

Green 485 Owner LLC v Quik Park 485 Garage LLC
2021 NY Slip Op 30590(U)
February 25, 2021
Supreme Court, New York County
Docket Number: 652873/2020
Judge: Arlene P. Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY****PRESENT: HON. ARLENE P. BLUTH****PART****IAS MOTION 14***Justice*

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GREEN 485 OWNER LLC,

INDEX NO. 652873/2020**MOTION DATE** N/A

Plaintiff,

MOTION SEQ. NO. 003

- V -

QUIK PARK 485 GARAGE LLC, RL HOLDINGS II
LLC, RAFAEL LLOPIZ**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 55, 56, 57, 58, 59, 61, 62, 63, 64

were read on this motion to/for

MISCELLANEOUS

The motion by plaintiff for an order directing the tenant to pay rent *pendente lite* is granted in part.

Background

In this commercial landlord tenant case, plaintiff claims that defendant Quik Park 485 Garage LLC ("Tenant") has been operating its parking garage business but stopped making monthly rent payments in April 2020. Defendant RL Holdings II LLC and Rafael Llopiz are the guarantors (Llopiz allegedly signed a good guy guaranty). Plaintiff claims it sent the Tenant a notice to cure dated May 26, 2020 but the Tenant failed to cure its default. Plaintiff wants \$140,450.00 in rent each month as this case progresses.

The Tenant and defendant RL Holdings offer opposition and explain that plaintiff unsuccessfully tried to obtain this relief on two prior occasions. They assert that plaintiff cannot show that the rent demanded is fair market rent. They assert that the amount plaintiff seeks is

double penalty damages and the fixed rent at the start of Covid-19 was \$70,225.00. These defendants claim that plaintiff will suffer no irreparable harm if the motion is denied.

Defendant Llopiz also offers opposition and insists that he cannot be held to pay rent *pendente lite*. He points out that he sold his interest in the Tenant to another entity and no ability to control the actions of the Tenant.

In reply, plaintiff argues that it is entitled to seek \$140,450.00 under the lease, that it can go after the guarantors and this is does not matter that it made previous attempts for the instant relief. Plaintiff also insists that defendants continue to operate a parking garage without paying any rent.

Discussion

A “court has broad discretion in awarding use and occupancy *pendente lite*” (*Alphonse Hotel Corp. v 76 Corp.*, 273 AD2d 124, 124, 710 NYS2d 890 (Mem) [1st Dept 2000]). A Court can award interim use and occupancy charges for existing leases (*Andejo Corp. v S. St. Seaport Ltd. Partnership*, 35 AD3d 174, 825 NYS2d 50 [1st Dept 2006]).

As an initial matter, the Court is not concerned that plaintiff made prior attempts to get the instant relief. Those motions were denied on procedural grounds as plaintiff failed to serve defendants and failed to state a basis for the Court to reconsider its denial. A ruling was not made on the merits.

The Court grants the motion but only to the extent that the Tenant is directed to pay \$70,225.00 starting in March 2021. The Court has broad discretion and finds that the appropriate amount for the Tenant to pay *pendente lite* is what was due each moth prior to the pandemic. The amount sought by plaintiff is the holdover rate. Given the ongoing pandemic, the Court finds that equity demands that, in this order, the Tenant be required to pay the amount it was supposed

to pay before Covid-19 devastated New York City, not the monthly amount sought by plaintiff.

This is without prejudice to plaintiff proving a greater amount at a later date.

The Court finds that the payment of rent *pendente lite* is appropriate only by the Tenant and not by the guarantors. The Court observes that plaintiff's "wherefore" clause in its memorandum of law in support only seeks relief against the Tenant. And, of course, it is the Tenant that continues to operate the parking garage without paying rent. There is no reason to require either guarantor to pay the rent at this time. Whether these guarantors might ultimately be liable in this case will be determined at a later date.

The Court emphasizes that it is granting the motion, at least in part, because the Tenant continues to run its parking garage. It would be wholly unfair for the Court to turn a blind eye to the fact that plaintiff (who has its own expenses, such as real estate taxes and insurance) must stand by and watch as its Tenant runs a business rent-free. There is no doubt that the businesses have been hit hard by the pandemic. And some of the executive orders signed by the governor and related legislation have tried to protect commercial tenants. But this Court is not aware of any order or act that prohibits a landlord from seeking the rent it is due. Public policy goals are not the same as statutes directing or prohibiting actions.

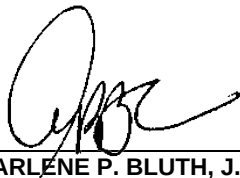
While the Court hopes that the parties reach a settlement that is mutually agreeable and keeps defendants in business, the fact that the parties have not been able to reach a settlement is irrelevant to this motion.

Although the Court grants the request for the payment of rent *pendente lite*, the Court denies the branch of the order to show cause directing defendants to deposit money received by defendants into escrow. There is no basis for that relief at this time.

Accordingly, it is hereby

ORDERED that the motion by plaintiff is granted only to the extent that the tenant, Quik Park 485 Garage LLC is directed to pay rent *pendente lite* in the amount of \$70,225.00 starting in March 2021.

Remote Conference: March 22, 2021 at 10 a.m.

<u>2/25/2021</u>					
DATE				ARLENE P. BLUTH, J.S.C.	
CHECK ONE:	☐	CASE DISPOSED	☒	NON-FINAL DISPOSITION	
	☒	GRANTED	☐	GRANTED IN PART	☐
APPLICATION:	☐	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	☐
				REFERENCE	