

Hillsborough  
No. 78-221

LLOYD W. LINZELL

v.

JOHN G. NELSON, JR., TRUSTEE

January 31, 1979

*Joseph L. Clough*, of Nashua, by brief and orally, for the plaintiff.

*Winer, Lynch, Pillsbury & Howorth*, of Nashua (*S. Robert Winer* orally), for the defendant.

MEMORANDUM OPINION

On petition of plaintiff, the owner of certain commercial property in Nashua, defendant was temporarily restrained by *Dunfey, J.*, from foreclosing on a mortgage held by him. The injunction was conditional on the filing of an injunction bond in the amount of \$5,000.00, which was filed on August 18, 1977.

On May 15, 1978, after various proceedings, *Souter, J.*, ordered that the injunction be dissolved on June 30, 1978, and that on that date defendant could proceed under the power-of-sale provisions of the mortgage. He further ordered that if the property was sold before June 30, the parties agreed that not less than \$150,000 in cash should be paid to defendant and that not more than \$15,000 should be placed in escrow. The rights of the parties under the injunction bond and with respect to costs chargeable regarding foreclosure proceedings and credits were left for a later hearing if the parties could not agree.

Thereafter, plaintiff moved that the requirement of placing \$15,000 in escrow be continued in force notwithstanding the dissolution of the injunction. Defendant then moved for reconsideration, claiming that certain items were overlooked when the court ordered the amount of not less than \$150,000 be paid to him in case of sale and that the correct amount should have been \$184,908. Plaintiff then moved to stay the court's order until the correct amount could be determined, claiming that the uncertainty thus created impaired his ability to effect a sale. All motions were denied by *Souter, J.*, who transferred plaintiff's exceptions. We find no error or abuse of discretion on the part of the

trial court, considering that the mortgage payments were in arrears since 1974 and that the foreclosure was delayed from August 18, 1977, to June 30, 1978.

*Exceptions overruled.*

Rockingham  
No. 78-223

SHIRLEY DURKIN

v.

PAUL DURKIN

January 31, 1979

*Shute, Engel & Frasier*, of Exeter (*David C. Engel* orally), for the plaintiff.

*Fisher, Parsons, Moran & Temple*, of Dover (*Edward T. Clancy* orally), for the defendant.

#### MEMORANDUM OPINION

The parties were divorced in November 1973. Plaintiff was awarded land and buildings in Greenland subject to a mortgage and also subject to defendant's obtaining subdivision approval so that a lot could be conveyed to him. Thereafter, in January 1975, the parties agreed on a stipulation under which the property in question became the property of the defendant, subject to the right of plaintiff to live in the property upon paying rent, the defendant having the obligation to keep the property in repair.