APL-2023-_____
Appellate Division, First Department
Docket Nos. 2021-03399, 2021-03400, 2022-00030
New York County Clerk's Index No. 157631/15

Court of Appeals
STATE OF NEW YORK

In the Matter of

KASOWITZ, BENSON, TORRES & FRIEDMAN, LLP,

Petitioner,

—against—

JPMORGAN CHASE BANK, N.A.,

Respondent-Appellant,

THE DAKOTA, INC.,

Respondent-Respondent,

ALPHONSE FLETCHER, JR.,

Respondent,

FLETCHER INTERNATIONAL LTD., MASSACHUSETTS BAY TRANSPORTATION AUTHORITY RETIREMENT FUND, FLETCHER FIXED INCOME ALPHA FUND LTD., FIA LEVERAGED FUND, and FLETCHER INCOME ARBITRAGE FUND,

Intervenors-Respondents.

OPPOSITION TO MOTION FOR LEAVE TO APPEAL TO THE NEW YORK STATE COURT OF APPEALS

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 500.1(f), The Dakota, Inc. ("The Dakota") is a residential cooperative corporation with no corporate parents, subsidiaries or affiliates.

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INTRODUCTION

Chase seeks to induce this Court to grant leave where it should not, and to drag New York law into a Dickensian world of never ending litigation,[1] by mischaracterizing and omitting material facts and then attacking the nine justices below who correctly decided the issues in dispute based on the full facts.[2] Chase (i) had agreed to The Dakota's lien priority in the "Recognition Agreement" between Chase, Fletcher and The Dakota at the time Chase made its loan in 2008, (ii) was on express and repeated notice of The Dakota's claimed fees and lien priority well before the December 2017 judgment awarding fees, and (iii) took no steps to either intervene to assert its position pre-judgment, nor applied as an 'interested party'

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[1] *See* Charles Dickens' Bleak House. "The case [Jarndyce and Jarndyce] is a central plot device in the novel and has become a byword for seemingly interminable legal proceedings." Jarndyce and Jarndyce - Wikipedia. In the present case, Chase seeks to re-open and re-litigate the final judgment of Justice Arlene Bluth issued six years ago, in December 2017, granting The Dakota's counterclaim for prevailing party legal fees pursuant to the proprietary lease (R. 858, 861) after six years of litigation with its ex-shareholder Alphonse Fletcher, Jr. ("Fletcher") (R. 2019, summary judgment decision dismissing Fletcher claims).

[2] Justice Bluth correctly granted The Dakota prevailing party legal fees pursuant to the proprietary lease between it and Fletcher, after briefing and a contested evidentiary hearing as to fees before retired Justice Ira Gammerman, sitting as JHO (R. 379, Gammerman Report; R. 815-842, hearing transcript), and after motions to confirm and reject Justice Gammerman's report and recommendation. (R. 844, Dakota motion to confirm; R. 861, decision on motions to confirm/reject; R. 858, judgment on counterclaim, four months after motion papers forwarded to Chase's counsel). Justice Robert Kalish (now retired) correctly ruled in the present special proceeding that Chase could contest the priority of its and The Dakota's liens, but that he would not allow a collateral attack on Justice Bluth's judgment as to the fees to which The Dakota is entitled. (R. 592, 593, 613-14, 649, transcript of Justice Kalish ruling.) Subsequently, Justice Lubell correctly held that The Dakota's lien against the proceeds of sale of the Fletcher apartments has priority over Chase's lien (R. 6, 9-10.). Five Justices of the Appellate Division unanimously affirmed Justice Lubell's decision and order that is the subject of the present motion.

pursuant to CPLR 5015 to modify the judgment after it was entered. This Court should not be misled and should not grant leave.

STATEMENT OF FACTS

Fletcher acquired his shares and lease at The Dakota in 2001.[3] As provided in New York's Uniform Commercial Code and upheld by the courts below, The Dakota is granted a statutory first priority lien against its shareholders' shares, a "cooperative organization security interest,"[4] that is perfected at the time the shares are issued for all amounts that may become due from the cooperative relationship.[5] This lien is recited in The Dakota's bylaws and emblazoned on the back of its share certificates.[6]

In 2008, JPMorgan Chase Bank, N.A. ("Chase") made loans to Fletcher secured, in part, by his rights against The Dakota set forth in his shares and lease.[7] The "assignment" to which Chase refers in describing its rights in this case, unlike the assignments in the authorities upon which it now mistakenly relies, was not an

