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| DLJ Mtge. Capital, Inc. v Kontogiannis |
| 2014 NY Slip Op 30042(U) |
| January 10, 2014 |
| Supreme Court, New York County |
| Docket Number: 104675/10 |
| Judge: Charles E. Ramos |
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION

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DLJ MORTGAGE CAPITAL, INC.,

CORRECTED ORDER
Index No. 104675/10

Plaintiff/Petitioner,

THOMAS HOEY and XIOMARA HOEY,

Third-Party Intervenors-Plaintiffs,

-against-

THOMAS KONTOGIANNIS, GEORGIA KONTOGIANNIS,
LISA DiPINTO a/k/a LISA KONTOGIANNIS a/k/a LISA
POLLATOS, ANNETTE APERGIS, CHLOE KONTOGIANNIS,
ADAM DiPINTO, ELIAS APERGIS, JOHN T. MICHAEL,
JONATHAN RUBIN, MICHAEL A. GALLAN, ESQ., TED
DOUMAZIOS, ESQ., THOMAS F. CUSACK, III, ESQ.,
STEPHEN P. BROWN, ESQ., STEPHEN A. MARTINI,
CARMINE CUOMO, GREGORY HOLLAND, GEORGE HOLLAND,
COASTAL CAPITAL CORPORATION d/b/a THE MORTGAGE
SHOP, d/b/a CLEARLIGHT MORTGAGE, EDGEWATER
DEVELOPMENT INC., GROUP KAPPA CORP.,
LORING ESTATES, LLC, PARKVIEW FINANCIAL
CENTER d/b/a PARKVIEW
FINANCIAL INC. d/b/a PARKVIEW CENTER, INC.,
CLEAR VIEW ABSTRACT, LLC, TRIUMPH ABSTRACT
INC., BOND & WALSH CONSTRUCTION COMPANY,
INTERAMERICAN MORTGAGE CORP., HALIFAX
GROUP, LLC, PLAZA REAL ESTATE HOLDINGS, INC.,
PLAZA FUNDING GROUP, INC., CROSS ISLAND
PLAZA, INC., BROOKVILLE PLAZA MANAGEMENT, INC.,
REAL ESTATE FUNDING GROUP CORP., GREENVALE
FINANCIAL CENTER, INC., 161 HEMPSTEAD REALTY
CORP., 3301 ATLANTIC AVENUE LLC, WESTSHORE
480 DEVELOPMENT LLC, YONAH REAL ESTATE, INC.,
BLOCK 12892 REALTY CORP., STOUT STREET
FUNDING LLC, STOUT STREET FUND I, LP, THE
AXXION GROUP LLC, GARDEN MARKET, INC., PLATO
HOLDINGS LLC, MOONLIGHT MANAGEMENT LTD.,
WASHINGTON TITLE INSURANCE COMPANY, INC.,
CHICAGO TITLE INSURANCE COMPANY, INC.,
UNITED GENERAL TITLE INSURANCE COMPANY, INC.,
And DOE's 1 through 100 inclusive,

Defendants/Respondents,

HAHN & HESSEN LLP, JEFFREY SIEGEL, JUNE
 SIEGEL, Individually and as the Personal Representative
 of the Estate of Seymour Siegel, IDGAF TRUCKING INC.,
 LCK SERVICES CORP., and BLOCK 13434
 DEVELOPMENT LLC,

Respondents.

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Charles Edward Ramos, J.S.C.:

This special proceeding arises out of a priority dispute between competing judgment creditors DLJ Mortgage Capital, Inc. (DLJ) and Jeffery and Richard Siegel (J&R Siegel), who were victims of fraudulent schemes orchestrated by defendant Thomas Kontogiannis (TK). This proceeding was consolidated with the original plenary action, as is detailed below.

Factual Background¹

I. DLJ Proceeding

In its original complaint, DLJ alleged that TK and the entities that he controlled, and their co-conspirators, including his close family members, orchestrated a massive fraudulent conspiracy to fake real estate sales and mortgage loan transactions, and then sell those fake loans to DLJ and other financial institutions. As an indication of the extent of the

¹ The facts set forth herein are taken from the Court's docket and the parties' submissions, and is not intended to be an exhaustive recitation of the complicated and lengthy background of this action. See also the time line annexed to this memorandum decision.

effort to disguise the manner of this fraud, and to simplify the facts herein, the Court will hereinafter refer to the "Kontogiannis Defendants" as including Elias Apergis (EA), Georgia Kontogiannis (GK), Annette Apergis (AA), Chloe Kontogiannis (CK), Lisa DiPinto (LD), Adam DiPinto (AD), Edgewater Development, Inc. (Edgewater), Loring Estates LLC (Loring), Parkview Financial Center, Inc. (Parkview), Bond & Walsh Construction Company (Bond & Walsh), InterAmerican Mortgage Corp. (InterAmerican), Halifax Group (LLC (Halifax)), Plaza Real Estate Holdings, Inc. (Plaza Real Estate), and Plaza Funding Group, Inc. (Plaza Funding), among others.

DLJ claims it was defrauded out of approximately \$50 million which it paid to defendant Coastal Capital Corporation d/b/a The Mortgage Shop (Coastal) to purchase 95 fraudulent mortgage loans between June 14, 2004 and August 30, 2006 (see Amended Complaint, ¶ 157 & Ex. 1 thereto). TK was convicted, along with nine others, in the Eastern District of New York (EDNY), after entering a plea of guilty to conspiracy to commit bank and wire fraud in connection with his role in the scheme. AA, one of TK's three daughters, also pled guilty to participating in the mortgage fraud scheme on June 25, 2013, and is now awaiting sentencing.

DLJ first commenced its legal proceedings (in 2009) against TK and the Kontogiannis Defendants in the EDNY, entitled *DLJ*

Mortgage Capital, Inc. v Thomas Kontogiannis, et al. (the DLJ Federal Action). In April 2010, DLJ commenced the instant action bearing the index number 104675/10 in New York County to void, as fraudulent conveyances, the transfer of certain properties owned by Loring and Edgewater to Halifax. TK is the president of both Loring and Edgewater.

By order dated July 23, 2010, the DLJ Federal Action was dismissed, without prejudice, for lack of subject matter jurisdiction. On August 10, 2010, DLJ moved in this Court for various forms of provisional relief and for leave to file an Amended Summons and Complaint so as to name all of the defendants who were previously named in the DLJ Federal Action.

Upon the application of DLJ, this Court has entered three separate orders of attachment against the Kontogiannis Defendants, on April 14, 2011 (the First Attachment Order), as against the assets and property of TK and AA, amongst others, July 22, 2011 (Second Attachment Order), and November 16, 2011 (Third Attachment Order), as against the assets and property of 3301 Atlantic Avenue LLC (3301 Atlantic) and Axxion Group LLC (axxion), amongst others. As is relevant to this motion, this Court also granted a judgment in favor of DLJ against TK, AA, Axxion, 3301 Atlantic, and others including Group Kappa, and Coastal. The First Order of Attachment, against the assets and property of TK and AA, amongst others, was obtained prior to any

J&R Siegel judgment against TK or AA.

By order dated December 11, 2011, this Court also granted DLJ summary judgment on certain of its claims against GK, AD, EA, Edgewater, Loring, Parkview, Halifax, Plaza Real Estate and Plaza Funding, and judgments to this effect have been entered and docketed, with priority relating back to the filings of the Orders of Attachment, as is detailed below.

J&R Siegel have not obtained any pre-judgment orders of attachment against TK or AA and rely solely on their judgments and pursuit of their post judgment devices.

In January 2012, DLJ commenced this special proceeding (DLJ Proceeding) pursuant to Articles 52 and 62 of the CPLR to determine its priority rights over the Siegels and to enforce attachment orders and judgments in favor of DLJ, with respect to the assets and property of, inter alia, a commercial building located at 3301 Atlantic Avenue and owned by defendant 3301 Atlantic; real property owned by AA including a house located at 16 Woodfield Lane, Glen Head, New York (16 Woodfield), and two parking lots located in Rosedale, Queens, at 134-20 241st Street, Rosedale and 134-22 241st Street (together, the Apergis Lots); and parcels of property owned by defendant Axxion and located in Rosedale, New York, identified as Block 13204, Lots 97, 99, 104; Block 13205, Lots 34, 38, 50 (the Axxion Lots).

II. Blue Ridge Action

In August 2008, J&R Siegel commenced an action in Supreme Court, Kings County titled *Blue Ridge Farms v Kontogiannis*, 23246/08 (Blue Ridge Action). On October 6, 2011, J&R Siegel obtained a judgment against TK in the Blue Ridge Action for \$6,288,256, and obtained executions directed at TK, AA, EA, LD, AD, GK, and other Kontogiannis entities, as garnishees of TK, on November 9, 2011 (Massoud Aff. in Opp., ¶ 7). J&R Siegel obtained a judgment against AA in the Blue Ridge Action on May 17, 2012.

III. J&R Siegel Enforcement Proceeding

On November 1, 2011, J&R Siegel commenced an Article 52 proceeding in Supreme Court, Kings County seeking to enforce their judgment against TK and naming as respondents certain garnishees, including AA, bearing the index number 24753/11 (J&R Siegel Enforcement Proceeding).

In the J&R Enforcement Proceeding, J&R Siegel alleged that all of the assets held in the names of AA and other Kontogiannis family members and entities were funded and put in their names by TK for the express purpose of hindering and frustrating the efforts of creditors from enforcing their rights against him. They sought a declaration that TK is the actual, equitable and beneficial owner of, inter alia, all of AA's real and personal property assets (J&R Siegel Enforcement Proceeding Petition, ¶ 49, Exhibit 9, annexed to the Index of Exhibits for the 10/15/12 Sanctions Hearing).

IV. Consolidation Order

In January 2012, DLJ moved before this Court to consolidate the original DLJ action with the DLJ special proceeding and the J&R Siegel Enforcement Proceeding (together, the Consolidated Proceedings).

By order dated April 14, 2012, this Court granted DLJ's motion to consolidate (Consolidation Order) (see 6/12/2012 Tr 28-29).

V. The July 27, 2012 Order

At the time that the Court granted DLJ's motion to consolidate the original DLJ action with the DLJ special proceeding and the J&R Siegel Enforcement Proceeding, pending in the J&R Enforcement Proceedings in Kings County were motions for partial summary judgment seeking a determination of priorities of the parties. The Court directed that the motions would be re-submitted once the Consolidation Order was effectuated and the files transferred from Kings County (3/22/12 Tr 29:9-23, 31:22-26).

On June 12, 2012, this Court heard oral argument on these re-noticed motions for partial summary judgment. In the motions, J&R Siegel sought an order vacating and/or modifying DLJ's Third Order of Attachment (as against Axxion and 3301 Atlantic, amongst others), and for partial summary judgment determining and declaring the priority rights pursuant to CPLR 5234 (b) of J&R

Siegel and DLJ in, *inter alia*, garnishee respondents 3301 Atlantic Avenue and Axxion (see Notices of Motion, denominated as motion sequence 03-04 in the then-unconsolidated DLJ proceeding, Exhibits 14, 15 annexed to DLJ's Index of Exhibits for the 10/15/13 Hearing on Sanctions).

Counsel for J&R Siegel specifically argued in support of the motion that they "delivered executions to the authorized enforcement officers for levy thereon at least two weeks prior to the time that DLJ delivered the order of attachment under which it claims an interest in the same property and assets to the same enforcement officer- i.e. the Sheriff of the City of New York" (J&R Siegels' Joint memo. of Law in Support of mot seq 03-04, at pg 3, 8-10). The property and assets referred to in the J&R Siegels' motion was, *inter alia*, that of 3301 Atlantic Avenue and Axxion.

This Court also heard oral argument on J&R Siegels' motion to vacate the First Order of Attachment as pertained to the assets of AA (denominated as motion sequence 05 in the then-unconsolidated DLJ proceeding).

On July 27, 2012, this Court rejected J&R Siegels' arguments and entered an order denying in its entirety the J&R Siegels' motion for partial summary judgment, which order was affirmed (see below). In that order, the Court also held that DLJ has a perfected attachment and/or is a judgment lien creditor with

senior rights over J&R Siegel in and to the real and personal property owned by TK, Loring, Edgewater, Group Kappa, Interamerican, Halifax, Parkview, GK and EA, and with respect to an escrow account which represented the proceeds received from Loring and Edgewater in connection with the sale of certain properties (July 27, 2012 Order pertaining to priority over the assets of TK). In the July 27, 2012 Order pertaining to priority over the assets of TK, it specifically states that "DLJ is a duly perfected attachment and/or judgment lien creditor with senior rights over the Siegels in and to the real property owned by ... TK" (Exhibit 25, annexed to DLJ's Exhibits for the 10/15/13 Sanctions Hearing).

In that order, this Court expressly reserved decision as to the respective parties' priority rights over other assets and property of the Kontogiannis Defendants set forth in DLJ's original petition, which include the real and personal property of AA, who at that time was an attachment debtor of DLJ and a judgment creditor of J&R Siegel (see 6/12/2012 TR 53-54, 57). Those assets are the subject of this motion.

As stated above, J&R Siegel appealed the Consolidation Order, the July 27, 2012 Order pertaining to priority over the assets of TK, and denial of its motion for partial summary judgment.

On October 17, 2013, the First Department unanimously

affirmed both the Consolidation Order and the July 27, 2012 Order pertaining to priority over the assets of TK (*DLJ Mortgage Capital Inc. v Kontogiannis*, 110 AD3d 522 [1st Dept 2013]). As to consolidation, the First Department specifically held, as to the J&R Siegel Enforcement Proceedings,

"[C]oncern petitioner's [DLJ's] and the Siegels' efforts to secure their rights and enforce judgment against the same assets. Indeed, the plenary action gave rise, directly to petitioner's enforcement action and thus to the priority dispute among the judgment creditors. Accordingly, the interests of justice and judicial economy will best be served by a joint trial."

In addition, the First Department also denied the motion to vacate the Third Attachment Order (that appeal did not relate to the other attachment orders), and all other grounds for their motion for partial summary judgment, and stated, unequivocally: "[I]n each case petitioner [DLJ] took the steps required to perfect the judgment and the order of attachment." Undoubtedly, this decision of the Appellate Division is law of the case.

Both prior to and subsequent to this Court's Consolidation Order (entered June 2012), and entry of this Court's July 27, 2012 Order pertaining to priority over the assets of TK, J&R Siegel have commenced multiple proceedings and filed numerous motions in other jurisdictions pertaining to identical real and personal properties at issue in the Consolidated proceeding and already partly ruled upon or expressly reserved for decision by this Court. In these other proceedings, J&R Siegel have

attempted to execute upon their judgment against TK and AA.

It is this conduct which is largely the subject of DLJ's cross-motion (motion sequence 063) for sanctions against J&R Siegel and their counsel, Ahmed Massoud, Esq.

VI. The Proceedings in Other Counties

A. Moonlight Management Action

In late September 2012, J&R Siegel commenced an Article 52 special proceeding in the Supreme Court, Queens County seeking enforcement of their judgment in the Blue Ridge Action against TK and Moonlight Management Ltd. (Moonlight Management), for whom TK is the sole shareholder (Moonlight Management Proceeding).

In the Moonlight Management Proceeding, J&R Siegel allege that all of the properties owned by Moonlight Management (Moonlight Management Properties), which include certain of the parcels (Block 13204, Lots 97, 99, and 104), which DLJ identifies in its original petition as the Axxion Lots, are subject to the judgment obtained against TK in the Blue Ridge Action.

On April 10, 2013, Justice Grays entered an order in the Moonlight Management Proceeding declaring Moonlight Management to be an alter ego of TK, appointing a receiver to take possession and control of the Moonlight Management Properties, and directing the receiver to sell the properties to satisfy J&R Siegel's judgment against TK.

B. Garden Market Proceedings

In October 2012, J&R Siegel commenced an Article 52 Proceeding in Supreme Court, Queens County against TK and other garnishees as respondents against Garden Market Inc. (Garden Market Proceedings).

In the Garden Market Proceedings, J&R Siegel allege that Garden Market owns parcels (Block 13205, Lots 34, 48, and 50), identified therein as the "Garden Market Properties," and which DLJ identifies in its original petition as comprising, in part, the Axxion Lots. In the Garden Market Proceedings, J&R Siegel seek a declaration that Garden Market is the alter ego of TK, and that TK's ownership interest is subject to the satisfaction of the judgment against TK in the Blue Ridge Action.

On June 7, 2013, Justice Siegal issued an order declaring Garden Market to be an alter ego of TK, the rightful owner of the Garden Market Properties, and that Axxion has no right or interest in the Garden Market Properties. Justice Siegal appointed a receiver to take possession of and sell the Garden Market Properties in order to satisfy the judgment obtained against TK in favor of J&R Siegel in the Blue Ridge Action.

Further complicating the issues, in the Consolidated Proceedings before this Court, J&R Siegel takes a contrary position and represents that AA wholly owns and controls Garden Market and 3301 Atlantic Avenue LLC (Atlantic Avenue) (J&R Siegels' Memo. of Law, mot seq 063 at 12).

Moreover, in the Consolidated Proceedings, DLJ had alleged in its original petition that Axxion, in fact, owns both the Garden Market and Moonlight Management Properties, i.e. the Axxion Lots. DLJ obtained orders and an equitable judgment to this effect prior to the time that Justice Siegal ruled that Axxion has no interest in the Garden Market Properties.

Specifically, on November 16, 2011, the Third Order of Attachment was entered against the real and personal property of, amongst others, Axxion, which was served on the Queens County Clerk on November 23, 2011. On October 2, 2012, DLJ obtained a judgment against Moonlight Management and Garden Market, amongst others. Thereafter, on October 22, 2012, as modified on November 26, 2012, the Court entered an order and an equitable judgment declaring that neither Garden Market nor Moonlight Management have any right, title or interest in the Axxion Lots, and directed both Garden Market and Moonlight Management to convey title to these properties to Axxion (hereinafter, the Axxion Orders) (NYSCEF Doc. No. 741, 746). These parties did, in fact, effectuate conveyance, and as of this date, Axxion is the title record owner of the Axxion Lots.

No party took an appeal of the Axxion Orders, which remain law of the case.

This Court recently granted DLJ's motion (064) to consolidate both the Moonlight Management and Garden Market

Proceedings into the Consolidated Proceedings before this Court (December 3, 2013 Order).

C. 3301 Atlantic Avenue

With respect to 3301 Atlantic, J&R Siegel again rely upon the December 12, 2012 execution directed at AA (not to TK) and delivered to the Nassau and Kings County Sheriff to levy upon her personal interests in Garden Market and 3301 Atlantic.

However, on November 16, 2011 (more than a year earlier), DLJ's Third Attachment Order was entered against the real and personal property of 3301 Atlantic, which owns a commercial building at this address. On December 8, 2011, the New York City Sheriff served the Third Attachment Order on the Kings County Clerk. On October 23, 2012, DLJ obtained a judgment against 3301 Atlantic, amongst others.

On July 25, 2012, J&R Siegel delivered to the Sheriff of the City of New York an execution, as garnishee, to AA's shares of stock in 3301 Atlantic Avenue (Massoud Aff., ¶ 6, Exhibit 30, annexed to DLJ Index of Exhibits for the 10/15/13 Sanctions Hearing). However, J&R Siegel did not obtain a judgment lien as to the real property owned by the corporation, 3301 Atlantic.

In motion sequence 063, which is the subject of this memorandum decision, J&R Siegel moves this Court, in part, to determine the priority as between themselves and DLJ with respect to AA's shares of stock and ownership interest in Garden Market

and 3301 Atlantic, amongst others (NYSCEF Doc. 980).

D. EDNY J&R Siegel Action

Five days after the First Department's affirmance of the Consolidation Order and July 27 order pertaining to priority over the assets of TK, which included the denial of the Siegel's application to vacate the Third Attachment Order, J&R Siegel commenced an action pursuant to Articles 52 and 62 of the CPLR in the EDNY (J&R Siegel EDNY Action) seeking to enforce their judgment against AA in the Blue Ridge Action, and seeking an order that the First Attachment Order should be vacated with respect to AA's real property. J&R Siegel also sought an order determining the priorities of certain parties with respect to AA's property and the appointment of a receiver.

DLJ, named as a defendant therein, moved to dismiss the EDNY Siegel Action on the ground that it was duplicative of this action; the motion remains *sub judice* before Judge Kuntz.

E. Turnover Orders in the Blue Ridge Action

A full half a year after the Consolidation Order was entered in this Court pertaining to the Siegels' and DLJ's judgment enforcement proceedings, J&R Siegel moved by way of orders to show cause dated January 22 and January 24, 2013 pursuant to CPLR 5225 in the Blue Ridge Action directing AA, as judgment debtor, to turn over her interest in Garden Market and 3301 Atlantic Avenue, in an effort to enforce its judgment against AA (see

Massoud Aff., Exhibit 30, annexed to DLJ's List of Exhibits for the 10/15/13 Sanctions Hearing).

This Court notes with incredulity that J&R Siegel sought a judgment enforcement device in the Blue Ridge Action, despite counsel for J&R Siegel's representation to this Court on the record his understanding that DLJ's motion to consolidate was for the purpose of joining all of the Article 52 judgment enforcement proceedings (which presumably would include this very application), and the issues with respect to determination of the priorities and interests of the different parties (see 3/22/2012 Tr 16-26).

DLJ appeared in the Blue Ridge Action to oppose J&R Siegel's application. By order dated June 10, 2013, Judge Schmidt in the Blue Ridge Action directed and ordered AA to deliver to J&R Siegel any and all interest, equitable, legal or beneficial she has in Garden Market and 3301 Atlantic (her personal property). Judge Schmidt also directed AA, amongst others, to pay over to J&R Siegel rent collected from 16 Woodfield.²

Discussion

DLJ Mortgage Capital, Inc. (DLJ) originally commenced this special proceeding pursuant to Articles 52 and 62 of the CPLR seeking an order that it is the duly perfected pre-judgment

² By way of a notarized quitclaim deed executed on July 11, 2013, AA turned over to J&R Siegel any and all interest in Garden Market and 3301 Atlantic (see Sections VI supra).

attachment and/or judgment lien creditor with superior rights over judgment creditors J&R Siegel and others with respect to certain property and assets of TK and the Kontogiannis Defendants.³

In July 2013, J&R Siegel moved, in motion sequence 063, to vacate the First Order of Attachment in favor of DLJ against the assets and property of AA, and to determine the order of priority between J&R Siegel and DLJ in specified assets and property owned by AA, including 16 Woodfield Lane, the Apergis Lots, and AA's membership interests in Garden Market and 3301 Atlantic.

DLJ cross-moved for sanctions against J&R Siegel and their counsel, Ahmed Massoud, Esq., pursuant to 22 NYCRR § 130-1.1, and enjoining J&R Siegel and their counsel from filing additional duplicative motions and/or proceedings.⁴

In motion sequence 064, DLJ moved to consolidate two special

³ DLJ's special proceeding was originally filed in the action bearing index number 150095/12, and denominated as motion sequence 01 in that action.

⁴ The Court denied J&R Siegel's motion to the extent that it sought to vacate the First Order of Attachment as law of the case, and granted DLJ's cross-motion to the extent of enjoining J&R Siegel and their counsel from filing additional duplicative motions and/or proceedings without notice to DLJ (10/15/2013 Tr).

J&R Siegel also sought to make a procedurally improper cross-motion to DLJ's cross-motion, for imposition of sanctions against DLJ for frivolous motion practice, which the Court indicated should be made as a separate motion unless the parties could stipulate to a briefing schedule (10/15/13 Tr 80:14-26, 81:2-21).

proceedings pending in Supreme Court, Queens County, which the Court granted (12/3/2013).

This Court had previously reserved decision with respect to that portion of DLJ's petition which sought the determination of priority between DLJ and J&R Siegel in and to the real and personal property of AA (see 7/16/2013 Transcript), the Axxion Lots, referred to by J&R Siegel in the Garden Market and Moonlight Management Proceedings as the Garden Market and Moonlight Management Properties (see Sections VI supra). This previously reserved issue is consolidated herein with motion sequence 063 for disposition. The cross-motion for sanctions is the subject of an ongoing evidentiary hearing.

According to DLJ, it is a duly perfected attachment and judgment lien creditor with respect to AA's personal and real property, namely 16 Woodfield and the Apergis Lots, in addition to the Axxion Lots and 3301 Atlantic, with priority rights over J&R Siegel. DLJ contends that it has achieved priority over the real properties at issue by filing the First and Third Attachment Orders in the counties where the real properties owned by AA, Axxion and 3301 Atlantic, are located, pursuant to CPLR 5203 and 6216, and the judgments that it obtained against AA, Axxion, and 3301 Atlantic date back uninterrupted, by virtue of the extension

orders to the date of entry of the respective Attachment Orders.⁵

With respect to the personal property of AA and the entities that own the real properties at issue, DLJ maintains that it has achieved priority over J&R Siegel by levying first, which, in this instance, means execution on the property by delivering the Third Attachment Order and judgments to the Sheriff in the county in which the properties are located, under CPLR 5202 (a), 5230 and 5232.

J&R Siegel assert in conclusory fashion, without a factual basis, that they have priority over DLJ with respect to the personal and real property of AA because, notwithstanding that DLJ's First Attachment Order was filed prior to the Siegels' judgment, DLJ has failed to demonstrate that it has done anything to enforce those orders. J&R Siegel secured turnover orders in the Blue Ridge Action directing AA to turnover and deliver to the Nassau and Kings County Sheriff all of the shares of stock and all documents evidencing her ownership of any and all interest held by her in Garden Market and 3301 Atlantic, and a separate order directing AA to deliver to the Clerk of the Supreme Court, Kings County the sum of \$33,733 collected in connection with

⁵ DLJ obtained an order from this Court pursuant to CPLR 6214, which extended its time to perfect its levies pertaining to the First Attachment Order (the Extension Order), the Second and Third Attachment Orders (Second Extension Orders), and any judgments it obtained (Levy Extension Order) (together, Extension Orders).

rental of 16 Woodfield.

J&R Siegel have argued to this and other courts on numerous occasions that the DLJ Proceeding is not an Article 52 judgment enforcement proceeding with respect to AA, because at the time that DLJ commenced its special proceeding in this Court in January 2012, it had not yet obtained a judgement against AA; DLJ obtained a judgment against AA on November 26, 2012.

Premised largely upon this flawed argument, even after this Court entered the Consolidation Order in June 2012, J&R Siegel have commenced at least six other proceedings in other jurisdictions, seeking orders pertaining to identical real and personal properties at issue in the Consolidated proceeding and already ruled upon or expressly reserved for decision by this Court in the July 27, 2012 Order pertaining to priority over the assets of TK. These six other proceedings were commenced often without notice to DLJ or notice of these proceedings to the Justices to whom the other proceedings were assigned.

J&R Siegel commenced the J&R Siegel EDNY action wherein it is argued in the petition for a declaration of priority vis-a-vis other creditors with respect to AA's assets that the First Order of Attachment that DLJ obtained against AA in this action gave DLJ an unwarranted priority over AA's other creditors. J&R Siegel otherwise seek the identical relief of its withdrawn motion in this action, vacating the First Attachment Order (EDNY

Complaint, ¶¶ 73-83, Exhibit 5, annexed to DLJ's Index of Exhibits for the 10/15/13 Sanctions Hearing).

Counsel for J&R Siegel does not explain why he has failed to provide notice to DLJ in numerous proceedings where he has sought the appointment of receivers of property for whom priority has already been adjudicated, as he is required to do by CPLR 5228. His contention that it is "mandatory under the law" is nonsensical and baseless, and does not explain the failure to provide notice to senior creditors (and see CPLR 5239, 5221).

In any event, the Court will not permit these transparent attempts at obfuscation and subterfuge to undermine the resolution of the legal issues before it, and will separately consider the propriety of counsel's behavior in the ongoing sanctions hearing.

At the time that DLJ commenced its special proceeding pursuant to Articles 52 and 62 of the CPLR, DLJ was an attachment creditor with respect to AA, Axxion and 3301 Atlantic (among others). DLJ specifically listed AA's and these entities' real and personal properties in its petition, in addition to other property that it sought a declaration thereto (DLJ Proceeding Petition, ¶¶ 57). The First Attachment Order that DLJ obtained against AA was served upon the appropriate enforcement officers in both New York City and Nassau County, the counties in which her real properties are located. The Third Attachment Order that

DLJ obtained as against Axxion and 3301 Atlantic was also served upon the appropriate enforcement officers.

DLJ obtained Extension Orders from this Court pursuant to CPLR 6214, that extended its time to perfect its levies pertaining to all three Attachment Orders and any judgments it obtained.

An examination of the relevant provisions of the CPLR make it plainly clear that the only liens that Article 52 creates is that of a judgment creditor or a pre-judgment attachment creditor. Thus even a pre-judgment attachment creditor, such as DLJ, can achieve priority over a judgment creditor with respect to a debtor's property, if the attachment creditor actually levied upon the property, and/or delivers the execution or attachment order to the appropriate enforcement officer, first (CPLR 5203, 5234, 6226; see also David D. Siegel, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, C5202:1).

With respect to real property, competition among creditors depends upon the simple order in which judgments are docketed in the county in which the real property is situated, whereupon the judgment, or attachment becomes a lien (CPLR 5203, 6216). Levy and sale of real property are governed by CPLR 5235, 5236.

DLJ has demonstrated that it is entitled to the award of priority with respect to AA's, Axxion's and 3301 Atlantic's real property vis-a-vis J&R Siegel. J&R Siegel failed to perfect a

lien on the real property of Axxion and 3301 Atlantic (as opposed to the membership interest of the entities themselves) and failed to obtain a lien of the real property of AA until after DLJ's First Attachment Order. It should also be noted that J&R Siegels' pursuit of liens against AA's purported membership interests, discussed below, is futile because the only property of value owned by these entities is the real property, and that realty has been encumbered by DLJ's Orders of Attachment and judgment liens.

On April 14, 2011, DLJ obtained the First Attachment Order as against AA's real and personal property, amongst others. On April 26 and May 3, 2011, the Nassau and Queens County Sheriffs served the county clerks of their respective jurisdictions with the First Attachment Orders, which are the counties where the real properties 16 Woodfield and the Apergis Lots are located, and DLJ obtained the Extension Orders which extended the time for the sheriff to perfect the levies upon the properties. DLJ obtained a judgment against AA on November 26, 2012, and filed a transcript of the judgment in the clerk's offices for Nassau and Queens Counties. On November 30, 2012, DLJ docketed the judgment against AA in the county clerk's offices of Queens, Kings and Nassau Counties.

On November 16, 2011, DLJ obtained the Third Attachment Order as against the real and personal property of Axxion and

3301 Atlantic. On November 21 and 23, 2011, the New York City, Queens County and Albany County Sheriffs served the county clerks of their respective jurisdictions and the Secretary of State⁶ with the Third Attachment Order. On December 8, 2011, the Kings County Sheriff levied on real property identified in the Third Attachment Order that is located in Kings County by serving the Kings County Clerk.

DLJ obtained an equitable judgment against Axxion on October 23, 2012, declaring that Axxion holds title to the Garden Market and Moonlight Management Properties, i.e. the Axxion Lots, and obtained a judgment against 3301 Atlantic on the same date.

On October 24, 2012, DLJ docketed the Axxion and 3301 Atlantic judgment in the county clerk's offices of Queens, Kings and Nassau Counties (Exhibit UU, annexed to the Amato Aff. dated November 12, 2013). These judgments relate back to the Third Attachment Order for purposes of priority.

On November 28, 2012, Garden Market transferred to Axxion fee simple title certain of the Axxion Lots, which is reflected in the Office of the City Register (Exhibit WW, annexed to the Amato Aff. dated November 12, 2013). On December 18, 2012, Moonlight Management transferred fee simple title of certain of the Axxion Lots to Axxion (Exhibit AAA, annexed to the Amato Aff.

⁶ DLJ moved for alternate service upon the Secretary of State with respect to, inter alia, Axxion and 3301 Atlantic, which this Court granted without opposition.

dated November 12, 2013). On December 1, 2011, DLJ obtained the Second Extension Order which extended the time for the sheriff to perfect levies in the Third Attachment Order until fourteen days after final judgment is entered. On March 30, 2012, the Court entered the Levy Extension Order, extending DLJ's time to perfect any levies made pursuant to all judgments one hundred and eighty days after final judgment is entered against the last remaining defendant.

J&R Siegel obtained a judgment against AA on May 17, 2012, and docketed its judgment on June 22 and 28, 2012 with the Queens and Nassau County Clerk.

DLJ's judgments against AA, Axxion and 3301 Atlantic, although obtained subsequent to J&R Siegel's judgment against AA, became judgment liens and date back to the First and Third Attachment Orders. The First and Third Attachment Orders created a lien on the real properties attached, and are operative as of the dates of those orders (CPLR 6216; see generally Eleanor L. Grossman and Mary Babb Morris, 7 C.J.S. Attachment § 263).

The record reveals no intervening liens from the brief time period between DLJ's motion to extend the levy and entry of the Extension Orders. J&R Siegel has not identified any intervening liens nor demonstrated that DLJ's levies lapsed and became void prior to obtaining the Extension Orders.

This Court has carefully considered J&R Siegel's arguments

in opposition, and finds them unpersuasive.

