

CPLR 5528: Court Warns that Abuse of Appendix System Cannot Be Tolerated

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who had at the time no equitable interest in the property, or who did not acquire rights as subsequent purchasers or incumbrancers for value."¹³⁴

In holding that the unrecorded mortgage had priority over the docketed judgment, the court cautioned that the result would be different if the mortgage had been given in fraud of creditors with knowledge by the mortgagee, or if it constituted a fraudulent conveyance under the Debtor and Creditor Law.¹³⁵

ARTICLE 55 — APPEALS GENERALLY

CPLR 5528: Court warns that abuse of appendix system cannot be tolerated.

CPLR 5528 specifies that an appeal may be taken by the appendix method, which requires reproduction of material portions of the record as opposed to reproduction of the whole record. This device was designed primarily to save costs and to ease the workload of practitioner and judge alike.¹³⁶ Recently, the appellate division, second department, has expressed displeasure at the failure of practitioners to fulfill the statutory requirements for appendix filing as set forth in CPLR 5528 and 5529.

In *Lo Gerfo v. Lo Gerfo*,¹³⁷ respondents moved for an order directing appellants to file an appendix in accordance with CPLR specifications. Respondent claimed that the pleadings and the appellants' bill of particulars were not contained in the appendix, that the appendix condensed a transcript of the trial testimony, which consisted of over 1100 pages, into 150 pages, that the reproduction of the transcript was so arranged that it was impossible to follow the testimony, and that the parts of the record on which appellant should reasonably assume respondent would rely were missing.

In granting respondent's motion, the court issued a forceful warning that abuse of the appendix method will not be tolerated. The offending practitioner will be required to submit a new appendix and may even be disallowed costs.¹³⁸

¹³⁴ *Sullivan v. Corn Exchange Bank*, 154 App. Div. 292, 294, 139 N.Y.S. 97, 99 (2d Dep't 1912).

¹³⁵ See *Billings v. Russell*, 101 N.Y. 226, 4 N.E. 531 (1886). See also DEBT. AND CRED. LAW. § 273.

¹³⁶ See generally 7 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶5528.01 (1965). See also *The Quarterly Survey of New York Practice*, 41 ST. JOHN'S L. REV. 279, 325-27 (1966).

¹³⁷ 30 App. Div. 2d 156, 290 N.Y.S.2d 1005 (2d Dep't 1968).

¹³⁸ See *Richard C. Mugler Co. v. A.C. Management Corp.*, 29 App. Div. 2d 548, 286 N.Y.S.2d 81 (2d Dep't 1967).