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[3] R. 264 (Lease) and 377 (Shares certificate).
[4] New York Uniform Commercial Code §§9-102(a)(27-d), 9-322(h)(1) (Appellate Division Memorandum Decision entered October 18, 2022, at p.2).
[5] R. 9. Appellants do not dispute the creation or perfection of this first priority lien. Rather, they wish to go back and re-litigate the December 2017 judgment of Justice Bluth awarding The Dakota prevailing party attorney's fees pursuant to the terms of its proprietary lease.
[6] R. 339, 348 at Art. VI, Section 6 (bylaws) and 377-78 (share certificate). Chase had possession of these documents, hence the need for Kasowitz to initiate this turnover special proceeding. R. 60 (Petition).
[7] R. 425-431, Loan Security Agreement, Stock Power and Assignment of Lease. Chase was, of course, well aware of The Dakota's statutory first priority lien, both because it is an active lender in the cooperative market and because it took possession of Fletcher's share certificate, with the emblazoned statement of The Dakota's lien, at the time of making its loan. (R. 377-78.)

assignment of ownership or title to an asset as a successor to Fletcher. Rather, the "assignment" was of a participation in the continuing legal relationship and rights between Fletcher and The Dakota. In fact, Chase, The Dakota and Fletcher entered into the three-way "Recognition Agreement" at the time of Chase's loan.[8] The Recognition Agreement – a contractual agreement among the three parties with respect to their relative rights and responsibilities – remained in effect until the Fletcher apartments were sold by the Temporary Receiver appointed in this proceeding. The Recognition Agreement repeatedly provides that Chase's security interest for sums owed to it pursuant to its loan to Fletcher is subordinate to The Dakota's right to first be paid amounts owed to it by Fletcher as a shareholder and lessee:

> 2(e) [The Dakota] shall recognize [Chase's] right as lienor against the Apartment pursuant to the Security, and, if the Lease be terminated and/or shares cancelled, against the net proceeds of any sale or subletting of the apartment, *after reimbursement to [The Dakota] of all sums due [The Dakota] under the Lease.*
>
> and
>
> 3(c)(2) If [The Dakota] ha[s] already sold or contracted to sell the Apartment [without notice to Chase], that [The Dakota] pay [Chase] the net proceeds of such sale (*after reimbursing [The Dakota] for all sums due [The Dakota]*) . . .
>
> and

[8] R. 157 (Recognition Agreement).

> 4. While [Chase] ha[s] the right but no obligation to cure the Lessee's defaults under the Lease, if we [Chase] do not do so within the time provided for herein, [The Dakota] shall have no obligation to [Chase], except that in the event of sale or subletting the Apartment, [The Dakota] shall recognize [Chase's] rights as lienor against the net proceeds of any sale or subletting *(after reimbursement to [The Dakota] of all sums which are due to [The Dakota] under the Lease)*.

(R. 157, emphasis added.)

In 2011, Fletcher sued The Dakota and several of its then-current and past board members, asserting fifteen causes of action for various theories of breach of contract, breach of fiduciary duty, defamation, racial discrimination and interference with contract based upon Fletcher's view that The Dakota's board of directors had wrongfully refused to consent to his purchase of an additional apartment in the building.[9] The Dakota counterclaimed for its attorney's fees incurred in defending the suit pursuant to the terms of its proprietary lease (First Counterclaim) or the terms of the statutes upon which Fletcher's discrimination claims were based (Second and Third Counterclaims).[10] After extensive motion practice, many depositions and other discovery, and interlocutory appeals, the last of Fletcher's claims were dismissed on summary judgment in a 54-page decision and order.[11]

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[9] R. 1879 (Complaint). In fact, the Board's analysis of Fletcher's finances was prescient, as Fletcher's investment management company, that formed the bulk of his assets, was shortly thereafter forced into bankruptcy. Among the intervenors in the present proceeding were both the Bankruptcy Trustee for several pension fund investors in Fletcher's funds who suffered substantial losses and the Internal Revenue Service that had a six figure claim for unpaid personal income taxes.

[10] R. 479 (Answer and Counterclaims at 510-511).

[11] R. 2019.

The Dakota's counterclaims for attorney's fees were severed and ultimately referred to retired Justice Ira Gammerman, sitting as JHO, to hear and report. Justice Gammerman granted discovery to Fletcher's attorney, required briefing on the claim, held a contested evidentiary hearing and thereafter issued a report dated May 18, 2017, recommending grant of the fees claimed.[12] Fletcher was represented throughout by counsel.

Thereafter, The Dakota moved to confirm Justice Gammerman's report and recommendation, and Fletcher, again by counsel, moved to reject it. The motions were referred to Justice Arlene Bluth, who took argument on the motions on October 3, 2017, and issued a judgment confirming the report and awarding fees to The Dakota on its First Counterclaim pursuant to the proprietary lease.[13] This judgment was final and was not appealed.

In the meantime, in July 2015, the law firm Kasowitz Benson Torres & Friedman, LLP, commenced the present special proceeding, initially against only Chase and The Dakota, to obtain turnover of the original of the Fletcher share certificate and lease from Chase to enable Kasowitz to enforce, by Sheriff's sale, the judgment for $2.7 million in fees that it had been awarded against Fletcher. Kasowitz had represented Fletcher for roughly thirteen months of Fletcher's six-

[12] R. 379 (Report).
[13] R. 858-860 (December 2017 judgment). The judgment specifically recites that it is on The Dakota's First Counterclaim.

year-suit against The Dakota and claimed that $2.7 million of the fees that it had billed Fletcher were unpaid.[14]

During the course of this proceeding, The Dakota worked cooperatively with Chase and Kasowitz to obtain appointment of a Temporary Receiver, to obtain authority for the Temporary Receiver to take possession of the Fletcher apartments and market and sell them through a reputable broker and to transfer the parties' lien claims to the proceeds of sale to enable the Temporary Receiver to maximize the proceeds of sale.[15]

The Dakota made clear to Chase throughout this proceeding that it was pursuing its fee claim against Fletcher, the amount of its fee claim, and that its fee claim was protected by a lien having first priority in the Fletcher shares and lease or the proceeds of sale:

- In an affirmation dated August 28, 2015, filed in this proceeding and in an email to counsel for Kasowitz and Chase in this proceeding dated August 27, 2015 – both two years prior to The Dakota's fee application and Bluth Judgment – the amount, legal basis and priority of The Dakota's fee claim

[14] R. 60 (Petition). Ultimately, Kasowitz settled with Chase on terms that Kasowitz dropped out of this special proceeding and assigned its fee claim to Chase to continue to assert against The Dakota. (*See* Chase Mem. at 7; R. 2094.) Thus, Chase seeks, in part, to inequitably and disingenuously collect fees on behalf of the losing party – Kasowitz and Fletcher – in priority over the prevailing party – The Dakota – from the proceeds of sale of the Fletcher apartments as to which Kasowitz, Chase and The Dakota claimed liens.

[15] R. 46, *et seq.*, Decision and Order on consent appointing Temporary Receive; R. 329, Stipulations to transfer Apt. 52 and PHB Lien to Proceeds of Receiver Sale.

were spelled out.[16] Chase did not exercise its option and right to intervene in the *Fletcher Action* pursuant to CPLR 1012(a)(2) (intervention as of right where the party's interest may not be adequately represented or the party may be bound by a judgment) or CPLR 1013 (intervention by permission).

- In October 2016, Chase was again reminded of the amounts, including legal fees, owed by Fletcher to The Dakota.[17]
- Chase's counsel also followed the course of the litigation of The Dakota's fee claim against Fletcher, inquired about the motion to confirm the fee award and, by email from The Dakota's counsel dated June 12, 2017, was provided with a copy of The Dakota's motion papers well before the motion was heard on October 3, 2017, and before the fee judgment was entered in December 2017.[18] Chase again did not seek to intervene pursuant to CPLR 1012 or 1013.
- Even after the Bluth judgment was entered, Chase took no steps to seek relief from the judgment as an "interested person" pursuant to CPLR 5015(a).

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[16] R. 567, Affirmation at ¶ 9, and R. 573-577, letter to counsel with documents supporting Dakota fee claim.

[17] NYSCEF Doc. No. 168.

[18] R. 578-579, email dated June 12, 2017. The judgment, R. 858 at 859, recites that the parties were heard on the motions to confirm and reject on October 3, 2017, four months after the motion papers were forwarded to Chase's counsel.

- In January 2018, a month after the Bluth judgment, The Dakota's counsel reiterated to Chase's counsel, by email, that The Dakota's lien, which included the fees incurred in defending against Fletcher's claims, was first in priority.[19]

Thus, in addition to the rights and privity among Chase, The Dakota and Fletcher provided by the 2008 Recognition Agreement, Chase was on ample notice throughout the period 2015 through 2017 of The Dakota's specific claim with respect to legal fees and the priority of its lien. Yet, Chase took no steps to question Fletcher's protection of its rights, no steps to intervene in the proceedings to determine the fees, and, even after the December 2017 fee judgment, no steps to apply to Justice Bluth as an interested party to vacate or modify her judgment pursuant to CPLR 5015.

Rather, Chase simply sat on its hands and sought to collaterally attack the judgment and The Dakota's lien in this proceeding before other Justices. Chase has not been deprived of a hearing or Due Process; it simply chose to avoid the process and hearing.

For the reasons set forth below, Chase's motion for leave to appeal should be denied. The Dakota has been burdened by this litigation for some twelve years; the priority of its claim for fees is based on its statutory and contractual rights to which

[19] NYSCEF Doc. No. 170.

Chase agreed in 2008; eight Justices of the Supreme Court and Appellate Division have reviewed and upheld its claims; Chase's attack on the reasoning and conclusions of those Justices, based on a misstated and incomplete Statement of Facts, must be rejected.

ARGUMENT

A motion for permission to appeal in civil cases must state why the issues presented for review are novel or of public importance, present a conflict with prior decisions of this Court, or involve a conflict among the departments of the Appellate Division, and the movant must identify the particular portions of the record where the questions sought to be reviewed were raised and preserved. 22 N.Y.C.R.R. § 500.22.

POINT I

THE TRIAL COURT AND APPELLATE DIVISION PROPERLY APPLIED THE LAW OF COLLATERAL ESTOPPEL – PARTICULARLY WHERE CHASE WAS ON REPEATED NOTICE OF THE CLAIMS AGAINST ITS PRIVY – AND THE AUTHORITIES CITED IN SUPPORT OF CHASE'S NEW ARGUMENT ARE INAPPOSITE.

Chase's contention that the decisions of the Courts below wandered off the course of New York law and require correction by this Court is without merit. The reasoning and conclusion that Chase, as a privy of its borrower Fletcher and contractually bound to both Fletcher and The Dakota as to its rights in the collateral, is collaterally estopped from attacking the 2017 judgment was a correct and unremarkable application of New York law. Any decision to the contrary would have been clear error.

The law of collateral estoppel is well-established in New York. Where an issue has been determined in favor of a party, that party's adversary – *i.e.* Fletcher –

or any party in privity with the adversary – *i.e.* Chase – who had a full and fair opportunity to contest the determination is precluded from contesting the determination in a subsequent proceeding. *Ryan v. N.Y. Tel. Co.*, 62 N.Y.2d 494 (1984); *All Terrain Properties, Inc. v. Hoy*, 265 A.D.2d 87 (1st Dep't 2000). It applies, *inter alia*, when a different judgment in a second action "would destroy or impair rights or interests established by the first." *Ryan*, 62 N.Y.2d at 500-01. The policies underlying its application are to avoid relitigation of a decided issue and the possibility of an inconsistent result. *Buechel v. Bain*, 97 N.Y.2d 295, 303-04 (2001). The burden rests upon the opponent to establish the absence of a full and fair opportunity to litigate the issue in the prior action or proceeding. *Parker v. Blauvelt Volunteer Fire Co.*, 93 N.Y.2d 343 (1999); *In re Hofmann*, 287 A.D.2d 119 (1st Dep't 2001).

Privity permits utilization of collateral estoppel against persons who were not parties to the previous action, but who were connected with it to such an extent that they are treated as if they were parties. *All Terrain Properties, Inc. v. Hoy*, 265 A.D.2d 87 (1st Dep't 2000). Privity exists between a mortgagor and mortgagee, such as Fletcher and Chase, to bind the mortgagee to the results of legal proceedings in which the mortgagee had a stake and was unified in interest with the mortgagor. *Altegra Credit Co. v. Tin Chu*, 29 A.D.3d 718 (2d Dep't 2006). Likewise, it has

been applied to creditors whose interests were aligned with the party-debtor. *In Re 56 Walker, LLC*, 2014 WL 1228835, at *3 (Bankr. S.D.N.Y. Mar. 25, 2014).

Chase and Fletcher were correctly found to be in privity. The First Department and the trial court did not overlook the law and properly reasoned that Chase's attack on the Bluth judgment would impair or "destroy" it. Chase and Fletcher had a shared interest – as owner and secured party – in the shares and lease throughout the period of the *Fletcher Action.* Chase was on express notice of the nature of The Dakota's claim and priority of claim against the Fletcher shares and lease. Indeed, Chase, Fletcher and The Dakota entered into the three-party Recognition Agreement at the outset of Chase's loan to Fletcher in 2008 that expressly recognized The Dakota's priority of payment.

