

<b>Jy's Ode to Murray Tepper L.P. v Garage 53 LLC</b>
2019 NY Slip Op 32817(U)
September 18, 2019
Supreme Court, New York County
Docket Number: 850047/2019
Judge: Arlene P. Bluth
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. ARLENE P. BLUTH PART IAS MOTION 32**

*Justice*

-----X

INDEX NO. 850047/2019

JY'S ODE TO MURRAY TEPPER L.P.,

MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. 002

- v -

GARAGE 53 LLC, 1018 & 310 GARAGE LEASE CO.  
LLC, BANKUNITED, N.A., BOARD OF MANAGERS OF THE  
THREE TEN CONDOMINIUM; JOHN DOE # 1 THROUGH  
JOHN DOE #99

**DECISION + ORDER ON  
MOTION**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 32, 33, 34, 35, 36, 39, 40, 41

were read on this motion to/for APPOINT - FIDUCIARY

The motion by plaintiff for the appointment of a receiver is granted.

Plaintiff seeks to foreclose on the garage unit located at 310 East 53<sup>rd</sup> Street in Manhattan. Plaintiff claims that defendants Garage 53, LLC and 1018 & 310 Garage Lease Co., LLC (the "Borrowers") executed a note for \$2.45 million and that the Borrowers defaulted by failing to make a timely payment of all amounts due on the maturity date of the loan (December 10, 2018). Plaintiff claims that paragraph 21 of the mortgage permits the appointment of a receiver in any foreclosure action without notice.

In opposition, the Borrowers acknowledge that the mortgage provides for the appointment of a receiver but asks the Court to disregard this clear provision. The Borrowers also claim that "Defendants in foreclosures 'generally' suffer motions for the appointment of receivers with little recourse because overworked courts routinely adhere to the 'general' rule

that, where a mortgage includes a clause providing for the appointment of a receiver in the event of a foreclosure, a receiver is theirs for the asking” (NYSCEF Doc. No. 35 at 1).

The Borrowers are correct that Courts “generally” enforce clear and unambiguous provisions of a contract and this Court will do that here. Moreover, the appointment of a receiver is particularly prudent where the defaulting borrowers are collecting substantial rental income. Here, plaintiff claims (and the Borrowers do not dispute) that the garage unit earns a rental income of about \$23,044 per month and an additional \$90,000 per year. A receiver can help ensure that the Borrowers do not continue to earn substantial rental income while not making payments to plaintiff.

Accordingly, it is hereby

ORDERED that the motion for the appointment of a Temporary Receiver is granted; and it is further

ORDERED that Elaine Shay, Esq. of 800 Third Ave, Suite 2800, NY NY 10022 212-520-2690 is hereby appointed with the usual powers and

directions of a Temporary Receiver for the benefit of Plaintiff of all the rents and profits now due and unpaid or become due during the pendency of this action and issuing out the mortgaged property mentioned in the complaint, known by the street address known as the Garage Unit in the Three Ten Condominium, 310 East 53<sup>rd</sup> Street, New York, NY 10022, Block 1345, Lot 1088; and it is further

ORDERED that the Temporary Receiver is authorized to take charge and enter into possession of the property; and it is further

ORDERED that before entering her/his duties, the Temporary Receiver shall be sworn to fairly and faithfully discharge the duties committed to him and shall execute to the People of the

State of New York and file with the Clerk of this Court an undertaking in the sum of \$250,000.00, conditioned for the faithful discharge of the duties of Temporary Receiver; and it is further

ORDERED that the Temporary Receiver is hereby directed to demand, collect and receive from the occupants, tenants and licensees in possession of said premises, or other persons liable therefor, inclusive of the mortgagor, all the rents and license fees thereof now due or unpaid or hereafter that become fixed or due and the Temporary Receiver is authorized to institute and carry on all legal proceedings necessary for the protection of said premises or to recover possession of the whole, or any part thereof, and apply to this Court to fix reasonable rental value and license fee value and to compel the tenants and occupants to attorn to the Temporary Receiver; and it is further

ORDERED that the Temporary Receiver may institute and prosecute suits for the collection of rent, license fees and other charges now due or hereafter to become due and fixed, and summary proceedings for the removal of any tenants or licensees or other persons therefrom; and it is further

ORDERED, that pursuant to the General Obligation Law section 7-105, anybody holding any deposits or advances of rental as security under any lease or license agreement affecting space in the premises affected by this action shall turn same over to said Temporary Receiver within five (5) days after said Temporary Receiver shall be qualified; and thereupon the said Temporary Receiver shall hold such security subject to such disposition thereof as shall be provided in an Order of the Court to be made and entered in this action; and it is further

