

<b>One NY Plaza Co. LLC v Quik Park S. LLC</b>
2021 NY Slip Op 30326(U)
February 4, 2021
Supreme Court, New York County
Docket Number: 157363/2020
Judge: David Benjamin Cohen
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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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ONE NY PLAZA CO. LLC,

Plaintiff,

- v -

QUIK PARK SOUTHERN LLC, MARATHON/QUIK PARK NYC, LLC, RAFAEL LLOPIZ, ABC CO., XYZ CORP.

Defendant.

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INDEX NO. 157363/2020
MOTION DATE N/A
MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 49, 50, 51, 52, 53, 55, 56, 57, 58

were read on this motion to/for MISCELLANEOUS

Upon the foregoing documents:

WHEREAS, plaintiff ONE NY PLAZA CO. LLC ("Plaintiff") commenced this action against defendants QUIK PARK SOUTHERN LLC ("Quik Park"), MARATHON/QUIK PARK NYC, LLC a/k/a QUIK PARK NYC, LLC ("Corporate Guarantor") and RAFAEL LLOPIZ ("Individual Guarantor" and, together with Corporate Guarantor, "Guarantors") by Summons and Complaint filed September 11, 2020 (NYSCEF Doc. No. 1); and

WHEREAS, Plaintiff filed a motion (Mot. Seq. 1; NYSCEF Doc. Nos. 13-27) seeking an order directing Quik Park and Guarantors 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, Individual Guarantor opposed the Order to Show Cause (NYSCEF Doc. Nos. 33-34), and due consideration having been given to same; and

**WHEREAS**, Quik Park and Corporate Guarantor opposed the Order to Show Cause (NYSCEF Doc. Nos. 35-40), 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 to pay Plaintiff use and occupancy in the total amount of \$662,448.50 for the period of September 2020 through January 2021 by January 10, 2021; and (2) Quik Park to pay monthly use and occupancy, *pendente lite*, in the amount of \$132,489.70 per month, on or before the 10<sup>th</sup> day of each month, starting February 10, 2021 (“**U&O Order**”, (NYSCEF Doc. No 45); and

**WHEREAS**, Quik Park 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’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’s payment of past due use and occupancy, but directed Quik Park “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. 2) supported by attorney affirmation dated January 14, 2021, and the exhibits submitted therewith (NYSCEF Doc. Nos. 49-52), and due consideration having been given to same; and

**WHEREAS**, this Court having signed the Order to Show Cause on January 15, 2021 (NYSCEF Doc. 53); and

**WHEREAS**, Quik Park and Corporate Guarantor 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. 55-58), 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 (NYSCEF Doc. No. 53), 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:**

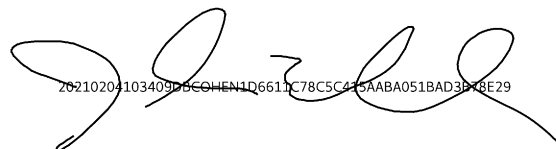
**ORDERED**, that Plaintiff's motion (Mot. Seq. 2) is granted to the extent that Quik Park is ordered to post a bond by February 12, 2021 with a nationally recognized surety company in the amount of \$662,448.50 and Quik Park shall provide a copy of the bond to all parties within two days of its issuance; 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 2021-00072) 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. 45) remains in full force and effect subject to the interim stay of the First Department as set forth above, and, accordingly, Quik Park 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 \$132,489.70 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 fixed rent, additional charges, holdover use and occupancy, lease termination damages, attorneys' fees and expenses owed by Quik Park and guaranteed by Guarantors to Plaintiff; and it is further

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



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DAVID BENJAMIN COHEN, J.S.C.

2/4/2021  
DATE

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
		<input type="checkbox"/>	DENIED	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE
			<input type="checkbox"/>	OTHER