

**Matter of MRR 1326 LLC v 124 E. 57th St. LLC**

2022 NY Slip Op 33151(U)

September 20, 2022

Supreme Court, New York County

Docket Number: Index No. 155870/2022

Judge: Arthur F. Engoron

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This opinion is uncorrected and not selected for official publication.

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

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In the Matter of the Application of:

MRR 1326 LLC,

Petitioner,

For an Order and Judgment pursuant to Section 881 of the  
Real Property Actions and Proceedings Law for access to  
adjoining property

-against-

124 EAST 57<sup>TH</sup> STREET LLC,

Respondent.

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Index No.: 155870/2022

**Decision, Order and License**

Part 37

Motion Sequence No. 1

Arthur F. Engoron, Justice

In compliance with CPLR 2219(a), this Court states that the following papers, numbered 1, 2, 3 and 4 were used in this RPAPL Section 881 Proceeding:

	Papers Numbered:
Moving Papers .....	1
Opposition Papers .....	2
Answer and Counterclaims .....	3
Reply to Counterclaims .....	4

Upon the foregoing papers, and upon oral argument having been heard on September 9, 2022, the instant petition is hereby granted to the extent that the Court hereby issues the following license:

MRR 1326 LLC ("Project Owner") is the developer of the premises located at 126 East 57<sup>th</sup> Street and 686 Lexington Avenue, New York, New York (collectively, the "Project Premises"), which is adjacent to the premises located at 124 East 57<sup>th</sup> Street, New York, New York (the "Adjacent Premises") on the western side of the 126 East 57<sup>th</sup> Street portion of the Project Premises. The Adjacent Premises is owned by 124 East 57<sup>th</sup> Street LLC ("Adjacent Owner").

Project Owner plans on performing the excavation and construction of a new building on the Project Premises (the "Project"). In connection with the Project, Project Owner intends to: (i) perform a pre-construction survey of the Adjacent Premises (the "Survey"); (ii) install, maintain, and remove temporary protections on the rear terrace of the Adjacent Premises, fire escape located on the Adjacent Premises, rear low roof of the Adjacent Premises, including the mechanical equipment located thereon, and over certain windows located on the building located on the Adjacent Premises which face the Project Premises during the Project (collectively the "Temporary Protections"); and (iii) access the airspace above the Adjacent Premises to install, maintain and

remove horizontal netting as a further layer of protection during the Project (the “Airspace Access”).

Project Owner is hereby granted a license to: (i) perform the Survey; and (ii) install, maintain, and remove the Temporary Protections and Airspace Access as identified in Drawing Nos. SSP-000.02, SSP-010.00, SSP-020.01, SSP-030.00, SSP-040.00, SSP-050.00, SSP-100.01, SSP-200.00, SSP-300.00, SSP-400.00, SSP-500.00, SSP600.00, SSP-700.00, SSP-701.00, SSP-702.00, SSP-703.00, SSP-704.00, SSP-705.00, SSP706.00 and SSP-707.00 dated July 5, 2022, prepared by Valjato Engineering P.C. (NYSCEF Doc. No. 10).

In connection with the license granted herein, as Adjacent Owner argued in opposition to this license that Project Owner shall install monitoring equipment on the Adjacent Premises, Project Owner shall: (i) maintain and remove the monitoring equipment already installed in Respondent’s tenant’s space (which Adjacent Owner’s tenant previously voluntarily provided access to install); and (ii) at Adjacent Owner’s reasonable request shall install, maintain and remove any reasonable additional monitoring equipment, notwithstanding Project Owner already having in place a New York City Department of Buildings approved monitoring plan that does not require monitoring equipment to be installed on the Adjacent Premises.

This license hereby covers and extends to the Project Owner and its successors, contractors, subcontractors, construction managers, architect and engineering consultants, employees and agents (the “Construction Team”) who may access the Adjacent Premises as may be reasonably required in order to perform the Survey and to install, maintain, and remove the Temporary Protections and Airspace Access, in accordance with the terms of this license and as required by all laws, codes, rules, regulations and requirements of DOB.

