SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT

Matter of Sterling Natl. Bank v. Freidman

2022 NY Slip Op 00832 (App. Div. 2022) · No. Appeal No. 15257-15257A; Case Nos. 2020-04787, 2020-04802; Index No. 160715/17 · Decided February 8, 2022

SUMMARY

The Appellate Division, First Department, affirmed the denial of Sterling National Bank's motion seeking a determination that its perfected security interest in certain limited liability companies extended directly to the real property owned by those entities. The court held that the bank's interest was personal property and did not itself encompass the underlying real estate. It also declined to void Citibank's attachment levies, noting that the bank had sought priority determinations rather than invalidation of the liens and that the validity of the levies was being litigated separately.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Manzanet-Daniels, J.P.; Oing, J.; González, J.; Shulman, J.; Higgitt, J.
JURISDICTION	New York
DECIDED	February 8, 2022
DOCKET	Appeal No. 15257-15257A; Case Nos. 2020-04787, 2020-04802; Index No. 160715/17
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner appealed from a Supreme Court, New York County judgment denying its motion for summary determination concerning the scope and priority of its security interest and declining to void Citibank's attachment levies. Petitioner also appealed from a related order, which the Appellate Division dismissed as subsumed in the appeal from the judgment.
STANDARD OF REVIEW	The Appellate Division reviewed the Supreme Court's legal determinations concerning the scope of the perfected security interest and the requested relief.
PRECEDENTIAL VALUE	published

PARTIES	Sterling National Bank v. Evgeny Freidman, Citibank, N.A., et al.

TOPICS

secured transactions · limited liability companies · real estate · summary judgment · appellate procedure

PRACTICE AREAS

civil procedure · secured transactions · limited liability companies · real estate · appellate procedure

QUESTIONS PRESENTED

1. Whether a perfected security interest in limited liability companies extends directly to real property owned by those entities.
2. Whether Sterling was entitled under CPLR 5239 to have Citibank's attachment levies against the entities' real property voided or invalidated.
3. Whether the appeal from the related order should be dismissed as subsumed in the appeal from the judgment.

HOLDINGS

1. A perfected security interest in limited liability companies constitutes an interest in personal property and does not extend directly to real property owned by those entities.
2. Sterling was not entitled in this proceeding to void Citibank's attachment levies because it sought a determination of priority in collateral, not an order invalidating the creditors' liens, and the validity of the levies was being litigated in a separate action.
3. The appeal from the related order was dismissed as subsumed in the appeal from the judgment.

FACTUAL BACKGROUND

Sterling National Bank held a perfected security interest in limited liability companies referred to as the Real Estate Entities, pursuant to an agreement with Evgeny Freidman. Those entities owned underlying real property, and Citibank filed attachment levies against that real property. Sterling sought a determination that its collateral included the underlying real property and sought to void Citibank's levies.

PROCEDURAL HISTORY

Supreme Court, New York County, denied Sterling National Bank's motion for summary determination that its interest in collateral consisting of limited liability companies extended to the entities' underlying real property and declined to void Citibank's levies of attachment against that property. The Appellate Division unanimously affirmed the judgment to the extent appealed from and dismissed the appeal from the related order as subsumed in the judgment appeal.

DISPOSITION

affirmed

CASES CITED

- Matter of Gilklad v Chernoi, 129 AD3d 604 (1st Dept 2015), lv denied 26 NY3d 918 (2016)
- Kassover v Prism Ventures Partners, LLC, 2017 NY Slip Op 31933(U) (Sup Ct, NY County 2017), affd 169 AD3d 525 (1st Dept 2019)
- Carter v Johnson, 110 AD3d 656, 658 (2d Dept 2013)

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