

**BDP Intl. Fin. Corp. v First Affiliated Sec.**

2010 NY Slip Op 30053(U)

January 5, 2010

Supreme Court, New York County

Docket Number: 600409/06

Judge: Richard B. Lowe

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1-13-10  
JP

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. RICHARD B. LOWE, III  
Justice

PART 54

BOP International

INDEX NO. 600409/06

MOTION DATE 7/14/09

MOTION SEQ. NO. 008

- v -

First Affiliated Securities

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

MOTION IS DECIDED IN ACCORDANCE WITH THE ATTACHED MEMORANDUM DECISION.

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

**UNFILED JUDGMENT**  
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 1415).

HON. RICHARD B. LOWE, III

Dated: 1/5/10

J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 56

-----X

BDP INTERNATIONAL FINANCE CORPORATION,  
CARIBBEAN CARD SYSTEM, INC., CREDIT  
PROGRESSO, S.A., and BANCO DOMINICANO  
DEL PROGRESSO, S.A.,

Plaintiffs,

Index No. 600409/06

-against-

FIRST AFFILIATED SECURITIES and PEDRO  
CASTILLO,

Defendants.

-----X

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 56

-----X

GREENBERG TRAURIG, LLP,

Petitioner,

Index No. 108033/09

-against-

U.S. SPECIALTY INSURANCE CO., NORMAN  
GOODMAN, BDP INTERNATIONAL FINANCE  
CORP., CARIBBEAN CARD SYSTEM INC.,  
CREDIT PROGRESSO S.A., BANCO  
DOMINICANO DEL PROGRESSO S.A. and  
DOES 1 THROUGH 25,

Respondents.

-----X

Richard B. Lowe, III, J.:

In these two proceedings, each disputing the parties' right to recover the proceeds of a

**UNFILED JUDGMENT**  
This judgment has not been entered by the County Clerk  
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obtain entry, counsel or authorized representative must  
appear in person at the Judgment Clerk's Desk (Room  
141B).

bond issued in conjunction with a temporary restraining order, the proceedings are hereby consolidated for determination of the following motions: (1) the motion brought by plaintiffs BDP International Finance Corporation, Caribbean Card System Inc. Credit Progresso, S.A. and Banco Dominicano Del Progresso, S.A. (together, Banco) in the above-captioned action, *BDP International Finance Corporation v First Affiliated Securities*, Index No. 600409/06 (mot. seq. no. 008)(*Banco* action) for an order discharging an undertaking previously given by Banco to obtain a temporary restraining order, and directing the Clerk of the Court to enter judgment of full satisfaction in its favor in the *Banco* action; (2) the petition brought by Greenberg Traurig, LLP (GT), in the proceeding entitled *Greenberg Traurig, LLP v U.S. Specialty Insurance Co.*, Index No. 108033/09 (the *GT* proceeding), for an order, pursuant to CPLR 403 (b), 5225 (b), 5227 and 5239, and Judiciary Law § 475, to determine the rights of GT in the aforementioned undertaking, and ordering a turnover of the proceeds of the undertaking in satisfaction of a judgment obtained in Banco's favor against First Affiliated Securities and Pedro Castillo (together, FAS), defendants in the *Banco* action, (mot. seq. no. 001); (3) the motion brought by Banco for an order dismissing GT's petition (mot. seq. no. 002); (4) respondent U.S. Specialty Insurance Co.'s (Specialty) motion for an order dismissing GT's petition; and (5) Specialty's cross motion to consolidate the two proceedings.

### **I. Background**

These proceedings and motions arise from the *Banco* action, wherein the Banco plaintiffs sued FAS for damages arising from what amounted to a massive theft. Banco moved for a temporary restraining order in the *Banco* action (TRO) in conjunction with a motion for an attachment. The TRO was granted, pursuant to which Banco was ordered to post a bond in the

sum of \$350,000 (the Bond). It did so, with Specialty as surety. When, on April 10, 2006, the court denied the motion for an attachment, the TRO was vacated.

At approximately the same time that Banco requested the TRO, it also commenced an action against FAS in Florida (the Florida action), reiterating the claims brought against FAS in the *Banco* action. On August 10, 2006, the court dismissed the *Banco* action, pursuant to CPLR 3211 (a) (4), in deference to the nearly identical Florida action.

As a result of the vacatur of the TRO, FAS made a motion pursuant to CPLR 6314 and 6315 against the Bond, for attorney's fees and costs sustained in defending the motion for an attachment. Following a reference, the court entered a judgment against Banco in FAS's behalf in the sum of \$282,063.39, exclusive of interest (FAS's NY judgment).

Meanwhile, the Florida action proceeded to judgment, which was awarded to Banco in excess of \$79 million. The motion was domesticated in New York pursuant to CPLR 5401.

In this proceeding, Banco now claims a right to set off the amount of the Bond against its Florida judgment, while GT, FAS's prior counsel, claims a competing right to the proceeds of the Bond, based on an attorney's charging lien for unpaid fees, for which it obtained a confession of judgment from FAS, in the sum in excess of \$300,000. GT has purportedly executed on the Bond by means of writs of execution, directing the Marshall to collect on the Bond.

Banco, on the other hand, has written to FAS's attorneys, requesting that they file a full satisfaction of judgment with respect to FAS's judgment against Banco, as a result of the purported setoff. Banco has so far failed to obtain the satisfaction of judgment from FAS.

The issue raised in the *GT* proceeding is whether GT has successfully executed on the Bond, so as to entitle it to collect an amount sufficient to cover its judgment against FAS. In

motion seq. no. 002, Banco moves to dismiss the *GT* proceeding, based on lack of jurisdiction over the several Banco entities. Banco explains, without dispute, that service commencing the proceeding was made upon the Banco entities by service of process only on Banco's attorneys in the *Banco* action. No effort was made to serve each respondent, which all have their principal places of business in the Dominican Republic. Banco also argues that *GT* has no basis for proceeding on the merits, based on Banco's purportedly superior right to a setoff. Specialty moves to dismiss the proceeding based on Banco's arguments, as well as the argument that *GT* has no standing to seek a discharge of the Bond in its favor.

In the *Banco* action, Banco moves to discharge the undertaking, and enter a full satisfaction of judgment in its favor, based on its purported setoff.

## **II. Discussion**

### **A. Consolidation**

As an initial matter, the court orders the consolidation of the two actions. "[I]t is well settled that there is a preference for consolidation in the interest of judicial economy where there are common questions of law and fact ..." (*Geneva Temps, Inc. v New World Communities, Inc.*, 24 AD3d 332, 334 [1st Dept 2005]). Consolidation will be denied if it will "prejudice a substantial right" of a party (*id.*; see also *RCN Construction Corp. v Fleet Bank, N.A.*, 34 AD3d 776 [2d Dept 2006]). The issues of law and fact herein, concerning the parties' dispute as to their rights to the Bond, call for consolidation of the actions, especially as no prejudice has been shown which would justify denial of the motion.

### **B. Issue of *GT*'s Jurisdiction over Banco**

Jurisdiction is a threshold issue (*Elm Management Corp. v Sprung*, 33 AD3d 753 [2d

Dept 2006]). “It is axiomatic that the failure to serve process in an action leaves the court without personal jurisdiction over the defendant, and all subsequent proceedings are thereby rendered null and void [internal quotation marks and citation omitted]” (*id.* at 755). GT raises two arguments claiming that service of process upon Banco by serving Banco’s attorneys in the *Banco* action is sufficient service on all the Banco entities. First, GT claims that service is proper under CPLR 303. This statute provides that:

The commencement of an action in the state by a person not subject to personal jurisdiction is a designation by him of his attorney ... as agent, during the pendency of the action, for service of a summons pursuant to [CPLR] 308, in any separate action in which such a person is a defendant and another party to the action is a plaintiff if such separate action would have been permitted as a counterclaim had the action been brought in the supreme court.

GT initially maintains that this section applies because Banco brought its action first, and GT is, essentially, FAS’s assignee, “stepp[ing] into the shoes of the FAS defendants as a petitioner in this proceeding” (GT Memorandum of Law in Opposition, at 4; *see Long Island Radiology v Allstate Insurance Company*, 36 AD3d 763, 765 [2d Dept 2007])[assignee “stands in the shoes of an assignor”], who could have brought its action as a counterclaim in the *Banco* action. In the alternative, GT claims that it is an “equitable assignee” to FAS’s rights under FAS’s NY judgment, under Judiciary Law § 475. Thus, GT argues that service on Banco’s attorneys is permissible, because GT’s action is equivalent to a counterclaim brought by FAS, such as FAS could have brought against Banco. GT also contends, alternatively, that, should its motion to consolidate the *Banco* action and the *GT* proceeding be granted, there would no longer be an issue as to its jurisdiction over Banco, thus ameliorating any defect in GT’s service on Banco.

Banco quotes 2 Weinstein-Korn-Miller, NY Civ Practice, ¶ 303:06, at 3-170 for the

proposition that:

[b]y its terms, CPLR 303 is available only if a plaintiff in the subsequent action was a party to the original action. So, if the plaintiffs in a subsequent action were not parties to an earlier related action, they cannot use CPLR 303 to reach the nonresident who initiated the prior action

(*id.*, citing *Adirondack Transit Lines, Inc. v Lapaglia*, 128 AD2d 228 [3d Dept 1987]). In *Adirondack*, the Court found that, under CPLR 303, a plaintiff seeking to serve a second party in a new action, through service on the second party's attorney, could only do so if it had been a party to a prior and continuing action involving the second party, if the plaintiff could have sued the second party in a counterclaim. Without that relationship, and lacking jurisdiction over the second party, service upon the second party's attorney was insufficient to start a new action against the second party.

GT's problem, as it recognizes, is that it was not a party to the *Banco* action, and could not itself have commenced a counterclaim there, so as to satisfy CPLR 303. Consequently, GT seeks to create a relationship between itself and FAS sufficient to transfer to it FAS's right to commence an action against Banco through service upon Banco's attorneys. GT attempts to accomplish this by arguing that it is a real party in interest which may step into FAS's shoes as a party with a counterclaim against Banco, for attorney's fees based on contract, in order to enforce its own right to attorney's fees, for which it has a statutory basis.

"Under the general rule, attorney's fees are incidents of litigation and a prevailing party may not collect from the loser unless an award is authorized by agreement between the parties, statute or court rule" (*Hooper Associates, Ltd. v AGS Computers, Inc.*, 74 NY2d 487, 491 [1989]; *see also TAG 380, LLC v ComMet 380, Inc.*, 10 NY3d 507 [2008]).

It must be kept in mind that there is no common-law cause of action for damages

sustained by an improperly procured preliminary injunction, nor does CPLR 6315 create a statutory cause of action. The basis for damages is the undertaking itself which is a contract between the parties “that the plaintiff, if it is finally determined that [it] was not entitled to an injunction, will pay to the defendant all damages and costs which may be sustained by reason of the injunction”

(*Honeywell, Inc. v Technical Building Services, Inc.*, 103 AD2d 433, 434 [3d Dept 1984], quoting CPLR 6312 [b]). As a result, FAS has a contractual right to sue Banco under the Bond, but no direct right to sue Banco in common law for attorneys’ fees, nor any statutory right to the fees. On the other hand, GT’s claim against FAS is statutory in nature, under Judiciary Law § 475.