First, J&R Siegel have failed to obtain a judgment against 3301 Atlantic or Axxion, nor have they perfected a lien against their real property. In fact, J&R Siegel, in their motion for partial summary judgment, specifically sought a determination that they had senior rights over DLJ with respect to the property and assets of 3301 Atlantic Avenue and Axxion because they served executions on these entities, as garnishees of TK, first (denominated as sequence 03-04 in the unconsolidated DLJ proceeding). This Court rejected that argument in the July 27, 2012 Order pertaining to priority over the assets of TK, which denial was affirmed in its entirety by the First Department on October 17, 2013 (see *DLJ Mortgage Capital, Inc.*, 110 AD3d 522).

Although the July 27, 2012 Order denying the Siegel's motion for partial summary judgment as to priority over the assets and the property of Axxion and 3301 Atlantic occurred before DLJ obtained judgments against these entities, the Siegels have not demonstrated that DLJ's levies subsequently lapsed or became void.

Alternatively, J&R Siegel assert that they have achieved priority vis-a-vis DLJ over 3301 Atlantic, because they have obtained a turnover order against AA for her membership interest in that entity, and obtained receivership orders with respect to the sale of the Axxion Lots in the Moonlight Management and

Garden Market Proceedings, relying upon CPLR 5234 [b] and [c]. J&R Siegel alleges that AA wholly owns 3301 Atlantic Avenue, and sought and obtained orders in the Garden Market proceeding that Garden Market is the alter ego of TK.

CPLR 5234 only governs the priority competition as to the personal property of a judgment debtor between an attachment creditor who has obtained an order of attachment under Article 62 and an execution creditor who has obtained a judgment and issued an execution as against that very personal property (CPLR 6226; Vincent C. Alexander, Practice Commentaries, McKinney's Cons. Laws of NY, Book 7B).

Under CPLR 5234 (b), where two or more executions or orders of attachment are issued against the same judgment debtor's personal property (as is the case here), priority is determined in the order of the execution or order of attachment levied upon. First in time prevails. Respecting priority of judgments, in order for a judgment to attain status in the ranking of priorities pertaining to personal property, there must be either a levy, an order directing delivery of property, or appointment of a receiver (CPLR 5234 [c]; *City of New York v Panziner*, 23 AD2d 158, 162 [1st Dept 1965]; *Fehr v First Americana Corp.*, 31 AD2d 967, 968 [2d Dept], *appeal dismissed* 25 NY2d 890 [1969]).

At the outset, the Court notes that the CPLR authorizes a judgment and/or attachment creditor to reach out for any property

interests the judgment debtor may have, whether realty or personalty, tangible or intangible, so long as it is property that is capable of assignment or transfer (CPLR 5201 [b]). The CPLR does not favor enforcement as against one type of property interest over another, so long as it is property available for application of a judgment and/or a pre-judgment attachment, and the creditor does not misstep (see generally David D. Siegel, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, C5201:9, 19; CPLR 6202).

In this case, DLJ has sought to treat the particular interests at issue (3301 Atlantic and Axxion) as both realty and personalty. As discussed above, DLJ has already demonstrated that it has achieved priority over J&R Siegel with respect to Axxion's and 3301 Atlantic's real property by docketing the judgments it obtained against these entities in the counties where their real properties is located, which judgment liens date back to the Third Attachment Order (CPLR 5203; 6216; see also CPLR 6501).

J&R Siegel has treated the interests at issue (3301 Atlantic and Axxion) as the personalty of AA and/or TK (in other proceedings). J&R Siegel are thus seeking to acquire the real property by owning the stock of the owner of the property. J&R Siegel did not obtain a judgment, nor has it demonstrated that it achieved a judgment lien, against the real properties of these entities. Rather, J&R Siegel sought enforcement as against the

purported membership interests that AA and/or TK (as alter ego) has in 3301 Atlantic, Moonlight Management and Garden Market.

However, DLJ also levied against the personal property of AA in that the Nassau County Sheriff served AA with the First Order of Attachment and the 11/26/12 judgment execution (Exhibits BBB, annexed to the Amato Aff. dated November 12, 2013). Levy was, therefore, complete (see CPLR 5201, 5232; McKinney's Cons Laws of NY, Book 7B, C5201:19).

Contrary to J&R Siegel's contention, neither an order of attachment, nor an execution of judgment, need bear specification when levied in order to obtain priority (*Truebner Voelbel Co. v A. Melides & Fils*, 138 NYS2d 391, 393 [Sup Ct, NY County 1954], *affirmed* 285 AD 928 [1st Dept 1955]).

DLJ also levied upon the personal property of 3301 Atlantic and Axxion, in that the appropriate Sheriffs served a copy of the Third Attachment Order and DLJ sought an Article 52 order with respect thereto (Exhibit V, annexed to the Amato Aff. dated November 12, 2013) (see CPLR 5201, 5232; McKinney's Cons Laws of NY, Book 7B, C5201:19).

J&R Siegel also place much significance upon the undisputed fact that DLJ did not levy upon the membership interests of Garden Market or Moonlight Management. DLJ had obtained an order and equitable judgment (Axxion Orders) that all of the real property of these entities was actually owned by Axxion, pursuant

to which Garden Market and Moonlight Management transferred all of their interests to Axxion, and no appeal was taken. The Garden Market and Moonlight Management entities are mere shells.

With respect to the finding that J&R Siegel obtained in the Garden Market proceeding, and is seeking in the Moonlight Management proceeding, that Garden Market is the alter ego of TK, DLJ levied (and re-levied) upon TK's personalty before J&R Siegel, by delivering executions to the New York City, Queens County and Nassau County sheriffs and upon garnishees, which all relate back to the First Order of Attachment (Exhibits G, O, P, Z, AA annexed to the Amato Aff. dated November 12, 2013) (see CPLR 5201, 5232; McKinney's Cons Laws of NY, Book 7B, C5201:19).

J&R Siegel otherwise fail to demonstrate that the efforts at execution against the personalty at issue that they undertook and the orders they obtained in the Blue Ridge Action and the Garden Market and Moonlight Management proceedings defeat DLJ's priority, in this regard.

Moreover, this Court notes in closing that in their Orders to Show Cause in the Blue Ridge Action, wherein J&R Siegel sought and obtained a turnover order of AA's membership interests in 3301 Atlantic and Garden Market, and in the Moonlight Management and Garden Market proceedings, counsel for J&R Siegel represented that no prior request for the relief was requested in that or any other court. In the ongoing sanctions evidentiary hearing against

counsel for J&R Siegel, the Court is considering whether these were false representations, and whether this conduct is sanctionable.

