

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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EAST 16<sup>TH</sup> STREET OWNER LLC,

Plaintiff,

Index No. 653839/20

-against-

**NOTICE OF APPEAL**

UNION 16 PARKING LLC and TMO PARENT LLC,

Defendants.  
-----X

**C O U N S E L:**

**PLEASE TAKE NOTICE**, that Defendants Union 16 Parking LLC and TMO Parent LLC hereby appeal to the Appellate Division of the Supreme Court of the State of New York, First Department, from the annexed Order of the Supreme Court, New York County (Bluth, J.), dated December 17, 2020 and entered in the Office of the New York County Clerk on December 17, 2020.

This appeal is taken from each and every part of that Order, as well as from the whole thereof.

Dated: New York, New York  
January 18, 2021

Yours, etc.,

/s/ Heath Olnowich  
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File: W:\1 - PERSONAL FOLDERS\Heath Olnowich\Active Files\Icon Parking Holdings, LLC\East 16th Street Owner v. Union 16 Parking\Notice of Appeal of 12-17-20 Order.wpd

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. ARLENE P. BLUTH PART IAS MOTION 14**

*Justice*

-----X

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

# Supreme Court of the State of New York

## Appellate Division: First Judicial Department

Informational Statement (Pursuant to 22 NYCRR 1250.3 [a]) - Civil

<p><b>Case Title:</b> Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.</p>	<p style="text-align: center;"><b>For Court of Original Instance</b></p>
<p>EAST 16TH STREET OWNER LLC,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">- against -</p> <p>UNION 16 PARKING LLC and TMO PARENT LLC,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">Date Notice of Appeal Filed</p>
<p style="text-align: center;"><b>For Appellate Division</b></p>	

Case Type	Filing Type
<input checked="" type="checkbox"/> Civil Action <input type="checkbox"/> CPLR article 75 Arbitration <input type="checkbox"/> Action Commenced under CPLR 214-g <input type="checkbox"/> CPLR article 78 Proceeding <input type="checkbox"/> Special Proceeding Other <input type="checkbox"/> Habeas Corpus Proceeding	<input checked="" type="checkbox"/> Appeal <input type="checkbox"/> Original Proceedings <input type="checkbox"/> CPLR Article 78 <input type="checkbox"/> Eminent Domain <input type="checkbox"/> Labor Law 220 or 220-b <input type="checkbox"/> Public Officers Law § 36 <input type="checkbox"/> Real Property Tax Law § 1278 <input type="checkbox"/> Transferred Proceeding <input type="checkbox"/> CPLR Article 78 <input type="checkbox"/> Executive Law § 298 <input type="checkbox"/> CPLR 5704 Review

**Nature of Suit:** Check up to three of the following categories which best reflect the nature of the case.

<input type="checkbox"/> Administrative Review	<input type="checkbox"/> Business Relationships	<input checked="" type="checkbox"/> Commercial	<input checked="" type="checkbox"/> Contracts
<input type="checkbox"/> Declaratory Judgment	<input type="checkbox"/> Domestic Relations	<input type="checkbox"/> Election Law	<input type="checkbox"/> Estate Matters
<input type="checkbox"/> Family Court	<input type="checkbox"/> Mortgage Foreclosure	<input type="checkbox"/> Miscellaneous	<input type="checkbox"/> Prisoner Discipline & Parole
<input type="checkbox"/> Real Property (other than foreclosure)	<input type="checkbox"/> Statutory	<input type="checkbox"/> Taxation	<input type="checkbox"/> Torts

Appeal	
Paper Appealed From (Check one only):	If an appeal has been taken from more than one order or judgment by the filing of this notice of appeal, please indicate the below information for each such order or judgment appealed from on a separate sheet of paper.
<input type="checkbox"/> Amended Decree <input type="checkbox"/> Amended Judgement <input type="checkbox"/> Amended Order <input type="checkbox"/> Decision <input type="checkbox"/> Decree	<input type="checkbox"/> Determination <input type="checkbox"/> Finding <input type="checkbox"/> Interlocutory Decree <input type="checkbox"/> Interlocutory Judgment <input type="checkbox"/> Judgment
<input checked="" type="checkbox"/> Order <input type="checkbox"/> Order & Judgment <input type="checkbox"/> Partial Decree <input type="checkbox"/> Resettled Decree <input type="checkbox"/> Resettled Judgment	<input type="checkbox"/> Resettled Order <input type="checkbox"/> Ruling <input type="checkbox"/> Other (specify):
Court: Supreme Court	County: New York
Dated: 12/17/2020	Entered: 12/17/2020
Judge (name in full): Arlene P. Bluth, JSC	Index No.: 653839/20
Stage: <input checked="" type="checkbox"/> Interlocutory <input type="checkbox"/> Final <input type="checkbox"/> Post-Final	Trial: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes: <input type="checkbox"/> Jury <input type="checkbox"/> Non-Jury
Prior Unperfected Appeal and Related Case Information	
Are any appeals arising in the same action or proceeding currently pending in the court? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
If Yes, please set forth the Appellate Division Case Number assigned to each such appeal.	
Where appropriate, indicate whether there is any related action or proceeding now in any court of this or any other jurisdiction, and if so, the status of the case:	
Original Proceeding	
Commenced by: <input type="checkbox"/> Order to Show Cause <input type="checkbox"/> Notice of Petition <input type="checkbox"/> Writ of Habeas Corpus	Date Filed:
Statute authorizing commencement of proceeding in the Appellate Division:	
Proceeding Transferred Pursuant to CPLR 7804(g)	
Court: Choose Court	County: Choose County
Judge (name in full):	Order of Transfer Date:
CPLR 5704 Review of Ex Parte Order:	
Court: Choose Court	County: Choose County
Judge (name in full):	Dated:
Description of Appeal, Proceeding or Application and Statement of Issues	
<p>Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed.</p> <p>This appeal is taken from the annexed Order of the Supreme Court, New York County (Bluth, J.), dated December 17, 2020 and entered in the Office of the New York County Clerk on December 17, 2020. By the subject Order, the Court granted Plaintiff's motion to direct Defendants to pay rent and additional rent (collectively, "Rent") in the sum of \$127,316.67 directly to Plaintiff pendente lite. The effect of the Order was to direct the payment of Rent beginning in November 2020 and continuing throughout the pendency of this action.</p>	

Informational Statement - Civil

Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review, the grounds for reversal, or modification to be advanced and the specific relief sought on appeal.

- (1) Whether the Court incorrectly granted Plaintiff's motion; and
- (2) Such other, further and different grounds on the facts and/or law as may become apparent upon a review of all papers comprising the record on appeal.

**Party Information**

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

No.	Party Name	Original Status	Appellate Division Status
1	EAST 16TH STREET OWNER LLC	Plaintiff	Respondent
2	UNION 16 PARKING LLC	Defendant	Appellant
3	TMO PARENT LLC	Defendant	Appellant
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## Attorney Information

Instructions: Fill in the names of the attorneys or firms for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

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State:

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Attorney/Firm Name:

Address:

City:

State:

Zip:

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Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name:

Address:

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State:

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Telephone No:

E-mail Address:

Attorney Type:  Retained  Assigned  Government  Pro Se  Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

Index No. 653839/20

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EAST 16<sup>TH</sup> STREET OWNER LLC,

Plaintiff,

-against-

UNION 16 PARKING LLC and TMO PARENT LLC,

Defendants.

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**NOTICE OF APPEAL  
AND  
APPELLATE DIVISION INFORMATIONAL STATEMENT**

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