

Chelsea Mercantile v 219 24th St., LLC
2021 NY Slip Op 30931(U)
March 25, 2021
Supreme Court, New York County
Docket Number: 152253/2021
Judge: Arthur F. Engoron
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At an IAS Part 37 of the Supreme Court of the State of New York County of New York, 60 Centre Street, New York, NY, on the 25th day of March, 2021

P R E S E N T

HON. ARTHUR F. ENGORON
Justice.

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The Chelsea Mercantile,	<i>Petitioner,</i>	:
		: Index No. 152253/2021
- against -		:
		:
219 24 th Street, LLC,	<i>Respondent.</i>	: <u>DECISION & ORDER</u>
		: <i>Motion Seq. 001</i>
		:
		:
-----X		:

Upon reading the Order to Show Cause (Motion Seq. 001), the accompanying affidavit of John Venetis sworn to on February 24, 2021, the Verified Petition dated March 4, 2021 and the accompanying exhibits, which seeks a license to enter onto Respondent’s property located at 219-221 West 24th Street, New York, NY (B: 774; L: 24) (“Respondent’s Property”) pursuant to Real Property Actions and Proceedings Law (RPAPL) § 881, and Respondent having appeared by way of filing a verified answer dated March 19, 2021 and filing an affirmation in opposition dated March 19, 2021 with accompanying exhibits, and the case having been called for oral argument virtually, through Microsoft Teams, on March 23, 2021 at 11:00am, with Respondent appearing through its counsel, and the Court having heard oral argument, the petition is granted to the extent stated herein and it is accordingly,

WHEREAS, Petitioner is seeking a limited license for a period of six (6) months, subject to extension for good cause shown, with said license term commencing upon the first date of the installation of the protections set forth below, to gain access to Respondent's Property ("License"):

- a. To perform a pre-construction survey of the exterior condition of the Adjacent Property as required by Building Code § 3309.4.3;
- b. To temporarily install plank and two (2) inches of Styrofoam with $\frac{3}{4}$ plywood over twenty (20) feet of the roof of the Adjacent Property (with such measurement commencing from the property line shared between the Adjacent Property and the Petitioner's property) as required by Building Code § 3309.10;
- c. To temporarily create a controlled access zone in the rear yard of the Adjacent Property during construction hours of 8AM-5PM while overhead work is being performed in that location;
- d. The right to temporarily install suspended scaffolding over the Adjacent Property in accordance with Building Code § 3314.3.2 to perform Façade Repair Work;
- e. The right to temporarily install (to the extent the existing sidewalk shed in front of the Adjacent Property is removed during this court-ordered access period), a sidewalk shed over twenty (20) feet of sidewalk in front of the Adjacent Property (with such measurement commencing from the property line shared between the Adjacent Property and the Petitioner's property) as required by Building Code § 3307.3 (subsections (a) through (e) collectively referred to as the "Temporary Protections")

- f. Unless otherwise agreed, Petitioner shall gain access to Respondent's rooftop from Petitioner's property or scaffolding without going through the interior of Respondent's Property;

WHEREAS, Respondent alleges that it is not permitted to voluntarily grant access to Petitioner due to Vacate Orders and other violations imposed by the New York City Department of Buildings ("DOB") and makes no other representations concerning the legality of access;

ORDERED and ADJUDGED that the petition brought by Order to Show Cause seeking a license to enter onto Respondent's Property pursuant to Real Property Actions and Proceedings Law (RPAPL) §881 is granted to the extent set forth below, and it is further

ORDERED, that Petitioner is granted a limited license for a period of six (6) months, subject to extension for good cause shown, with said license term commencing upon the first date of the installation of the protections set forth below, to gain access to Respondent's Property:

- g. To perform a pre-construction survey of the exterior condition of the Adjacent Property as required by Building Code § 3309.4.3;
- h. To temporarily install plank and two (2) inches of Styrofoam with ¾ plywood over twenty (20) feet of the roof of the Adjacent Property (with such measurement commencing from the property line shared between the Adjacent Property and the Petitioner's property) as required by Building Code § 3309.10;
- i. To temporarily create a controlled access zone in the rear yard of the Adjacent Property during construction hours of 8AM-5PM while overhead work is being performed in that location;
- j. The right to temporarily install suspended scaffolding over the Adjacent Property in accordance with Building Code § 3314.3.2 to perform Façade Repair Work;

