

<b>Chequessett Owner L.L.C. v Immerman</b>
2022 NY Slip Op 33810(U)
November 7, 2022
Supreme Court, New York County
Docket Number: Index No. 651274/2022
Judge: Barry Ostrager
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. BARRY R. OSTRAGER PART IAS MOTION 61EFM**

*Justice*

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 CHEQUESSETT OWNER L.L.C., EIGHTEENTH ST. OWNER L.L.C., and NEWCOMB OWNER L.L.C.,

Plaintiff,

- v -

LAWRENCE F. IMMERMANN; HARRY F. IMMERMANN; RICHARD LIPPNER; PHILLIP E. WALKER AS SUCCESSOR TRUSTEE U/L/W OF FRANCES S. STERN, DECEASED; DONALD J. MACKENZIE; CHRISTOPHER D. GOFFREDO AS THE TRUSTEE OF THE WILLIAM F. GOFFREDO 2020 REVOCABLE TRUST; ALAN J. SAVADA, TRUSTEE OF THE ALAN J. SAVADA REVOCABLE TRUST DATED APRIL 8, 2004; LAUREL GLASSMAN; MARK ZEIDMAN; ELIAS SAVADA AS TRUSTEE OF THE ELIAS SAVADA REVOCABLE INTER VIVOS TRUST AGREEMENT; HARVEY C. MARX AS TRUSTEE OF THE HARVEY C. MARX SELF-DECLARATION OF LIVING TRUST, DATED MARCH 25, 2014; JOHN PERLMAN; DAVID H. GLASS; ROBERT KALTER AND NANCY GLASS AS HUSBAND AND WIFE; et al.,

INDEX NO.	651274/2022
MOTION DATE	
MOTION SEQ. NO.	001

**DECISION + ORDER ON MOTION**

Defendants.

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 HON. BARRY R. OSTRAGER

Before the Court is a motion by plaintiffs Chequessett Owner L.L.C., Eighteenth St. Owner L.L.C., and Newcomb Owner L.L.C. (“Plaintiffs”) for a default judgment against defendant Christopher D. Goffredo as the Trustee of the William F. Goffredo 2020 Revocable Trust (“the Goffredo Trust”) based on the Goffredo Trust’s failure to appear and respond to the Complaint. Specifically, Plaintiffs seek an Order, pursuant to CPLR § 3215, that defendant Christopher D. Goffredo as the Trustee of the William F. Goffredo 2020 Revocable Trust was properly served, has defaulted in answering, and cannot oppose Plaintiffs’ request for relief

related to the proposed partition and sale of the property located at 44 West 18th Street, New York, NY 10011 and described as Block 819, Lot 10 in the borough of Manhattan, New York County (“the Property”). The Property is a twelve-story commercial building.

The relevant facts are as follows. On March 17, 2022, Plaintiffs filed a Complaint (NYSCEF Doc. No. 2) asserting two causes of action: (1) for a declaratory judgment confirming that Chequessett Owner L.L.C. holds an undivided 3% tenant in common interest in the Property, that Eighteenth St. Owner L.L.C. holds an undivided 4.9% tenant in common interest in the Property, and that Newcomb Owner L.L.C. holds an undivided 5% tenant in common interest in the Property; and (2) for the partition and sale of the Property pursuant to RPAPL Section 901 *et seq.* The various named defendants allegedly also own interests in the Property. The Goffredo Trust, having an address in Easton, Massachusetts, allegedly has a 2.1% tenant in common interest in the Property. Complaint ¶ 10.

On April 4, 2022, the Goffredo Trust was served via substituted service with the Summons and Complaint and other relevant documents by delivery of a true copy of each document to Christopher D. Goffredo’s wife, Amy Goffredo, a person of suitable age and discretion, at their Massachusetts residence (NYSCEF Doc. No. 10). To complete substituted service, on April 5, 2022, a copy of the documents were mailed by first-class mail in a postpaid envelope properly addressed to the Goffredo Trust at the Goffredo Trust’s last-known residence in Massachusetts. The envelope bore the legend “Personal and Confidential” and did not indicate on the outside, by return or otherwise, that the communication was from an attorney or concerned an action against the Goffredo Trust. The service was proper pursuant to CPLR §§ 308 and 313.

Proof of service was efiled on April 27, 2022, service was complete ten days later pursuant to CPLR § 308(2), and the Goffredo Trust had thirty days to respond pursuant to CPLR § 320(a). However, the Goffredo Trust defaulted on the Complaint by failing to answer or otherwise respond to the Complaint (NYSCEF Doc. No. 37).<sup>1</sup>

On July 27, 2022, Plaintiffs served the Goffredo Trust with their First Set of Interrogatories and First Notice of Discovery and Inspection via overnight FedEx.(NYSCEF Doc. No. 39). Plaintiffs also served a copy of this motion by Federal Express with a delivery date of October 7, 2022 (NYSCEF Doc. No. 42, 44). As of that date, Plaintiffs had received no response to their discovery demands (see NYSCEF Doc. No. 37). Nor did Plaintiffs receive any response to this motion, returnable on October 21, 2022, as of November 7, 2022. However, in response to an inquiry from the Court requesting confirmation of service, Plaintiffs' counsel reported by letter dated November 7, 2022 that it had received "what appear to be interrogatory responses from Mr. Goffredo, with the same return address indicated on the affidavit of service and FedEx proof of delivery." (NYSCEF Doc. No. 44). Plaintiffs' counsel added in the letter that: "The Goffredo Trust is still unrepresented and, to date, has not answered the complaint, responded to Plaintiffs' requests for production, or opposed the default judgment motion."

In light of this recent development, and in light also of the absence of a party affidavit or other proof of facts consistent with CPLR § 3215(f), the Court denies Plaintiffs' motion without prejudice to renewal after the defendant Goffredo Trust is given a further opportunity to be heard. Specifically, the Court directs Plaintiffs' counsel to send a copy of this Decision and Order to Christopher D. Goffredo by regular and overnight mail with a cover letter advising Mr.

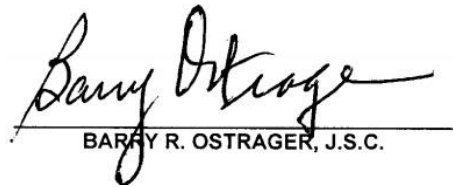
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<sup>1</sup> On May 5, 2022, Plaintiffs efiled an Amended Complaint to add an additional party (NYSCEF Doc. No. 12) . Although the Amended Complaint was not served on the Goffredo Trust, it included no new or different allegations. (See NYSCEF doc Nos. 37-38).

Goffredo that the Goffredo Trust is at risk of losing any interest in the Property it may have if it fails to respond to the Amended Complaint. A copy of the Amended Complaint shall be included. Mr. Goffredo shall be advised that he has the right to appear remotely at the conference scheduled for December 13, 2022 at 2:00 p.m. via Microsoft Teams. Plaintiffs' counsel shall obtain the email address for Mr. Goffredo and then forward a copy of the Teams invitation to Mr. Goffredo. An updated Appearance Sheet that includes the contact information for Mr. Goffredo shall be efiled along with a copy of counsel's letter and a copy of Mr. Goffredo's interrogatory responses no later than December 5, 2022.

This constitutes the Decision and Order of this Court.

Dated: November 7, 2022

  
 BARRY R. OSTRAGER, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE