

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: JOAN M. KENNEY
J.S.C.
Justice

PART 8

111 West 57th LLC et al.

INDEX NO. 158192/14

-v-

MOTION DATE 9/11/14

The Board of Managers et al.,

MOTION SEQ. NO. 002

The following papers, numbered 1 to 31, were read on this motion to/for TRO

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s) 1-20

Answering Affidavits — Exhibits _____ No(s) 21-31

Replying Affidavits No reply per Court order No(s) n/a

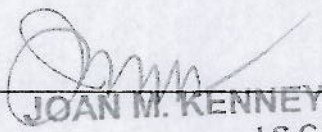
Upon the foregoing papers, it is ordered that this motion is

Briefly, on August 22, 2014, petition brought an application, by Order to Show Cause (OSC) (motion sequence 001), seeking an Order:

(a) granting Petitioners a limited license to gain access to the property owned by (a) the Windsor Park Condominium Unit Owners located at 100 West 58th Street, New York, New York (represented by Respondent Board of Managers of the Windsor Park Condominium), (b) the property owned by Respondent John Doe, Windsor Park Condominium Unit Number Unknown, more particularly the Unit containing the 14th Floor North Terrace ("Unit Y"), and (c) the property owned by Jane Doe, Windsor Park Condominium Unit Number Unknown, more particularly the Unit containing the 14th Floor South Terrace ("Unit Z") (collectively the "Respondents' Properties") for the purpose of installing, maintaining and later removing protections to Respondents' Properties in connection with Petitioners' construction activities on Petitioners' adjacent property as required and in compliance with the New York City Building Code, the New York City Department of Buildings and all applicable local laws, codes, rules, regulations and directives, all to protect Respondents' Properties, the occupants thereof and the public at large; and

(b) directing Respondents, and each of them, to execute any and all required New York City Department of Buildings filing forms required in connection with the protective measures to be installed and maintained on Respondents' Properties.

Dated: September 24, 2014


JOAN M. KENNEY, J.S.C.
J.S.C.

FOR THE FOLLOWING REASON(S):

1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

This Court declined to sign the OSC without prejudice granting petitioners leave to proceed by Notice of Motion. Days later, on August 25 and August 26, 2014, petitioners exercised their own discretion, without respondents' permission, without a license and without a court order, and installed and erected a "sidewalk shed" around respondents' property - the very relief petitioners were seeking by OSC.

On August 28, 2014 respondents presented the within Order to Show Cause (motion sequence 002) which seeks injunctive relief, requiring the immediate removal of the sidewalk shed and:

directing that Petitioners cease all construction, demolition and or excavation activities following the removal of the Sidewalk Shed; or in the alternative (C) if the Court, in its discretion, converts this motion into an application pursuant to RPAPL §881 in connection with the Sidewalk Shed, then any license granted to Petitioners to erect and maintain a Sidewalk Shed on Respondents' property: (i) be limited in duration to a period of time reasonable under the circumstances; (ii) requires Petitioners to indemnify Respondents for any damage caused by the sidewalk shed; (iii) requires Petitioners to pay Respondents a license fee of \$7,500.00 per month; (iv) requires Petitioners to reimburse Respondents for all reasonable fees and expenses incurred by Respondents in conjunction with the license including, but not limited to, attorneys' fees, professional fees, engineer's fees and insurance consultant fees; (D) sanctioning Petitioners and Petitioners' counsel, and holding them in contempt, for their frivolous litigation conduct resulting from their willful defiance of this Court's authority by erecting the Sidewalk Shed on Respondents' property a mere one (1) business day after this Court declined to sign the Petitioners' order to show cause seeking a license to access Respondents' Property to, among

After respondents presented this application for injunctive relief and after petitioners unilaterally erected a sidewalk shed around respondents' property, petitioners filed a motion on notice, as previously directed to do so by this Court, seeking an Order permitting petitioners to erect "protections" to respondents' property (motion sequence 003). Said motion was denied because petitioners engaged in "self-help" rather than wait to obtain appropriate relief from this Court.

It is well settled that in order to be entitled to a preliminary injunction, a movant must clearly demonstrate: (1) a likelihood of success on the merits, (2) irreparable injury absent granting of the preliminary injunction, and (3) a balancing of the equities in the movant's favor (*St. Paul Fire and Marine Ins. Co. v York Claims Serv., Inc.*, 308 AD2d 347, 348 [1st Dept 2003]). Respondents have met their burden of proof. Given the extraordinary circumstances surrounding the erection of the sidewalk shed around respondents' property, the instant application seeking injunctive relief must be granted. Petitioners were well aware that they needed to obtain a license from this Court, in order to erect a "protective shed" around respondents' property. The parties hereto had been in negotiating the terms of license for weeks when petitioners presented its first application. Nevertheless, petitioners did not obtained permission from respondents and/or a Court order granting petitioners a license and proceeded to perform the "protective work."

