

## [Matter of Bergen St Equity LLC v 259 Wyckoff Assoc. LLC](#)

Supreme Court of New York, Kings County

April 6, 2026, Decided

Index No. 533236/2025

### Reporter

2026 N.Y. Misc. LEXIS 2552 \*; 2026 NY Slip Op 50474(U) \*\*; 2026 LX 119116

In the Matter of the Application of Bergen St Equity LLC, Petitioner, For an Order and Judgment pursuant to Section 881 of the Real Property Actions and Proceedings Law for access to adjoining Property, v 259 Wyckoff Associates LLC, Respondent.

**Notice:** THIS OPINION IS UNCORRECTED AND WILL NOT BE PUBLISHED IN THE PRINTED OFFICIAL REPORTS.

## Core Terms

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professional fees, license, intrusion, attorney's fees, reimbursement

## Headnotes/Summary

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### Headnotes

**Digest-Index Classification:** Adjoining Landowners—Entry on Adjoining Land to Make Improvements—RPAPL 881 Special Proceeding--Professional Fees

**Counsel:** 2026 N.Y. Misc. LEXIS 2552 2026 NY Slip Op 50474(U) 2026 LX 119116 at 1 Smith, Gambrell & Russell, LLP, New York City (Daniel Q. Horner of counsel), for petitioner.

Tuttle Yick LLP, New York City (Eli Raider & Austin Fincher of counsel), for respondent.

**Judges:** Aaron D. Maslow, J.

**Opinion by:** Aaron D. Maslow

## Opinion

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Aaron D. Maslow, J.

**2026 N.Y. Misc. LEXIS 2552 2026 NY Slip Op 50474(U) 2026 LX 119116 at 1** The following papers efiled on NYSCEF were used in this special proceeding: 1-54.

### Background

Upon the foregoing papers, having heard oral argument, and due deliberation having been had, the within decision and order determines the issue of professional fees in the instant **2026 N.Y. Misc. LEXIS 2552 2026 NY Slip Op**

**50474(U) 2026 LX 119116 at 2** Real Property Actions and Proceedings Law § 881 seeking to encroach on Respondent's property.

Petitioner is in the early stages of developing a tract of land situated in the Boerum Hill neighborhood area of Brooklyn, between Bergen Street and Wyckoff Street, and Third Avenue and Nevins Street. The instant special proceeding seeks to encroach, in particular, on the premises known as 259 Wyckoff Street, owned by Respondent. The parties have settled various matters among themselves such as a license fee and compensation for lost rents but have reserved the issue of the determination of professional fees (legal and construction expert) for the Court. Most of the professional fees claimed by Respondent are in the nature of attorneys' fees.**2026 N.Y. Misc. LEXIS 2552 2026 NY Slip Op 50474(U) 2026 LX 119116 at 2** In its most recent submission to the Court, Respondent has sought Court approval of its invoicing for professional fees through date of service March 12, 2026, the total of which has reached \$67,750.00. The hourly rates of attorneys at the law firm representing Respondent are \$800 for the lead attorney and \$550-\$700 for others. Respondent's architect, Bradley Cronk, is charging \$475 per hour. Respondent still raises issues over whether a post-approval amendment has been approved by the New York City Department of Buildings and whether Petitioner has placed pilings into Respondent's property for the purpose of stabilization.

#### *Petitioner's Argument*

Petitioner argues that Respondent's attorneys' are unreasonable and incurred in bad faith. According to Petitioner, Respondent's counsel unnecessarily prolonged the dispute by raising baseless demands, revisiting settled terms, and covertly preparing litigation while pretending to negotiate settlement. This conduct, Petitioner claims, was designed to inflate fees and pressure Petitioner into paying them as a condition of resolution. Because courts have discretion under RPAPL § 881 to deny or reduce fees that are excessive or the product of bad-faith tactics,**2026 N.Y. Misc. LEXIS 2552 2026 NY Slip Op 50474(U) 2026 LX 119116 at 3** Petitioner contends the court should reject Respondent's fee request entirely or significantly reduce it.

#### *Respondent's Argument*

Respondent argues that its attorneys' and professional fees are reasonable, necessary, and routinely reimbursed under New York law in RPAPL § 881 proceedings. Because Respondent did not seek out the intrusion and derives no benefit from the developer's project, equity requires that the developer bear the costs of legal counsel and experts needed to protect the property. Respondent maintains that its counsel acted in good faith, negotiated reasonable terms, and incurred fees due to Petitioner's refusal to engage constructively and premature litigation. Given counsel's expertise, market-rate billing, and the work performed, Respondent asserts the court should award full reimbursement of its fees.

