

500 E. Funding LLC v 500 EPKY LLC

2021 NY Slip Op 31721(U)

May 19, 2021

Supreme Court, Kings County

Docket Number: 508184/21

Judge: Karen B. Rothenberg

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part _35 of the Supreme Court of the State of New York, held in and for the County of Kings, located at 360 Adams Street, Brooklyn, New York 11201 on May 19th_, 2021

PRESENT: _KAREN B. ROTHENBERG, J.S.C.

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500 EASTERN FUNDING LLC,

Petitioner,

Index No. 508184/21

-against-

ORDER TO APPOINT RECEIVER

500 EPKY LLC, and “JOHN DOE ONE” through “JOHN DOE SIXTEEN,” said names being fictitious, the parties intended being possible tenants or occupants of the premises, and corporations or other entities or persons who claim, or may claim, a lien against the premises,

Respondents.

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Upon the Order to Show Cause and Verified Petition (the “Petition”) filed by Petitioner 500 Eastern Funding LLC (“Petitioner”) in the Office of the Clerk of Kings County on April 7, 2021, and upon reading and filing the Affirmation of Andrea J. Caruso, Esq., in Support of Petitioner’s Application for an Order Appointing Receiver, duly affirmed on April 7, 2021, and the exhibits annexed thereto, it is hereby

ORDERED, that Gregory M. LaSpina, Esq. of Borchert & LaSpina, P.C., 1902 Whitestone Expy Ste 302, Whitestone, N.Y. 11357, Tel. 718-767-3333, be and is hereby appointed, with the usual powers and directions Temporary Receiver (the “Receiver”) for the benefit of the Petitioner of all rents and profits, now due and unpaid or to become due during the pendency of this action and issuing out of the following portions of the mortgaged property mentioned in the Petition: 500 Eastern Parkway, Brooklyn, New York, with the following tax

designation on the Tax Map of Kings County: Block: 1268, Lot: 21, and more particularly described in Schedule A hereto (the “Mortgaged Property”); and it is further

ORDERED that the said Receiver is authorized forthwith take charge and enter into possession of the Mortgaged Property; and it is further

ORDERED that before entering upon his/her duties, said Receiver shall be sworn to fairly and faithfully discharge the duties committed to him/her and shall execute to the People of the State of New York and file with the Clerk of this Court an undertaking in the penal sum of \$___90,000_____, conditioned for the faithful discharge of his/her duties as Receiver; and it is further

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

ORDERED that the Receiver may institute and prosecute suits for the collection of rent, license fees and other charges now due or hereafter to become due or 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 provisions of the General Obligations Law section 7-105, anybody holding any deposits or advances of rental as security under any lease or license

agreement affecting space in the Mortgaged Property affected by this action shall turn same over to said Receiver within five (5) days after said Receiver shall have qualified; and thereupon the said Receiver shall hold such security subject to such disposition thereof as shall be provided in an Order of this 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 Receiver all rent lists, orders, unexpired and expired leases, agreements, correspondence, notices and registration statements relating to rental space or facilities in the premises; and it is further

ORDERED that notwithstanding anything to the contrary contained in this order, the said Receiver shall not, without the further prior order of this Court, upon prior notice to Petitioner, make improvements or substantial repairs to the property at a cost in excess of \$1,000.00; and it is further

ORDERED that said Receiver forthwith deposit all monies received by him/her at the time he/she receives same in an account at __TD Bank, Montague Street, Brooklyn_ (the “Depository”) or in an account established by the Receiver for the purposes of receipt of such funds, such account to be in his/her name, as Receiver, and to show the name of the instant case; the Depository shall furnish monthly statements regarding such account to the Receiver, who will in turn provide such statements to Petitioner’s counsel on a timely basis; and it is further

ORDERED that said Receiver be and is authorized from time to time to rent or lease any part of the Mortgaged Property for terms not exceeding one (1) year or such longer terms as may be required by the State of New York; to keep said Mortgaged Property insured against loss by damage or fire; to pay the taxes, assessments, water rates, sewer rents, vault rents, salaries of employees, supplies and other charges; to comply with all the lawful requirements of any municipal department or other authority of the municipality in which the Mortgaged Property is

situated; and to procure such fire, plate glass, 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 Mortgaged Property attorn to said Receiver and pay over to said Receiver all rents, license fees and other charges of such Mortgaged Property 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 Mortgaged Property and from interfering in any manner with the Mortgaged Property or its possession; and from transferring, removing or in any way disturbing any of the occupants or employees; and that all tenants, occupants, employees and licensees of the Mortgaged Property 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 Mortgaged Property to the defendants, their agents, servants or attorneys; and it is further

ORDERED that the Receiver is prohibited from incurring obligations in excess of the monies in his/her hands without further Order of this Court or written consent of the Petitioner's attorney; and it is further

ORDERED that the Owner 500 EPKWY LLC (the "Owner") turn over to the Receiver all rents collected from and after the date of this Order; and it is further,

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

ORDERED that said Receiver after paying the expenses of the management and care of the said Mortgaged Property as above provided retain the balance of the monies which may come

into his/her hands until the sale of the said Mortgaged Property under the judgment to be entered in this action and/or until further Order of this Court; and it is further

ORDERED that if it is necessary in the fulfillment of the Receiver's duties, Petitioner may, but shall not be required, to advance funds to the Receiver for the payment of repairs, maintenance, insurance, taxes, the curing of violations or any other expense which may be necessary for the preservation and protection of the Mortgaged Property by the Receiver and to the extent that the rents, issues and profits collected by the Receiver and remaining in the Receiver's account are insufficient to reimburse Plaintiff for such advances, all such advances made by Petitioner shall be secured by its mortgage and shall be added to and included to the debt thereupon due and in the judgment of foreclosure and sale; and it is further

ORDERED that said Receiver shall file a monthly accounting with Petitioner's counsel beginning with the date of this Order and monthly thereafter during the term of the receivership; and it is further

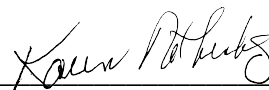
ORDERED that said Receiver, or any party hereto, may at any time, on proper notice to all parties who may have appeared in this action, apply to this Court for further or other instructions or powers necessary to enable said Receiver to properly fulfill his/her duties; and it is further

ORDERED that for his/her services, Receiver shall be compensated for the faithful discharge of his/her duties provided for in Section 8004 of the Civil Practice Law and Rules; and it is further

ORDERED that the appointee named as Receiver herein shall comply with the provisions of Section 35(a) of the Judiciary Law, Sections 6401-6405 of the Civil Practice Law and Rules, and Article 13 of the Real Property Actions and Proceedings Law and Rule 36 of the Chief Judge.

NOTWITHSTANDING ANY OTHER PROVISION OF THE ORDER TO THE CONTRARY, THE RECEIVER SHALL NOT APPOINT AN ATTORNEY, AGENT, APPRAISER, AUCTIONEER OR ACCOUNTANT WITHOUT PRIOR ORDER OF THIS COURT.

ENTER



Karen. B. Rothenberg
J.S.C.