

SUPREME COURT OF STATE OF NEW YORK
COUNTY OF WESTCHESTER

BLUE RIO LLC,

Petitioner,

v.

FRANK DELEONARDIS,

Respondent.

Index No.

PETITION

Petitioner, Blue Rio LLC, by its attorneys, Emery Celli Brinckerhoff & Abady LLP, for its Petition alleges as follows:

PRELIMINARY STATEMENT

1. Petitioner seeks a license to enter onto Respondent’s premises for the limited purpose of protecting Respondent’s building from any impact from the final construction of Petitioner’s adjacent property.

2. This license is necessary because Respondent has (a) insisted his property be protected; (b) refused access to his property without the payment of \$40,000; (c) caused the City of Mount Vernon to issue stop work orders on Petitioner’s project; and (d) threatened to cause future stop work orders to be issued, if his demands are not met.

3. Accordingly, Petitioner seeks a license under N.Y. Real Property Actions Law §881 for necessary access to Respondent’s premises to protect Respondent’s roof.

PARTIES

4. Petitioner Blue Rio LLC is a limited liability company duly organized and existing under the laws of the State of Connecticut with an address c/o Atlantic Development Group, LLC, 183 Madison Avenue, Suite 1601, New York, NY 10016.

Petitioner is the fee owner of the premises known by the street address 203 Gramatan Avenue, Mount Vernon, New York (the “203 Premises”).

5. Respondent Frank DeLeonardis, on information and belief, is the fee owner of real property adjacent to the 203 Premises known by the street address of 177 Gramatan Avenue, Mount Vernon, New York (the “177 Premises”). The 177 Premises abuts the southern façade of the 203 Premises.

JURISDICTION & VENUE

6. This action arises under N.Y. Real Property Actions Law § 881.
7. Jurisdiction over the Respondent is appropriate under CPLR § 301.
8. Westchester County is the appropriate venue under CPLR § 507.

FACTUAL ALLEGATIONS

9. Petitioner is constructing a building on the 203 Premises (the “203 Building”).

The Proposed License

10. Petitioner seeks a license to enter onto the adjacent 177 Premises to install and later remove roof protection (the “Requested Licensed Activities”). As set forth in the accompanying affidavit of Meredith Brake, the Requested Licensed Activities are intended for the direct benefit of the 177 Premises. These licensed activities are needed to accommodate Respondent, protect his building, and ensure the safety of those in and around the construction project.

11. The anticipated time period for the Requested Licensed Activities is four months. The proposed work will be performed at Petitioner’s sole cost and expense.

12. Petitioner will access Respondent’s roof from Petitioner’s building and only when it is engaged in the Requested Licensed Activities.

N.Y. Real Property Actions Law § 881

13. N.Y. Real Property Actions Law § 881 provides as follows:

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.

14. In this case, Petitioner is in the process of constructing the 203 Premises. In order to protect the roof of Respondent's neighboring building during that construction, Respondent needs to access the roof of the Premises. Respondent has refused permission for Petitioner to enter upon the roof of the Premises. Accordingly, Petitioner seeks a license to access the roof of the 177 Premises for a period of four months to install and later remove roof protection. Petitioner shall be liable to Respondent for actual damages occurring as a result of the entry.

The License Dispute between Respondent and Petitioner

15. Negotiations between Petitioner and Respondent over privately negotiated access to the 177 Premises have broken down. Respondent is demanding \$40,000 for access to the 177 Premises and has stated that he has the ability to have the Mount Vernon Department of Buildings ("DoB") shut down Petitioner's site if he is not paid.

16. By mutual agreement, Respondent previously allowed Petitioner access to the 177 Premises roof for construction staging. A series of disputes arose over that access,

including whether and to what extent damage had been caused to the 177 Premises and the extent to which any such damage had been remediated.

17. In the course of negotiating a subsequent license to access Respondent's roof, the parties could not agree on the appropriate fees for the license and repair work. Petitioner viewed the "license fee" of \$20,000 as improper given Petitioner's right under N.Y. Real Property Actions Law § 881 to access Respondent's roof for necessary work. In addition, Respondent's repair demand of \$23,355 (since lowered to \$20,000) was well in excess of Petitioner's cost estimate of \$10,425 for the same work.

18. Because of the dispute and the unreasonable monetary demands made by Respondent, Petitioner changed its work plan so that it would no longer need to stage any construction work from the 177 Premises roof. Petitioner instead plans to perform the necessary work within the perimeter of its own rooftop and has revised its drawings to install copers as an extension of its roof cap. As a result, Petitioner no longer requires access to Respondent's roof to complete work on its project.

