

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

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In the Matter of the Application of
37 PLAZA LLC,

Petitioner,

Index No. 707671/2018

Motion Seq. No.1

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

DECISION/ORDER

-against-

PSA REALTY CORP.,

Respondent.

=====
Present: **HONORABLE ULYSSES B. LEVERETT:**

Papers Numbered

- Order to Show Cause, Verified Petition. -----(1)-----
- Affidavit and Affirmation in Support -----(2)-----
- Memorandum of Law in Support of Petitioner Application. -----(3)-----
- Affirmation in Opposition..... -----(4)-----
- Reply Affidavit of Paul A. Bailey... -----(5)-----

Upon the foregoing papers, the decision and order on this motion is as follows:

Petitioner 37 Plaza LLC bring this proceeding by order to show cause pursuant to Article 4 of the Civil Practice Law and Rules (CPLR) and section 881 of the Real Property Actions and Proceedings Law (RPAPL) for an order granting limited license to gain access to adjoining property of respondent, PSA Realty Corp.

Upon review of the above submitted papers the petition is granted.

The Court finds that petitioner as owners of real property located at 37-02/37-12 Queens Boulevard, Long Island City, New York are constructing a buildup of a five-story commercial building. The respondent PSA Realty Corp. is the owner of adjacent real property and building located at 37-16 Queens Boulevard, Long Island City, New York. The respondent building is four-stories and operated as La Quinta Inn Hotel.

Petitioner seeks access to install Sidewalk Bridges in the front side and rear of respondent's property as well as roof protection and other protection required by the Building Codes and/or the NYC Department of Building (DOB). Petitioner seeks access to complete its construction commenced January 2016 until halted by a stop work order dated October 25, 2017 to safeguard the public and property. The stop work order was rescinded on November 28, 2017. Respondent PSA commenced an action in Queens County Supreme Court under index no. 714963/2017 (PSA Realty v. 37 Plaza LLC, et. al.) for trespassed and damages. PSA also sought a preliminary injunction of the construction project of 37 Plaza LLC. The preliminary injunction was denied as per order of Justice C. Valasquez dated March 13, 2018 but the action under 714963/2017 is still pending.

Petitioner commenced this Art. 4 special proceeding to obtain a license for access to respondent's property pursuant to RPAPL §881 to protect respondent's property and the public during its construction project. RPAPL §881 provides:

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 pursuant to article four of the civil practice law and rules. The petition and affidavits, if any, shall state the facts making such entry necessary and the date or dates on which entry is sought. Such license shall be granted by the court in an appropriate case upon such terms as justice requires. The licensee shall be liable to the adjoining owner or his lessee for actual damages occurring as a result of the entry.

Property owners may seek compulsory license for access of new construction as an improvement within the meaning of RPAPL §881. See North 7-8 Investor's LLC v. Newgarden, 43 Misc.3d 623 (Sup. Ct. Kings County 2014).

The Court finds the petitioner has satisfied the requirements of RPAPL §881 in that despite lengthy negotiation efforts between the parties, respondent refuses to grant petitioner the requested access of 8 weeks to complete the construction project unless a cantilever or suspended scaffolding system of roof protection is used to protect respondent's roof.

Respondent failed to provide evidence that the cantilever system which requires extending plywood 20 feet from the edge of the building being constructed, suspended by steel needle beams, and suspended at least 8 feet above the respondent's roof is a safer system than the New York City Department of Buildings Code (DOB) §3309.10 method proposed in petitioner Plaza's roof protection plan which includes lying plywood down on top of a Styrofoam underlayment with additional protective covering on top. Nor has respondent shown that the cantilever system is more practical, less intrusive and safer than petitioner's proposed sidewalk sheds for the front, side, or rear of respondent's building or that the cantilever system is likely to be approved by DOB.

Petitioner's roof protection plans were submitted as attachments to the affidavit of petitioner's chief operating officer, Daniel Song, dated May 11, 2018 and revised for more detailed specificity of the roof protection plan as per the affidavit of, Ransd Design, Inc. general contractor, Jace Jung, dated June 13, 2018. Petitioner also submitted the existing sheds/bridges plans with the affidavit of Paul A. Bailey dated May 15, 2018.

Accordingly, petitioner is granted a license to enter the premises of respondent located at 37-18 Queens Boulevard, Long Island City, New York to perform the construction surveys, install, maintain and remove the property protection consistent with the revised roof protection plans, and sidewalk sheds/bridges plans of petitioner dated May 11, 2018, June 13, 2018 and May 15, 2018 as required by DOB, applicable local laws, code rules and regulation. Respondent is required to execute any required DOB forms in connection with the protective measures.

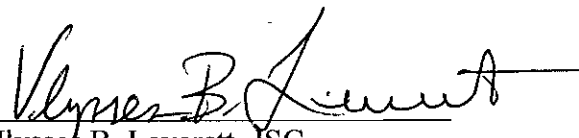
The limited access order is also condition upon petitioner providing insurance naming respondent PSA Realty Corp. as an additional insured, that shall include a general liability policy with minimum limits of \$5,000,000 each occurrence and \$5,000,000 aggregate.

The duration of the limited access order is 8 weeks from the service of this decision and order on respondent's attorney with proof of ordered insurance coverage and submission by respondent of any required DOB forms for protective measure. The license granted to petitioner shall be effective between the hours of 8:00am and 5:00pm, Monday through Friday exclusive of holidays on July 4, 2018 and September 3, 2018.

Respondent's application for license fees based upon speculative damages arising from unrentable hotel rooms, is denied without prejudice to renew for appropriate relief after expiration of the limited access order and subject to pending Queens Supreme Court action under index no. 714963/2017.

This is the decision and order of this Court.

Dated: June 25, 2018


Ulysses B. Leverett, JSC

FILED
JUN 29 2018
COUNTY CLERK
QUEENS COUNTY