

**Kasowitz, Benson, Torres & Friedman LLP v
JPMorgan Chase Bank N.A.**

2015 NY Slip Op 31953(U)

October 20, 2015

Supreme Court, New York County

Docket Number: 157631/2015

Judge: Anil C. Singh

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 45

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KASOWITZ, BENSON, TORRES &
FRIEDMAN LLP,

Petitioner,

DECISION AND
ORDER

-against-

Index No.
157631/2015

JPMORGAN CHASE BANK N.A., THE DAKOTA,
INC., and ALPHONSE FLETCHER, JR.,

Respondents,

-and-

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

Intervenor-Respondents.

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HON. ANIL C. SINGH, J.:

Petitioner Kasowitz, Benson, Torres & Friedman LLP (“KBTF”), as judgment creditor of respondent Alphonse Fletcher, Jr., moves by order to show cause for an order appointing a receiver pursuant to CPLR 5228 and 5240. The respondents and intervenor are not opposed, in principle, to the appointment of a receiver to sell the apartment.

This is an enforcement proceeding commenced by judgment creditor KBTF for: 1) turnover to the sheriff of the City of New York of all capital stock certificates and all of Fletcher's right, title and interest in the proprietary lease(s) in the cooperative apartments located at 1 West 72nd Street, New York, New York, in which Fletcher has an interest and that are currently held by garnishee JPMorgan Chase Bank N.A. ("JPMorgan Chase") and/or Fletcher; 2) determination of the respective rights and interests of KBTF and JPMorgan Chase in the apartment; and 3) sale of Fletcher's interests in 1 West 72nd Street to satisfy KBTF's judgment against Fletcher in the principal amount of \$2,748,244.03 with interest from February 5, 2015. Respondent Fletcher has not answered the petition.

CPLR 5228 gives courts the discretion to appoint a receiver to facilitate the enforcement of a money judgment.

After careful consideration, we find that KBTF has shown by clear and convincing evidence that the appointment of a receiver is necessary for the conservation of the property, to sell the property in an arm's length market transaction that maximizes the proceeds for the benefit of all respondents and the intervenor. Accordingly, it is

ORDERED that the motion seeking the appointment of a receiver is granted; and it is further

ORDERED that Jeffrey L. Goldman, Esq., whose address is 270 Madison Avenue, 5th Floor, New York, New York 10016, telephone number 212-867-4466, extension 312, is hereby appointed receiver; and it is further

ORDERED that the receiver shall take possession of the 965 shares of stock of The Dakota, Inc., owned by respondent Fletcher and the proprietary lease(s) appurtenant thereto for Apartments 52, PHB, and Rooms 270 and 271 in the building located at 1 West 72nd Street, New York, New York; and it is further

ORDERED that the receiver shall, after consulting with the respondents and intervenor, engage a reputable, duly licensed residential real estate broker with meaningful experience marketing and selling cooperative apartments at The Dakota or similar multiple dwellings, negotiate the broker's commission, to market the stock and proprietary lease(s) and seek a purchaser thereof, subject to the customary marketing, purchase application and review process and requirements of the board of directors of The Dakota; and it is further

ORDERED that the receiver shall have the authority to negotiate and enter a contract and to close on the transaction by an assignment and/or transfer of the stock and lease as a single unit or as separate units, as warranted to maximize the proceeds of the sale; and it is further

ORDERED that the receiver shall have the authority to pay all reasonable and

customary costs, expenses, and brokerage commissions incurred for the marketing and sale of the stock and lease; and it is further

ORDERED that the receiver shall deposit all funds at the time he receives them in his own name as receiver in such bank in the County of New York as the receiver shall select. The bank shall provide monthly statements to the receiver and to all parties; and it is further

ORDERED that no withdrawals shall be made from the receiver's account without further order of the Court except the receiver shall have the authority to pay:

a) all real property transfer taxes due to the State or City of New York at the time of sale; and b) all costs, expenses and brokerage commissions described above, and to account to the Court and all lien holders for the gross and net proceeds of such sale, and to thereafter hold the net proceeds in escrow pending further order of this Court as to liens, priorities and further distributions of the proceeds; and it is further

ORDERED that the receiver's commission shall be based on his usual and customary hourly billable rate for all services rendered in connection with all of the aforementioned duties.

The foregoing constitutes the decision and order of the court.

Date: October 20, 2015
New York, New York



Anil C. Singh