DOCKETED

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Cooper

Plaintiff(s)

v. 6:94-cv-06191

Madalena

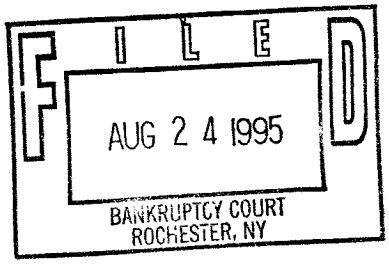
Defendant(s)

PLEASE take notice of the entry of a JUDGMENT filed on 8/24/95, of which the within is a copy, and entered 8/24/95 upon the official docket in this case. (Document No. 8 .)

Dated: Rochester, New York
August 24, 1995

RODNEY C. EARLY, Clerk
U.S. District Court
Western District of New York
282 U.S. Courthouse
100 State Street
Rochester, New York 14614

Enclosure
TO:
Robert S. Cooper
Richard S. Mayberry, Esq.



UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

ROBERT S. COOPER,

Plaintiff,

JUDGMENT IN A CIVIL CASE

V.

GERALD MADALENA and
SALLY MADALENA,

Defendant.

CASE NUMBER: 94-CV-6191L

☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

X **Decision by Court.** This action came to ~~trial or~~ hearing before the Court. The issues have been ~~tried or~~ heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that the Decision and Order of the Bankruptcy Court entered February 28, 1994, as amended by Order entered March 1, 1994, is in all respects affirmed.

FILED
95 AUG 24 PM 2:20
U.S. DISTRICT COURT
W.D.N.Y. - ROCHESTER

August 24, 1995
Date

RODNEY C. EARLY
Clerk

Catherine A. Marr
CATHERINE A. MARR
(By) Deputy Clerk

#8

DOCKETED

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Cooper

Plaintiff(s)

v. 6:94-cv-06191

Madalena

Defendant(s)

PLEASE take notice of the entry of an ORDER filed on 8/23/95, of which the within is a copy, and entered 8/24/95 upon the official docket in this case. (Document No. 7 .)

Dated: Rochester, New York
August 24, 1995

RODNEY C. EARLY, Clerk
U.S. District Court
Western District of New York
282 U.S. Courthouse
100 State Street
Rochester, New York 14614

Enclosure
TO:
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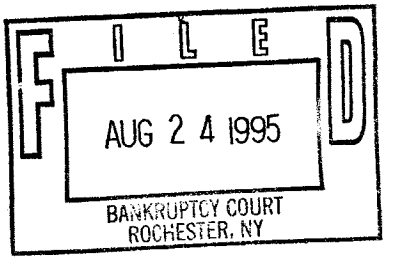

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

FILED

95 AUG 23 PM 12: 58

U.S. DISTRICT COURT
W.D.N.Y. - ROCHESTER

ROBERT S. COOPER, TRUSTEE,

Appellant,

v.

GERALD MADALENA and
SALLY MADALENA,

Appellees.

DECISION AND
ORDER

94-CV-6191L

This is an appeal from a Decision and Order of the Bankruptcy Court for the Western District of New York (John C. Ninfo, II, J.). In an adversary proceeding commenced by the Trustee, appellant on this appeal, the parties filed cross-motions for summary judgment. In the decision appealed from, Judge Ninfo granted summary judgment in favor of appellees, Gerald and Sally Madalena, and dismissed the adversary proceeding commenced by the Trustee against them to resolve a dispute concerning the respective rights of the debtor and the Madalena's in property at 2570 Baird Road, Penfield, New York.

I have carefully reviewed Judge Ninfo's thorough decision in this case, as well as the briefs filed on appeal by the Trustee and the Madalenas. In my view, Judge Ninfo's Decision and Order should be affirmed in all respects.

#7

The material facts are not controverted and are set forth with precision in Judge Ninfo's decision and need not be repeated here.

To be sure, the transaction at issue between the debtor, Glasgow, and the Madalenas was not a garden-variety sale of property with the seller holding a mortgage on the conveyed premises to secure payment of the purchase price. However, this transaction involving a long-term lease and sale of assets was certainly commercially reasonable. In any event, as Judge Ninfo found, it clearly was the intent of the parties that the Madalenas retain a security interest on the commercial building and its fixtures in order to secure the substantial lease payments due them from Glasgow pursuant to the terms of the lease executed on May 19, 1989.

This transaction was structured to benefit both Glasgow and the Madalenas, but there was no evidence that it was structured in order to defraud creditors or to hide the resulting security interest in favor of the Madalenas.

I agree with Judge Ninfo's conclusion that for purposes of this bankruptcy proceeding, the Glasgows hold a mortgage granting them a lien on the building and fixtures at 2570 Baird Road, Town of Penfield, New York.

I also agree with Judge Ninfo that the Trustee may not void the lien under principles of New York law. The Trustee makes much of the admitted fact that the security agreement together with the lease and deed were recorded in the Liber of Deeds rather than the Liber of Mortgages. It is, of course, not clear that either Glasgow or the Madalenas had any control over where personnel of the Clerk's Office elected to record the submitted documents. But, in any event, the fact is that these documents were recorded for all the

world to see and clearly any prospective purchaser or mortgagee would have discovered the existence of the lease and lien upon searching the record.

As Judge Ninfo observed (p. 11), the lien claimed by the Madalenas is not a "springing or hidden" lien subject to avoidance under § 544 of the Bankruptcy Code.

I have considered all of the other contentions of the Trustee and find them to be without merit.

CONCLUSION

The Decision and Order of the Bankruptcy Court for the Western District of New York (John C. Ninfo, II, J.) entered February 28, 1994, as amended by Order entered March 1, 1994, is in all respects affirmed.

IT IS SO ORDERED.

DAVID G. LARIMER
UNITED STATES DISTRICT JUDGE

Dated: Rochester, New York
August 23, 1995.