

SUPREME COURT OF NEW JERSEY

John Giovanni Granata v. Edward F. Broderick, Jr.

A-31/32-16 (078207) · No. A-31/32-16 (078207) · Decided November 14, 2017

SUMMARY

The Supreme Court of New Jersey affirmed the Appellate Division’s judgment concerning the priority of competing claims to an attorney’s fee award. The Court upheld the determination that anticipated attorney’s fees could constitute an account receivable secured under Article 9 of the Uniform Commercial Code and that OKS Realty perfected its security interest by filing a financing statement. The Court affirmed substantially for the reasons stated in the Appellate Division’s published opinion.

CASE DETAILS

COURT	Supreme Court of New Jersey
WRITING FOR THE COURT	Chief Justice Rabner; Justice LaVecchia; Justice Albin; Justice Patterson; Justice Fernandez-Vina; Justice Solomon; Justice Timpone
JURISDICTION	New Jersey
DECIDED	November 14, 2017
DOCKET	A-31/32-16 (078207)
DISPOSITION	affirmed
PROCEDURAL POSTURE	Intervening creditors Rotenberg and Gourvitz petitioned for certification from the Appellate Division's decision vacating an order that placed OKS Realty last in priority for distribution of an attorney's fee award. The Supreme Court granted certification and affirmed the Appellate Division substantially for the reasons stated in Judge Guadagno's published opinion.
STANDARD OF REVIEW	The Supreme Court reviewed the Appellate Division's legal determinations concerning attachment, perfection, and priority under Article 9 of the Uniform Commercial Code.
PRECEDENTIAL VALUE	precedential
PARTIES	Rotenberg, Meril, Solomon, Bertiger & Gutilla, P.C., Elliot H. Gourvitz, Esq. v. OKS Realty

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QUESTIONS PRESENTED

1. Whether an attorney's anticipated fees arising from pending litigation may constitute an account receivable and collateral subject to a security interest under Article 9 of the Uniform Commercial Code.
2. Whether OKS Realty's security interest in Acciavatti's anticipated attorney's fees attached and was perfected by its security agreement and UCC-1 financing statement.
3. Whether OKS Realty's perfected security interest had priority over the later judgment liens obtained by Gourvitz and Rotenberg.

HOLDINGS

1. Under the circumstances presented, an attorney's pledge of anticipated counsel fees may be treated as an account receivable and secured under Article 9 of the Uniform Commercial Code.
2. OKS complied with the UCC requirements to attach and perfect its security interest in Acciavatti's anticipated attorney's fees by executing a security agreement describing the collateral and filing a financing statement covering those fees.
3. OKS's perfected security interest had priority over the later liens obtained by Gourvitz and Rotenberg.

KEY QUOTATIONS

“Having considered the parties’ arguments presented in their briefs and at oral argument, the judgment of the Appellate Division is affirmed substantially for the reasons expressed in those parts of Judge Guadagno’s opinion addressing the distribution priorities of the attorney’s fee award, reported at 446 N.J. Super. 449 (App. Div. 2016).” (at 2-3)

FACTUAL BACKGROUND

Diane Acciavatti represented John Giovanni Granata in a legal-malpractice action under an hourly fee agreement and expected to seek attorney's fees from the opposing parties. While the matter was pending, OKS Realty loaned Acciavatti, LLC \$125,000 and obtained a security agreement identifying the legal fees in the Granata matter as collateral; OKS filed a UCC-1 financing statement on December 2, 2010. Gourvitz and Rotenberg later obtained judgments and liens against Acciavatti, and after the matter settled for \$840,000, the parties disputed the priority of claims against the attorney's fee award.

PROCEDURAL HISTORY

The trial court ranked Gourvitz first, Rotenberg second, and OKS third in priority to receive attorney's fees arising from settlement of Granata's malpractice action. OKS appealed, and the Appellate Division vacated the distribution-priority order, holding that OKS had a perfected security interest in the anticipated fees that took

priority over the later judgment liens. The Supreme Court granted certification and affirmed substantially for the reasons expressed by the Appellate Division.

DISPOSITION

affirmed

CASES CITED

- Shaw Mudge & Co. v. Sher-Mart Mfg. Co., 132 N.J. Super. 517, 521 (App. Div. 1975)

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