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| Losner v Cashline, L.P. |
| 2005 NY Slip Op 30011(U) |
| July 7, 2005 |
| Sup Ct, Richmond County |
| Docket Number: |
| Judge: Philip G. Minardo |
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SUPREME COURT OF THE STATE OF NEW YORK By: Philip G. Minardo, J.S.C.
COUNTY OF RICHMOND: DCM PART 6 Date: July 7, 2005

RONALD B. LOSNER, SHIRLEY LOSNER,
and RONALD B. LOSNER, P.C.,

Plaintiffs,

-against-

Decision/Order

Index No.14146/94

CASHLINE, L.P., CANTICO INTERNATIONAL LTD.,
THOMAS NEELY, 2A SAGAMORE HILL ROAD CORP.,
RICK, STEINER, RUBIN & TANNENBAUM, P.C. and
North Fork

Defendants.

NORTH FORK BANK, As Trustee,

Plaintiff,

-against-

Index No.12828/95

CANTICO INTERNATIONAL, LTD., NEW YORK CITY
PARKING VIOLATIONS BUREAU, RONALD B. LOSNER,
SHIRLEY LOSNER, RONALD B. LOSNER, P.C., NEW
YORK STATE DEPARTMENT OF TAXATION AND
FINANCE, 2A SAGAMORE HILL ROAD CORP., "Richard
Roe", et al.

Defendants.

NORTH FORK BANK, As Trustee,

Plaintiff,

-against-

Index No.10401/96

CANTICO INTERNATIONAL, LTD., NEW YORK CITY
PARKING VIOLATIONS BUREAU, RONALD B. LOSNER,
SHIRLEY LOSNER, RONALD B. LOSNER, P.C., NEW
YORK STATE DEPARTMENT OF TAXATION AND
FINANCE, 2A SAGAMORE HILL ROAD CORP., "Richard
Roe", et al.

Defendants.

NORTH FORK BANK, As Trustee,
 Plaintiff,
 -against-

Index No.11716/00

CANTICO INTERNATIONAL, LTD., NEW YORK CITY
 PARKING VIOLATIONS BUREAU, NEW YORK CITY
 ENVIRONMENTAL CONTROL BOARD, RONALD B.
 LOSNER, SHIRLEY LOSNER, RONALD B. LOSNER,
 P.C., et al.

Defendants.

NORTH FORK BANK, As Trustee,
 Plaintiff,
 -against-

Index No.100482/04

RONALD B. LOSNER, SHIRLEY LOSNER, and
 RONALD B. LOSNER, P.C.

Defendants.

The following papers numbered 1-11 used on this motion this 2nd day of June, 2005.

| | Papers Numbered |
|---|-----------------|
| Notice of Motion (Defendant North Fork) | 1 |
| Affirmation in Support | 2 |
| Memorandum of Law in Support | 3 |
| Affirmation in Opposition | 4 |
| Affidavit in Opposition | 5 |
| Reply Affirmation | 6 |
| Notice of Motion (Plaintiff Losner) | 7 |
| Memorandum of Law in Support | 8 |
| Affirmation in Opposition | 9 |
| Affidavit in Opposition | 10 |
| Reply Affidavit | 11 |

Defendants North Fork Bank, as trustee, (hereinafter "North Fork") moves for Summary
 Judgment dismissing Plaintiffs' Second Amended Complaint, pursuant to CPLR § 3212.

Plaintiffs are moving to preclude Peter Rosenbaum, President of 2A Sagamore Hill Road Corp.

(hereinafter "Sagamore"), from submitting evidence and testimony that Cantico executed and delivered two (2) mortgages to Sagamore, because all of Sagamore's records were lost in a fire, and cannot be found. Plaintiffs also move for Summary Judgment on their cause of action for a constructive trust of the title of the premises 1072 Victory Boulevard (hereinafter "Victory Blvd. Property") on the basis that Sagamore, Cantico International Ltd. (hereinafter "Cantico"), and Thomas Neely (hereinafter "Neely") defaulted in answering their Second Amended Complaint and failed to appear at their Examinations Before Trial (hereinafter "EBTs").

Both the Plaintiffs and the Defendant's motion for Summary Judgment are denied in that this issue was previously argued before Justice Christopher Mega, and a decision was rendered on February 24, 2004, finding that there were questions of fact regarding the Plaintiffs' claim concerning the deed Cantico acquired, and whether it was fraudulently procured. This court is of coordinated jurisdiction with Justice Mega and therefore bound by his decision. Post v. Post, 141 A.D.2d 518 (2nd Dept.1988); Collins v. Olsker-McLain Industries, 22 A.D.2d 485 (4th Dept. 1965). If Defendant North Fork intends to make a motion to renew based on newly obtained evidence, said motion must be made before Justice Mega pursuant to CPLR § 2221.

Plaintiff's motion to preclude Defendant Sagamore and its successor in interest, North Fork, from submitting any evidence or testimony in support of its claim that Cantico as mortgagor, executed and delivered two (2) mortgages, in the amounts of \$200,000 and \$100,000, to Sagamore as mortgagee and predecessor in interest to North Fork, on the ground that Sagamore's president and sole share holder, Peter Rosenbaum, testified at his EBT, that Sagamore's business records were destroyed and/or lost is denied.

The mortgages, consolidation and extension agreement and assignment of mortgage at issue in this case are all recorded documents, readily available in the county clerk's office.

Further, North Fork submitted the wire transfer records received for the assignment transactions, as a result of to which North Fork became the owner and holder of the mortgages in issue.

Plaintiff's further motion to set aside all of the Sagamore mortgages and transferring title of the premises back to the Plaintiff free of all liens and mortgages on the grounds that Defendants Sagamore, Cantico, and Neely have defaulted and failed to interpose an answer to their second amended complaint is granted only to the following extent: Plaintiff shall have a default judgment against Defendants Sagamore, Cantico, and Neely.

This shall constitute the decision and order of the Court.

ENTER

J.S.C.