

Fridman v Ginette-Domingue
2021 NY Slip Op 30312(U)
January 26, 2021
Supreme Court, Kings County
Docket Number: 508854/2020
Judge: Richard Velasquez
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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 26th day of JANUARY, 2021

P R E S E N T:

HON. RICHARD VELASQUEZ, Justice.

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ANSHEL FRIDMAN and 1720 OPERATOR, LLC,

Plaintiff,

-against-

Index No.: 508854/2020
Decision and Order

MARIE GINETTE-DOMINGUE, MICHAEL DOMINGUE, RODRIGUE DOMINGUE, MUCHELINE SOMINGUE, YVES DOMINGUE, ARMIDE DOMINGUE, SELMA ROBINSON and HILDA ROBINSON, ESTATE OF HILDA ROBINSON and DAVID ROBINSON individually, and as Sole surviving heir at law of SELMA ROBINSON and HILDA ROBINSON.

Defendants,

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The following papers NYSCEF Doc #'s 2 to 26 read on this motion:

<u>Papers</u>	<u>NYSCEF DOC NO.'s</u>
Notice of Motion/Order to Show Cause Affidavits (Affirmations) Annexed_____	2-15, 28; 19
Opposing Affidavits (Affirmations)_____	21-26

After having heard Oral Argument on JANUARY 26, 2021 and upon review of the foregoing submissions herein the court finds as follows:

Petitioner moves pursuant to NY RPAPL § 881 for an order granting Petitioner a license to enter the properties commonly known as 1716 President Street, Brooklyn, New York and the property known as 1722 President Street, Brooklyn, NY.(MS#1). Respondent David Robinson opposes the same. Respondent David Robinson cross-

moves for an order pursuant to CPLR 1012 allowing David Robinson to intervene and pursuant to CPLR 3211(a)(8) dismissing the action for failure to effectuate service. (MS#2).

Pursuant to NY RPAPL § 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. NY 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.” *Id.*

In the present case, there is no opposition to petitioners request with regard to the property known as 1716 President Street, Brooklyn New York. Additionally, Petitioner has demonstrated that a license is warranted because a new building constitutes an improvement under section NY RPAPL § 881. Therefore, petitioners

requests pursuant to NY RPAPL § 881 regarding the property known as 1716 President Street is hereby granted in its entirety. (MS#1)

Next the Court shall address Respondent's cross-motion. Respondent David Robinson's request pursuant to CPLR 1012 allowing David Robinson to intervene is hereby deemed MOOT, as petitioner has already named the respondent David Robinson in its amended complaint. Pursuant to CPLR 3025 "Amendments without leave. A party may amend his pleading once without leave of court within twenty days after its service, or at any time before the period for responding to it expires, or within twenty days after service of a pleading responding to it. NY CPLR 3025 (McKinney). In the present case the Petitioner filed the Amended Petition on January 5, 2021, Respondent filed their responsive pleading to the Petition on December 30, 2020. Therefore Petitioner was within the time allowed to amend their petition as of right without leave of the court. Said amendment added respondent David Robinson thereby deeming his request to intervene MOOT as he is a named party to this action. Respondent David Robinson's cross-motion is decided as follows; this matter as it pertains to the property known as 1722 President Street, Brooklyn New York, only, is hereby stayed pending the appointment of an administrator for the Estate of Hilda Robinson and Selma Robinson. Any reliefs not specifically addressed are hereby denied. (MS#2)

Accordingly, Petitioner's request pursuant to NY RPAPL § 881 for an order granting Petitioner a license to enter is hereby granted, with regard to the property known as 1716 President Street, Brooklyn New York, for the reasons stated above. Further, it is hereby ordered this matter as it pertains to the property known as 1722

President Street, Brooklyn New York, only, is hereby stayed pending the appointment of an administrator for the Estate of Hilda Robinson and Selma Robinson. (MS#1 & 2).

This constitutes the Decision/Order of the court.

Dated: Brooklyn, New York
January 26, 2021

ENTER FORTHWITH:



HON. RICHARD VELASQUEZ