

269-273 14th St. NY Corp. v Stein

2019 NY Slip Op 33770(U)

December 3, 2019

Supreme Court, Kings County

Docket Number: 520144/2017

Judge: Richard Velasquez

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 66 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 3 day of DECEMBER, 2019.

PRESENT:
HON. RICHARD VELASQUEZ
Justice.

-----X
269-273 14TH ST NY CORP.,

Petitioner(s),

Index No.: 520144/2017

-against-

Decision and Order

MICHAEL STEIN, VALERIE BUDZIK and
JACQUELINE PHUNG, in her capacity as Trustee
Of the JACQUELINE PHUNG 2014 REVOCABLE
TRUST,

Respondent(s).
-----X

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KINGS COUNTY CLERK
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The following papers numbered 130 to 192 read on this motion:

<u>Papers</u>	<u>Numbered</u>
Notice of Motion/Order to Show Cause Affidavits (Affirmations) Annexed _____	130-163
Opposing Affidavits (Affirmations) _____	168-177; 180-192
Memorandum of Law _____	167

After oral argument and a review of the submissions herein, the Court finds as follows:

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Respondents, MICHAEL STEIN, VALERIE BUDZIK and JACQUELINE PHUNG, in her capacity as Trustee moves by Order to Show Cause for an order 1) reopening this action for enforcement of the courts decision and order dated March 1, 2018, (2) enforcing the Order dated March 1 2018 by revoking Petitioners license to access respondents property; (3) compelling petitioner to remove needle beams from contact with respondents building, to install waterproofing between the needle beams and respondents property, and repairing any damage to respondents property resulting from the placement of the needle beams in direct physical contact with respondents building; (4) compelling petitioner to complete comprehensive repairs to the foundation of Respondents building so as to stop the leaks into respondents cellar; (5) compelling petitioner to remove all tools, material, and equipment from respondents roof and to repair any damage resulting from the work conducted on respondents roof; (6) awarding respondent its reasonable attorneys fees and costs in bringing this Order to Show Cause. Petitioner opposes the same.

ANALYSIS

Second, Pursuant to N.Y. R.P.A.P.L. § 881; 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 licensee shall be liable to the adjoining owner or his lessee for actual damages occurring as a result of the entry. N.Y. Real Prop. Acts. Law § 881 (McKinney).

Under this section, a property owner, upon refusal of his neighbor to permit access to make 'improvements or repairs,' may move for a compulsory license where reasonable and necessary. The Court in *North 7-8 Investors, LLC v. Newgarden*, 43 Misc.3d 623, 982 N.Y.S.2d 704 (Sup. Ct., Kings Co., 2014), found that new construction was an "improvement" within the meaning of the statute and that "access is deemed necessary even where the access is necessary because a building is constructed to the lot line of a property." The statute directs that the license be granted "upon such terms as justice requires."

In the present case this court has already granted the Petitioners a license to enter. However, such agreement and Order, requires Petitioner to maintain at all times during the performance of work, insurance coverage. Respondents submitted proofs of the Petitioners insurance policies expired on February 2, 2018, and the Petitioners General Contractor insurance coverage expired on October 3, 2017. In opposition, the Petitioner submits the same proofs which support the Respondents contentions that all insurance policies have lapsed and expired.

As such, the Petitioner is in violation of the Courts March 1, 2018 Order. It is the decision of the court that this matter is hereby reopened and the Petitioners License to enter the Respondents property is hereby suspended until such time as the Petitioner provides proof on the required insurance pursuant to the March 1, 2018 Order.

Respondents request for attorneys' fees is hereby denied as they respondent has failed to annex an affirmation of actual services rendered in connection with the filing of this order to show cause. This court is unable to make any reasonable award of attorney's fees without said information.

Accordingly, Respondents Order to show cause is hereby granted to the extent that, this matter is hereby reopened, the current license to enter respondent's property is hereby suspended until such time as Petitioner provides proof of the required insurance policy pursuant to the Order dated March 1, 2018, for the reasons stated above.

This constitutes the Decision/Order of the Court.

Date: December 3, 2019

Richard Velasquez

RICHARD VELASQUEZ, J.S.C.

So Ordered
Hon. Richard Velasquez

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