

**BOP 350 Bleecker St. Leasehold LLC v Quik Park
Bleecker St. Garage LLC**

2021 NY Slip Op 30325(U)

February 4, 2021

Supreme Court, New York County

Docket Number: 156890/2020

Judge: David Benjamin Cohen

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(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. DAVID BENJAMIN COHEN PART IAS MOTION 58EFM

Justice

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INDEX NO. 156890/2020

BOP 350 BLEECKER STREET LEASEHOLD LLC,

MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. 003

- v -

QUIK PARK BLEECKER STREET GARAGE LLC, ABC CO.,
XYZ CORP.

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 53, 54, 55, 56, 57, 59, 60, 61, 62

were read on this motion to/for MISCELLANEOUS

Upon the foregoing documents:

WHEREAS, plaintiff BOP 350 BLEECKER STREET LEASEHOLD LLC ("Plaintiff") commenced this action against defendant QUIK PARK BLEECKER STREET GARAGE LLC ("Quik Park Bleecker") by Summons and Complaint filed August 28, 2020 (NYSCEF Doc. No. 1); and

WHEREAS, Plaintiff filed a motion (Mot. Seq. 2; NYSCEF Doc. Nos. 27-36) seeking an order directing Quik Park Bleecker to (1) tender to Plaintiff certain arrears or, alternatively, post an undertaking in the amount of same, and (2) tender to Plaintiff payment of monthly use and occupancy, pendente lite, and due consideration having been given to same; and

WHEREAS, Quik Park Bleecker opposed the Order to Show Cause (NYSCEF Doc. Nos. 39-44), and due consideration having been given to same; and

WHEREAS, upon due consideration of the arguments advanced by counsel for all parties and after conclusion of hearing held on December 21, 2020, this Court issued a Decision and Order

directing (1) Quik Park Bleecker to pay Plaintiff use and occupancy in the total amount of \$158,816.10 for the period of September 2020 through January 2021 by January 10, 2021; and (2) Quik Park Bleecker to pay monthly use and occupancy, *pendente lite*, in the amount of \$31,763.22 per month, on or before the 10th day of each month, starting February 10, 2021 (“**U&O Order**”, (NYSCEF Doc. No 48); and

WHEREAS, Quik Park Bleecker appealed the U&O Order to the First Department on January 7, 2021, and sought an interim tolling of its lump sum payment of the past due use and occupancy; and

WHEREAS, on January 7, 2021, the First Department held a hearing on Quik Park Bleecker’s application for interim relief and issued an order (“**First Department Stay Order**”), which stayed the portion of the U&O Order directing Quik Park Bleecker’s payment of past due use and occupancy, but directed Quik Park Bleecker “to post an appropriate bond in an amount determined by the Supreme Court”; and

WHEREAS, Plaintiff filed a proposed Order to Show Cause for Use and Occupancy Undertaking Determination (Mot. Seq. 3) supported by attorney affirmation dated January 14, 2021, and the exhibits submitted therewith (NYSCEF Doc. Nos. 53-56), and due consideration having been given to same; and

WHEREAS, Quik Park Bleecker opposed the Order to Show Cause by attorney affirmation dated January 29, 2021, accompanying Memorandum of Law, and the exhibits submitted therewith (NYSCEF Doc. Nos. 59-62), and due consideration having been given to same; and

WHEREAS, the Court held a virtual hearing on the Order to Show Cause on February 2, 2021, rendered a decision on the record and directed Plaintiff's counsel to submit an order in conformance with the Court's on-the-record decision.

NOW, THEREFORE, IT IS HEREBY:

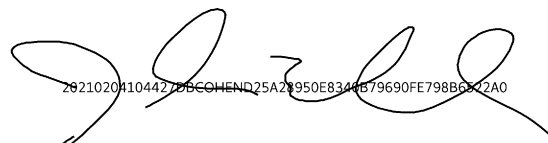
ORDERED, that Plaintiff's motion (Mot. Seq. 2) is granted to the extent that Quik Park Bleecker is ordered to post a bond by February 12, 2021 with a nationally recognized surety company in the amount of \$158,816.10 and Quik Park Bleecker shall provide a copy of the bond to all parties within two days of its issuance; and it is further

ORDERED, that Plaintiff shall be permitted to draw on the aforesaid bond without notice beginning three business days after the lifting of the stay set forth in the First Department Stay Order (NYSCEF 2021-00073) unless the U&O Order is reversed on appeal, in which case the bond may be cancelled on five days' notice to all parties; and it is further

ORDERED, that the U&O Order (NYSCEF Doc. No. 48) remains in full force and effect subject to the interim stay of the First Department as set forth above, and, accordingly, Quik Park Bleecker remains obligated to pay use and occupancy *pendente lite*, on or before the 10th day of each month, starting February 10, 2021 at the monthly rate of \$31,763.22 as provided in the U&O Order, as said portion of the U&O Order was not stayed pursuant to the First Department's Stay Order; and it is further

ORDERED, that this Order is without prejudice to Plaintiff's claims for all unpaid rent and other damages, including base rent, additional rent, other amounts, holdover use and occupancy, lease termination damages, attorneys' fees and expenses owed by Quik Park Bleecker and guaranteed by Guarantors to Plaintiff; and it is further

ORDERED, that the forgoing is without prejudice to Quik Park Bleecker's rights, remedies, defenses and/or counterclaims (whether asserted or unasserted in this action).



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2/4/2021
DATE

DAVID BENJAMIN COHEN, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE