



An attorney discusses litigating construction disputes: Part I

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The construction industry in New York City is back in action. That's the good news. However, with that activity comes many disputes- both within the teams working on these projects and also with neighboring properties. Since I represent buildings and companies on all sides of these issues, here are some of the common problems I have been consulting about. This article will discuss disputes with neighbors. A future article will discuss disputes within the team.

The biggest issue with neighbors is anything to do with damage from construction activities involving banging and underpinning. Buildings in New York City, including the boroughs, are very close together and developers are maximizing their usable building space by building "in the face" of neighboring buildings. Windows looking out over lot lines are virtually covered up. The new building may be less than two feet from the building next door. This can lead to problems down the road if repairs are ever needed.

A larger neighboring building may need to do work beneath the neighbor's smaller building, which can create huge cracks and even a "shift" in the building. Windows may no longer close and the floor may be crooked. To the extent that the developer has construction crews that can jump in and fix these issues, there is some likelihood of remedying the problem without litigation. However, more often than not, these situations lead to litigation, because the dollars involved in performing repairs are so great that both sides need the insurance carriers to be involved.

Since many construction projects damage neighboring properties, the best advice is "a picture is worth a thousand words." A pre-construction survey with photographs can be extremely useful in pinpointing when a problem occurred. These are issues that are best organized by legal counsel. There may also be access issues where the neighbor doing the construction needs to gain access to the neighboring property in order to "protect" it with scaffolding and netting. Sometimes the builders just move right ahead with these activities and the neighbors find out after the fact. Other times, they ask for permission via access agreements. Occasionally, the builder actually "takes" some of the neighboring property without permission. This is one of the most serious things that can happen and the most difficult to unravel.

Some neighbors try to withhold their permission to allow access. Generally speaking, if all that is needed is access to protect your building, the court is going to allow it. These agreements and the negotiations become more complex when the builder needs more than just protection. The builder may need to perform certain activities from the neighboring rooftop. He may need to store materials on a penthouse terrace. He may need to "borrow" some of the neighbor's airspace. This can lead to lively negotiations and sometimes to litigation.

A building that has been advised that construction will be commencing next door should be well "armed" with legal counsel and a team of experts to help understand what the neighbor is planning

to do and whether there are likely to be problems. The neighbor may be planning work which will cross over the lot line between the properties and cause damage. One homeowner found that the neighbor's contractor had knocked down a small wall between the properties which was actually a retaining wall. Soil started to fall and a stop work order was issued. It also raised a question about where the lot line was and whether a fence had been installed too far over on to the neighbor's property.

Anyone in a situation where a neighbor is doing construction work should gear up and be well-prepared for the process. I advise developers to approach neighbors in a friendly fashion and to try to smooth out problems before they occur.

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