

CITY COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

IN THE MATTER OF SUPPLEMENTARY PROCEEDINGS:

DUDLEY FOSDICK,
Judgement Creditor

-against-

NOTICE OF
MOTION

ROERICH MUSEUM,
Judgement Debtor.

S I R S:

PLEASE TAKE NOTICE that upon the subpoena under Section 775 of the Civil Practice Act dated September 8th, 1937, a copy of which is hereto annexed, and upon the affidavit of George G. Lake verified September 15th, 1937, hereto annexed, and upon all proceedings had herein, the undersigned will apply to this Court At Special Term, Part I, thereof, to be held at the Courthouse, 52 Chambers Street, Borough of Manhattan, New York City, on the 17th day of September, 1937, at ten o'clock in the forenoon for an order under Section 804 of the Civil Practice Act appointing a receiver of Roerich Museum, the judgement debtor herein, without prejudice to the pending proceeding herein, and further providing that the receiver so appointed shall have all the usual duties and powers of receivers in similar instances; that all property, records, books, documents, things, and chattels belonging to the judgement debtor, or standing in its name, or in which it may in any wise be interested, be forthwith turned over to said receiver and that the judgement debtor, its trustees, managers, officers, agents, and servants, be further enjoined and restrained from collecting or receiving any debt or demand or from paying out or in any way transferring or delivering to any person, any money, property, or effects, or interest therein of the judgement debtor, such injunction to be in addition to and concurrent with that contained in said annexed subpoena in accordance with Section 781 of the Civil Practice Act, and that the judgement creditor will likewise apply for such other, further and diferent relief as may be just.

Dated, New York, September 15th, 1937.

Yours, etc.,
GEORGE G. LAKE
Attorney for Judgement Creditor
Office & P.O. Address
7 East 42nd Street,
Borough of Manahattan
New York City.

TO:
GREENBAUM, WOLFF & ERNST, Esqs
Attorneys for Judgement Debtor
285 Madison Avenue,
Borough of Manahattan
New York City.

ROERICH MUSEUM
Judgement Debtor
310 Riverside Drive,
Borough of Manahattan,
New York City

COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

IN THE MATTER OF SUPPLEMENTARY PROCEEDINGS:

DUDLEY FOSDICK

Judgement Creditor

AFFIDAVIT

-against-

ROERICH MUSEUM

Judgement Debtor

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS:

GEORGE G. LAKE, Being duly sworn, deposes and says:

I am the attorney for the judgement creditor herein. This is an application under Section 804 of the Civil Practice Act for the appointment of a receiver for the judgement debtor, which is a domestic corporation, and has and always had its principal office within New York County.

On August 17th, 1937, an action was instituted in the Municipal Court of the City of New York, Borough of Manhattan, Ninth District, in which the judgement creditor was plaintiff and the judgement debtor was the defendant. On that date the summons and complaint in said action was served personally upon the defendant by Louis L. Horch, its President, within the City of New York. The defendant duly appeared in that action, but did not answer, and on August 27th, 1937, a judgement was rendered and docketed in the office of the Clerk of said Court in favor of the judgement creditor and against the judgement debtor in the sum of \$742.21.

On September 8th, 1937, a subpoena under Section 775 of the Civil Practice Act, of which the annexed is a copy, was duly issued by me for the examination of the judgement debtor by Louis L. Horch, its President. This subpoena called for the production of all the books and records of the judgement debtor. This subpoena was duly personally served upon the judgement debtor, by Louis L. Horch, its President, at 310 Riverside Drive, Borough of Manhattan, New York City, on September 9th, 1937. The judgement debtor duly appeared by Greenbaum, Wolff & Ernst, Esqs. of 285 Madison Avenue, Borough of Manhattan, New York City. Pursuant to stipulation of the attorneys, an examination was had at the office of said attorneys at 3 o'clock in the afternoon on September 14th, 1937. The judgement debtor was partly examined, and the examination was thereupon adjourned to September 29th, 1937, at Special Term, Part II of this Court. This examination was had before a Notary Public, pursuant to stipulation. The examination has not as yet been transcribed, and its substance is hereinafter contained. The person examined was Mr. Louis L. Horch, who has been President of Roerich Museum since its incorporation in 1928, and is still its President. This examination disclosed the following facts:

1. That there is a balance of approximately \$30.00 standing to the credit of the judgement debtor in an account with the Corn Exchange Bank Trust Company, 102nd Street Branch, located at 2681 Broadway, Borough of Manhattan, New York City.
2. That the judgement debtor is the owner of approximately 200 paintings which are at present on exhibition at Roerich Museum, 310 Riverside Drive, Borough of Manhattan, New York City. These paintings were carried on the books as being worth \$200,000, but I make no estimate of their present value. Mr. Horch testified that these paintings were involved in some foreclosure action of the real estate. This statement is utterly without foundation, as an examination of the said foreclosure file will disclose. The sole purpose of the foreclosure was to foreclose the real estate itself. While it would not be wise to move the paintings from their present location, where they

are being exhibited, nevertheless a receiver must be appointed in order that he may establish his possession of the paintings, and preserve the same. This is particularly true as the testimony shows that there are loans for which Roerich Museum is liable in the sum of approximately \$100,000, and interest (other than the present judgement), which are still unpaid.

