

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
No. 05-4898

ANTONY M. GAGLIARDI, Trustee of the
ANTHONY & COMPANY REALTY TRUST

vs.

SOVEREIGN BANK

**MEMORANDUM AND ORDER ON PLAINTIFF'S
MOTION FOR PRELIMINARY INJUNCTION**

For the following reasons, the plaintiff's motion for preliminary injunction is DENIED.

The motion was presented at a hearing on the afternoon of November 18, 2005, at which counsel for both parties appeared and argued. Defendant's counsel, who had been served earlier that day, requested until Monday, November 21, to submit papers. I received these papers yesterday morning before 11:00 a.m. The day's trial and a full motion calendar precluded my getting to them before 5:00 p.m., but I thereafter reviewed and duly considered both parties' submissions, with the additional assistance of the oral arguments of last Friday.

The exigency of today's foreclosure precludes a fully detailed statement of the rationale for this decision. Suffice it to say that in weighing the factors enumerated in Packaging Indus. Group, Inc. v. Cheney, 380 Mass. 609, 616-617 (1980):

1. The plaintiff has demonstrated a likelihood of success that appears, on this record, to fall well short of even odds.
2. Although the "the raw amount of irreparable harm the [plaintiff] might conceivably suffer" – indeed, will undoubtedly suffer – from the foreclosure on its commercial

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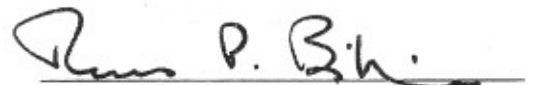
Plaintiff's papers 11/23/05 gT R.S.N. D.E.

real estate is substantial, and may well be thought more substantial than the threatened harm to the bank, the latter is considerable as well. Even if one credits the prognostication of the plaintiff's expert appraiser that real estate values in the relevant market will likely hold steady in the next three to four months, the interest accruing on a \$2.6 million (+/-) obligation must be considerable and, based on what the papers disclose as to the loan's security, very likely uncollectible.

3. Considering "the risk of such harm in light of the [plaintiff's] chance of success on the merits," the balance of harms favors denial of the requested injunctive relief.

ORDER

For the foregoing reasons, the plaintiff's motion for preliminary injunction is DENIED.


Thomas P. Billings, Associate Justice

Dated: November 22, 2005, 8:50 p.m.