

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
BLUE RIO LLC,

Petitioner,

INDEX #: 51668/2017

-against-

AFFIRMATION IN
OPPOSITION

FRANK DeLEONARDIS

Respondent
-----X

STATE OF NEW YORK)
)ss:
COUNTY OF WESTCHESTER)

PAUL I. HOROWITZ, ESQ. an attorney at law duly admitted to practice in the State of New York, having an office at 22 West First Street, Suite 521, Mount Vernon, New York, 10550 affirms the following under penalty of perjury:

1. I am the attorney for the above-named Respondent FRANK DeLEONARDIS, the owner of a building located at 177 Gramatan Avenue, Mount Vernon, New York (hereinafter the "177 Premises"). I am fully familiar with all the facts and circumstances herein and submit this Affirmation in Opposition to Petitioner's Motion for A License pursuant to Section 881 of the New York Real Property and Proceedings Law.

2. The annexed Affidavit and Exhibits of the Respondent, FRANK DeLEONARDIS set forth, in detail, the reasons why the Petitioner's request for the imposition of a license to obtain access to the roof of 177 Premises, Mount Vernon, New York, for a period of four months, , under the terms requested and proposed by the Petitioner, are inadequate and unjust.

3. Section 881 of the New York Real Property and Proceedings Law empowers the court to grant a license "...in an appropriate case upon such terms as justice requires".

4. The Respondent respectfully submits that justice requires this Court to consider the twenty-month history of the Petitioner's treatment of Respondent's property in order to fashion a license that protects the Respondent's interests and property at 177 Premises.

5. The Respondent's annexed Affidavit with Exhibits sets forth, in detail:

(a) the previous unauthorized use of the Respondent's roof by its workmen; (b) the inadequate roof and building "protection" provided by the Petitioner; (c) the resultant costs in excess of \$20,000.00 to repair the damage to both the exterior and interior of the 177 Premises; (d) the Petitioner's failure to repair and restore those areas that were damaged by the Petitioner's construction activity; (e) the dilatory, inadequate, and negligent action taken by Petitioner in response to the Respondent's repeated requests for repair and remediation of the damages sustained at 177 Premises; (f) the proposed paltry offer of \$1,500.00 to Respondent for a four-month license going forward; and (g) the insufficiency of Petitioner's proposed One-Million (\$1,000,000.00) Dollars in liability insurance coverage to protect the Respondent against all potential claims that could arise during the four-month license.

6. Accordingly, this Court should find the terms of the proposed license unjust and inadequate under the circumstances.

7. The Respondent respectfully requests that the Court fashion a license that is guided by the history of the damages sustained by the Respondent, the Petitioner's deficient responses thereto, and the ongoing risks to Respondent's 177 Premises while the Petitioner's construction project continues to completion.

WHEREFORE, Plaintiff respectfully requests that the Petitioner's motion for the imposition of a license under the terms proposed by the Petitioner be denied, together with such other and further relief as to the Court may seem just and proper.

Affirmed: Mount Vernon, New York
February 24, 2017


PAUL I. HOROWITZ