

COURT OF APPEALS OF THE STATE OF NEW YORK

Banque Indosuez v. Sopwith Holdings Corp.

98 N.Y.2d 34, 772 N.E.2d 1112, 745 N.Y.S.2d 754 (2002) · Decided May 2, 2002

SUMMARY

The New York Court of Appeals addressed the priority between an attorney's charging lien under Judiciary Law § 475 and a bank's right to set off its judgment against the client's judgment. The court held that when competing claims arise from the same transaction or instrument, the setoff takes priority and the attorney's lien attaches only to any net recovery remaining after offsetting the judgments. Because the bank's judgment exceeded the defendants' judgment, the court reversed the order enforcing the charging lien and dismissed as academic the companion appeal concerning postjudgment interest.

CASE DETAILS

COURT	Court of Appeals of the State of New York
WRITING FOR THE COURT	Graffeo, J.; Kaye, Chief Judge; Smith, J.; Levine, J.; Ciparick, J.; Wesley, J.; Rosenblatt, J.
JURISDICTION	New York
DECIDED	May 2, 2002
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The parties appealed from orders concerning the priority of an attorney's charging lien against a client's judgment and the client's opposing party's right of setoff. Banque Indosuez appealed the Appellate Division's determination that the charging lien had priority; Sopwith Holdings Corp. and related defendants separately appealed the denial of postjudgment interest on the lien.
STANDARD OF REVIEW	Review of the legal priority between an attorney's statutory charging lien and an opposing party's right of setoff; no factual merits issues were before the court.
PRECEDENTIAL VALUE	Published precedential opinion of the New York Court of Appeals
PARTIES	Banque Indosuez, Sopwith Holdings Corp. et al. in the companion appeal v. Sopwith Holdings Corp. et al., Banque Indosuez in the companion appeal

TOPICS

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PRACTICE AREAS

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attorney charging liens

setoff

remedies

QUESTIONS PRESENTED

1. Whether an attorney's charging lien under New York Judiciary Law § 475 has priority over an opposing party's right to set off a judgment when both judgments arise from the same transaction or instrument.
2. Whether the attorneys' charging lien can be enforced when the client's judgment is fully offset by the opposing party's larger judgment.
3. Whether the appeal concerning postjudgment interest on the charging lien remained justiciable after the lien was held unenforceable against any net recovery.

HOLDINGS

1. When competing claims arise from the same transaction or instrument, the opposing party's judgment has priority over the attorney's charging lien because the parties' equities must be balanced before determining the client's net recovery.
2. Under Judiciary Law § 475, where competing claims arise from the same transaction or instrument, an attorney's charging lien is recoverable only against the client's net recovery, if any, after the parties' judgments are offset.
3. The appeal concerning postjudgment interest on the charging lien was academic because the lien could not be collected against any net recovery.

KEY QUOTATIONS

“We therefore hold that where competing claims arise out of the same transaction or instrument, an attorney's charging lien under section 475 will be recoverable against the client's net recovery, if any, after offsetting the parties' judgments.” (98 N.Y.2d at 43-44)

“Here, the Sopwith defendants won no net recovery because the Bank's \$3.5 million judgment against them exceeded their \$2.4 million judgment against the Bank.” (98 N.Y.2d at 44)

FACTUAL BACKGROUND

Banque Indosuez entered into foreign-exchange trading agreements with five investment companies, including the Sopwith defendants. The agreements addressed collateral and expressly required the customers to pay the Bank's legal fees and costs incurred in preserving and enforcing its rights. After consolidated litigation, the Sopwith defendants received a \$2.4 million conversion judgment, while the Bank obtained a \$3.5 million judgment for attorneys' fees and costs arising from the same agreements. The defendants' attorneys asserted an \$860,666.64 charging lien against the conversion award.

PROCEDURAL HISTORY

Banque Indosuez and several corporate customers litigated competing claims arising from foreign-exchange trading agreements. After a consolidated jury trial, the Sopwith defendants obtained a \$2.4 million conversion judgment, while Banque Indosuez later obtained a \$3.5 million judgment for contractual attorneys' fees and costs. Supreme Court and the Appellate Division ordered that the defendants' attorney's charging lien be paid before Banque Indosuez could set off its judgment. The Court of Appeals reversed that priority determination and dismissed the companion postjudgment-interest appeal as academic.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

In case number 36, reverse the judgment appealed from and the Appellate Division order brought up for review, with costs, and remit the case to Supreme Court for further proceedings consistent with the opinion. In case number 37, dismiss the appeal without costs as academic.

CASES CITED

- Matter of City of New York, 5 N.Y.2d 300, 307 (1959), cert. denied sub nom. United States v. Coblenz, 363 U.S. 841 (1960)
- Goodrich v. McDonald, 112 N.Y. 157, 163 (1889)
- Fischer-Hansen v. Brooklyn Heights R.R. Co., 173 N.Y. 492, 497-498 (1903)
- Banque Indosuez v. Sopwith Holdings Corp., 257 A.D.2d 519 (1st Dep't 1999), lv. denied, 93 N.Y.2d 806 (1999)
- Banque Indosuez v. Sopwith Holdings Corp., 275 A.D.2d 662 (1st Dep't 2000)
- Banque Indosuez v. Sopwith Holdings Corp., 288 A.D.2d 91 (1st Dep't 2001)
- Beecher v. Vogt Mfg. Co., 227 N.Y. 468, 469, 471-473 (1920)
- Mohawk Bank v. Burrows, 6 Johns. Ch. 317, 321 (N.Y. Ch. 1822)
- Dunkin v. Vandenberg, 1 Paige Ch. 622, 625-626 (N.Y. Ch. 1829)
- Nicoll v. Nicoll, 16 Wend. 446 (N.Y. 1836)
- Perry v. Chester, 53 N.Y. 240, 243 (1873)
- LMWT Realty Corp. v. Davis Agency, 85 N.Y.2d 462, 467, 470 (1995)
- Robinson v. Rogers, 237 N.Y. 467, 473 (1924)
- Goldstein, Goldman, Kessler & Underberg v. 4000 E. Riv. Rd. Assoc., 64 A.D.2d 484, 488 (4th Dep't 1978), aff'd on op. below, 48 N.Y.2d 890 (1979)
- Zitter, Annotation, Priority Between Attorney's Charging Lien Against Judgment and Opposing Party's Right of Setoff Against Same Judgment, 27 A.L.R.5th 764 (1995)

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