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| Excelsior 57th Corp. v Select Parking, LLC |
| 2020 NY Slip Op 32844(U) |
| August 31, 2020 |
| Supreme Court, New York County |
| Docket Number: 155922/20 |
| Judge: David Benjamin Cohen |
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| This opinion is uncorrected and not selected for official publication. |

WHEREAS, proof of service of the Order to Show Cause, and Summons and Complaint, having been duly filed with the Court (NYSCEF Doc. Nos. 19–26), and

WHEREAS, the Court having determined it has jurisdiction and held a hearing on said Order to Show Cause on August 31, 2020, via Skype, and

WHEREAS, no one having appeared on behalf of the Defendants, and

WHEREAS, the Court having determined that the Coop should be granted the relief requested in said Order to Show Cause, and

WHEREAS, the Coop’s attorney having been directed to submit a proposed order consistent with the Court’s on-the-record decision, and

WHEREAS, the Court having determined that Select has failed to pay monthly rent in the amount of \$174,645.83 per month for the period of April, May, and June 2020, and

WHEREAS, the Court having determined that the lease by which Select maintains possession of the premises expired effective June 30, 2020, and

WHEREAS, the Court having determined that the parties agreed pursuant to Article 18.02 of the Select Lease that in the event Select holds over in possession after expiration of the Lease, use and occupancy shall be paid “in an amount of money equal to three (3) times the amount of basic rent for the demised premises in effect” at the expiration of the Lease, and pursuant to the foregoing, the monthly use and occupancy commencing July 1, 2020, must be calculated at the monthly rate of \$523,937.49 and

WHEREAS, the Court having determined that Select should pay all arrears due and owing from April 1, through August 31, 2020 so that it is received on or before September 4, and that said monies should be paid to the Coop’s Managing Agent; and

WHEREAS, the Court having directed Select to provide the Coop with an accounting of all monies received by Select for the period commencing April 1, 2020, and continuing each month, *pendente lite*, on or before the 21st day of each month, starting September 21, 2020; and

WHEREAS, the Court having directed that all monies received by the Select on or after September 1, 2020, shall be used solely for the payment to the Coop of the rent and/or use and occupancy directed to be paid by this Court, it is hereby ordered as follows:

ORDERED, that Select shall pay outstanding use and occupancy to the Coop for the months of April, May, and June 2020 at the monthly rate of \$174,645.83 per month, plus use and occupancy for the months of July and August 2020 at the monthly rate of \$523,937.49, for a total of \$1,571,812.47 to be paid by either certified check, bank check, or wire transfer, so that it is received on or before September 4, 2020, to the Coop's Managing Agent as follows: Excelsior 57th Corp. c/o Charles H. Greenthal Management, PO Box 348, Emerson, NJ 07630 [Account Number 0994 – Garage]. Wiring instructions: Signature Bank, 950 Third Avenue, New York, NY 10022, Account: 1503848496, ABA- 026013576, and it is further

ORDERED, that commencing September 1, 2020, and continuing each and every month *pendente lite*, Select shall pay use and occupancy to the Coop at the monthly rate of \$523,937.49 per month to be paid so that it is received no later than the 10th day of each month, by bank check, certified check, or wire transfer, to the Coop's Managing Agent as above stated; and it is further

ORDERED, that commencing September 1, 2020, Select shall deposit and/or transfer to the Coop's Managing Agent any and all monies received by Select on or after September

1, 2020, by wire, check, cash, or otherwise, within ^{two business days} ~~24 hours~~ of Select's receipt of each payment until further order of the Court; and it is further

ORDERED, that Select shall provide the Coop's attorney (Rosenberg & Estis) with an accounting of all monies received by Select on or after April 1, 2020, and continuing each month on the 21st day of each month, starting September 21, 2020.

ORDERED, that Select is enjoined from committing any waste to the premises.

Dated: August 31, 2020



DAVID B. COHEN, J.S.C.