#### *Discussion*

##### Attorneys' Fees in RPAPL Proceedings

Under RPAPL § 881, courts have broad discretion to award attorney's fees and **2026 N.Y. Misc. LEXIS 2552 2026 NY Slip Op 50474(U) 2026 LX 119116 at 3** professional fees to a respondent compelled to grant access to its property. This discretion is grounded in equity: a property owner who is forced to accommodate a neighboring development neither seeks out the intrusion nor benefits from it, and therefore should not bear**2026 N.Y. Misc. LEXIS 2552 2026 NY Slip Op 50474(U) 2026 LX 119116 at 4** the associated costs. As reflected in the New York Practice Guide, such fees are not awarded as a routine incident of litigation, but as compensation for expenses incurred in negotiating a license, reviewing plans, and protecting the respondent's property interests. (See 1 [NY Practice Guide: Real Estate § 2.05](#) [2026].)

Appellate courts have consistently recognized that fee awards are often appropriate in this context. The First Department explained that licenses granted under RPAPL § 881 "often warrant" contemporaneous license fees and that a compelled licensor is generally entitled to reasonable attorney and engineering fees ([Matter of Panasia Estate, Inc. v 29 W. 19 Condominium, 204 AD3d 33, 35 \[1st Dept 2022\]](#).) Similarly, the Court emphasized that a respondent is compelled to grant access and does not benefit from the intrusion and, therefore, equity requires that it not bear any resulting costs ([Matter of 1643 First LLC v 1645 1st Ave. LLC, 224 AD3d 623, 624 \[1st Dept 2024\]](#)). Although courts have discretion in granting fee awards, they are frequently warranted because the burden of access should fall on the party seeking it (see [Matter of NY Pub. Lib. v Condominium Bd. of the Fifth Ave. Tower, 170 AD3d 544 \[1st Dept 2019\]](#)).

Courts must balance the equities in determining whether fees are appropriate and proportional. Fees should accurately reflect the complexity and scope of the project (see [Matter of North 7-8 Invs., LLC v Newgarden, 43 Misc 3d 623 \[Sup Ct, Kings County 2014\]](#) [intrusion by petitioner deemed to be complex as it not only required assessing respondent's **2026 N.Y. Misc. LEXIS 2552 2026 NY Slip Op 50474(U) 2026 LX 119116 at 5** property but also working on it]). By the same token, where access is limited or minimally intrusive, courts have declined to award fees (see [Matter of Meopta Props. II, LLC v Pacheco, 185 AD3d 511 \[1st Dept 2020\]](#) [fees were denied where the intrusion was slight, short in duration, and adequately mitigated by insurance and cost-shifting measures]).

Courts also consider the conduct of the parties in determining whether fees were reasonably incurred. Courts must use a balancing test to distinguish between unreasonable conduct and legitimate efforts to protect property interests (see [550W21 Owner LLC v Board. of Mgrs. of 120 Eleventh Ave., 87 Misc 3d 1218\[A\], 2025 NY Slip Op 51609\[U\], \\*3 \[Sup Ct, NY County 2025\]](#)). Courts have denied fees where respondents made unreasonable demands or exaggerated objections (see [145 E. 57th St. Assoc. LLC v 149 E. 57 Aldo LLC, 2021 NY Slip Op 32567\[U\], \\*5 \[Sup Ct, NY County 2021\]](#)). Additionally, courts may consider whether either party engaged in bad faith litigation conduct (see [Horwitz Family LP, Ltd. v P & M Manhasset Realty Corp. 3 E. Shore Rd., 2024 NY Misc. LEXIS 53698 \[Sup Ct, Nassau County Jan. 2, 2024, No. 609096/2023\]](#) [court found petitioner's conduct to be frivolous and in bad faith based on filing the same action three times, failing to disclose all prior actions in current petition, voluntarily discontinuing the action to avoid award of counsel fees, and failing to appear on return date of application]).