Chase's argument to this Court – raised for the first time in Chase's Reply Brief on appeal and not included in its Appellant's Brief – is that it is not in privity with Fletcher and the usual rule of collateral estoppel should not apply due to their "assignor-assignee" relationship. The argument disingenuously mischaracterizes Chase's relationship to both Fletcher and The Dakota and the authorities on which Chase relies are inapposite due to the differing assignments and lack of notice in those cases. First, while Chase was, indeed, an "assignee," it was an assignee only of the security interest while Fletcher retained ownership of the shares and lease. Second, at the time of making its loan and taking assignment of a security interest,

Chase entered into an express three-way contractual relationship with Fletcher and The Dakota as to each's relative interests and priorities in the shares and lease. Third, Chase was on express, repeated and timely notice of the substance of The Dakota's claim – the fees due under the proprietary lease and the priority of The Dakota's claim. A clearer example of privity for collateral estoppel purposes is difficult to imagine.[20]

Chase's principal reliance on *Gramatan Home Investors Corp. v. Lopez*, 46 N.Y.2d 481 (1979) is misplaced. The facts and circumstances in *Gramatan* are readily distinguishable and inapposite. In *Gramatan*, ownership of – and not just a security interest in – the asset at issue – the contract and mortgage – was assigned to plaintiff and the predecessor assignor had no continuing interest in the asset. By comparison, in the instant case, Chase was assigned only a security interest in the Shares and Lease; Fletcher remained the owner of the Shares and Lease and had a continuing interest in the asset. Furthermore, the Court in *Gramatan* noted, *id*. at 487, that having no notice of the adverse claim and litigation against the Assignor was a component of its holding ("the assignee is charged with notice that his rights

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[20] Furthermore, this relationship of cooperative corporation, shareholder-borrower, and lender-secured party expressed in the form Recognition Agreement and consistent with the statutory priority of cooperative organization security interests in New York's UCC, is the standard and usual relationship of a residential cooperative corporation, its shareholder and its shareholder's lender. The Justices of the Appellate Division, at argument of the appeal, expressed incredulity that Chase sought to avoid these well-established relationships.

to the assignment are subject to competing claim"). As shown above, Chase had repeated and detailed notice of The Dakota's claim against Fletcher and claim of priority with respect to the asset. Finally, in *Gramatan* there was no three-way express contractual allocation of rights and priorities as there is in the present case. *Gramatan* and its progeny have no bearing on this case.[21]

Chase has not been denied its day in court, and its due process rights have not been violated, it simply chose, for whatever strategic reason, not to assert its interest when it had the opportunities to do so under either the pre-judgment intervention avenue afforded by CPLR 1012 and 1013, or post-judgment motion to vacate or modify the judgment pursuant to CPLR 5015. Chase elected to be absent and the Courts below properly applied the law of collateral estoppel to prevent Chase from destroying the judgment rights of The Dakota that had already been determined. The decisions of the courts below present no issue that is novel or of statewide public importance; they merely and correctly applied established law.

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[21] Nor are the pre-*Gramatan* cases referenced by Chase factually analogous or applicable here. *See Masten v. Olcott*, 101 N.Y. 152 (1886) (140-year old case that does not involve assignment of security interest with continuing shared interest in asset and three-party recognition agreement); *Postal Tel. Cable Co. v. City of Newport, Ky.*, 247 U.S. 464 (1918) (100-year old case that pertains to an action to recover taxes in connection with transfer of property; not to assignment of security interest with continuing shared interest in asset and three-party recognition agreement); *Dull v. Blackman*, 169 U.S. 243 (1898) (pertains to a judgment based on improper service of process).

POINT II

LEAVE TO APPEAL SHOULD BE DENIED BECAUSE THE DECISION AND ORDER PRESENTS NO CONFLICT AMONG THE APPELLATE DIVISIONS.

The Appellate Division's decision does not present a conflict with prior decisions of this Court, nor does it involve a conflict among the Departments of the Appellate Division.

In its attempt to show that the Decision and Order creates a conflict among the Appellate Divisions, Chase cites to readily distinguishable cases primarily involving the assignment of medical benefits in no-fault benefit actions. *See* Chase's Mem. of Law at 21, *citing Gentlecare Ambulatory Anesthesia Servs. v. MVAIC*, 64 Misc.3d 130(A) (N.Y. App. Term. 2019) (pertains to assignment of medical benefits) *J.K.M. Med. Care, P.C. v. Ameriprise Ins. Co.*, 54 Misc.3d 54 (N.Y. App. Term. 2016); (pertains to recovery of assigned first-party no-fault benefits for medical services provided as a result of a motor vehicle accident); *Ideal Med. Supply v. Mercury Cas. Ins. Co.*, 39 Misc.3d 15 (App. Term 2013) (pertains to no-fault claims arising from injuries allegedly sustained by plaintiff's assignor in motor vehicle accident); *Smooth Dental, P.L.L.C. v. Preferred Mut. Ins. Co.*, 37 Misc.3d 67 (App. Term 2012) (pertains to assignment of no-fault benefits for dental services); *Magic Recovery Med. & Surgical Supply Inc. v. State Farm Mut. Auto.*

Ins. Co., 27 Misc.3d 67 (App. Term 2010) (action to recover assigned first-party no-fault benefits for medical equipment).

None of the above cases involve the assignment of a security interest in shares to a cooperative apartment lender. None of the above cases involve a continuing shared interest in the asset with the assignor as well as a three-party agreement as to the priority of interests. None of the cases above involve repeated and continuous notice to the assignee of a security interest by a competing lienor with a priority claim.

The other cases cited by Chase are likewise misplaced. These decisions either involve an assignment of all rights and interests in an asset (rather than, as here, a security interest in which there is a continued shared interest with the assignor and three-party recognition agreement), or involve circumstances in which the assignee had no notice of the third party adverse claim against the assignor that affected the asset assigned to the assignee (unlike here where Chase was involved and on repeated and continuous notice), or involve no assignment at all and are otherwise not analogous to the facts of this case. See *Exch. Nat. Bank of Chicago v. Ferridge Properties of New York, Inc.*, 112 A.D.2d 33 (4th Dep't 1985) (involving assignment of all rights and interest in a trust-deed and lack of notice to assignee of defenses to the note); *Dalton v. Dalton*, 174 A.D.3d 499 (2d Dep't 2019) (involving parents' rights to sue son's former spouse as to real estate proceeds even though parents were

not involved in son's prior divorce action); and *Colella v. GEICO Gen. Ins. Co.*, 164 A.D.3d 745 (2018) (involving insurance company's right to contest benefits to policy holder even though insurance company was not involved in personal injury action).

There is no conflict between the Appellate Divisions that needs resolution by this Court.

POINT III

LEAVE TO APPEAL SHOULD BE DENIED BECAUSE THE DECISION AND ORDER PRESENTS NO NOVEL QUESTIONS OF STATEWIDE IMPORT.

Chase has both misrepresented the material facts and relationships at issue and sought, in effect, to carve out an exception for itself from the generally applicable and accepted rules as to privity and collateral estoppel. In correctly rebuffing Chase, the courts below have not relied on or created an issue that is novel or of statewide importance. Re-examination of the issues is not needed from this Court and any result in this Court other than an affirmance of the correct decisions below would unsettle the broadly accepted industry practices defined by the statutory UCC provisions, the generally accepted form of recognition agreements among cooperative lenders, shareholders and cooperative corporations, and the specific agreements and facts at issue in this case.

As spelled out above, the Decision and Order is a straight forward application of UCC provisions governing cooperative organization security interests, rules of privity and collateral estoppel, and the contractual provisions of the recognition agreement. To the extent Chase disputed The Dakota's claims, or Fletcher's defense of the interests in the shares and lease that he shared with Chase, Chase had explicit notice and opportunities under the CPLR to intervene or apply to assert its interest, both before and after the judgment.

There is no policy reason to create a special rule for parties such as Chase to exempt them from the generally applicable and established rules of privity, collateral estoppel and their own strategic or mistaken choices as to how and when to assert their claims.

CONCLUSION

For the reasons set forth above, Chase's motion for leave to appeal should be denied.

Dated: New York, New York
February 27, 2023

Respectfully submitted

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CERTIFICATION

I certify pursuant to 22 N.Y.C.R.R. § 500.13(c)(1) that the total word count for all printed text in the body of the brief, exclusive of the corporate disclosure statement, the table of contents, the table of cases and authorities, and the statement of questions presented required by subsection (a) of this section is 4,370 words.

Dated: New York, New York
February 27, 2023

Respectfully submitted

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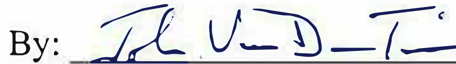
By: 

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