

**504 E. 14th St., LLC v NAR Apts., LLC**

2016 NY Slip Op 30106(U)

January 22, 2016

Supreme Court, New York County

Docket Number: 159827/2015

Judge: Manuel J. Mendez

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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: MANUEL J. MENDEZ PART 13
Justice

In the Matter of the Application of
504 EAST 14th STREET, LLC, EAST 14TH
LIGHTHOUSE, LLC, and EAST VILLAGE
14 LLC,
Petitioners,

INDEX NO. 159827/2015
MOTION DATE 12-16-2015
MOTION SEQ. NO. 001
MOTION CAL. NO.

FOR AN ORDER AND JUDGMENT PURSUANT
TO ARTICLE 4 OF THE CIVIL PRACTICE LAW
AND RULES AND SECTION 881 OF THE REAL
PROPERTY ACTIONS AND PROCEEDINGS LAW
FOR ACCESS TO ADJOINING PROPERTY,

-against-

NAR APARTMENTS, LLC
Respondent.

The following papers, numbered 1 to 11 were read on this Order to Show Cause for a License
pursuant to Real Property Actions and Proceedings Law § 881 .

Table with 2 columns: Description of papers and PAPERS NUMBERED. Includes rows for Notice of Motion/ Order to Show Cause, Answering Affidavits, and Replying Affidavits.

Upon a reading of the foregoing cited papers, it is Ordered that petitioner's motion
by Order to Show Cause for an Order granting it a license to enter onto respondent's
property pursuant to Real Property Actions and Proceedings Law (here "RPAPL") § 881
is granted to the extent stated herein.

Petitioners hold a net lease on real property located at 500 through 530 East 14th
Street, New York, New York (herein "Property"). Respondent NAR Apartments, LLC is the
owner of a five (5) story building located at 517 East 13th Street, New York, New York
(herein "Building"). The Property and the Building share a common property line.

Petitioner will complete excavation, foundation, and superstructure construction on
the Property for the construction of two new buildings. Petitioner has filed the appropriate
plans for the construction with the New York City Department of Buildings, which have
been approved. Petitioner is required to provide protection for the Building, its occupants,
and the general public.

Petitioner provided respondent with multiple property protection plans and multiple
limited licensing agreements. The parties did not reach agreement on various terms and
respondent has denied petitioner access to his property and the Building.

Petitioner commenced this special proceeding pursuant to RPAPL § 881 for an order granting it access to respondent's building in order for it to install, maintain, and remove overhead protection, fencing, sidewalk bridge, debris netting, monitors already installed on the Building, construct a chimney extension, and install other protections as required by law. Respondent answered the Petition and asserted six affirmative defenses.

"RPAPL § 881 is the means by which a landowner seeking to make improvements or repairs to its property may seek a license to enter an adjoining landowner's property when those improvements or repairs cannot be made without such entry" (Lincoln Spencer Apartments, Inc. v. Zeckendorf-68th Street Associates, 88 A.D.3d 606, 931 N.Y.S.2d 69, 70 [1<sup>st</sup> Dept., 2011]). RPAPL § 881 requires that "[t]he 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." Further, the "licensee shall be liable to the adjoining owner or his lessee for actual damages occurring as a result of the entry."

After multiple conference calls with this Court, the parties advised the Court that the only remaining issues are (1) attorneys' fees in this proceeding; (2) future legal expenses; and (3) replacement and/or rewiring of security cameras allegedly damaged by the sidewalk bridge installed by Petitioner.

Petitioner states a basis for the granting of a license pursuant to RPAPL § 881. Petitioner annexes affidavits from Yehuda Borg, the petitioner's Project Manager, and Dov Hertz, Vice President of 504 East 14<sup>th</sup> Street. They explain the hardship the petitioner faces if the license is not granted, and they cite to the New York Construction Code requiring petitioner to erect scaffolding, sidewalk bridges and rooftop protections in order to protect the Building and its occupants. Petitioner also annexes affidavits from three licensed engineers detailing why the license is required and the specific work to be performed under the license, and why the work may not be performed without the license.

"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" (114 A.D.3d 491, 492, 979 N.Y.S.2d 811 [1<sup>st</sup> Dept., 2014]).

Petitioner shows that it will suffer harm by not being able to timely complete the project without the license, and that justice requires the granting of a license to access respondent's property.

The issues remaining between the parties - attorneys' fees and damage to the security cameras - are not before this Court. The Petition seeks a limited license. Respondent does not seek any relief in the form of counter-claims or a cross-motion. Any claims respondent currently has or may have during the construction project may be brought by a proceeding or action against petitioner.

Accordingly, it is ORDERED that petitioner's motion by Order to Show Cause seeking a license to enter onto respondent's property is granted, and it is further,

**ORDERED**, that petitioner is granted a limited license during the construction project to gain access to respondent's property in order to:

- (A) Install, maintain, and remove overhead protection and fencing in the rear courtyard of respondent's property;
- (B) Install, maintain, and remove overhead protection for the rooftop of the building on respondent's property;
- (C) Install, maintain, and remove a sidewalk bridge in the front of respondent's property;
- (D) Install, maintain, and remove debris netting to protect windows on the side of respondent's property;
- (E) Install, maintain, and remove a sidewalk bridge by the windows on the side of respondent's property;
- (F) Complete the extension and/or offset of any chimneys, flues, exhausts, vents and other equipment on respondent's property to the extent required by applicable law;
- (G) Read, maintain, and remove the monitors already installed on respondent's property as part of the construction project;
- (H) Access all monitors on respondent's property in the event additional monitors are required during the excavation, or during construction;
- (I) Install, maintain, and remove any other protection on respondent's property during the construction as required by and in compliance with applicable laws and regulations; and
- (J) That respondent execute the necessary New York City Department of Building filing forms required by the limited license herein,

, and it is further,

**ORDERED**, that Petitioner shall not unreasonably interfere with the Respondent's necessary access to their property and quality of life, and shall take the necessary steps, measures, and precautions to prevent and avoid any damage to the Respondents' property, and it is further,

**ORDERED**, that Petitioner shall procure and maintain a policy of insurance covering liability and property damage, or equivalent bond with a corporate surety, in an amount of not less than \$10,000,000 (ten million) naming the Respondent as an additional insured during the period of this license through the removal of all temporary protections encumbering Respondent's property, and it is further,

**ORDERED**, that Petitioner shall be held liable to the Respondent for any damages which they 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 notify the Respondent in writing when it has completed the work under the license and removed the temporary protections, and it is further,

ORDERED, that upon the completion of the term of the license, the Respondent's property within such license area shall be returned 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 is solely responsible for the installation, maintenance and removing of the temporary protections.

MANUEL J. MENDEZ

ENTER: ~~\_\_\_\_\_~~ J.S.C.

Dated: January 22, 2016

  
\_\_\_\_\_  
MANUEL J. MENDEZ  
J.S.C.

Check one:     FINAL DISPOSITION     NON-FINAL DISPOSITION

Check if appropriate:     DO NOT POST     REFERENCE