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COURT OF APPEALS

STATE OF NEW YORK

PANGEA CAPITAL MANAGEMENT, LLC,

Appellant,

-against-

No. 53

LAKIAN,

Respondents.

20 Eagle Street
Albany, New York
June 5, 2019

Before:

CHIEF JUDGE JANET DIFIORE
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE LESLIE E. STEIN
ASSOCIATE JUDGE EUGENE M. FAHEY
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE PAUL FEINMAN

Appearances:

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1 CHIEF JUDGE DIFIORE: The first appeal on this
2 afternoon's calendar is appeal number 53, Pangea Capital
3 Management v. Lakian.

4 Counsel?

5 MS. BRONNER: Good afternoon. May it please the
6 court. My name is Caitlin Bronner. I am counsel for
7 Pangea Capital Management, LLC. I'd like to request two
8 minutes for rebuttal, please.

9 CHIEF JUDGE DIFIORE: Two minutes for rebuttal?

10 MS. BRONNER: Yes, thank you, Your Honor.

11 CHIEF JUDGE DIFIORE: Counsel, how did the
12 divorce judgment here create a debt?

13 MS. BRONNER: A debt, Your Honor?

14 CHIEF JUDGE DIFIORE: Yes.

15 MS. BRONNER: Well, if Your Honor's asking how it
16 could have been required to have been docketed under CPLR
17 5203(a), the answer is provided by CPLR 5203(c) which
18 requires that any - - - that where there has been an oral
19 or written award of an interest in real property - - - it
20 must be docketed with the clerk of the county in which such
21 property is located, not less than thirty days after the
22 earlier real property award. And in that situation, the
23 judgment will relate back to the date of the earlier award.

24 JUDGE STEIN: But isn't the question here really
25 whether this is an award of real property similar - - -



1 like all others? In other words, I think the argument is
2 is that this real property always - - - that the wife
3 always had an inchoate interest in this real property.
4 There was not a transfer of property; it was a division of
5 property. It was a division of property, it was an
6 equitable distribution of all of the parties' martial
7 property. And in that equitable distribution division, the
8 wife got certain things and the husband got other things,
9 but it wasn't a transfer under that - - - under the usual
10 understanding.

11 MS. BRONNER: Your Honor, understandably - - -
12 well, with respect to the interest between the wife and the
13 husband, that may be so. But that doesn't address the
14 interest of third parties. It's plain, and the New York
15 legislature has - - - has plainly spoken on this issue.
16 Musso v. Ostashko was a Second Circuit decision in which
17 the rights of a former spouse, arising under an equitable -
18 - -

19 JUDGE STEIN: But in Musso there wasn't - - -
20 there wasn't even a judgment of divorce. And I - - - I
21 think it - - - I think it's pretty clear from the Second
22 Circuit's opinion there that that was a problem. There was
23 no judgment, and there was no judgment entered, let alone
24 docketed. And - - - and maybe there was, maybe - - - you
25 know. I think it can be viewed as everything talking about



1 docketing was really dicta under the circumstances of that
2 case. There was nothing there to - - -

3 MS. BRONNER: Well - - -

4 JUDGE STEIN: Go ahead.

5 MS. BRONNER: Sorry, Your Honor.

6 JUDGE STEIN: Um-hum.

7 MS. BRONNER: I would say that, to the extent
8 that Your Honor may believe that, CPLR 5203 answers the
9 question because, again, it specifically - - -

10 JUDGE GARCIA: Isn't 5203 just a response to
11 Musso? I mean, it's the legislature's response to the
12 Circuit.

13 MS. BRONNER: It is a response to Musso, but in
14 responding to Musso, it is - - -

15 JUDGE GARCIA: And there's a couple of problems
16 with that. One I think Judge Stein just mentioned; it's
17 dicta in Musso. Two, it's a Circuit decision. So - - -

18 JUDGE FEINMAN: We're not bound.

19 JUDGE GARCIA: - - - in terms of New York law,
20 we're not bound by it even if it wasn't dicta. And it
21 talks about bankruptcy. So what would that - - - what
22 relevance would that really have to have to our decision?

23 MS. BRONNER: What does CPLR 5203(c) have, as it
24 relates to Musso? Well, again, it's - - -

25 JUDGE GARCIA: No, no, it clearly addresses the



1 Musso problem in a bankruptcy context. And if that's the
2 rule in New York, then it would address that, but that's
3 not what we have here.

4 MS. BRONNER: But the legislative history makes
5 plain that it is not - - - that the docketing requirement
6 is not limited to the - - - to the bankruptcy context.
7 Specifically - - -

8 JUDGE WILSON: Well, but the statutory language
9 talks - - - sorry, I'm over here.

10 MS. BRONNER: Sorry.

11 JUDGE WILSON: You started out earlier by saying
12 5203(c) requires, if we thought this was a judgment, that
13 it be docketed. I think you said that.

14 MS. BRONNER: I did, Your Honor.

15 JUDGE WILSON: Where - - - why does it - - - I
16 don't see that it requires that. I - - - I see that it
17 says: if you do that, then you get a certain priority in a
18 bankruptcy.

19 MS. BRONNER: Well, but - - - well, again, if one
20 were to look at the legislative history, it spec - - -

21 JUDGE WILSON: Well, I'm asking about the words
22 of the statute.

23 MS. BRONNER: Well, the wording of the statute
24 specifically does speak of priority, but it says that in
25 order to have that priority you must docket. So that



1 suggests, implicitly, that the docketing requirement of
2 CPLR - - -

3 JUDGE WILSON: And that priority is in a
4 bankruptcy.

5 JUDGE GARCIA: Right.

6 MS. BRONNER: It's not limited to bankruptcy.

7 JUDGE WILSON: Is it not?

8 MS. BRONNER: Again, if I may just quickly get to
9 the legislative history - - -

10 JUDGE WILSON: I'm asking about - - -

11 JUDGE GARCIA: But let's look at the statute
12 first. It says that "created upon simultaneous or later
13 filing of a petition in bankruptcy pursuant to the U.S.
14 Bankruptcy Code". So how is not limited to bankruptcy?

15 MS. BRONNER: Because, again, it's plain from the
16 legislative history that it is not.

17 JUDGE GARCIA: So we would look at the
18 legislative history over the plain text of this statute?

19 MS. BRONNER: This court has specifically held
20 that it is appropriate to examine the legislative history
21 even where the language of the statute is clear.

22 JUDGE GARCIA: But we generally do that to - - -
23 to reinforce our interpretation of the statute. So what
24 you would be asking us to do is to say the plain language
25 of the statute is X, but the legislative history is Y, and



1 Y is going to trump the plain language of the statute?

2 MS. BRONNER: I wouldn't be asking that, Your
3 Honor. Again, CPLR 5203(a) makes clear that docketing is
4 required. CPLR 5203(c) confirms that docketing is
5 required, and it notes this in a specific bankruptcy
6 context, but it is consistent with CPLR 5203(a) in that
7 regard, so it is appropriate to consider the legislative
8 history.

9 JUDGE RIVERA: So if it applies everywhere, why
10 would they include the language of bankruptcy?

11 MS. BRONNER: I'm sorry - - -

12 JUDGE RIVERA: What's the point of that?

13 MS. BRONNER: I - - -

14 JUDGE RIVERA: What's the point of that, if - - -
15 if you're correct that it applies regardless of whether or
16 not it's a bankruptcy proceeding?

17 MS. BRONNER: Well, again, because it is a
18 response specifically to Musso.

19 JUDGE RIVERA: Yeah, but - - -

20 MS. BRONNER: But that's not - - -

21 JUDGE RIVERA: I thought your argument was it's
22 not limited to bankruptcy, so then there would be no point
23 to include it because of course it would subsume bankruptcy
24 proceedings. And - - -

25 MS. BRONNER: Of - - -



1 JUDGE RIVERA: And therefore respond to Musso.

2 MS. BRONNER: Once again, just to be clear, CPLR
3 5203(c) alters the traditional priorities that would
4 ordinarily exist when a bankruptcy petition is filed, so
5 that's - - -

6 JUDGE RIVERA: Yes, no doubt. That wasn't my
7 question, though.

8 MS. BRONNER: Okay. But again, so - - - so to
9 the extent that it does that, it doesn't alter the - - -
10 the docketing requirement that already exists in this
11 context under CPLR 5203(a).

12 If I may just quickly get to the legislative
13 history.

14 JUDGE FEINMAN: Well, but let's go back to (a),
15 all right, and the language of (a). And it's talking about
16 judgment debtors. I have a much more fundamental problem
17 which is I don't understand how you are saying that the
18 wife here is a judgment debtor.

19 MS. BRONNER: Well, once again, I believe that
20 that is made plain because in - - - in Musso - - - well, if
21 - - - if I may. In Musso - - -

22 JUDGE FEINMAN: There's no money judgment entered
23 against the husband at this point - - -

24 MS. BRONNER: There's no money judgment - - -

25 JUDGE FEINMAN: - - - or any point during these



1 proceedings.

2 MS. BRONNER: No, there's no money judgment
3 against the husband.

4 JUDGE FEINMAN: So how is - - - again, how is she
5 a judgment debtor or creditor or, you know, whether it's a
6 creditor or a debtor - - - a debt - - - excuse me, a
7 judgment debtor or a judgment creditor; how is she either
8 of those things?

9 MS. BRONNER: Well, she is treated as someone who
10 has the type of judgment which must be docketed under the
11 statute. And again, that is - - -

12 JUDGE FAHEY: Well, to follow up on Judge
13 Feinman's argument, the purpose of docketing, as I
14 understand your argument, is so that third parties would be
15 on notice, right?

16 MS. BRONNER: That's correct, Your Honor.

17 JUDGE FAHEY: And of course to establish priority
18 under a lien. But one of the problems here, and really
19 neither party seems to mention this statute, but when I
20 look at the question of how would the judgment creditors be
21 informed of a change in title when a divorce is entered in
22 one county and the property is located in another county,
23 like we have here, the answer seems to be in the Domestic
24 Relations Law in Section 234, not 236. And in 234, the
25 judgment - - - where a judgment is recorded in a county



1 where the property is located in the same manner as you
2 would record a deed, and I think it sets forth - - - if you
3 look at it - - - it sets forth a process to make sure that
4 those deed protections, if you get a conveyance of a deed,
5 protect notice for the other party. And so, in other
6 words, I think the law has provided to address the policy
7 question that underlies your concern.

8 I think that 234 and a recording of the judgment in the
9 same - - - as an attachment to the deed takes care of that
10 underlying problem and really undermines your argument.

11 Now, in fairness to you, 234 wasn't in your
12 brief. So - - - so I don't expect a great off-the-cuff
13 answer. That - - - that wouldn't be fair to either party.
14 But I would encourage you to look at it, all right?

15 MS. BRONNER: Yes, Your Honor.

16 JUDGE FAHEY: Okay.

17 JUDGE STEIN: I want to address some other
18 aspects of the DRL too, and that is that it seems to me
19 that there is a way that, potentially, a spouse could end
20 up being a judgment creditor subject to 5203(a), and that
21 is, for example, if the spouse gets an award of child
22 support or maintenance or some other thing, and the other
23 spouse - - - and a judgment of divorce is entered, and the
24 other spouse doesn't pay that, the recipient spouse can
25 then go to court and get a money judgment as a judgment



1 creditor, and then in order to establish priority of that
2 judgment, would have to comply with 5203(a). But if - - -
3 if that's the case, then why would we need, for example,
4 Section 244 of the Domestic Relations Law, which is what
5 entitles the spouse to get a money judgment?

6 MS. BRONNER: Well, I think that, in point of
7 fact, the point Your Honor is making is - - - is the point
8 that Andrea Lakian's attorney has made which is that - - -
9 that DRL 244 judgments, theoretically, might need to be
10 docketed, but not DRL 236 judgments.

11 I see my time is up. If I might just - - -

12 CHIEF JUDGE DIFIORE: You may continue.

13 MS. BRONNER: - - - respond. Thank you.

14 But the problem and the reason that we believe
15 CPLR 5203(c) does in fact confirm that docketing is
16 required here is that Musso was a DRL 236 case; it was not
17 a DRL 244 case. And in response to Musso, the legislature
18 clearly and plainly manifested its intent that - - - that
19 in a Musso-type case, the judgment - - - not the award, but
20 the judgment of divorce, which is the DRL 236 judgment,
21 would have to be docketed to create priority.

22 JUDGE STEIN: Well, and in Musso, there was no
23 judgment, and that's - - - that's where the - - - the
24 requirement of docketing becomes, I think, dicta.

25 MS. BRONNER: But - - - okay.



1 CHIEF JUDGE DIFIORE: Thank you, counsel.

2 MS. BRONNER: Thank you, Your Honor.

3 CHIEF JUDGE DIFIORE: Counsel?

4 MS. RICHMAN: May it please the court. Judith
5 Richman for respondent, Andrea Lakian. Good afternoon,
6 Your Honors.

7 And we are here today, I believe, to confirm that
8 equitable distribution is unlike all other aspects of the
9 law. It is brilliant, and it provides that when a court
10 determines that there is marital property, and they go
11 through the factors, and they distribute the property - - -

12 JUDGE STEIN: Counsel, the way I see this is
13 that, at bottom, okay, a judgment creditor can only reach
14 the judgment - - - debtor's assets, correct?

15 MS. RICHMAN: I agree.

16 JUDGE STEIN: Okay. So the way that I see this
17 is that the - - - the judgment of divorce, once it was
18 entered, made these proceeds no longer the husband's
19 assets. And so it's really not - - - whatever you want to
20 call it, judgment debtor, judgment creditor, or equitable
21 distribution, it - - - it really comes down to that very
22 basic rule that because of equitable distribution that no
23 longer belongs to him.

24 MS. RICHMAN: I agree. I agree one hundred
25 percent; it is - - - it has nothing to do with being a



1 judgment creditor and judgment debtor. She is the owner of
2 the property as of the entry of the judgment of divorce.
3 He is the owner of his property as of the judgment of
4 divorce, and his creditors, Pangea or others, have a right
5 to go against his property, not her property. She owns her
6 property; she's not a judgment debtor of the husband, nor
7 is he a judgment debtor of the wife. That is the - - -

8 JUDGE STEIN: But there could be circumstances,
9 and I referred to - - - I alluded to them earlier. If she
10 had - - - there was something else in the judgment that
11 directed him to pay her something or whatever, and then she
12 received - - - she - - - she went to enforce that right and
13 went to a court and got a judgment, that would put her in a
14 different light, correct?

15 MS. RICHMAN: I agree. If he had owed her, or a
16 spouse owes another spouse, let's say, interim support, and
17 they don't pay the support, that is not equitable
18 distribution; that is a payment of a debt, and therefore
19 you get a judgment. That is far different than being an
20 owner under equitable distribution under property that's
21 distributed.

22 JUDGE STEIN: Or a distributive award, if he - -
23 - if he had a business, and they evaluated the business and
24 said she was entitled to some dollar amount as her interest
25 in that business, and he didn't pay her that distributive



1 award, then she could get a money judgment, correct?

2 MS. RICHMAN: Well, it was her ownership interest
3 under distributive award, and then how she proceeds to
4 obtain that ownership interest, you know, there are
5 numerous ways, turnover proceedings.

6 JUDGE RIVERA: Well, this case is about real
7 property.

8 MS. RICHMAN: But - - -

9 JUDGE RIVERA: This case is about real property.
10 And I understood your argument to be that, upon the entry
11 of the judgment of divorce, that is a judicial
12 determination and pronouncement of title.

13 MS. RICHMAN: Correct, and also, Your Honors, in
14 this situation, she was the beneficial owner of a trust.
15 She had an increased interest in the division of the trust
16 assets of the - - - when it was sold. So it is not
17 necessarily real property bec - - -

18 JUDGE FEINMAN: So - - -

19 JUDGE RIVERA: So - - -

20 JUDGE FEINMAN: I'm sorry.

21 JUDGE RIVERA: So it's title ownership in the
22 what?

23 MS. RICHMAN: Well, she has - - - she has a
24 greater interest in 62-and-a-half percent of the proceeds
25 of sale plus 75,000 dollars. That's her money. And she -



1 - - prior - - - prior to the divorce, she also had her
2 independent interest and then, after the divorce, that is
3 her property.

4 JUDGE RIVERA: So then to clarify, so you're not
5 saying it's the title in the property - - -

6 MS. RICHMAN: Change - - -

7 JUDGE RIVERA: - - - that gets sold. It's the
8 interest in the proceeds from the sale.

9 MS. RICHMAN: She had an interest in the proceeds
10 from the sale. She also had an interest in - - - in - - -
11 in the property. But in this - - - in this - - -

12 JUDGE RIVERA: Interest in the property, a title
13 - - -

14 MS. RICHMAN: Well, the - - -

15 JUDGE RIVERA: - - - ownership?

16 MS. RICHMAN: GEMS II - - -

17 JUDGE RIVERA: Okay.

18 MS. RICHMAN: - - - had the title. And she had
19 an interest - - - a beneficial interest in that, and that
20 was increased.

21 CHIEF JUDGE DIFIIORE: So this divorce judgment
22 contemplates the sale of that property and the future
23 distribution of the proceeds based on their ownership
24 interest as - - -

25 MS. RICHMAN: Yes, they - - -



1 CHIEF JUDGE DIFIORE: - - - as held by the court,
2 right?

3 MS. RICHMAN: Yes, the property was already on
4 the market - - -

5 CHIEF JUDGE DIFIORE: Um-hum, yes.

6 MS. RICHMAN: - - - at the time of the agreement
7 and then the judgment of divorce. It was - - - and there
8 were provisions of how they each had a right in the
9 property and the distribution of the assets upon the sale.

10 JUDGE RIVERA: But is the interest in the
11 property an owner's interest? That's what I'm trying to
12 clarify from - - -

13 MS. RICHMAN: Well, she had a - - -

14 JUDGE RIVERA: - - - your argument.

15 MS. RICHMAN: She was an owner.

16 JUDGE RIVERA: Okay.

17 MS. RICHMAN: She owned both the property - - -
18 she owned the proceeds of sale upon the sale. She had an
19 interest in - - - as a beneficial owner of the trust. So
20 under every circumstances, she was an owner. And under all
21 circumstances she was an owner.

22 JUDGE GARCIA: It seems to me, counsel, that
23 trust kind of clutters the issues here, factually, right?
24 But for us, in the certified question, they've asked us if
25 an entered divorce judgment grants a spouse an interest in



1 real property. So we are assuming, in that question, this
2 is an interest in real property, right? And I think there
3 are different cases, and I think they're cited in the
4 briefs, that say a distribution, whether it's sales
5 proceeds or dividing the property, is an interest in the
6 property, right? So the trust - - -

7 MS. RICHMAN: Yes.

8 JUDGE GARCIA: - - - kind of adds an interesting
9 layer to the facts of this case. But it seems, as I read
10 this question, what the Circuit is asking here is when you
11 grant an interest in real property then what happens here -
12 - - and you don't docket it, what's the effect, right?

13 MS. RICHMAN: Well, they are. But in this - - -
14 in this situation, one of the - - - you know, in this
15 situation with Andrea Lakian, she had an interest in - - -
16 in the trust proceeds, and the answer, though, with respect
17 to any property under equitable distribution, they don't
18 make a distinction. That is one of the basic foundations
19 of 236-B.

20 JUDGE WILSON: Is the - - -

21 MS. RICHMAN: There is not a - - -

22 JUDGE WILSON: Is the - - - sorry, I didn't mean
23 to interrupt you. Is the import of your argument that the
24 docketing priority doesn't matter here because, once the
25 judgment of divorce was entered, the - - - the property was



1 separated, and at that point, even if Pangea had a
2 priority, all it can levy against is Mr. Lakian's share?
3 Is that what you're saying?

4 MS. RICHMAN: Correct. She was an owner; she
5 wasn't a judgment creditor, so she doesn't docket.

6 JUDGE WILSON: But even if she were, even if we
7 were giving a priority to Pangea, it's only against - - -
8 once the divorce judgment has happened, it's only against
9 Mr. Lakian's share; is that what you're saying?

10 MS. RICHMAN: Correct.

11 JUDGE WILSON: Okay.

12 MS. RICHMAN: Correct. She owned her share - - -

13 JUDGE WILSON: So the docketing priority, in some
14 ways, doesn't matter.

15 MS. RICHMAN: She owned her share, he owned his
16 share, Pangea has a right against his share. They were
17 judgment creditors, post-divorce, against his share which
18 is the - - - the foundation of equitable distribution that
19 once - - -

20 JUDGE FAHEY: So let's say we disagreed with you,
21 what would the public policy - - -

22 MS. RICHMAN: Please.

23 JUDGE FAHEY: - - - implications be for divorced
24 individuals who apparently, in New York, have not been
25 docketing their judgments?



1 MS. RICHMAN: A horror, Your Honor.

2 JUDGE FAHEY: Describe how - - - how do you mean
3 that?

4 MS. RICHMAN: It would potentially undo thousands
5 of awards because 236 equitable distribution says you're an
6 owner. That's how the courts have interpreted it for forty
7 years. If now, all of a sudden, the court were to say, by
8 the way, you're not really an owner, you're a judgment
9 creditor, and somebody has come in over the last ten years
10 or so as - - -

11 JUDGE FAHEY: That has priority, right.

12 MS. RICHMAN: Right, who has a judgment against
13 your ex-spouse, but you have the property and you've owned
14 the property, they could come back after all those years.
15 It also undoes all the future of equitable distribution
16 because 236 says it doesn't matter how title is held. Then
17 you would be saying, well, yes, if it's - - - if it's
18 personalty, you're the owner; at the judgment of divorce,
19 you're the owner. But if it's real property, you're not
20 really an owner, you're a creditor, which is not what 236
21 says. So you would be undoing the entire concept of
22 equitable distribution. We would be going back to a title
23 state. And they - - -

24 JUDGE FEINMAN: Okay. I think we have - - - I
25 want to ask you about something that is not this case, and



1 I recognize it's not this case. But I'm - - - I'm a little
2 worried about it, and that is part of your argument is
3 built upon the entry, right, and the timing of the entry
4 here of the divorce judgment. But what happens - - - and I
5 see this as, you know, maybe a future case - - - when
6 there's a divorce, you know, and - - - and the judge comes
7 down with the decision after trial and divides up the
8 property under equitable distribution and directs entry - -
9 - of the judgment, and there's a delay in the county
10 clerk's office for weeks and weeks and weeks, and it may
11 even go beyond thirty days for bankruptcy - - - you know,
12 then what are we going to do?

13 MS. RICHMAN: Well, I think that the courts have
14 already basically determined that yes, the - - -

15 JUDGE FEINMAN: You know, and assuming that
16 Pangea or whoever the creditor is, has, in the meantime,
17 you know, docketed - - -

18 MS. RICHMAN: Well, they have - - - right. I
19 mean, in - - - because they are - - -

20 JUDGE FEINMAN: I guess what I'm getting at is
21 the focus on entry?

22 MS. RICHMAN: That is what the courts have said,
23 that there's an inchoate right, that you have a protectable
24 right during a divorce, but when the judgment of divorce is
25 entered, you are an owner. Your ownership vests, and that



1 is it. And but - - -

2 JUDGE FEINMAN: So if the county clerk delays in
3 entering, that spouse is unprotected?

4 MS. RICHMAN: Well, you have - - - I mean, there
5 are, potentially, I mean, ways of - - - I assume, of
6 getting potential - - - there are restraints in - - - you
7 know, in - - - in the matrimonial law, in the equitable
8 distribution law. Certainly that 5203(c) was enacted for
9 one specific purpose, and that was where the judgment - - -
10 where the divorce had been on the record and it hadn't yet
11 been entered.

12 JUDGE FEINMAN: Right.

13 MS. RICHMAN: And so the court said, both in
14 commercial cases and in matrimonial cases, I believe
15 docketing had to do with commercial cases not with
16 matrimonial cases, but you could then be considered - - -
17 you get an extra thirty days. Does the legislature then -
18 - -

19 JUDGE FEINMAN: So we'll have to cross that path
20 with the legislature down the road?

21 MS. RICHMAN: That is down the road. But for
22 this case and for all other thousands of cases and all
23 other thousands of litigants, the entry of the judgment
24 confers vested absolute complete ownership. You go one - -
25 - you know, spouse - - - ex-spouse goes their way, another



1 ex-spouse goes their way. That is what is, frankly, partly
2 so brilliant about it. You do not - - - you - - - you are
3 not a judgment creditor in those situations, and you have
4 the ability to get on with your life, economically and
5 other ways. And that is what happened in this case.

6 CHIEF JUDGE DIFIORE: Thank you, counsel.

7 MS. RICHMAN: Thank you, Your Honor.

8 CHIEF JUDGE DIFIORE: Counsel, what about
9 respondent's projection that if we were to decide in your
10 favor this would be a horror?

11 MS. BRONNER: That's simply not so, Your Honor.

12 CHIEF JUDGE DIFIORE: Why is that?

13 MS. BRONNER: The short answer is that this is -
14 - - this - - - the decision in this case will apply to a
15 very narrow class of cases, cases in which the property at
16 issue is held in a trust in which the divorce judgment
17 doesn't require the property to be deeded outright, and the
18 trust dissolved, and - - -

19 JUDGE STEIN: So you're saying if this property
20 was in the husband's name but the same - - - same terms of
21 the - - - the judgment of divorce, that would be a
22 different result?

23 MS. BRONNER: Well, I'm simply saying that - - -
24 again, the - - - the unique facts of this case are that the
25 property is held in a trust and it wasn't a deed of - - -



1 JUDGE STEIN: You see, what I'm trying to get at
2 is I don't see why the trust makes any difference here.

3 MS. BRONNER: Well, also the property is located
4 in a different county, and as - - -

5 JUDGE STEIN: And is that so unusual? I mean,
6 the parties may have been separated for a long time. One
7 lives in one county, another lives in another county,
8 someone may live in another state.

9 MS. BRONNER: And as further evidenced by the
10 fact that the Second Circuit certified this question
11 because there were simply no decisions of this court. In
12 fact, there are only two trial court decisions that have
13 addressed the - - - the intersection of - - - of the areas
14 of law that - - - that are manifest in this - - - in this -
15 - - on this appeal. If - - - if I may just - - -

16 JUDGE STEIN: That me because nobody raised it
17 before but - - -

18 MS. BRONNER: If I may just quickly respond to
19 two other points. First of all, with respect to the focus
20 on - - - on entry as opposed to docketing, I would note
21 that the legislature has made a claim that, quote: "Under
22 CPLR 5203(a), the Supreme Court's award of the marital home
23 could not be enforced until docketed." That is referring
24 to the Musso decision. So clearly, it was the moment of
25 docketing in Musso, not entry, which would have conferred -



1 - - would have conferred upon Tanya Ostashko her - - - her
2 rights.

3 Additionally, I just wanted to note, again, the
4 legislature does not distinguish - - - well, it
5 specifically provides that, in both matrimonial and
6 commercial actions, docketing affects legal ownership, and
7 the docketing date determines the seniority of competing
8 property interests. See CPLR 5203(a). That is in the
9 legislative history of CPLR 5203(c). It plainly - - - it
10 plainly indicates that in both matrimonial and commercial
11 cases docketing determines seniority.

12 JUDGE STEIN: That clearly comes from the
13 language in Musso, right?

14 MS. BRONNER: Excuse me, Your Honor?

15 JUDGE STEIN: We can assume that that language
16 comes from - - - that that comes from the language in
17 Musso, right?

18 MS. BRONNER: It is the legislative response to
19 Musso, Your Honor, specifically, not - - - not from the
20 language itself in Musso. And that confirms, in my
21 respectful opinion - - - or it - - - it confirms, we
22 believe, that clearly the legislature was making plain, in
23 response to Musso, that in all matrimonial cases, whether
24 DRL 236 or DRL 244, docketing was required in order to
25 confer - - - in order to determine seniority, including in



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- - - in matrimonial cases.

CHIEF JUDGE DIFIORE: Thank you, counsel.

MS. BRONNER: Thank you, Your Honor.

(Court is adjourned)



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C E R T I F I C A T I O N

I, Sharona Shapiro, certify that the foregoing transcript of proceedings in the Court of Appeals of Pangea Capital Management, LLC v. Lakian, No. 53 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Sharona Shapiro

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