Judiciary Law § 475 states, in pertinent part “[f]rom the commencement of an action ... the attorney who appears for a party has a lien upon the client’s cause of action ... which attaches to a verdict ... in his client’s favor, and the proceeds thereof in whatever hands they may come.” It is well settled that the attorney’s lien “essentially creates an equitable assignment to the attorney of the fund procured by his efforts to the extent of the amount of the lien [internal quotation marks and citation omitted]” (*Marsano v State Bank of Albany*, 27 AD2d 411, 413 [3d Dept 1967]). However, “the attorney has no ownership or immediate right to possession and must obtain enforcement of his lien by appropriate order of the court in which the action is pending [internal citation omitted]” (*People v Keefe*, 50 NY2d 149, 156 [1980]).

The flaw in GT’s reasoning is the well-settled rule that, while an assignee “steps into the shoes” of its assignor (*see Long Island Radiology v Allstate Insurance Company*, 36 AD3d at 765), it “acquires no greater rights than those of its assignor” (*Each Acupuncture, P.C. v Allstate Insurance Company*, 61 AD3d 202, 211 [2d Dept 2009]; *see also General Insurance Company of America v Tilcon New York, Inc.*, 294 AD2d 195 [1st Dept 2002]). This court does not

believe that GT can use its statutory lien claim against FAS to step into FAS's potential contractual counterclaim against Banco, just because the end result sought in each proceeding is a recovery of attorney's fees and costs.

GT, as assignee of FAS, cannot have any greater right to sue Banco than FAS has under the circumstances. GT does not, and cannot, seek to enforce a contractual right to attorney's fees, and so, cannot step in to FAS's shoes for this purpose. Without a relationship between FAS and GT sufficient enough to create a right to bring a FAS's counterclaim against Banco, GT cannot rely on CPLR 303 to make service upon Banco's attorneys valid. The court is aware of no precedent which would allow CPLR 303 to be used in this manner, and declines to do so in the present proceeding. GT simply does not have an action which equates to a counterclaim against Banco sufficient to allow it to avoid the important step of proper service. The equitable nature of the charging lien does not affect this result; the only counterclaim FAS could bring against Banco would be for breach of contract. As such, the court holds that service in the GT proceeding was not successfully made upon Banco by service of process upon Banco's attorneys. Therefore, Banco's motion to dismiss the turnover proceeding as to it must be granted.

GT's failure to obtain jurisdiction does not, however, mean that it cannot proceed in this consolidated proceeding in its efforts to obtain a turnover of the monies in the Bond, in spite of Banco's absence in the turnover proceeding. This is because Banco is not a necessary party to GT's proceeding, and need not have been made a party to GT's proceeding at all to make GT's proceeding valid. A necessary party is one who "ought to be [a party] if complete relief is to be accorded between the persons who are parties to the action or who might be inequitably affected

by a judgment in the action ..." (CPLR 1001 [a]). However, under CPLR 5227, the turnover statute, the court "may permit any adverse [party] to intervene," but does not require that party's intervention (*see Matter of Ruvolo v Long Island Rail Road Company*, 45 Misc 2d 136, 146 [Sup Ct, Queens County 1965]; *see also Lincoln Rochester Trust Company v S.C. Marasco Steel, Inc.*, 66 Misc 2d 295 [Monroe County Civ Ct, 1971]). In *Ruvolo* (45 Misc 2d at 146), the court found that third-party judgment creditors "may intervene formally to determine their claims," but does not cite to any obligation to implead such parties. In fact, the court in *Bergdorf Goodman, Inc. v Marine Midland Bank* (97 Misc 2d 311, 313 [Civ Ct, NY County, 1978]), notes that "CPLR article 52 of the CPLR contemplates a "race of diligence,"" (citing *Ruvolo*, 45 Misc 2d at 148), and flatly states that "other judgment creditors are not necessary parties to a special proceeding under CPLR article 52" (*id.* at 314). While not addressing any need for a judgment creditor to implead other judgment creditors, the Court of Appeals has stated that "[r]ival claimants to the ... funds *may* be joined in [a proceeding under CPLR Article 52] so that the court may prioritize the competing interests [emphasis added]" (*National Union Fire Insurance Company of Pittsburgh, Pa. v Eland Motor Car Company, Inc.*, 85 NY2d 725, 729 [1995]).

As a result of the foregoing, it appears that it was not up to GT to bring Banco into its turnover proceeding pursuant to CPLR Article 52, and so, it is irrelevant that Banco might have been improperly served. Consolidation of the proceedings, while not in and of itself a means to obtain jurisdiction over Banco (*Adirondack Transit Lines v Lapaglia* [128 AD2d at 230 ["(t)he mere consolidation of actions does not confer jurisdiction over a defendant who has not been served with process"]), allows Banco and GT to consolidate their "race of diligence" in one proceeding (*Ruvolo v Long Island Rail Road Company*, 45 Misc 2d at 148), even if it is true that,

as this court has found, Banco has not been properly impleaded into the GT proceeding. In this way, it is ensured that any possibility that Specialty or any other party be subject to double liability does not occur. Thus, this court finds that GT did not have to include Banco in its turnover proceeding, and so, GT's proceeding, and Banco's action, may both continue, with all parties' interest in the Bond properly protected.

### **C. Issue of Parties' Right to Collect on the Bond**

#### **i. The Competing Proceedings**

GT claims that it has priority over Banco because (1) it has an automatic, and superior, charging lien against FAS, pursuant to Judiciary Law § 475; and (2) it has executed on the judgment, while Banco has not. Banco claims a superior right to a setoff against the Bond, under Debtor and Creditor Law (DCL) § 151.

The Judiciary Law § 475, as here applicable, states that:

the attorney who appears for a party has a lien upon his client's cause of action, claim or counterclaim, which attaches to a verdict, report, determination, decision, judgment or final order in his client's favor, and the *proceeds thereof* in whatever hands they may come; and the lien cannot be affected by any settlement between the parties before or after judgment, final order or determination [emphasis added]

(see also *City of Troy v Capital District Sports, Inc.*, 305 AD2d 715, 715-716 [3d Dept 2003]).

The charging lien is essentially, "a security interest in the favorable result of litigation"

(*Chadbourne & Parke, LLP v AB Recur Finans*, 18 AD3d 222, 223 [1st Dept 2005]). It attaches solely to the "judgment or settlement reached in favor of the former client in the action in which the discharged attorney was formerly attorney of record" (*Butler, Fitzgerald & Potter v Gelmin*, 235 AD2d 218, 219 [1st Dept 1997]). The identifiable fund upon which the attorney would attach his or her lien must have been created by that attorney's labors (*Banque Indosuez v*

*Sopwith Holdings Corp.*, 98 NY2d 34 [2002]); *City of Troy v Capital District Sports, Inc.*, 305 AD2d 715, *supra*). The lien, which is equitable in nature (*see LMWT Realty Corp. v Davis Agency Inc.*, 85 NY2d 462 [1995]), “must be given effect, even though a prior lien against the specific fund exists” (*id.* at 468).

In contrast, Debtor and Creditor Law § 151 allows a right of setoff to a judgment debtor “against any indebtedness whether matured or unmatured, of [a] creditor to such debtor,” even after an execution against the property is made by another creditor (*see Aspen Industries, Inc. v Marine Midland Bank*, 52 NY2d 575 [1981])[bank judgment debtor holding account of its judgment creditor had superior right of setoff on an account to satisfy a debt simultaneously owed to it by that judgment creditor, even after another judgment creditor executed on the account]).

Under *Aspen*, Banco has made its argument that it has a superior right to set off the amount of the Bond, despite GT’s efforts to execute on the Bond, and despite the fact that it did not exercise the right to a setoff “prior to the making, filing or issuance, or service upon such debtor ...” (*Aurora Maritime Co. v Abdullah Mohamed Fahem & Co.*, 85 F3d 44, 46 [2d Cir 1996]).

The above notwithstanding, Banco has a further hurdle to overcome before it can prove its superior right to collect on the Bond.

Banco, with good cause, places especial reliance on the case *Banque Indosuez v Sopwith Holdings Corp.* (98 NY2d 34, *supra*) (*Banque Indosuez*). In *Banque Indosuez*, the Court addresses the “narrow issue of whether an attorney’s charging lien acquired by defendants’ attorneys on their successful cause of action is entitled to priority over plaintiff’s right to set off

its larger judgment against defendants (*id.* at 37). In the present action, GT's lien is meant to attach to the proceeds of the Bond, as a result of GT's successful assault in the *Banco* action upon the propriety of the Bond. Banco's setoff is meant to apply to the Bond fund created in the *Banco* action, based on Banco's success in the Florida action, where it obtained a judgment over and above the amount represented by the Bond, and owed to FAS.

The Court in *Banque Indosuez* noted that "there has been tension between an attorney's right to collect under a charging lien and an adverse party's right to a setoff -- specifically, which has priority over the other" (*id.* at 41). The Court, after a review of the case law concerning such priority issues, held that

an attorney's charging lien maintains superiority over a right of setoff where the setoff is *unrelated* to the judgment or settlement to which the attorney's lien attached. However, we conclude that a different rule should apply here, where the setoff is the result of judgments *emanating from the same transaction or instrument* [emphases added]

(*id.* at 43).

The *Banque Indosuez* Court eventually found that the plaintiff bank had a superior right to the proceeds that arose in the same litigation in which the defendant's attorneys claimed a charging lien, finding this conclusion to be a result of a "balancing of equities" between the competing claims (*id.*).

In the present action, the issue is whether the Bond, which clearly is subject to GT's attorney's lien, arises from the same "transaction or instrument" as Banco's judgment in the Florida action, which action was a mirror of the *Banco* action, to such an extent that it was found to be a prior pending action under CPLR 3211 (a) (4).

This court finds that the Bond, the result of an unsuccessful attempt to attach FAS's

property in the *Banco* action, was not related to the Florida action, in which no such measure was taken. The Bond was unique to the *Banco* action, and, while the New York and Florida actions sought the same relief, the Bond was not part of “the same transaction or instrument” as envisioned by *Banque Indosuez*. Thus, GT’s charging lien takes precedence over Banco’s purported right to set off its Florida judgment against the Bond.

#### **ii. Specialty’s Motion for Summary Judgment**

Specialty argues for summary judgment on the ground that GT is not mentioned as a beneficiary of the Bond. Specifically, Specialty argues that Banco’s superior right to a setoff, as a named beneficiary under the Bond, gives it priority over any claim made by GT. This argument, however, presupposes that Banco’s right to a setoff is superior to that of GT, an argument which has been settled in GT’s favor. GT, as FAS’s attorney, has proven its right to an attorney’s charging lien as against FAS’s right to the Bond, as a result of its successful assault on the underlying injunction. The lien thus attaches to the proceeds of FAS’s success “in whatever hands [the funds] may come” (Judiciary Law § 475). GT’s attorney’s charging lien thus attaches, by statute, and in equity, to the fund (i.e., the Bond) procured by GT for FAS (*see LMWT Realty Corp. v Davis Agency Inc.*, supra), leaving Specialty, as holder of the Bond, as a proper party to the turnover proceeding, and GT a proper petitioner as against Specialty.

Specialty’s attempt to equate GT’s right to the fund in FAS’s name as FAS’s attorney to the rights of parties in an attachment bond is unavailing (*see First Merchant Bank OSH, Ltd. v Village Road Pictures*, 2002 WL 1423063, 2002 US Dist LEXIS 11769 [SD NY 2002]). *First Merchant* did not involve an attorney’s charging lien statutorily and equitably recoverable from an established fund within the grasp of its client judgment debtor, and is wholly distinguishable.

III. Conclusion

Specialty's motion to consolidate these proceedings is granted. Further, GT has established its right to sue for a turnover of the Bond, and that it has a superior lien on the Bond, by virtue of its charging lien, rendering Banco's attempt to set off its judgment against the Bond fruitless.<sup>1</sup>

Accordingly, it is

ORDERED that the motion brought by U.S. Specialty Insurance Co. to consolidate the two actions is granted, and the action is hereby amended as follows:

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 56

-----X  
BDP INTERNATIONAL FINANCE CORPORATION,  
CARIBBEAN CARD SYSTEM, INC., CREDIT  
PROGRESSO, S.A., and BANCO DOMINICANO  
DEL PROGRESSO, S.A.,

Plaintiffs,

Index No. 600409/06

-against-

FIRST AFFILIATED SECURITIES and PEDRO  
CASTILLO,

Defendants.

-----X

GREENBERG TRAURIG, LLP,

Petitioner,

Index No. 108033/09

-against-

\_\_\_\_\_

<sup>1</sup>In the course of these motions, Banco put forward an informal request for sanctions against GT. This request is denied.

U.S. SPECIALTY INSURANCE CO., NORMAN GOODMAN, BDP INTERNATIONAL FINANCE CORP., CARIBBEAN CARD SYSTEM, INC., CREDIT PROGRESSO, S.A., BANCO DOMINICANO DEL PROGRESSO, S.A. and JOHN DOES 1 THROUGH 25,

Respondents.

-----X;

and it is further

ORDERED that upon service on the Clerk of this Court of a copy of this order with notice of entry, the Clerk shall consolidate the papers in the actions hereby consolidated and shall mark his records to reflect the consolidation; and it is further

ORDERED that a copy of this order with notice of entry shall also be served upon the Clerk of the Trial Support Office (Room 158), who is directed to mark the court's records to reflect the consolidation; and it is further

ORDERED that the motion brought by plaintiffs BPD International Finance Corporation, Caribbean Card System Inc., Credit Progresso, S.A. and Banco Dominicano Del Progresso, S.A. in the above-captioned action, *BDP International Finance Corporation v First Affiliated Securities*, Index No. 600409/06 (mot. seq. no. 008), for an order discharging the undertaking previously given by these entities to obtain a temporary restraining order, and directing the Clerk of the Court to enter full satisfaction in the *Banco* action is denied; and it is further

ORDERED that the petition brought by Greenberg Traurig, LLP, in the proceeding entitled *Greenberg Traurig, LLP v U.S. Specialty Insurance Co.*, Index No. 108033/09, for an order, pursuant to CPLR 403 (b), 5225 (b), 5227 and 5239, and Judiciary Law § 475, to determine the rights of Greenberg Traurig, LLP in the aforementioned undertaking, and ordering

a turnover of the proceeds of the undertaking in satisfaction of a judgment obtained against First Affiliated Securities and Pedro Castillo (mot. seq. no. 001) is granted; and it is

ORDERED and ADJUDGED that U.S. Specialty Insurance Co. is directed, upon receipt of a certified copy of this order and judgment, to turn over to petitioner Greenberg Traurig, LLP, all funds in the bond issued in the action *BDP International Finance Corporation v First Affiliated Securities*, Index No. 600409/06; and it is further

ADJUDGED that, upon such turnover of funds, respondent U.S. Specialty Insurance Co. shall be discharged of all liability on the bond to the extent of payment made; and it is further

ORDERED that the motion brought by BPD International Finance Corporation, Caribbean Card System Inc., Credit Progresso, S.A. and Banco Dominicano Del Progreso, S.A. dismissing Greenberg Traurig's petition is denied; and it is further

ORDERED that the motion brought by U.S. Specialty Insurance Company for an order dismissing Greenberg Traurig, LLP's petition is denied.

Dated: January 5, 2010

HON. F... J.S.C.  
ENTER:  
JAN 5 2010

**UNFILED JUDGMENT**  
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).