coop board [may] decide[] to negotiate a license for this to happen," and warned that rushing to court without providing the information was premature. Petitioner's counsel refused the inspection, stating, "I don't have to give you an inspection of my client's property. That's ridiculous" and filed this proceeding shortly thereafter.

RPAPL § 881 allows a property owner to petition for a license to enter an adjoining property when such entry is necessary to make improvements or repairs, and permission to enter has been refused. A court must balance the competing interests of the parties, weighing the hardship to the petitioner if the license is denied against the inconvenience to the adjoining owner if it is granted.

Crucially, the statute requires the petitioner to demonstrate that the repairs "cannot be made... without entering the premises of an adjoining owner." Where alternative means exist that obviate the need for access, a petitioner lacks the requisite necessity for an RPAPL § 881 license (see *Matter of Panstar Realty LLC v New York Teachers Hous. Corp.*, 246 AD3d 473 [1st Dept 2026]; *Lincoln Spencer Apts., Inc. v Zeckendorf*, 88 AD3d 606 [1st Dept 2011]). Furthermore, pursuant to the December 2025 amendments to RPAPL § 881, courts granting a license are expressly required to "reasonably compensate the adjoining owner for the loss of use and enjoyment of the adjoining premises including diminution in value."

As discussed above, a threshold requirement for an RPAPL § 881 license is that the adjoining owner must have refused access. The record conclusively establishes that the respondent did not outright refuse access. Rather, the respondent sought reasonable predicate information, documentary evidence of the alleged failed interior repairs, and a professional interior inspection to fulfill its fiduciary duties before consenting to the permanent destruction of its property.

Seeking reasonable terms and information for access is not a refusal. The petitioner's assertion to this Court that the respondent unequivocally refused access is belied by the documentary record. The petitioner cannot manufacture statutory jurisdiction by refusing a reasonable request for an inspection and then characterizing the resulting impasse as a denial of access.

Even if a refusal had occurred, the petitioner has failed to meet its burden of proving that the highly destructive exterior access is necessary. The petitioner relies on its engineer, David Turner, who asserts that exterior excavation is the only way to permanently repair the foundation because interior measures failed. However, the petitioner has not produced all of the relevant documentation including contracts, invoices, Department of Buildings (DOB) filings, or before-and-after photographs to substantiate its claims of prior intensive and expensive interior remediation efforts that failed. Conversely, the respondent has submitted compelling expert affidavits demonstrating that feasible alternatives exist. Licensed engineer Albert Edwin Mayas Jr. and registered architect Julie Georgopoulos detail several standard "negative-side" (interior) waterproofing methods—such as polyurethane injection, epoxy injection, and acrylate gel injection—that they maintain can successfully remediate the infiltration entirely from within the petitioner's building. Furthermore, certified arborist William Bryant Logan identifies less destructive arboricultural alternatives, such as targeted root pruning and shallow vertical root barriers, which the petitioner has not excluded. The respondent's experts also note that the leaks may be caused by alternative sources, such as cavity wall defects or an existing conduit pipe penetrating the wall, which the petitioner has failed to investigate. Because feasible alternatives exist that could obviate the need for destroying the trees and courtyard, the petitioner has not established the requisite necessity under RPAPL § 881.

The relief the petitioner seeks is extraordinarily severe. It does not merely seek to erect a temporary sidewalk shed; it seeks the permanent destruction of two 80-year-old mature maple trees and a masonry planter that have defined the character of Hudson Mews since 1978. The respondent's real estate appraiser, Michael Vargas, estimates that this destruction would cause a permanent diminution in value to the cooperative's apartments ranging from \$2,700,000 to \$4,500,000. The December 2025 amendments to RPAPL § 881 mandate that a licensee compensate the adjoining owner for the "loss of use and enjoyment of the adjoining premises including diminution in value." The petitioner has failed to offer any concrete compensation proposal for this massive, permanent loss. Equity dictates that an innocent adjoining owner who derives no benefit from a neighbor's construction project should not be forced to bear the cost or suffer permanent property devaluation.

The Court finds that this proceeding was commenced prematurely. Petitioner has failed to establish that the respondent refused access, has failed to prove that the destructive exterior excavation is the only viable method of repair, and has shielded its own property from the necessary professional inspections that would allow for an informed technical resolution. That being said, the Court also has concerns about the respondents' willingness to negotiate on good faith at this juncture. At oral argument on the petitioner, the attorney of record for the respondent failed to appear. Instead, he sent an attorney who appeared to be rather unfamiliar with the basic facts and allegations of the case. When pressed to offer specifics about what conditions the respondents might be willing to accept in exchange for acceding to the requested license, the attorney refused to even attempt to negotiate, claiming he lacked any authority to do

so even though the respondents themselves were in the courtroom at the time. He also declined to try to reach the attorney of record by telephone after the Court requested that he attempt to do so. The only time the appearing attorney appeared to really engage with the case is when he insisted that the Court was obligated to award the respondents attorney's fees and professional fees for having to respond to the petition. He claimed that a failure by this Court to award attorney's fees in this matter would "set a dangerous precedent." This Court is much more concerned about the fact that this dispute between neighbors has been festering since at least 2019 and it appears no closer to resolution now than when it first began. Accordingly, while the Court will consider an award of any professional fees incurred in having to defend against the premature license application, it declines to consider awarding attorney's fees at this time.

Accordingly, it is hereby:

ORDERED AND ADJUDGED that the petition is **DENIED without prejudice**; and it is further

ORDERED that if Petitioner wishes to renew its application for an RPAPL § 881 license, the parties are directed to strictly adhere to the following fact-finding protocol:

1. Petitioner shall grant Respondent's engineering and architectural professionals access to perform a "negative-side" interior inspection of Petitioner's cellar wall, with all finished walls removed to expose the masonry.
2. Respondent's professionals shall be permitted to conduct 3D laser scanning and non-destructive probing of the interior masonry.
3. The parties shall coordinate a joint, non-destructive arborist inspection of the trees and root systems.
4. Petitioner must produce to Respondent all documentary evidence of its prior interior repairs, including contracts, invoices, permits, DOB filings, and before-and-after photographs.
5. Respondent shall be afforded a two-month period to complete a unit-by-unit real estate appraisal to quantify the exact diminution in value the cooperative will suffer if the exterior excavation proceeds.

ORDERED that, pursuant to RPAPL § 881, because Respondent did not refuse access but rather sought reasonable terms and necessary information, Petitioner shall reimburse Respondent for its reasonable expert professional fees incurred in defending this premature petition. Respondent is directed to submit an affirmation of services and costs within thirty (30) days of the date of this Order. The Court declines to award attorney's fees for the reasons stated.

This constitutes the Decision and Order of the Court.


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4/30/2026

DATE

NICHOLAS W. MOYNE, 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: