

Sterling Natl. Bank v Freidman
2018 NY Slip Op 31808(U)
July 25, 2018
Supreme Court, New York County
Docket Number: 160715/2017
Judge: Andrea Masley
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Andrea Masley PART 48
JSC

STERLING NATIONAL BANK,
PETITIONER,
-against-
EVGENY FREIDMAN, ET AL.
RESPONDENTS.

INDEX NO. 160715/2017
MOTION DATE:
MOTION SEQ. NO. 02
MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this _____.

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	_____
Answering Affidavits — Exhibits _____	_____
Replying Affidavits _____	_____

Cross-Motion: Yes No

In its Amended Notice of Petition, Sterling National Bank (Sterling) moves pursuant to CPLR 5225, 5227 and 5239 and Article 9 of the UCC for (1) a declaration of its rights in the collateral as superior to the rights of competing creditors Citibank, N.A., Capital One Equip. Finance Corp., and Banco Popular North America (the Competing Creditors); (2) directing respondents Freidman and the Real Estate Entities¹ to turn over management and control of the real estate assets held by those entities to Sterling; and (3) directing respondent Evgeny Freidman and the Debtor Companies² to

¹ East 65th Street Owners LLC, 66th Street Unit Owners LLC, Halsey Lane Owners LLC, Alexandrite Realty Corp, Almaz Realty Corp., Amethyst Realty LLC, Bloodstone Realty Corp., Coral Realty Corp., Dylan Realty Corp., Granat Realty Corp., Graphite Realty Corp., Helium Realty LLC, Izumrud Realty Corp., Prince Harry Realty LLC, Quartz Realty Corp., Sulfur Realty LLC, Tiger Eye Realty LLC, Turquoise Realty LLC, Zhemchug Realty Corp., Zoloto Realty Corp., Bull Consulting, Inc., Denga Realty Corp., Zinc Realty LLC, 43-05 Vernon Boulevard, LLC, 4514 Elston LLC, 4532 N. Elston LLC, Tungsten Realty, LLC, Azurite LLC, Zircon Realty LLC, Nargila Realty LLC, and Nachas Realty LLC (collectively, the Real Estate Entities).

²Carrera Taxi Inc., Canary Trans Corp., Cote Dzur Taxi Inc., Erique Taxi Inc., ENAF Taxi, Inc., Grappa Taxi LLC, Grey Goose Taxi, LLC, Jack Daniel Taxi LLC,

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

turn over all right, title, and interest in the Sterling Collateral, as defined below, specifically directing (i) Freidman to turn over to Sterling "all right, title, and interest of" Freidman in the Real Estate Entities - which constitute property pledged pursuant to a security agreement Sterling has with Freidman, and in which Sterling has and maintains a first-priority perfected security interest - and includes any distributions that have accrued and Freidman's rights to receive additional future payments from those entities, whether by distribution, dividend or otherwise as well as all other vestiges of corporate ownership and control, and (ii) the Debtor Companies to turn over to Sterling all interest in and operations of the Debtor Companies, which constitutes the assets pledged pursuant to various security agreements Sterling has with Debtor Companies, and in which Sterling has a perfected security interest; to Sterling the collateral in which Sterling has a first priority perfected security interest.

CPLR 5225(a) authorizes this court to order the delivery of personal property in the possession of a judgment debtor to satisfy a judgment.

CPLR 5225(b) authorizes this court to order third parties in possession of a judgment debtor's property or a transferee with inferior rights in the property to turn over the property to the judgment creditor.

CPLR 5227 authorizes this court to order any person owing a debt to a judgment debtor to pay that debt to the judgment creditor upon maturity.

CPLR 5239 authorizes this court to vacate or void executions, orders and levies; order the disposition of property or debt, or direct damages be awarded. CPLR 5239 authorizes the court to determine and adjudicate adverse claims expeditiously.

The petition is essentially unopposed. Significantly, it provides:

In March 2014, Sterling made seventeen Term Loans to the Debtor Companies (collectively, the Medallion Loans) pursuant to a Note and Loan Agreement, dated March 25, 2014 (Petition, ¶57). Freidman "absolutely and unconditionally" guaranteed each loan for its principal amount of \$1,350,000.00 (Petition, ¶60).

On behalf of each Debtor Company, Freidman executed a Security Agreement pledging the Debtor Companies' respective assets as collateral for the Medallion Loans: all license and property rights in New York City taxi medallions currently owned or later-acquired by Debtor Companies, and all property used to operate the taxi medallions (the Debtor Companies' Collateral) (Petition, ¶58). Freidman, individually and on behalf of the Debtor Companies, executed Affidavits of Judgment by Confession and related

Madrid Taxi Inc., Margo Express Cab Corp., Megeve Taxi LLC, Patron Taxi, LLC, Pravda Taxi LLC, RJIG Hacking Corp., Rum Taxi LLC, Sake Taxi LLC, and Siberia Taxi LLC (collectively, the Debtor Companies).

Hypothecation Agreements for each of the Medallion Loans (Petition, ¶69).

Freidman also secured a personal \$2 million loan from Sterling (the Personal Loan) (Petition, ¶61), and executed a Security Agreement granting Sterling a continuing blanket security interest in, and lien on, "all right, title and interest of [Freidman] in and to each of the following items in which [Freidman] has any right, title or interest, whether now owned or hereafter acquired, created or existing" (Exhibit E, Security Agreement, NYSCEF Doc. No. 7) (the Friedman Collateral, collectively with the Debtor Companies' Collateral, the Sterling Collateral). The Sterling Collateral includes all of Freidman's right, title, and interest in the Real Estate Entities (Petition, ¶64).

On March 25, 2014, Sterling perfected its first priority, blanket lien, security interests in the Debtor Companies' Collateral by filing a UCC-1 Financing Statement for each Debtor Company with the Department of State for the State of New York (Petition, ¶59).

In November 2015, the Debtor Companies defaulted on their Medallion Loans. Freidman defaulted on his Personal Loan and amendment to that Loan, a month later. Sterling notified Freidman and the Debtor Companies of the defaults on December 15, 2015 and May 5, 2016 (Petition, ¶¶76-77).

The court finds that by virtue of its receipt of all "right, title and interest" in Freidman's interests in his single member and controlled entities, Sterling has a superior interest in Freidman's complete interests in the Real Estate Entities, including any management and voting interest as well as all assets and debts of those Real Estate Entities (see *Matter of Gliklad v Chernoi*, 129 AD3d 604 [1st Dept 2015]; *Kassover v Prism Ventures Partners, LLC*, 2017 NY Slip Op 31933 [u] [Sup Ct, NY County 2017]). Because Sterling perfected its security interest in the Sterling Collateral prior to the Competing Creditors obtaining rights as judgment creditors, Sterling's priority in the Sterling Collateral is superior to and takes priority over the Competing Creditors' claims to that collateral.

The Competing Creditors, respondents in this action, each made loans to Freidman and his entities, all of which defaulted. The Competing Creditors filed a variety of actions against Freidman and his entities.

Citibank

In January 2012, Citibank loaned approximately \$10 million to various medallion companies owned, in whole or in part, by Freidman (Petition, ¶104). When Freidman and his medallion companies defaulted on these loans, the bank commenced an action in Supreme Court, New York County against Freidman and other debtors. The action was later removed to federal bankruptcy court in *Citibank, N.A. v: Bombshell Taxi, LLC et al.*, Adv. Pro. No. 15-01185 (CEC), (Bankr. EDNY) (the Citibank Proceeding) (Petition, ¶108). The attachment order in the proceeding includes property in which Sterling has an interest (see Decision after Trial, Doc. No. 73) (the Citibank Attachment

Order)(Petition, ¶110).

On July 20, 2016, Sterling filed a petition under CPLR 6221 in the Citibank Proceeding requesting the Court to declare Sterling's perfected, senior secured interest in the Freidman Sterling Collateral (see Sterling National Bank's Notice of Petition and Petition Pursuant to CPLR 6221 and Fed. R. Bank. P. 7064, July 20, 2016, Doc. No. 230) (Petition, ¶109). To date, Sterling's petition remains pending.

Capital One

In 2011, Capital One extended a series of loans to various medallion companies owned, in whole or in part, by Freidman. Freidman personally guaranteed each loan (Petition, ¶111).

In April 2015, Capital One filed an Affidavit of Judgment by Confession, signed by Freidman, in the County Clerk's Office in New York County for judgment in the amount of \$8,484,949.30 (Petition, ¶112). Between November 2015 and January 2016, Capital One filed a transcript of the judgment in various counties: Suffolk County Clerk's Office; Kings County Clerk's Office; and Queens County Clerk's Office (Petition, ¶113). Sterling's perfected security interest in the Sterling Collateral predates Capital One's judgement against Freidman (Petition, ¶114).

In July 2016, Capital One commenced an action in Supreme Court, New York County, against Freidman to recover property to satisfy a judgment of \$8,484,949.30 before post-judgment interest. That action is ongoing (*Capital One Equip. Finance Corp. f/k/a Capital One Taxi Medallion Finance, a Trade Name for all Points Capital Corp. v. Freidman et al.*, No. 653892/2016 [Sup Ct, NY County]) (the Capital One Action)(Petition, ¶115).

On August 29, 2016, Sterling moved to intervene and file a petition under CPLR 5239 in the Capital One Action. Sterling requests the court declare that Sterling's perfected senior secured interest in the Sterling Collateral is superior to any interest in such property claimed by Capital One, and for related relief (see Capital One Action, Notice of Motion, Aug. 29, 2016, Doc. No. 21) (Petition, ¶116). On October 6, 2016, the parties stipulated to Sterling intervening as a named petitioner and to Sterling's withdrawal of its motion to intervene without prejudice to its claim to the property (Capital One Action, Doc. No. 32).

Banco Popular

In May 2017, judgment was entered in the Supreme Court of the State of New York, County of New York, in favor of Banco Popular and against Freidman and his various medallion companies in the amount of \$80,772,439.99 (Petition, ¶117).

In October 2017, Banco Popular caused a writ of execution to be delivered to the Marshal; the writ was served on Freidman in November 2017. The writ of execution attempted to levy on Freidman's "ownership and/or membership interest" in certain

limited liability companies and corporations (Petition, ¶118).

Sterling's perfected security interest in the Sterling Collateral also predate Banco Popular's judgment against Freidman and the writ of execution to the Marshal (Petition, ¶119).

Freidman's attempts to divert assets have been found invalid and the court is bound by the findings of other courts. On January 12, 2016, the court in the Citibank Proceeding found that the transfers of Freidman's interests, in various limited liability companies and corporations owning real estate, to four offshore trusts (the Offshore Trusts) was done "with intent to defraud Freidman's creditors or to frustrate a judgment that might be entered . . ." (see Citibank Attachment Order at 1 [ordering attachment of assets that Freidman transferred to offshore trusts]). These actions are also documented in a prior action in this court captioned *Citibank, N.A. v Bombshell Taxi LLC et al.*, Index No. 650691/15 (Sup Ct, NY County 2015).

On October 4, 2017, the court in the Citibank Proceeding found that Freidman's attempt to transfer his interests in the Real Estate Entities to the Offshore Trusts was invalid and may be disregarded (see Proposed Findings of Fact and Conclusions of Law at 17-18, Doc. No. 501). The Court also found that Freidman controlled the Offshore Trusts and that the Offshore Trusts were alter egos of Freidman and that, consequently, the veils of the Offshore Trusts may be pierced (*id.* at 23-27).

The only objection to this proceeding is by Freidman who insists that all creditors should be notified, not just the banks. Specifically, Freidman identified GF Lender, LLC and Community Federal Savings Bank which have asserted claims against the Real Estate entities in a Queens action (*Community Federal Savings Bank v Denga Realty Corp, et al.*, Index No. 711422/2015). Freidman also identifies other entities that have filed UCC liens. The court is satisfied that Sterling has notified those entities that have publicly made their claims against Freidman and his entities and who may have an objection to Sterling's request in this proceeding. In addition to those notified above, Sterling also served SDF64 Mermaid Avenue LLC another entity that had a UCC filing against Freidman as of March 2, 2018.

In addition, Freidman argues that Sterling cannot seize property that no longer belongs to Freidman because he transferred his ownership interests in the Real Estate Entities, some of which were not held entirely by him or held by him -- only nominally. Freidman recognizes that the United States Bankruptcy court for the Eastern District of New York (EDNY Court) found those transfers fraudulent. However, he asserts that since the EDNY Court failed to direct that those properties be returned to Freidman, they are in limbo, and thus, not within his control.

Sterling established with documentary evidence that Freidman owns the Real Estate Entities in either stock in corporations or membership interests in LLCs of which Sterling seeks turnover. Sterling submitted a document from Freidman provided to

Sterling called a personal financial statement dated March 31, 2014 showing that he owned 100%. This statement is corroborated by ACRIS. Freidman's inconclusive equivocal June 27, 2018 affidavit does not alter the court's conclusion. Having found the transfers to be fraudulent, the EDNY Court in the Citibank NA action directed those transfers to be disregarded. To the extent that any other actions are needed to transfer those interests to Sterling, Freidman shall cooperate to reverse those transfers and direct them to Sterling.

