

Short Form Order and Judgment

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE CARMEN R. VELASQUEZ IAS PART 38
Justice

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In the Matter of the Application of
39-01 QB, LLC., Index No. 707724/16

Petitioner, Motion
Date: July 13, 2016

FOR AN ORDER AND JUDGMENT PURSUANT TO
ARTICLE 4 OF THE CIVIL PRACTICE LAW m# 1
AND RULES AND SECTION 881 OF THE REAL
PROPERTY ACTIONS AND PROCEEDINGS LAW
FOR ACCESS TO ADJOINING PROPERTY,

-against-

39 SUNNYSIDE OWNERS LLC.,
Respondent.

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The following papers numbered EF 1-21 read on this application by the petitioner for a judgment granting petitioner a license for access to respondent's property.

	<u>PAPERS NUMBERED</u>
Order to Show Cause - Petition - Exhibits.....	EF 1-18
Affirmation in Opposition	EF 19
Replying Affirmation.....	EF 20-21

Upon the foregoing papers, it is ordered and adjudged that this application by the petitioner is decided as follows:

Petitioner is the owner of real property located at 39-01 Queens Boulevard, Sunnyside, New York. Respondent is the owner of adjacent properties located at 39-11 to 39-19 Queens Boulevard. Petitioner maintains that respondent or its predecessors-in-interest damaged an exterior wall and the main structural support beam during demolition work at the respondent's premises. Respondent's property currently consists of a vacant parcel of land surrounded on three sides by an eight foot construction fence. Petitioner asserts that the property is situated in such a way that repairs to its property cannot be made without entering the adjacent property. Respondent has refused to grant

such access to the petitioner. Petitioner, thus, commenced this Special Proceeding pursuant to RPAPL § 881 to obtain access to respondent's property in order to inspect and repair the damage to its property.

In support of its application, petitioner submits an affidavit from Vincent Boccia, a licensed professional engineer, who conducted a limited site inspection of petitioner's property and portions of the adjacent proper visible from the street on June 1, 2016. Mr. Boccia avers that in order to assess the extent of the damage to the petitioner's property, access to the adjacent property and up-close, hands-on inspection, with the use of ladders and scaffolding, of the exterior wall and main structural beam are required. Mr. Boccia opines that absent access to the adjacent property, there is no reasonable, alternative method to properly assess and repair the damaged structural support beam and exterior wall. He further opines that an immediate inspection must be conducted in order to prevent further damage to the property and to protect the health and safety of the property's occupants and the general public. Mr. Boccia states that the inspection will take two to four days, and it will take 30-50 days to perform the needed repairs.

"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..." (RPAPL § 881.) This statute is to be read narrowly as it stands in derogation of the common law which protects landowners from trespass. (*Pav-Lak Indus., Inc. v Wilshire Ltd.*, 2009 WL 5243692 [Sup Ct, NY County 2009].) In determining whether to grant petitioner a license pursuant to RPAPL 881, the court must apply a standard of reasonableness. (*Mindel v Phoenix Owners Corp.*, 210 AD2d 167, 167 [1st Dept 1994].) The court must balance the competing interests of the parties and should issue a license when necessary, under reasonable conditions, and where the inconvenience to the adjacent property owners is outweighed by the hardship of their neighbors if the license is refused. (*Chase Manhattan Bank (Natl. Assn.) v Broadway, Whitney Co.*, 57 Misc 2d 1091, 1095 [Sup Ct, Queens County 1968], *affd* 24 NY2d 927 [1969].)

In the matter at hand, after weighing the interests of the adjoining property owners, the court finds that the petitioner is entitled to access respondent's property pursuant to RPAPL § 881 to inspect the property prior to the commencement of repairs.

The affidavit of Mr. Boccia sufficiently explains the necessity of the inspection and the risks if it is not performed. Further, the court notes that respondent's property is currently vacant, and, thus, there are no occupants that will be disturbed by the inspection. In addition, petitioner states that it will obtain adequate insurance and name respondent as an additional insured. Finally, the court notes that RPAPL § 881 affords the respondent adequate legal rights and remedies in that it subjects the licensee to full liability for damages for "actual damages occurring as a result of the entry." (RPAPL § 881; *Sunrise Jewish Ctr. of Valley Stream, Inc. v Lipko*, 61 Misc 2d 673, 676 [Sup Ct, Nassau County 1969]; *Chase Manhattan Bank v Broadway, Whitney Co.*, 57 Misc 2d at 1095-1096.)

Accordingly, this application by the petitioner for a judgment granting petitioner a license for access to respondent's property is granted, and petitioner is granted a license to enter respondent's property, located at 39-11 to 39-19 Queens Boulevard, Sunnyside, New York 11103, to conduct an inspection of the exterior wall of petitioner's property, including the main structural support beam in order to determine its structural elements and integrity and to ascertain whether and how it should be stabilized and repaired.

The inspections shall be for no more than 3 consecutive weekdays, beginning on the 5th day after service of a copy of this order and judgment upon the respondent upon the following terms and conditions:

(i) petitioner shall not unreasonably interfere with respondent's necessary access to its property and shall take the necessary steps, measures, and precautions to prevent and avoid any damage to respondent's property;

(ii) petitioner shall procure and maintain a policy of insurance covering liability and property damage, or equivalent bond with a corporate surety, in an amount of not less than \$1 million naming the respondent as an additional insured during the period of this license;

(iii) 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;

(iv) petitioner shall notify respondent in writing when it has completed the inspections under the license;

(v) After the inspections are conducted, petitioner shall, if necessary, make a new application to this court for a license to perform the needed repairs;

(vi) Respondent may, if it chooses, have its expert and/or contractor be present at the time of the inspections;

(vi) any such other terms and conditions that petitioner and respondent may agree to in writing

A copy of this order and judgment is being faxed on this date to both sides.

Date: August 8th, 2016


CARMEN R. VELASQUEZ, J.S.C.