

132 E. 71st LLC v PCA Capital, LLC

2021 NY Slip Op 30529(U)

February 25, 2021

Supreme Court, New York County

Docket Number: 154533/2020

Judge: Debra A. James

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DEBRA A. JAMES PART IAS MOTION 59EFM

Justice

-----X

132 EAST 71ST LLC,

Petitioner,

INDEX NO. 154533/2020

MOTION DATE 7/17/2020

MOTION SEQ. NO. 001

- v -

PCA CAPITAL, LLC, THOMAS HORTON and JANET HORTON,

Respondents.

DECISION + ORDER ON MOTION

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 41

were read on this motion for MISC. SPECIAL PROCEEDINGS
ORDER

Upon the foregoing documents, it is

ORDERED and ADJUDGED that Petitioner 132 East 71ST LLC (the Property) is hereby granted a license, pursuant to RPAPL 881, to enter upon a portion of Respondent's land (Adjacent Property), specifically the area of Adjacent Property immediately adjacent to the Property, (a) to perform a pre-construction survey of the Adjacent Property within ten (10) days of Petitioner posting proof of service on NYSCEF of a copy of this Order with notice of entry, and within thirty (30) days of completing the pre-construction survey, (1) to install overhead protection in the rear yard of the Adjacent Property and to maintain such rear yard overhead protection for up to five (5) months from the

completion of such installation; and (2) to install plywood rooftop protection and overhead protection on the front terrace of the Adjacent Property, and maintain such rooftop and overhead protection for up to five (5) months from the completion of such installation; (3) to install front sidewalk bridge protection in front of the Adjacent Property, and maintain such sidewalk bridge protection for up to ten (10) months from the completion of such installation (Required Protective Measures); and it is further

ORDERED that the installation of the Required Protective Measures will be carried out pursuant to the customary and standard practices used in the building construction industry as certified by an architect licensed in the State of New York and retained by Petitioner; and it is further

ORDERED that the granting of the foregoing license is subject to the following terms and conditions: (1) Petitioner shall be entitled to such license for a period of ten (10) months, commencing upon the service of this judgment with notice of entry, or as soon as the weather permits as certified by the licensed architect, (2) Petitioner is directed to pay the sum of \$ 3,500 per month to Respondent during the term of the license, (3) Petitioner shall take the necessary steps, measures, and precautions to prevent and avoid any damage to the Adjacent Property, (4) upon the completion of the term of the license,

Petitioner shall return Respondent's land within such license area to its original condition, and all materials used in construction and any resultant debris shall be removed from the license area, (5) Petitioner shall save Respondent harmless for any damages occurring within the license area, during the period of this license, and a policy of liability insurance in an amount of not less than \$2 million which names Respondent as additional insured shall be maintained by Petitioner throughout the period of this license, (6) Petitioner shall be held liable to Respondent for any damages which it 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 (7) a hearing shall be held before this court at the expiration of the term of the license to determine the amount of any professional fees, including attorney's fees, which accounts for \$100,000 reimbursement of such fees already provided by Petitioner to Respondent, incurred by Respondent as the result of Petitioner's entry upon the Adjacent Property pursuant to such license, which, upon application by show cause order, shall be referred to a Special Referee to hear and report, and which upon confirmation of such report by the court, shall be paid by petitioner.

DECISION

See House 93, LLC v Lipton, 178 AD3d 545 (1st Dept. 2019).

2/25/2021
DATE

[Signature]
DEBRA A. JAMES, J.S.C.

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