

Island Holding, LLC v O'Brien
2002 NY Slip Op 30022(U)
May 2, 2002
Supreme Court, Suffolk County
Docket Number: 0020743/0743
Judge: Williaml. Underwood
Republished from New York State Unified Court System's E-Courts Service. Search E-Courts (http://www.nycourts.gov/ecourts) for any additional information on this case.
This opinion is uncorrected and not selected for official publication.

COPY

SHORT FORM ORDER

INDEX NO. 20743-1999

SUPREME COURT - STATE OF NEW YORK
I.A.S. TERM, PART XIV - SUFFOLK COUNTY

PRESENT:**Hon. WILLIAM L. UNDERWOOD, JR.**

ISLAND HOLDING, LLC,

Plaintiff(s),

-against-

DENIS J. O'BRIEN a/k/a DENIS O'BRIEN,
 GEORGE HARRISON, ALLEGIANT BANK,
 ALBERT J. O'BRIEN a/k/a ALBERT J.
 O'BRIEN, UNION BANK OF ILLINOIS and
 DOUGLAS ALAN O'BREN, TIEE FBO
 DENIS J. O'BREN FAMILY, NOEL V.
 O'BRIEN, SWEEZEY NEWINS d/b/a
 SWEEZEYS DEPARTMENT STORES,
 COMMISSIONER OF TAXATION &
 FINANCE, CHASE MANHATTAN BANK,
 USA n/k/a CHEMICAL BANK, BRUCE
 HUBERT,

Defendant(s).

ORIG. RETURN DATE: 11/28/01**FINAL RETURN DATE: 11/28/02****MTN. SEQ. #: 008-MD****PLTF'S/PET'S ATTORNEY:**

STEVEN L. LEVITT & ASSOCIATES, P.C.
 BY: STEVEN L. LEVITT, ESQ.
 Two Hillside Avenue, Building F
 Williston Park, New York **11598**

DEFT'S/RESP ATTORNEY:

LEO F. MCGINITY, Jr., Esq.
 RIEGER WALSH & MCGINITY, LLP
 Attorneys for ULILP
 199 Main Street
 Northport, New York **11768**

ZACHARY MURDOCK, ESQ.
 LAZER, APTHEKER, FELDMAN, ROSELLA & YEDID, P.C.
 Attorneys for Denis J. OBrien, Albert J. OBrien and Douglas Alan O'Brien
 225 Old Country Road
 Melville, New York **11747**

RAFAEL J. DROZ, ESQ.
 Corbin Silverman & Sanseverino LLP
 Attorneys for the Executors
 Nicholas E. Valner & Kenneth S. Roberts of the Estate of George
 Harrison
 805 Third Avenue
 New York, New York 10022

ELLIOT SPITZER, ESQ.
 Attorney General State of New York
 Attorney for Commissioner of Taxation & Finance
 120 Broadway, Room 4-124
 New York, New York **10047**

COOPERMAN, LEVITT, WINIKOFF, LESTER & NEWMAN, P.C.
 Attorneys for Noel O'Brien
 800 Third Avenue
 New York, New York 10022

BATZAR & WEMBERG, P.C.
 Attorneys for Sweezy & Newins, Inc.
 184 Sunrise Highway
 Rockville Centre, New York **11570**

Island Holding, LLC v. O'Brien, et.al.

Index No.: 20743-1999

Page Two

Upon the following papers numbered 1 to= read on this motion granting leave to renew
Notice of Motion/Order to Show Cause and supporting papers 1-13; Notice of Cross Motion and supporting papers _____; Answering Affidavits
and supporting papers 14-17; 18; Replying Affidavits and supporting papers _____; Other 19; (and after hearing counsel in support of and
~~opposed to the motion~~) it is,

ORDERED that the plaintiff, Island Holding, LLC's motion for an order granting
"leave to renew, for vacatur of the Court's Memorandum Decision dated August 10, 2001,
is denied under the circumstances presented herein. (CPLR 2221).

The plaintiff, Island Holding, previously sought an order confirming the report of sale
and directing the Suffolk County Treasurer to distribute surplus monies in the above
captioned foreclosure proceeding. Defendant The Union Illinois Investment Limited
Partnership cross moved for distribution of the surplus money. By decision dated March 5,
2001, we directed that a hearing to be held for the limited purpose of determining whether
the debt secured by a mortgage issued to defendant George Harrison, which was
subsequently assigned to the plaintiff, was satisfied prior to this action. After conducting a
hearing, by decision dated August 10, 2001, we found that the underlying debt was satisfied
and the plaintiff's second mortgage lien was vacated. It appears that the plaintiff seeks leave
to renew such decision.

"A motion to renew is intended to draw the court's attention to new or additional facts
which, although in existence at the time of the original motion, were unknown to the party
seeking renewal and therefore not brought to the court's attention. (see, *William P. Pahl*

Island Holding, LLC v. O'Brien, et.al.
Index No.: 20743-1999
Page Three

Equip. Corp. v. Kassis, 182 A.D.2d 22, 588 N.Y.S.2d 8).” (*Natale v. Jeffrey Samel & Associates*, 264 A.D.2d 384, 693 N.Y.S.2d 631, 632 [2nd Dept. 1999]). CPLR 2221(e) (3) provides that “a motion for leave to renew shall contain reasonable justification for the failure to present such facts on the prior motion”. Herein, in support of the instant motion, the plaintiff avers that defendant Denis J. O’Brien was an undisclosed interested witness at the aforementioned hearing and supports such assertions by including numerous references to his testimony at a **341** creditor’s committee hearing regarding his bankruptcy petition filed in the **U.S.** Bankruptcy Court, Eastern District of Missouri. During the hearing conducted before this Court, the plaintiffs former counsel was given ample opportunity to cross examine O’Brien. There is nothing to indicate that the transcripts which the plaintiff would now seek to impeach O’Brien’s testimony with were unknown or unavailable to it at the time of the hearing, nor has the plaintiff proffered any reason why they were not brought to our attention during the hearing.

The plaintiffs other arguments seeking renewal are equally without merit. The plaintiff asserts that it was denied due process because the scope of the hearing was enlarged beyond the purposes set forth in our decision of March **5**, 2001. The hearing was commenced on April 24, 2001 and continued to June 7, 2001 at the plaintiffs counsel’s

Island Holding, LLC v. O'Brien, et.al.

Index No.: 20743-1999 --

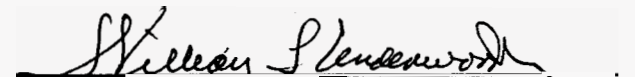
Page Four

request. If the plaintiff claims surprise with regard to the issues addressed at the hearing, it was given every opportunity by way of granting a continuance to adequately respond. Finally, the plaintiff in its motion seeks to explain the purchase price it paid defendant Harrison for the subject secondary mortgage. Once again, the plaintiff chose not to call Island Holding's principal, David Long to testify even though he was readily available to do so. None of the grounds submitted in support of the instant motion in any way can be considered additional or new facts unavailable or unknown to the plaintiff warranting leave to renew. As such, its motion is in all respects denied.

This shall constitute the decision and order of the Court.

So ordered.

Dated: May 2,2002


HON. WILLIAM L. UNDERWOOD, JR.
J.S.C.

CHECK ONE: FINAL DISPOSITION

NON-FINAL DISPOSITION