Project Owner shall only access the interior of the Adjacent Premises in connection with the following: (i) performing the Survey; (ii) to inspect and/or repair any damages directly caused by the Project; and (iii) install, maintain and remove monitoring equipment.

When accessing the interior of the Adjacent Premises pursuant to this license, Project Owner shall comply and/or cause any members of its Construction Team entering the Adjacent Premises to comply with all applicable COVID-19 laws, including then-current protocols set forth by the Centers for Disease Control and Prevention and the reasonable COVID-19 requirements of Adjacent Owner and its tenants.

Adjacent Owner shall cooperate to effectuate the terms of this license, including, without limitation, providing all necessary executed applications, consents, sign-offs and other documents required by any governmental authority having jurisdiction over the Project, including the DOB.

The License shall be effective for twenty-eight months (28) beginning on January 30, 2023 until May 30, 2025 (the “Term”). To the extent an extension of the Term is required, Project Owner will contact Adjacent Owner to request an extension; however, to the extent the parties cannot agree to the terms of such an extension, Project Owner may contact this Court at least 30 days prior to the end of the Term to request an extension. Project Owner will cause the removal of the

Temporary Protections and Airspace Access from the Adjacent Premises as soon as permitted by the DOB.

To the fullest extent permitted by law, Project Owner agrees to indemnify and hold harmless Adjacent Owner, its members, partners, directors, officers and employees (“Indemnitees”), from and against all costs, damages, claims, causes of action and liabilities, arising out of or related to claims for personal injury, property damage or wrongful death made against Adjacent Owner in connection with the Project or Project Owner’s access to the Adjacent Premises, except to the extent caused by Adjacent Owner’s or the Indemnitees’ negligence or willful misconduct. Notwithstanding the foregoing, this indemnity shall not apply to claims for lost rents as a result of the Project or access unless such loss rent claims are the direct result of Project Owner’s having caused damage to the Adjacent Premises such that a governmental authority having jurisdiction over the Project orders a partial or whole vacatur of the Adjacent Premises.

Project Owner shall maintain and/or shall cause its construction manager to maintain insurance with the minimum limits set forth on the sample certificate of insurance filed by Respondent (NYSCEF Doc. No. 32) (which minimum amounts can be achieved through a combination of primary and excess policies). 124 East 57<sup>th</sup> Street LLC and its members, directors, officers and employees shall be designated as additional insureds under the commercial general liability policy, and, prior to accessing the Adjacent Premises to install the Temporary Protections and the Airspace Access, Project Owner shall provide Adjacent Owner with a certificate of insurance evidencing same together with either: (i) a specific endorsement naming such parties as additional insureds; or (ii) a blanket endorsement and an insurance agreement executed by the party providing the insurance on a form to be reasonably agreed upon by the parties.

Project Owner shall pay Adjacent Owner a license fee of \$4,500 per month (pro-rated for partial months), such fee commencing upon the installation of the first of the Temporary Protections and Airspace Access and ending on the removal of the Temporary Protections and Airspace Access. There will be no award of engineering or architect fees to Adjacent Owner. Attorney’s fees in the amount of \$7,500 shall be awarded to Adjacent Owner.

Given Project Owner’s and/or its construction manager’s maintenance of proper insurance (including naming Respondent as an additional insured thereon) for the duration of the Project will sufficiently protect Respondent, its request for a temporary protection bond is hereby denied.

In light of this Decision, Order and License, Respondent’s counterclaims (NYSCEF Doc. No. 17) are hereby moot.

This Court agrees to continue jurisdiction over this case and may be reached at 646-386-3222 if any problems arise.



9/20/2022  
DATE

**HON. ARTHUR F. ENGORON**

CHECK ONE:

- CASE DISPOSED
- GRANTED  DENIED

- NON-FINAL DISPOSITION
- GRANTED IN PART  OTHER
- SUBMIT ORDER
- FIDUCIARY APPOINTMENT  REFERENCE

APPLICATION:

SETTLE ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN