

*Environmental and Land Use Practice Group*

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## **Litigation Related to Accessing Neighbor's Property for Building Construction and Repair**

Due to the limited space in the city, many New York property owners cannot make repairs and improvements to their property without access to their neighbors' land. Section 881 of New York's Real Property Actions and Proceedings Law provides a means by which these owners can petition a court to compel their neighbors to grant them temporary access. In the event that property owners are refused access by their neighbor, they can begin a special proceeding to obtain a temporary entry license from the court.<sup>1</sup> To obtain a license they must show that entry into their neighbor's property is necessary to carry out the work in question. The statute gives judges broad discretion in deciding the terms of the license, which can lead to contentious litigation.

Licensing fees have been one of the most contested aspects of recent RPAPL 881 disputes. State law says nothing about the subject and until recently neither had many courts. But about a dozen recent cases have addressed the issue head-on, developing some guidelines for lawyers, developers and neighbors. Courts focus on the nature of the work, particularly whether it is required by law (e.g., façade repairs) or voluntary (new construction).<sup>2</sup> A judge is more likely to award fees for new construction and development rather than for required repairs or inspections. Courts also focus on how significantly the construction has disturbed a neighbor's property rights.<sup>3</sup> This can depend on the duration of the project, as well as noise, vibration, and physical interference with the property.

A number of recent decisions have shed some light on what courts believe to be substantial interference with an owner's property rights. In one instance, a developer's construction plan required a cantilevered construction scaffold to be suspended six feet over the neighbor's roof deck.<sup>4</sup> Given that this roof deck was the neighbor's only outdoor space, the court awarded the neighbor \$3,500 per month in license fees.<sup>5</sup> In another case, which involved a project that had begun more than three years before the license proceeding, a neighbor alleged that workers regularly entered his property, scaffolding had been anchored to his walls, and

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<sup>1</sup> N.Y. Real Prop. Acts. Law §881 (McKinney 2015).

<sup>2</sup> See *10 East End Avenue Owners LLC v. Two East End Avenue Apartment Corp.*, 35 Misc. 3d 1215(A) (Sup. Ct. New York County 2012).

<sup>3</sup> *Matter of North 7-8 Invs. LLC v. Newgarden*, 43 Misc. 3d. 623, 634 (Sup. Ct. Kings County 2014).

<sup>4</sup> *Id.* at 634.

<sup>5</sup> *Id.*

that vibrations and noise had disrupted his lifestyle and were preventing him from selling his residence.<sup>6</sup> Citing the prolonged duration of the project, the court awarded license fees of \$3,000 per month.<sup>7</sup> Courts may also use fees as a way to compensate neighbors for the professional costs incurred in negotiating access or monitoring for impacts.<sup>8</sup> The widely disparate litigation results suggest that this area of law is still developing and parties should always, as a first recourse, try to work out license and access terms outside the courthouse.

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Written by Anthony R. Prinziwalli, 2016 summer associate, and Christopher Rizzo, partner. For more information concerning the matters discussed in this publication, please contact Mr. Rizzo (212-238-8677, [rizzo@clm.com](mailto:rizzo@clm.com)) or your regular Carter Ledyard attorney.

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<sup>6</sup> *Snyder v. 122 E. 78th St. NY LLC*, No. 159262/14, 2014 N.Y. Misc. LEXIS 4987, at \*3-4 (Sup. Ct. New York County Nov. 17, 2014).

<sup>7</sup> *Id.* at \*22-23.

<sup>8</sup> See *Matter of North 7-8 Invs. LLC*, 43 Misc. 3d. at 632.