- k. The right to temporarily install (to the extent the existing sidewalk shed in front of the Adjacent Property is removed during this court-ordered access period), a sidewalk shed over twenty (20) feet of sidewalk in front of the Adjacent Property (with such measurement commencing from the property line shared between the Adjacent Property and the Petitioner's property) as required by Building Code § 3307.3 (subsections (a) through (e) collectively referred to as the "Temporary Protections")
- l. Unless otherwise agreed, Petitioner shall gain access to Respondent's rooftop from Petitioner's property or scaffolding without going through the interior of Respondent's Property;

and it is further

ORDERED, that Petitioner is solely responsible, at its own cost, for the installation, maintenance and removal of the Temporary Protections, and it is further

ORDERED, that in consideration of the access to install, maintain and remove the Temporary Protections, as set forth above, Petitioner shall pay Respondent the amount of \$3,500.00 for its professional fees in connection with this proceeding, and it is further

ORDERED, that prior to any entry onto Respondent's Property, Petitioner will have its contractors performing work hereunder obtain policies of general liability insurance on an occurrence basis against claims for property damage with a combined single limit coverage of at least two million dollars (\$2,000,000.00) per occurrence and at least four million dollars (\$4,000,000.00) in the aggregate, with excess/umbrella coverage of at least five million dollars (\$5,000,000.00) naming Respondent and its managing agent as an additional insured during the

period of this license through the removal of the Temporary Protections encumbering Respondent's Property, and it is further

ORDERED, that Petitioner shall (a) within two business days of filing of this decision and order, email copy of this decision and order to Rachel Rabinowitz, Esq (rrabinowitz@buildings.nyc.gov), counsel for the DOB which counsel for Respondent advises is involved in issues involving the Respondent's Property; (b) at least two (2) business days prior to commencement of installation of any Temporary Protections by Petitioner on Respondent's Property notify Rachel Rabinowitz, Esq (rrabinowitz@buildings.nyc.gov), of the date and time Petitioner shall enter upon Respondent's Property to install the Temporary Protections in accordance with this decision and order; and (c) comply with directions, if any, of the DOB with regard to the access permitted by this decision and order, and it is further

ORDERED, that at least two (2) business days prior to commencement of installation of any Temporary Protections by Petitioner on Respondent's Property, Petitioner shall notify Respondent's counsel, Matthew Brett (MBrett@BBGLLP.COM), by email of the date and time Petitioner shall enter upon Respondent's Property to conduct the pre-construction inspection and/or install the Temporary Protections in accordance with this decision and order, and it is further

ORDERED, that Petitioner shall notify Respondent's counsel, Matthew Brett (MBrett@BBGLLP.COM), by email when the work is completed under the license, and the Temporary Protections shall be removed and Respondent shall provide Petitioner access to remove the Temporary Protections, and it is further

ORDERED, that during the term of Petitioner's license, it shall reasonably cooperate with Respondent to accommodate any roof repairs or renovations Respondent may seek or be ordered to perform, and it is further,

ORDERED, that during the term of Petitioner's license, it shall regularly update Respondent's engineer of the progress of the work and promptly notify Respondent of any dangerous conditions observed, and it is further,

ORDERED, that upon the completion of term of the license, such areas of Respondent's Property as are impacted by the Temporary Protections shall be returned to its condition as of the date of Petitioner's first access to the Respondent's Property, and all materials used by Petitioner in exercising this license shall be removed from the licensed area; and it is further

ORDERED, that Petitioner shall be liable to Respondent for any actual damages to Respondent's Property which occur as a result of entry under this order and are not otherwise repaired by Respondent;

ORDERED, Petitioner shall indemnify and hold Respondent harmless from any third party claims relating to the License, including but not limited to claims that the access violates any vacate Order or violation issued by DOB;

Dated: _____ March 25, _____, 2021

ENTER:

**Arthur F.
Engoron**

Digitally signed by Arthur F. Engoron
DN: C=US, OU=NY County Supreme
Court, O=New York State Courts,
CN=Arthur F. Engoron,
E=AENGORON@NYCOURTS.GOV
Reason: I am approving this
document with my legally binding
signature
Location: Molly56789
Date: 2021.03.25 15:55:52-04'00'
Foxit PhantomPDF Version: 10.1.0

Hon. Arthur F. Engoron, J.S.C.