

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

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Argued - December 8, 2006

ROBERT W. SCHMIDT, J.P.  
WILLIAM F. MASTRO  
FRED T. SANTUCCI  
STEVEN W. FISHER, JJ.

2005-09788

DECISION & ORDER

Ford Motor Credit Company, et al., appellants, v  
Berta Shayovitz, et al., respondents, et al.,  
defendants

(Index No. 2942/05)

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Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, White Plains, N.Y. (David L. Tillem and Kathleen A. Daly of counsel), for appellants.

Herzfeld & Rubin, P.C., New York, N.Y. (David B. Hamm and Linda M. Brown of counsel), for respondents.

In an action, inter alia, seeking contractual and common-law indemnification and to set aside two conveyances of real property as fraudulent, the plaintiffs appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County (Schmidt, J.), dated October 6, 2005, as granted that branch of the motion of the defendants Berta Shayovitz, Jacob Shayovitz, 1469 Realty, LLC, and 1314 Ave. M Realty, LLC, which was to cancel the notices of pendency on the two properties and directed the Kings County Clerk to cancel the notices.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, that branch of the motion which was to cancel the notices of pendency is denied, and the Kings County Clerk is directed to reinstate the notices of pendency.

The plaintiffs allege in their complaint, in relevant part, that the defendants, in anticipation of an imminent judgment against them and with the intent to defraud their creditors, conveyed certain real property to related corporate entities, without adequate consideration, thereby

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rendering themselves insolvent (*see* Debtor and Creditor Law § 270, *et seq.*). Under the circumstances, the Supreme Court erred in determining that this action was not one in which a notice of pendency may be filed (*see* CPLR 6501; *Resnick v Doukas*, 261 AD2d 375, 376; *Moran v Harting*, 227 AD2d 391; *American Auto Ins. Co. of St. Louis v Sansone*, 206 AD2d 445; *Amev Capital Corp. v Kirk*, 172 AD2d 714; *Bennett v Bennett*, 62 AD2d 1154, 1155).

SCHMIDT, J.P., MASTRO, SANTUCCI and FISHER, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer  
Clerk of the Court