

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: Hon. Nancy M. Bannon
Justice

PART 42

ALFRED K.T. CHAN and
FIONA MADELINE CIBANI

INDEX NO. 151966/14

- v -

MOTION DATE 11-5-14

CROWN WISTERIA, INC., JARED STAMELL,
SUSAN STAMELL and JACQUES BLINBAUM

MOTION SEQ. NO. 001

The following papers were read on this motion for injunctive relief pursuant to RPAPL § 881.

Table with 2 columns: Document Type and No(s). Rows include Notice of Motion/ Order to Show Cause, Answering Affirmation(s), and Replying Affirmation(s).

This is one of several matters pending between litigious neighbors. Petitioner Alfred K.T. Chan and his wife, petitioner Fiona Madeline Cibani, own a five-story townhouse located at 116 East 78th Street in Manhattan, which they are renovating for conversion to a one-family dwelling, at a cost of approximately \$10 million. Respondent Jared Stamell and his wife, respondent Susan Stamell, are principals in respondent Crown Wisteria, Inc. which owns the adjacent three-story townhouse at 118 East 78th Street. Defendant Jacques Birnbaum owns the townhouse at 114 East 78th Street.

In this proceeding, the petitioners seek relief under RPAPL § 881, i.e. a license to gain limited access to these two adjacent properties for the purpose of completing the renovations. The petitioners requested permission from the respondents for access but were denied. The respondents opposed unfettered access but were willing to agree to a license with conditions, concerned that the petitioners previously conducted "careless" and "erratic" work which they abandoned for 18 months and then resumed, and that the extensive work planned would damage their properties and quiet enjoyment. To that end, the parties engaged in settlement negotiations, in and out of court. In September 2014, all parties except Wisteria and the Stammels reached an agreement in regard to the terms of a license for the demolition phase work, and signed a written stipulation. Wisteria and the Stammels agreed to most terms except for the amount of insurance to be maintained by the petitioners, the amount of the daily license fees and a few minor details. That stipulation provided, inter alia, that the petitioner would pay \$10,000 per month as to each of the two properties as a licensing fee, obtain liability insurance totaling \$18,000,000 to cover the cost of any damage to the respondents' property and compensate the respondents for lesser damages as they may arise, maintain 24-hour video surveillance of the properties for security, suspend work on a religious holidays and weekends, and confine the work to

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

between 8:00 a.m. and 5:00 p.m. on workdays. Notwithstanding several conferences with the court, negotiations broke down without a final agreement.

Soon thereafter in September 2014, Crown Wisteria commenced a separate action for trespass, Crown Wisteria inc. v Uberto Ltd, d/b/a Uberto Construction and Everest Scaffolding, Inc. (Index No. 159372/14) against the Chan/Cibani's general contractor and subcontractor. The complaint alleged that these defendants trespassed upon their property and installed scaffolding, and a sought money damages to cover the cost of removing the scaffolding, plus punitive damages. In December 2014, the construction defendants withdrew a motion to dismiss that complaint and, in March 2015, plaintiff Crown Wisteria withdrew its request for a preliminary injunction as most of the demolition work had been completed and the scaffolding dismantled. It appears that the contractors were able to use "needle beams and netting projecting from the Cibani/Chan property to protect the neighboring property. This action, however, is still pending, but is subject to dismissal as moot in light of the completion of the demolition work and the granting of relief under RPAPL § 881.

Shortly after Crown Wisteria commenced its trespass action, Cibani, along with Uberto, commenced a separate action against the Stamells and Crown Wisteria (Cibani and Uberto Ltd v Stamell, Index No. 159558/14) claiming tortious interference with contractual relationships and seeking to enjoin the defendants from communicating with employees of Uberto and Everest and from interfering with their work. There is currently in effect in that action a temporary order enjoining the defendants from "tortiously interfering with the plaintiff's contractual relationships" or from "taking any actions which otherwise render performance by Uberto Construction and/or Everest Scaffolding of their respective contracts impossible." Other temporary relief was denied. In opposition to the preliminary injunction, the defendants argue that they have a First Amendment right to speak to employees of Uberto and Everest, and maintain that Cibani, Chan and their contractors, Uberto and Everest, are trespassing by suspending beams with netting partly over their property. However, this opposition was submitted some time before the demolition work was completed.

In order to establish prima facie entitlement to a license to enter the premises of an adjoining owner pursuant to RPAPL § 881, the petitioner must show that issuance of a license is necessary and reasonable under the circumstances. See In re Board of Managers of Artisan Lofts Condominium v Moskowitz, 114 AD3d 491 (1st Dept. 2014); In re Lincoln Spencer Apartments, Inc. v Zeckendorf-68th Street Assoc., 88 AD3d 606 (1st Dept. 2011). The petitioner must also specify "the date or dates on which entry is sought." RPAPL § 881. In deciding such an application, the court is required to balance the interests of the parties and may issue a license only "when necessary, under reasonable conditions, and where the inconvenience to the adjacent property owner is relatively slight compared to the hardship of his neighbor if the license is refused." In re Board of Managers of Artisan Lofts Condominium v Moskowitz, *supra* at 492 quoting Chase Manhattan Bank [Nat'l. Assn.] v Broadway Whitney Co., 57 Misc.2d 1091, 1095 (Sup Ct, Queens County 1968), *aff'd* 24 NY2d 927 (1969).

The papers submitted in support of the petition detail the type and scope of the work, and include detailed architects' plans, land surveys, building permits and a permit from the Landmarks

Preservation Commission for the proposed work. Also submitted are proposed License and Access Agreements, which are dated March 9, 2012, but unsigned by the parties. Upon these submissions, the court finds that the petitioners are entitled to relief under RPAPL § 881 and shall have limited and conditional access to the respondents' property for the purpose of completing the renovations and construction of their townhouse. The proposed intrusions onto the respondents' property were shown to be necessary to the completion of the work and are reasonable under the circumstances, particularly in light of the proposed protections and conditions. Indeed, much of what the respondents complained of initially was designed to protect their property from damage, and the petitioners had agreed, *inter alia*, to obtain insurance coverage and to indemnify the respondents for any damage. Under such circumstances, and with these and other conditions imposed, the inconvenience to the respondents could be kept slight in comparison to the hardship to the petitioners if the license is refused and they were unable to complete the work.

Therefore, the petitioners are granted a license for limited access to the respondent's property pursuant to RPAPL § 881, the conditions shall include all those contained in the proposed stipulation which was signed by all parties except Crown Wisteria and the Stammels, as discussed above, that stipulation to be updated and amended to include all remaining phases of the work. The license shall be for a period of one year or until all work is completed, whichever occurs first, and the term may be extended upon agreement of the parties or, if no agreement is reached, upon further application to the court. To that end, the petitioners shall submit to the court, within 30 days, a proposed license complying with RPAPL § 881 and all the above conditions for signature, which shall be in the same format as the License and Access Agreements dated March 9, 2012, and the one-year term of the license shall commence from the date that license is signed by the court.

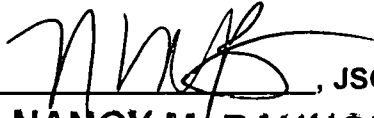
Accordingly, it is

ORDERED that petition pursuant to RPAPL § 881 for a license to gain access to the respondents' property for the purpose of completing renovation and construction work on the petitioners' property is granted to the extent indicated herein, and it is further,

ORDERED that the petitioners shall submit to the court, within 30 days, a proposed license complying with RPAPL § 881 and all the above conditions and guidelines for signature.

This constitutes the Decision and Order of the court.

Dated: April 13, 2015


_____, JSC
HON. NANCY M. BANNON
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 as appropriate: SETTLE ORDER SUBMIT ORDER