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)

OPINION

Matter of Sterling Natl. Bank v. Freidman 2022 NY Slip Op 00832
PER CURIAM.
Matter of Sterling Natl. Bank v Freidman (2022 NY Slip Op 00832) Matter of Sterling Natl. Bank v Freidman 2022 NY Slip Op 00832 Decided on February 08, 2022 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided and Entered: February 08, 2022 Before: Manzanet-Daniels, J.P., Oing, González, Shulman, Higgitt, JJ. Index No. 160715/17 Appeal No. 15257-15257A Case No. 2020-04787, 2020-04802 [*1]In the Matter of Sterling National Bank, Petitioner-Appellant, vEvgeny Freidman, et al., Respondents, Citibank, N.A., Respondent-Respondent. Chipman Brown Cicero & Cole, LLP, New York (Adam David Cole of counsel), for appellant. Zeichner Ellman & Krause LLP, New York (Jantra Van Roy of counsel), for Citibank, N.A., respondent. Judgment, Supreme Court, New York County (Andrea Masley, J.), entered on or about July 9, 2020, to the extent appealed from as limited by the briefs, denying petitioner'smotion for a summary determination that its interest in certain collateral consisting of limited liability companies (the Real Estate Entities), included the Real Estate Entities' underlying real property, and declining to void respondentCitibank's levies of attachment on the underlying real property, unanimously affirmed, without costs. Appeal from order, same court and Justice, entered on or about June 15, 2020, unanimously dismissed, without costs, as subsumed in the appeal from the judgment. The motion court correctly determined that petitioner's collateral, i.e., its perfected security interest in the Real Estate Entities, did not extend directly to the real property owned by the Real Estate Entities. As defined in the petition, petitioner's collateral consists of its secured interest in the Real Estate Entities themselves, pursuant to its agreement with respondent Evgeny Freidman. That interest is personal property, not the underlying real property (see Limited Liability Company Law § 601). Petitioner's reliance on Matter of Gilklad v Chernoi (129 AD3d 604 [1st Dept 2015], lv denied 26 NY3d 918 [2016]) and Kassover v Prism Ventures Partners, LLC (2017 NY Slip Op 31933[U] [Sup Ct, NY County 2017], affd 169 AD3d 525 [1st Dept 2019]) for the proposition that it owned the properties as part of its collateral is misplaced. Neither of those cases involved an

interest pursuant to a perfected security interest in a limited liability company. Rather, they involved judgment creditors who had direct liens on property (Matter of Gilklad, 129 AD3d 604 [personal property]; Kassover, 2017 NY Slip Op 31933[U] [real property]. Moreover, we take judicial notice of the motion court's subsequent order deciding petitioner'smotion to reargue, in which the court clarified that, as shareholder of the Real Estate Entities, petitionerwould be entitled to sell the underlying properties and take money from the sale, subject to the interests of any creditors. The motion court also correctly declined to void the attachment levies filed by Citibank against the real property held by the Real Estate Entities. Pursuant to CPLR 5239, petitionersought, among other things, a determination that its interest in its collateral took priority over other parties' interests in the same collateral. It did not seek to void the creditors' liens (see generally Carter v Johnson, 110 AD3d 656, 658 [2d Dept 2013]). Moreover, the validity of Citibank's attachment liens is currently the subject of an action, in which petitioner has intervened, to determine whether the Real Estate Entities were Evgeny Freidman's alter egos (Citibank, N.A. v East 65th Street Owners LLC, [NY CountyIndex No. 651089/2019]). We have considered petitioner's remaining arguments and find them unavailing. THIS CONSTITUTES THE DECISION AND [*2]ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: February 8, 2022