

**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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EAST 16TH STREET OWNER LLC,
Plaintiff,

- v -

UNION 16 PARKING LLC, TMO PARENT LLC
Defendant.

INDEX NO. 653839/2020

MOTION DATE N/A

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 38, 41, 47, 48, 49, 50, 51, 52

were read on this motion to/for PENDENTE LITE.

The motion by plaintiff for an order directing defendant to pay rent *pendente lite* is granted.

Plaintiff seeks an order directing defendants, who operate a parking garage at a building owned by plaintiff, to pay ongoing use and occupancy. Defendant Union 16 Parking LLC is the tenant and defendant TMO Parent LLC signed a good guy guarantee in connection with Union 16's lease. Plaintiff claims that the tenant has not paid rent since April 1, 2020 and now owes over \$1 million to plaintiff through November 1, 2020. It argues that the lease does not permit the tenant to withhold rent under any circumstance. Plaintiff also observes that the lease does not contain a force majeure provision which might absolve defendants of their obligations.

In opposition, defendants cite the ongoing pandemic as the reason they have been unable to pay rent. They observe that their monthly business was down 60 percent in August 2020. Defendants claim that this motion is simply an effort to circumvent New York State's moratorium on commercial evictions and evict defendants. They claim that since the pandemic

began, they have lost revenue and incurred additional expenses to implement health and safety measures.

Defendants argue that the reasons behind the eviction moratorium were to preserve jobs and keep businesses from closing and the relief the instant motion seeks contravenes those purposes. They point out that orders requiring the payment of rent *pendente lite* are normally reserved for holdover proceedings where tenants refuse to vacate the premises. Defendants argue that plaintiff has a remedy—sue for the amount it seeks.

In reply, plaintiff stresses that defendants have offered no basis for the denial of the instant motion. It attaches printouts from defendants' website advertising which shows they are actively offering parking spaces, including a spot for \$559 per month. Plaintiff questions how defendants could suddenly be unable to afford rent in April 2020 merely one week after orders went into effect reducing the workforce in New York City. It speculates that defendants saw an opportunity to stop paying rent.

The Court grants the motion. 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]). While the Court understands that nearly every business, especially those that rely on commuters or tourists, has faced significant hardships due to the ongoing pandemic, that does not justify denying plaintiff's motion. The undisputed fact is that defendants have continued to operate a large parking garage throughout the Covid-19 pandemic while not having paid plaintiff a nickel since March.

The policies undergirding the moratorium on commercial evictions do not extend to a landlord's ability to recover payments. And the goal of the policy was not to allow a tenant to run its business while paying no rent whatsoever. Moreover, defendants attached nothing, such

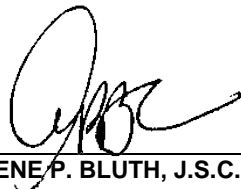
as monthly revenue statements and payroll data, that might substantiate its claim about not being able to pay employees. This is not a case where the restrictions related to the pandemic shut down a business or forced it to dramatically scale down its operations. Defendants run a garage, a business that does not require extensive face-to-face interactions like that of a restaurant. If the downturn in business due to fewer commuters and tourists makes the garage less profitable – enough to shut down - then defendant can surrender possession and limit the good guy guarantor’s exposure. But it is only fair that plaintiff receive rent while defendants continue to run their business.

Accordingly, it is hereby

ORDERED that the motion by plaintiff for an order directing defendants to pay plaintiff rent and additional rent in the amount of \$127,316.67 per month starting from November 2020 throughout the pendency of this action is granted.

Return Date for Motion Sequence 002 is January 13, 2021.

12/17/2020
DATE


ARLENE P. BLUTH, J.S.C.

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