These representations were made after DLJ obtained the First and Third Attachment Orders (dated 4/11/2011 and 11/16/2011) as against the property and assets of TK, AA, 3301 Atlantic and Axxion; after the Consolidation Order was entered in this Court pertaining to the Siegels' and DLJ's judgment enforcement proceedings (see Massoud Aff., Exhibit 30, annexed to DLJ's List of Exhibits for the 10/15/13 Sanctions Hearing); after this Court's denial of the Siegels' motion for a determination that it had senior rights over DLJ with respect to its execution on 3301 Atlantic Avenue and Axxion in the July 27, 2012 Order pertaining to priority over the assets of TK; after this Court entered an equitable judgment against Axxion and directing that Garden Market and Moonlight Management transfer the Axxion Lots to Axxion, and after these entities did, in fact, transfer fee title to Axxion on November 28 and December 18, 2012 (Exhibits WW, AAA annexed to the Amato Aff. dated November 12, 2013).

For all of these reasons, DLJ has demonstrated its achievement of priority over J&R Siegel with respect to the assets and property of AA, Axxion, and 3301 Atlantic.

The enforcement provisions of Article 52 of the CPLR award diligence, not dalliance. DLJ acted quickly and decisively to

perfect its liens. J&R Siegels' attempts to piggy-back on DLJ's efforts are futile.

Accordingly, it is hereby

ORDERED that motion sequence 063 is denied in its entirety, and it is further

ORDERED and ADJUDGED that DLJ Mortgage Capital, Inc. has lien priority vis-a-vis Jeffrey and Richard Siegel in the following real properties owned by judgment debtor Annette Apergis: a house located at 16 Woodfield Lane, Glen Head, New York and two lots located in Rosedale, Queens, at 134-20 241st Street, Rosedale and 134-22 241st Street; the following real property owned by 3301 Atlantic Avenue Corp.: 3301 Atlantic Avenue, and the following real properties owned by the Axxion Group LLC: lots in Rosedale, New York (Block 13204, Lots 97, 99, 104; Block 13205, Lots 34, 38, 50, and it is further

ORDERED that an order may be settled to effectuate the holdings made herein, and it is further


ORDERED that motion sequence 064 as to consolidation is granted.

Counsel's attention is hereby directed to the appendix to this memorandum decision entitled, Time Line of Significant Activity. If the parties believe that there is an error or material omission in this time line, please notify the Court within seven days following entry. If appropriate, this decision

and order will be amended.

Dated: January 10, 2014

ENTER:



J.S.C.

Time Line of Significant Activity Affecting Lien Priority

4/14/11 **DLJ** obtains the First Attachment Order as against the real and personal property of, inter alia, TK and AA.

4/19/11 **DLJ** delivers the First Attachment Order to the New York City and Nassau County Sheriffs.

4/26/11 Nassau County Sheriff levies on property held in the name of TK or AA by serving the Nassau county clerk with the **DLJ** First Attachment Order.

5/2/11 Kings County Sheriff levies on property held in the name of TK or AA by serving the Kings county clerk with the **DLJ** First Attachment Order.

5/3/11 Queens County Sheriff levies on property held in the name of TK or AA by serving the Queens county clerk with the **DLJ** First Attachment Order.

6/22/11 **DLJ** moves to extend the 90-day period to perfect all levies made under First Attachment Order. That motion is granted

(Extension Order).

7/22/11 **DLJ** obtains the Second Order of Attachment, with respect to property not at issue on this motion.

8/15/11 judgment is entered in favor of **DLJ** against TK, amongst others.

8/17/11 DLJ files a transcript of the TK judgment in the King's County clerk's office.

8/18/11 DLJ files a transcript of the TK judgment in the clerks' offices of Queens and Nassau Counties.

8/19/11 This Court enters Extension Order, extending time for sheriff to perfect levies under First Attachment Order until fourteen days after final judgment is entered.

10/6/11 **J&R Siegel** obtain a judgment against TK in the Blue Ridge Action.

11/2/11 **J&R Siegel** commence the **J&R Siegel** Enforcement proceeding in Kings County naming as respondents, inter alia, TK, AA, and Axxion.

11/2/11 **J&R Siegel** deliver executions on, inter alia, Axxion, as garnishee of TK.

11/8/11 **J&R Siegel** deliver executions to the Nassau County Sheriff's office directed to, inter alia, TK and AA, as garnishees of TK.

11/15/11 New York Sheriff levies on **JR Siegel** executions directed at, inter alia, Axxion, as garnishee of TK

11/16/11 **DLJ** obtains the Third Order of Attachment, which includes assets and real property of Axxion and 3301 Atlantic.

11/17&18/11 **DLJ** delivers Third Attachment Order to NYC and Albany County Sheriffs for levy.

11/21/11 Queens County Sheriff levies on property held in the name of, inter alia, Axxion and 3301 Atlantic, by serving the Queens County Clerks office with the **DLJ** Third Attachment Order.

11/23/11 Albany County Sheriff levies by serving the **DLJ** Third Attachment Order on the Secretary of State.

12/1/11 **DLJ** obtains the Second Extension Order, extending time for sheriff to perfect levies under Second and Third Attachment

Orders until fourteen days after final judgment is entered.

12/8/11 Kings County Sheriff levies on real property identified in the **DLJ** Third Attachment Order that is located in Kings County by serving the Kings County Clerk.

1/20/12 **DLJ** commences the DLJ Proceeding to enforce judgments and attachment liens and seeking declaration as to priority vis-a-vis creditors, including **J&R Siegel**.

1/24/12 **DLJ** moves to consolidate NY County actions with **J&R Siegel** enforcement proceedings pending in Kings County, which is granted (Consolidation Order).

3/30/12 **DLJ** obtains the Levy Extension Order, extending its time to perfect any levies made pursuant to all judgments that it has or will obtain in the action one hundred and eighty days after final judgment is entered against the last remaining defendant.

5/17/12 **J&R Siegel** obtain a judgment over AA in the Blue Ridge Action.

5/30/12 **J&R Siegel** deliver to the Nassau County Sheriff's's office a judgment execution directed to AA.

6/20/12 **J&R Siegel** docket their judgment against AA with the Nassau County Clerk.

6/22/12 **J&R Siegel** docket their judgment against AA with the Queens County Clerk's Office.

7/25/12 **J&R Siegel** deliver execution to the Sheriff of NYC directing 3301 Atlantic, as garnishee of AA, to deliver to Sheriff all of AA's shares in 3301 Atlantic; 3301 Atlantic does not comply.

7/27/12 This Court enters July 27, 2012 Order awarding priority over the assets of TK to **DLJ**, denying in its entirety **J&R Siegel's** motion for partial summary judgment that it has priority over DLJ with respect to assets and property of TK, and with respect to judgment executions served on, inter alia, Axxion and 3301 Atlantic as garnishees of TK, and reserving decision as to the respective parties' priority rights over other assets and property of the Kontogiannis Defendants set forth in **DLJ's** original petition.

9/26/12 **J&R Siegel** commence Article 52 Moonlight Management Proceeding in Supreme Court, Queens County seeking a declaration that Moonlight Management is an alter ego of TK, that he owns the

Moonlight Management Properties, comprised of certain of the Axxion Lots, and appointing a receiver to sell the properties to satisfy **J&R Siegel's** judgment against TK obtained in the Blue Ridge Action.

10/2/12 **J&R Siegel** commence Article 52 Garden Market Proceeding in Supreme Court, Queens County seeking a declaration that Garden Market is an alter ego of TK, that he owns the Garden market Properties, comprised of certain of the Axxion Lots, that Axxion has no rights in the properties, and appointing a receiver to sell the properties to satisfy **J&R Siegel's** judgment against TK obtained in the Blue Ridge Action.

10/9/12 **J&R Siegel** deliver executions to the NYC Sheriff for service on Garden Market and Moonlight Management, as garnishees of TK.

10/22/12, modified 11/26/12 **DLJ** obtains an equitable judgment declaring that Garden Market and Moonlight Management have no interest in the Axxion Lots, and directing these entities to convey the properties back to Axxion.

10/23/12 **J&R Siegel** commence the J&R Siegel EDNY Enforcement Action in EDNY to enforce the judgment against AA obtained in the

Blue Ridge Action, to determine priority vis-a-vis creditors, and seek vacatur of DLJ's Orders of Attachment, **DLJ** moves to dismiss the action as duplicative to the Consolidated Proceeding before this Court, which is sub judice.

10/23/12 **DLJ** obtains judgment against 3301 Atlantic and Axxion.

10/24/12 **DLJ** levies on Axxion's real property by docketing the Axxion judgment in Queens, Kings and Nassau County.

11/26/12 **DLJ** obtains a judgment against AA.

11/28/12 Garden Market transfers fee simple title to Axxion of the Garden Market Properties, certain of the Axxion Lots.

11/29/12 & 12/5/12 **DLJ** delivered to the NYC and Nassau County Sheriff executions pertaining to the AA judgment.

11/30/12 **DLJ** filed a transcript of the AA judgment in the clerks office for Nassau and Queens counties.

11/30/12 **DLJ** docketed the judgment against AA in the county clerk's offices of Queens, Kings and Nassau Counties.

12/12/12 JR Siegel delivered to Nassau County Sheriff an execution directing AA to turnover shares in Garden Market, but she does not comply.

12/18/12 Record title to the Moonlight Management Properties, certain of the Axxion Lots, is transferred to Axxion.

1/22/13 & 1/24/13 **J&R Siegel** move in the Blue Ridge Action for turnover order against AA.

2/1/13 Nassau County Sheriff serves AA with **DLJ**'s judgment execution.

4/10/13 On **J&R Siegel**'s motion, Judge Grays in Moonlight Management proceeding schedules a hearing concerning J&R Siegel's claims to declare Moonlight Management to be alter ego of TK and appoints a receiver to sell properties to satisfy J&R Siegel's judgment against TK obtained in the Blue Ridge Action.

4/12/13 **DLJ** obtains order of Justice Galasso in a Nassau County proceeding directing the sale of 16 Woodfield and that proceeds be applied to DLJ's judgment against AA.

6/7/13 On **J&R Siegel**'s motion, Justice Siegal declares Garden

Market to be an alter ego of TK and the rightful owner of the Garden Market Properties, and that Axxion has no interest therein, and appoints a receiver.

6/10/13 **J&R Siegel** obtain a turnover order in the Blue Ridge Action directing AA to turnover her membership interests in 3301 Atlantic and Garden Market.

7/23/13 **J&R Siegel** move in the Consolidated Proceedings for a determination of priority with respect to AA.

10/3/13 Court grants, in part, DLJ's cross-motion to enjoin J&R Siegel and their counsel from filing additional duplicative motions and/or proceedings against the Kontogiannis Defendants without fourteen days advance written notice to counsel for DLJ, which is entered on November 7, 2013.

10/17/13 First Department unanimously affirms the Consolidation Order, the July 27, 2012 order pertaining to **DLJ's** priority over assets of TK, and this Court's denial of **J&R Siegel's** motion for partial summary judgment that they had achieved priority with respect to the property of TK, Axxion and 3301 Atlantic, amongst others.

12/3/13 This Court grants **DLJ's** motion to consolidate the Garden Market and Moonlight Management proceedings pending in Queens County.

Time Line of Activity suggested by J&R Siegel and omitted as not affecting the lien priority issues raised in these motions

11/9/11 New York City Sheriff levies on **J&R Siegel** execution directed to Hahn & Hessen LLP as garnishees of TK by virtue of monies held in escrow by Hahn & Hessen LLP by serving Hahn & Hessen LLP with execution.

12/6/11 **DLJ** delivers executions to the Office of the Sheriff of the City of New York directed to Hahn & Hessen LLP as garnishee by virtue of monies held in escrow by Hahn & Hessen LLP.

8/9/12 **J&R Siegel** commence Article 52 judgment proceeding in Supreme Court, Nassau County seeking a declaration that Theoblock SA Ltd., Block `3434 Development LLC and Conat Realty LLC are alter egos of TK, that TK owns the properties held in the names of said entities, and appointing a receiver to sell the real properties held in their names to satisfy J&R Siegel's judgment against TK obtained in the Blue Ridge Action (the Theoblock Proceeding).

12/14/12 **DLJ** seeks an order allowing it to intervene in the Theoblock Proceeding, to extend the receivership therein to its judgment and to direct receiver to act on its behalf, to direct the receiver to distribute all proceedings first to DLJ, and to impose sanctions against J&R Siegel and their counsel, arguing that, under this Court's order of July 27, 2012, it is the real creditor in interest with superior rights over J&R Siegel in the assets of TK.

1/25/13 **DLJ** commences Article 52 judgment enforcement proceeding in the Supreme Court, Nassau County to enforce the judgment against AA, naming only AA, to sell her property located at 16 Woodfield Lane, and apply the proceeds of sale, after payment to AA of a homestead exemption in the amount of \$150,000, to satisfaction of DLJ's judgment against AA.

2/26/13 **DLJ** appears as non-party in the Blue Ridge Action to oppose **J&R Siegel** application for turnover order against AA arguing that, pursuant to this Court's order of July 27, 2012, only this Court can decide the priority issue concerning the assets and property of AA.

3/6/13 Supreme Court, Kings County (Hon. Schmidt) hears oral argument on **J&R Siegel** application for turnover order against AA

and **DLJ** opposition thereto.

3/27/13 Supreme Court, Nassau County (Hon. Diamond) denies **J&R Siegel's** application to intervene in the Theoblock Proceeding and to impose sanctions against J&R Siegel and their counsel.

4/17/13 Supreme Court, Nassau County (Hon. Diamond) enters order appointing receiver to sell Theoblock Property and apply proceeds to satisfy **J&R Siegel** judgment against TK.