

## Panel Says Judge Was Wrong To Postpone License Fee

BY BEN BEDELL

The owners of a TriBeCa penthouse were entitled to be paid at the same time they lost the use of their terrace, which had a sunken hot tub and outdoor kitchen, the Appellate Division, First Department, said Tuesday.

The renovation of the adjacent building required the terrace be rendered unusable, but the penthouse owners refused to grant a license for the work on the terms sought by the building's developer.

The developer brought an action under Real Property Actions and Proceedings Law §881, which allows a court to compel access to adjoining property to perform work, and to set the license terms.

Justice Shlomo Hagler granted the license, but declined to set the fee until completion of the 30-month-long renovation.

The panel said Hagler had improvidently refused to require that contemporaneous payments be made.

"Where the granted license will entail substantial interference with the use and enjoyment of the neighboring property," the fees should not be postponed, the panel said in *DDG Warren v. Assouline Ritz 1*, 654425/13.



Joining in the opinion were Justices Dianne Renwick, Richard Andrias, David Saxe and Rosalyn Richter.

"Because real estate is so hot now, this issue comes up frequently," said Dani Schwartz, a partner at Rosenberg & Estis.

"This case is the first from the Appellate Division to address the issue of license fees," said Schwartz.

Bruce Lederman, a partner with D'Agostino, Levine, Landesman &

Lederman represented the penthouse owners. He said his clients had sought a license fee of \$9,500 per month.

John Simoni, a partner at Goetz Fitzpatrick, represented the developer. Simoni said the decision is disappointing and "gives judges no guidance" on how to set license fees."