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JOAN M. KENNEY
J.S.C.

Petitioners' erection of the sidewalk shed without respondents' permission or this Court's authority occurred because petitioners were not entitled to the ex-parte relief it initially sought as it failed to set forth the "reasonableness" and necessity of the protective shed. More to the point, petitioners failed to establish that "the inconvenience to the adjacent property owner is slight compared to the hardship of his neighbor" if a license were refused (see also *Chase Manhattan Bank v Broadway, Whitney Co.*, 57 Misc 2nd 1091, 1095 (Sup Ct, Queens County 1968); and *In the Matter of Board of Managers of Artisan Lofts Condominium v Moskowitz, Herbert et al.* — AD3d —, 2014 NY Slip Op 00937 [1st Dept 2014]).

It is further noted that petitioners do not dispute that the protective shed they erected has established a nuisance on respondents' property. Specifically, the protective shed blocks a window of a residential apartment located within respondents' premises and it also obstructs a commercial ground tenants' signage and window. Lastly, it is undisputed that petitioners have refused to provide respondents with construction plans, proof of insurance naming respondents as additional insureds, contact information respecting the contractor etc.. The totality of the circumstances, warrant the granting of the injunctive relief sought herein.

Accordingly, it is

ORDERED that respondents' application for injunctive relief, is granted and due deliberation having been had, and it appearing to this Court that a cause of action exists in favor of respondents and against petitioners and that the respondents are entitled to a preliminary injunction on the ground that the petitioners suffered to be done, an act in violation of the respondents' rights, it is:

ORDERED that the undertaking is fixed in the sum of \$100,000.00, conditioned that the respondents, if it is finally determined that they were not entitled to an injunction, will pay to the petitioners all damages and costs which may be sustained by reason of this injunction; and it is further

ORDERED that petitioners and their agents, servants, employees and all other persons acting under the jurisdiction, supervision and/or direction of petitioners, are enjoined and restrained, during the pendency of this action, from doing or suffering to be done, directly or through any attorney, agent, servant, employee or other person under the supervision or control of respondents or otherwise, any of the following acts:

Creating a nuisance relative to any construction affecting respondents real property, and it is further


ORDERED that due to petitioners' unauthorized installation of "protections," said sidewalk shed be immediately removed, in accordance with all applicable rules, regulation and laws and in a safe manner. All construction is to be halted until the issuance of a proper license permitting petitioners access to respondents' property and/or permission is granted by this Court for the installation of a sidewalk shed; and it is further

ORDERED that the application for sanctions, is denied, without prejudice; and it is further

ORDERED that respondents serve an answer the petition, no later than October 6, 2014; and it is further

ORDERED that the parties appear for a preliminary conference on October 30, 2014 at 9:30 a.m. in Room 304 located at 71 Thomas Street, NYC 10013.

NY 393



JOAN M. KELLY
J.S.C. 9/24/14

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

JOAN M. KENNEY

PRESENT: J.S.C. Justice

PART 8

Index Number : 158192/2014
111 WEST 57TH LH LLC
vs
BOARD OF MANAGERS OF THE
Sequence Number : 003
SUMMARY JUDGMENT

INDEX NO. 158192/14
MOTION DATE 9/11/14
MOTION SEQ. NO. 003

The following papers, numbered 1 to 43, were read on this motion to/for Sj.
Notice of Motion/Order to Show Cause — Affidavits — Exhibits No(s) 1-12
Answering Affidavits — Exhibits No(s) 13-37
Replying Affidavits No(s) 38-43

Upon the foregoing papers, it is ordered that this motion is

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

It is hereby ORDERED that petitioners motion for an Order granting petitioners a license to access respondents' properties for the purposes of installing, maintaining and later removing protections to respondents' properties in connection with petitioners' construction activities etc., and directing respondents to execute required filings with the Department of Buildings, if any, for the protection of respondents' properties, is denied. It is undisputed that petitioners have accessed respondents properties and installed the "protection" work, without leave of court and without a license from respondents.

Dated: 9/16/14

Signature of Joan M. Kenney, J.S.C.

- 1. CHECK ONE: CASE DISPOSED, NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED, DENIED, GRANTED IN PART, OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER, SUBMIT ORDER, DO NOT POST, FIDUCIARY APPOINTMENT, REFERENCE