3. Although the subpoena served upon Mr. Horch directed the production of all the books and records, Mr. Horch produced only the following books:

- (a) Ledgers beginning in 1929 and ending in 1932.
- (b) One or two journals for that period.
- (c) A check book on the Corn Exchange Bank/ Trust Company beginning July 1935, and running down to date.

Roerich Museum for the period from October, 1929, until the Fall of 1932 was the recipient of various scholarship moneys, fees and rentals of a very large building located at ~~103rd~~ 103rd Street and Riverside Drive, Borough of Manhattan, New York City. Subsequent to 1932 it continued to receive various fees, and, as been stated, it also received loans of some \$100,000. Books of Roerich Museum were constantly and permanently kept.

When Mr. Horch was pressed at his examination for the production of the other books and records, he stated that he looked for them, but could not find them. He could show no book or record indicating how the judgement creditor's money had been disposed of, or how any of the other loans of approximately \$100,000, for which Roerich Museum is liable, were disposed of.

It must be remembered that Roerich Museum is a source through which hundreds of thousands of dollars passed, and that constant and permanent records were kept of the disposition of these funds under the direction of Mr. Horch. These records are certainly available, and if they are being hidden, it can be only because they still show improper disposition of these funds by Mr. Horch. For these reasons it is necessary not only that the present records should be held in the custody of a receiver, but it is also necessary that a receiver be appointed to take proper steps for further inquiry as to the disposition of these hundreds of thousands of dollars. These proceedings, of course, will be in addition to any proceedings that the judgement creditor himself may take for the production of these books or for an accounting as to the disposition of these funds.

I therefore respectfully ask for the appointment of a receiver of the judgement debtor under Section 804 of the Civil Practice Act, and for further relief as stated in the annexed notice of motion.

GEORGE G. LAKE

Sworn to before me this
15th day of September, 1937.

Harry J. Carito

Commissioner of Deeds, NYC.
Bronx Co. Clk's No. 2, Reg. No. 3902
N.Y. Co. Clk's No. 9, Reg. No. 3-C-9
Kings Co. Clk's No. 2, Reg. No. 9001
Queens Co. Clk's No. 213 Reg. No. 19
Commission Expires Jan. 12, 1939

CITY COURT OF THE CITY OF NEW YORK
COUNTRY OF NEW YORK

In the Matter of Supplementary Proceedings
DUDLEY POSDICK

Judgement Creditor

-against-

ROERICH MUSEUM

Judgement Debtor

SUBPOENA

For Examination of
Judgement Debtor

THE PEOPLE OF THE STATE OF NEW YORK

To ROERICH MUSEUM, by Louis L. Horch, its President.

The above named judgement debtor

GREETING:

WHEREAS, a certain judgement in the sum of \$742.21 has been ~~recovered~~ recovered by the above named judgement creditor against the above named judgement debtor in the Municipal Court of the City of New York, Borough of Manhattan, Ninth District, on the 27th day of August, 1937, said judgement having been docketed in the office of the clerk of said Municipal Court, borough and district aforesaid on the 27th day of August, 1937.

NOW, THEREFORE, WE COMAND YOU, and each of you to appear and attend before one of the justices of the City Court of the City of New York at a special term, part II thereof to be held in and for the County of New York at the Court House, at 52 Chambers Street, New York City, on the 14th day of September, 1937, at ten o'clock in the forenoon, to be examined under oath concerning your property, income or other means for satisfying such judgement; and for a failure to attend you will be deemed guilty of a contempt of court and liable to punishment in accordance with article forty-five of the civil practice act.

WITNESS, Honorable Louis Wendel, Chief Justice of our said City Court of the City of New York, at the Court House, in the County of New York on the 8th day of September, 1937.

Please produce all books and records of the judgement debtor at the hearing.

GEORGE G. LAKE
Attorney for Judgement
Creditor

P.O. and Street Address
7 East 42nd Street,
Borough of Manhattan,
New York City.

Civil Practice Act Section 781. TRANSFER OF PROPERTY BY JUDGEMENT DEBTOR OR THIRD PARTY ENJOINED. Upon the service of the subpoena upon the judgement debtor or any third party who has in his or its possessions property or moneys belonging to the judgement debtor or claimed by the receiver of the said judgement debtor or who is indebted to the judgement debtor, such judgement debtor or third person is hereby forbidden to transfer, pay over or otherwise dispose of such moneys or property belonging to the judgement debtor or thereafter acquired by or becoming due to him, not exempt by law from application to the satisfaction of the judgment, until the further order of the court. Any person served with said subpoena, who shall violate provisions of such restraining provision, shall be subject to punishment by the court by fine and imprisonment or either, as and for a contempt. To effect such restraining provision, a copy of this section must be endorsed upon the copy of the subpoena served under this article.