Accordingly, it is

ADJUDGED that the petition is granted; and it is further

ADJUDGED AND DECLARED that Sterling's interests in the Sterling Collateral are superior to Citibank, N.A.'s, Capital One Equip. Finance Corp. f/k/a Capital One Taxi Medallion Finance, a Trade Name for all Points Capital Corp., and Banco Popular North America's interests in the same collateral; and it is further

ORDERED and ADJUDGED that Debtors, Freidman, Carrera Taxi Inc., LLC, Canary Trans Corp., Cote Dzur Taxi Inc., Erique Taxi Inc., ENAF Taxi, Inc., Grappa Taxi LLC, Grey Goose Taxi, LLC, Jack Daniel Taxi LLC, Madrid Taxi Inc., Margo Express Cab Corp., Megeve Taxi LLC, Patron Taxi, LLC, Pravda Taxi LLC, RJIG Hacking Corp., Rum Taxi LLC, Sake Taxi LLC, and Siberia Taxi LLC to turn over all right, title, and interest in the Sterling Collateral as specially directed below; and it is further

ORDERED and ADJUDGED that Freidman shall turn over to Sterling all right, title, and interest of Freidman in the Real Estate Entities, East 65th Street Owners LLC, 66th Street Unit Owners LLC, Halsey Lane Owners LLC, Alexandrite Realty Corp, Almaz Realty Corp., Amethyst Realty LLC, Bloodstone Realty Corp., Coral Realty Corp., Dylan Realty Corp., Granat Realty Corp., Graphite Realty Corp., Helium Realty LLC, Izumrud Realty Corp., Prince Harry Realty LLC, Quartz Realty Corp., Sulfur Realty LLC, Tiger Eye Realty LLC, Turquoise Realty LLC, Zhemchug Realty Corp., Zoloto Realty Corp., Bull Consulting, Inc., Denga Realty Corp., Zinc Realty LLC, 43-05 Vernon Boulevard, LLC, 4514 Elston LLC, 4532 N. Elston LLC, Tungsten Realty, LLC, Azurite LLC, Zircon Realty LLC, Nargila Realty LLC, and Nachas Realty LLC, of corporate ownership and control, which constitute property pledged pursuant to a security agreement Sterling has with Freidman, and which Sterling maintains a first priority perfected security interest, including any distributions that have accrued and Freidman's rights to receive additional future payments from those entities, whether by distribution, dividends or otherwise as well as all other vestiges of corporate ownership and control; and is further

ORDERED and ADJUDGED that the Debtor Companies, Carrera Taxi Inc., Canary Trans Corp., Cote Dzur Taxi Inc., Erique Taxi Inc., ENAF Taxi, Inc., Grappa Taxi LLC, Grey Goose Taxi, LLC, Jack Daniel Taxi LLC, Madrid Taxi Inc., Margo Express Cab Corp., Megeve Taxi LLC, Patron Taxi, LLC, Pravda Taxi LLC, RJIG

Hacking Corp., Rum Taxi LLC, Sake Taxi LLC, and Siberia Taxi LLC, shall turn over to Sterling all interest in and operations of the Debtor Companies, which constitutes the assets pledged pursuant to various security agreements Sterling has with Debtor Companies, and in which Sterling has a perfected security interest; and it is further

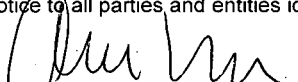
ORDERED and ADJUDGED that Freidman and the Real Estate Entities, East 65th Street Owners LLC, 66th Street Unit Owners LLC, Halsey Lane Owners LLC, Alexandrite Realty Corp, Almaz Realty Corp., Amethyst Realty LLC, Bloodstone Realty Corp., Coral Realty Corp., Dylan Realty Corp., Granat Realty Corp., Graphite Realty Corp., Helium Realty LLC, Izumrud Realty Corp., Prince Harry Realty LLC, Quartz Realty Corp., Sulfur Realty LLC, Tiger Eye Realty LLC, Turquoise Realty LLC; Zhemchug Realty Corp., Zoloto Realty Corp., Bull Consulting, Inc., Denga Realty Corp., Zinc Realty LLC, 43-05 Vernon Boulevard, LLC, 4514 Elston LLC, 4532 N. Elston LLC, Tungsten Realty, LLC, Azurite LLC, Zircon Realty LLC, Nargila Realty LLC, and Nachas Realty LLC, are directed to turn over all management and control of the real estate assets held by those entities to Sterling, and to execute any documents necessary to effectuate the turn over; and

ORDERED that the Marshal is directed to dispose of the collateral and apply the proceeds therefrom to satisfy the Judgments; and it is further

ORDERED that Freidman, the Debtor Companies, the Real Estate Entities, and all those acting in concert with them, shall cooperate with Sterling to retrieve all properties Friedman transferred to offshore trusts; and it is further

ORDERED that within 30 days, Sterling shall submit to courtroom 242 any orders necessary to implement this order, on notice to all parties and entities identified for notice.

Dated: 7/25/18


HON. ANDREA MASLEY, J.S.C.

- Check one: CASE DISPOSED NON-FINAL DISPOSITION
- MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- Check if appropriate: SETTLE ORDER SUBMIT ORDER DO NOT POST
- FIDUCIARY APPOINTMENT REFERENCE