

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D14702
O/cb

_____AD3d_____

Argued - March 5, 2007

ROBERT W. SCHMIDT, J.P.
ROBERT A. SPOLZINO
ANITA R. FLORIO
PETER B. SKELOS, JJ.

2006-01851

DECISION & ORDER

Tri-Global Management Corp., respondent, v
Citibank, N.A., appellant.

(Index No. 16817/05)

Zeichner Ellman & Krause, LLP, New York, N.Y. (Barry J. Glickman of counsel),
for appellant.

Susan von Ohlen, Great Neck, N.Y., for respondent.

In an action to recover damages for violating a restraining notice, the defendant appeals from an order of the Supreme Court, Kings County (Douglass, J.), dated January 9, 2005, which granted the plaintiff's motion for summary judgment and denied its cross motion for summary judgment dismissing the complaint.

ORDERED that the order is reversed, on the law, with costs, the plaintiff's motion for summary judgment is denied, and the defendant's cross motion for summary judgment dismissing the complaint is granted.

The plaintiff alleged that the defendant violated a restraining notice the plaintiff served upon the defendant pursuant to CPLR 5222 as part of the plaintiff's ongoing efforts to enforce a judgment it obtained against a nonparty. The Supreme Court erred in granting the plaintiff's motion for summary judgment and in denying the defendant's cross motion for summary judgment dismissing the complaint. The defendant established its entitlement to judgment as a matter of law by demonstrating that the account the plaintiff sought to restrain was not included in a proper restraining notice issued pursuant to the requirements of CPLR 5222. Thus, the defendant had no obligation to

April 10, 2007

Page 1.

TRI-GLOBAL MANAGEMENT CORP. v CITIBANK

freeze the account (*see* CPLR 5222[b]; *Tri-Global Mgt. Corp. v Richardson*, 25 AD3d 600, 601). In opposition, the plaintiff failed to raise a triable issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324).

The plaintiff's remaining contentions are without merit.

SCHMIDT, J.P., SPOLZINO, FLORIO and SKELOS, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court