With respect to attorneys' fees, the Court has discretion to determine what is reasonable **2026 N.Y. Misc. LEXIS 2552 2026 NY Slip Op 50474(U) 2026 LX 119116 at 6** based on factors like time, labor, difficulty, experience of attorneys, and results achieved ([DDG 2026 N.Y. Misc. LEXIS 2552 2026 NY Slip Op 50474\(U\) 2026 LX 119116 at 4 Warren LLC v Assouline Ritz 1, LLC, 2016 NY Misc. LEXIS 5245, \\*8 \[Sup Ct, NY County Apr. 22, 2016, No. 654425/2013\]](#) [court found attorney's \$475 per hour fee of to be reasonable in light of experience and circumstances of action]). The Court should utilize the prevailing market rate or the "rate prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation" ([Matter of George Estates LLC v 72 George St., LLC, 2023 NY Slip Op 30235\[U\], \\*3 \[Sup Ct, Kings County 2023\]](#) [internal quotation marks omitted], quoting [Blum v Stenson, 465 U.S. 886, 896 \[1984\]](#) and citing [Farbotko v Clinton County, 433 F 3d 204 \[2d Cir 2005\]](#)).

#### Analysis

In the case at hand, it appears to the Court that Respondent's requested reimbursements are reasonable. Respondent was compelled to address Petitioner's development project and incurred attorney and expert fees in reviewing plans, negotiating a license agreement, and opposing the petition. The project involved ongoing access and required technical evaluation. The scope and complexity of the work required here align more closely with the circumstances described in [Matter of Panasia Estate, Inc.](#) and [Matter of 1643 First LLC](#), where reimbursement of professional fees was appropriate to prevent the respondent from bearing the costs of an intrusion it did not **2026 N.Y. Misc. LEXIS 2552 2026 NY Slip Op 50474(U) 2026 LX 119116 at 7** seek.

The fees incurred reflect the type of expenses RPAPL § 881 is designed to shift: costs associated with protecting the respondent's property and ensuring that any access granted is properly conditioned to safeguard its interests. Respondent's retention of legal counsel and an expert to review plans, communicate with Petitioner, and address

the proposed work is consistent with the reasonable and necessary efforts compensated by courts. Moreover, there is no indication that the fees were disproportionate to the scope of the project when viewed in light of the complexity and potential impact on the Respondent's property, a small tenant-populated building amidst a huge construction site.

The fact that Respondent's counsel was able to procure for his client a provision in the license agreement dealing with lost of rent income resulting from the development project is confirmation that he was successful in zealously representing his client's interests. The same holds true for Respondent's counsel procuring a \$3,500 monthly license fee. These were substantial benefits for Respondent, which was deeply concerned that tenants would move out due to the construction activity surrounding them. (See generally **2026 N.Y. Misc. LEXIS 2552 2026 NY Slip Op 50474(U) 2026 LX 119116 at 8** [Seinfeld v Robinson, 246 AD2d 291 \[1st Dept 1998\]](#).)

With respect to hourly rates, Respondent alleges that counsel's requested reimbursement falls within the range of prevailing New York market rates for attorneys with comparable experience handling similar real estate and access matters. Comparables were provided. Petitioner contends that Respondent's counsel's hourly rates are excessive and exceed prevailing market rates for similar services, rendering the requested fees unreasonable. However, Petitioner has provided no evidence that the requested rate significantly deviates from the typical market rate. In the absence of such proof, the Court has little basis to discount Respondent's requested rates, particularly where those rates are not facially unreasonable for comparable legal services **2026 N.Y. Misc. LEXIS 2552 2026 NY Slip Op 50474(U) 2026 LX 119116 at 5** in New York.

In sum, Respondent's fees represent compensable costs incurred as a direct result of Petitioner's requested access. Under the equitable principles underlying RPAPL § 881 and the case law interpreting it, such fees fall within the category of expenses that may properly be awarded to ensure that the Respondent is not required to subsidize Petitioner's project and is able to adequately defend the stability of its small building.

### *Conclusion*

It is **2026 N.Y. Misc. LEXIS 2552 2026 NY Slip Op 50474(U) 2026 LX 119116 at 9** hereby ORDERED that the professional fees (attorney's fees and architect's fees) invoiced to Respondent covering dates of service through March 12, 2026, in the sum total of \$67,750.00 are found to be reasonable and, hence, are to be paid by Petitioner as a condition for encroaching on Respondent's property

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Of course, any payments already made by Petitioner to Respondent toward attorneys' fees are deemed credits. and the final license shall reflect this.

There being remaining issues concerning the post-approval amendment — whether it has been approved by the New York City Department of Buildings — and whether Petitioner has placed pilings into Respondent's property for the purpose of stabilization prior to receiving final authorization shall be discussed when this special proceeding is continued on Monday, April 13, 2026, at 11:30 a.m., on Microsoft Teams, with all attorneys and experts being present.