19. The buildings do, however, still abut each other. Accordingly, Petitioner wrote to the City of Mount Vernon to ask if there is any law, rule, regulation, or ruling of the City that requires Petitioner to pay to access Respondent's roof, for any purpose. To date, Petitioners have received no reply. In addition, out of an abundance of caution, Petitioner offered to install protection on Respondent's roof. Petitioner not only offered to do this at Petitioner's expense, it also offered to pay Respondent \$1,500 for access to the roof. (Petitioner also offered to pay \$10,425 for the repairs that Respondent claims—but Petitioner disputes—were Petitioner's responsibility.) In addition, Petitioner offered

Respondent an indemnity and \$1 million in liability insurance for actions relating to the license.

20. In response to Petitioner's offer, Respondent continued to demand \$40,000 to enter into the proposed license agreement. In addition, Respondent threatened Petitioner that, if Petitioner does not pay the sum demanded, Respondent will ensure that stop work orders are issued by the DoB to prevent the completion of Petitioner's project.

Respondent's demands are evidenced in letters he sent Petitioner on January 9, 18, and 19, 2017.

21. As to the ongoing dispute about the license fee, the improper nature of Respondent's demand is demonstrated by the fact that Respondent demanded four times Petitioner's estimate of the disputed damages—and threatened (and is apparently receiving) the backing of Mt. Vernon officials in collecting this sum. This petition, of course, does not seek to and will not extinguish any claim Respondent may have with respect to prior damages. It seeks only the access to which Petitioner is entitled by law.

Respondent's Interference with the Project

22. Respondent's threat comes amidst unusual activity aimed at the 203 Premises building site. For example, on December 13, 2016, the site was beset by a swarm of DoB inspectors and other City regulators. Despite an extraordinary series of inspections, not one inspector found a basis to shut the site down on December 13—or even issue a violation to Petitioner. Nonetheless, two weeks later on December 30, 2016, the Deputy Commissioner of Mount Vernon's Department of Buildings, Curtis Woods, shut the site down without explanation.

23. Four days after the December 30 stop work order, on January 3, 2017, Respondent contacted Petitioner and informed it that if it agreed to pay for the “license agreement,” Respondent would arrange to have the stop work order lifted.

24. Later that day, Petitioner’s representatives met in person with Deputy Commissioner Woods to discuss the stop work order. Deputy Commissioner Woods informed Petitioner’s representatives that: the stop work order related to Respondent’s roof; Mount Vernon Mayor’s office directed Deputy Commissioner Woods to deal with Respondent on this matter; the Mayor’s office was involved in the decision to issue the stop work order; and Respondent’s issues needed to be resolved before the stop work order would be lifted.

25. Although ostensibly triggered by Respondent’s roof, the stop work order inexplicably covered both exterior and *interior* construction. At Petitioner’s initiative, the stop work order as to interior work was lifted on January 4, 2017, after a construction delay of four days.

26. On January 9, Respondent, a private citizen, wrote a letter to Petitioner, again demanded payment for entry into the license agreement, and warned: “I am sure that you realize that this order can be reimposed. The publicity generated will not be good for your company or for the City of Mount Vernon.”

27. In a conversation with Petitioner on January 13, Deputy Commissioner Woods indicated that he was getting direction on the stop work order issue from the Mayor’s office and that he couldn’t give concrete answers to direct questions because he was waiting for their input. He indicated that if Petitioner did not get the license

agreement with Respondent completed, Woods would be forced to issue another stop work order on the project.

28. The following week, on January 19, 2017, Deputy Commissioner Woods told Petitioner that three outstanding permits that Petitioner had filed in May and June 2016 (for Fire Alarm, Mechanical, and Generator) were “still under review.”

29. On January 20, Petitioner wrote to Deputy Commissioner Woods, described the Respondent’s extortionate demand for over \$40,000 for a license to access Respondent’s roof for the purpose of protecting it, and expressly asked whether the City of Mount Vernon required Petitioner to obtain such access as a condition of completing the exterior work on the 203 Premises. There has been no reply.

30. Petitioner has initiated this action to be able to obtain necessary access to the 177 Premises as provided by section 881 to finish its construction project.

FIRST CAUSE OF ACTION
Special Proceeding for a License Pursuant to
N.Y. Real Prop. Acts. Law § 881

31. Petitioner repeats and realleges the foregoing paragraphs as if the same were fully set forth at length herein.

32. Petitioner seeks to make improvements or repairs to real property so situated that such improvements or repairs cannot be made by the Petitioner without entering the premises of Respondent’s adjoining building.

33. Respondent has refused entry onto its premises.

34. Accordingly, Petitioner requests a license to enter Respondent’s premises from February 15, 2017 to June 15, 2017.

35. No previous application has been made for the relief sought herein.

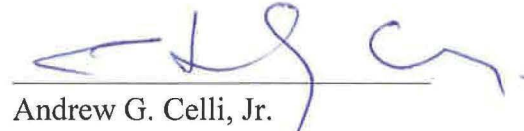
PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests the following relief:

- a. an Order granting Petitioner, its engineers, contractors and consultants a license to enter upon the 177 Premises to conduct the Requested Licensed Activities; and
- b. Such other and further relief as this Court may deem just and proper.

Dated: February 3, 2017
New York, New York

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