ORDERED, that anybody in possession of same shall turn over to said Temporary Receiver all rent lists, orders, unexpired and expired leases, agreements, correspondence, notices

and registration statements relating to rental spaces or facilities in the premises; and it is further,

ORDERED, that notwithstanding anything to the contrary contained in this order, the Temporary Receiver shall not, without the further, prior order of this Court, upon prior notice to the plaintiff, make improvements or substantial repairs to the property at a cost in excess of \$1,000.00, *except* that in an emergency, if funds need to be expended in excess of \$1,000 or would otherwise require Court intervention, no Court approval will be necessary if counsel for plaintiff agrees in writing that the receiver may make such disbursement; and it is further

ORDERED that the Temporary Receiver shall deposit all monies received by her/him into any FDIC-insured bank where she has an account for this purpose and such account shall show the name of this action and the Temporary Receiver shall furnish plaintiff's attorneys with monthly statements of the receipts and expenditures of the Receivership together with a photocopy of the monthly statements received from said depository and no withdrawals shall be made therefrom except as directed by the Court or on a draft or check signed by the Temporary Receiver; and it is further

ORDERED that the Temporary Receiver is authorized from time to time to rent and lease any part of the premises for terms not exceeding one (1) year or such longer terms as may be required by applicable laws or regulations; to keep the premises insured against loss by damage or fire; to pay the taxes, assessments, water rates, sewer rates, vault rents, salaries of employees, supplies and other charges; to comply with all lawful requirements of any municipal department or other authority of the municipality in which the mortgaged premises are situated and to procure such fire, liability and other insurance as may be reasonably necessary; and it is further

ORDERED, that the tenants, licensees or other persons in possession of said premises attorn to the Temporary Receiver and pay over to the Temporary Receiver all rents, license

fees, and other charges of such premises now due and unpaid or that may hereafter become due; and that the defendants be enjoined and restrained from collecting the rents, license fees and other charges of said premises from interfering in any manner with the property or its possession; and from transferring, removing or in any way disturbing and of the occupants or employees; and that all tenants, occupants, employees and licensees of the premises and other persons liable for the rents be and hereby are enjoined and restrained from paying any rent or license fees or other charges for such premises to the defendants, their agents, servants or attorneys; and it is further

ORDERED that the Temporary Receiver is prohibited from incurring obligations in excess of the monies in her hands without further Order of this Court or written consent of Plaintiff's attorney and plaintiff may advance money, which can be recouped in this litigation; and it is further

ORDERED, that the Owner turn over to the Temporary Receiver all rents collected from and after the date of this Order; and it is further

ORDERED, that all persons now and hereafter in possession of said premises, or any part thereof, and not holding such possession under valid and existing leases or tendencies, do forthwith surrender such possession to the Temporary Receiver, subject to emergency laws, if any, and it is further

ORDERED, that the Temporary Receiver after paying the expenses of the management and care of the said premises as above provided retain the balance of the monies which may come into his hands until the sale of the said premises under the judgment to be entered in this action and/or until further Order of this Court, and it is further

ORDERED that the Temporary Receiver, or any party hereto, may at any time, on proper notice to all parties who have appeared in this action, apply to the Court for further and other

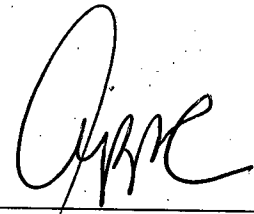
instructions or powers necessary to enable the Temporary Receiver to properly fulfill her duties or for interim fee payments; and it is further

ORDERED that the appointed named herein shall comply with Section 35a of the Judiciary Law, Sections 6401-6404 of the CPLR, Section 1325 of RPAPL and Rule 36 of the Chief Judge; and it is further

ORDERED that notwithstanding any other provision of this order, the Temporary Receiver is authorized to appoint a managing agent without prior order of the Court; and it is further

ORDERED that the Temporary Receiver shall not appoint an appraiser, auctioneer or accountant without prior order of this Court, but *may* appoint a landlord/tenant attorney for the collection of rent, license fees and other charges now due or hereafter to become due and fixed, or for summary proceedings for the removal of any tenants or licensees or other persons therefrom without further order of this Court.

9/18/19  
DATE



HON. ARLENE P. BLUTH

CHECK ONE:

CASE DISPOSED  
GRANTED  DENIED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION  
GRANTED IN PART  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT

OTHER  
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: