

1035 Third Ave. LLC v Premier Parking LLC
2021 NY Slip Op 30538(U)
February 17, 2021
Supreme Court, New York County
Docket Number: 157911/2020
Judge: Shlomo S. Hagler
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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1035 THIRD AVENUE LLC,

Plaintiff,

– against –

PREMIER PARKING LLC
d/b/a ICON PARKING,
ICON PARKING HOLDINGS, LLC
f/k/a CITIZENS ICON HOLDINGS, LLC
a/k/a CITIZENS ICON HOLDINGS LLC,
“ABC CO.” and “XYZ CORP.”,

Defendants.

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ORDER

Index No. 157911/2020

Motion Seq. Nos. 2 and 3

WHEREAS, plaintiff 1035 Third Avenue LLC (“**Plaintiff**”) commenced this action against defendants Premier Parking LLC d/b/a Icon Parking (“**Premier Parking**”) and Icon Parking Holdings LLC f/k/a Citizens Icon Holdings LLC a/k/a Citizens Icon Holdings LLC (collectively, “**Defendants**”), by Summons and Complaint filed September 25, 2020 (NYSCEF Doc. No. 1); and

WHEREAS, Plaintiff filed a proposed Order to Show Cause for Use and Occupancy (Mot. Seq. 2) (“**U&O Motion**”) supported by Plaintiff’s attorney’s affirmation in support, the affidavit of Jason Blacksberg, its accompanying Memorandum of Law, and the exhibits submitted therewith (NYSCEF Doc. Nos. 33-43), and due consideration having been given to same; and

WHEREAS, this Court having issued the Order to Show Cause on the U&O Motion on January 13, 2021 (NYSCEF Doc. 44); and

WHEREAS, Defendants opposed the U&O Motion by the affirmation of Mohammad B. Shihabi, and the accompanying Memorandum of Law (NYSCEF Doc. Nos. 55-57), and the exhibit submitted therewith and due consideration having been given to same; and

WHEREAS Plaintiff having submitted its reply memorandum of law, and the exhibits submitted therewith, in further support of the U&O Motion (NYSCEF Doc. Nos. 61-67), and due consideration having been given to same; and

WHEREAS, Defendants having filed a proposed Order to Show Cause (Motion Seq. No. 3) (the "Stay Motion"), supported by Defendants' attorney's affirmation in support (NYSCEF Doc. Nos. 45-53) seeking to stay the determination of the U&O Motion pending the determination of an appeal in the matter *33/34 West Owner LLC v. Quik Park Truffles LLC*, 1st Dept. Case No. 2021-00100, Sup. Ct. N.Y. County Index No. 157631/2020 (the "Quik Park Appeal"), and due consideration having been given to same; and

WHEREAS, the Court having issued the Order to Show Cause on the Stay Motion on February 3, 2021 (NYSCEF Doc. No. 54); and

WHEREAS, Plaintiff opposed the Stay Motion by the affirmation of Daniel Ansell and the exhibits submitted therewith (NYSCEF Doc. Nos. 58-60), and due consideration having been given to same; and

WHEREAS, the Court having held a virtual hearing on both the U&O Motion and the Stay Motion on February 16, 2021; and

WHEREAS, upon due consideration of the arguments advanced by counsel for all parties and after conclusion of the aforesaid hearing the Court rendered a decision on the record granting the Stay Motion to the extent of staying the determination of the U&O Motion pending the determination of the Quik Park Appeal on condition that Premier Parking (1) post an

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without objection
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undertaking in the amount of \$432,208.34 representing use and occupancy for the period October 2020 through February 2021, and (2) pay Plaintiff use and occupancy, at the monthly rate of \$87,125.00 *pendente lite*, on or before the 10th day of each month, starting March 10, 2021; and

WHEREAS, the Court having determined that the foregoing posting of the undertaking and payment of use and occupancy *pendente lite* is without prejudice to Plaintiff's claims for all unpaid rent and other damages, including fixed rent, additional rent, holdover use and occupancy, lease termination damages, attorneys' fees and expenses owed by Premier Parking and guaranteed by Guarantor to Plaintiff; and

WHEREAS, the Court having directed Plaintiff's counsel to submit an order in conformance with the Court's on-the-record decision; and

NOW, THEREFORE, IT IS HEREBY:

ORDERED, that the Stay Motion is granted ^{without objection} to the extent set forth herein; and it is

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further

ORDERED, that Premier Parking is hereby directed to: (1) post an undertaking with a nationally recognized surety company in the amount of \$432,208.34, representing use and occupancy for the period October 2020 through February 2021, within 10 days of the filing of a Notice of Entry of this Order, and Premier Parking shall provide a copy of the undertaking to Plaintiff within two days of its filing; and (2) pay monthly use and occupancy, *pendente lite*, in the amount of \$87,125.00 per month on or before the 10th day of each month, starting on March 10, 2021; and it is further

ORDERED, that except as otherwise set forth herein, the determination of the U&O Motion is hereby stayed pending the determination of the Quik Park Appeal; and it is further

ORDERED, that the foregoing is without prejudice to Plaintiff's claims for all unpaid rent and other damages, including fixed rent, additional rent, holdover use and occupancy, lease termination damages, attorneys' fees and expenses owed by Defendants to Plaintiff and without prejudice to Defendants' defenses thereto.

Dated: February 17, 2021



Hon. Shlomo S. Hagler, J.S.C.