

LAW CURRENTS An informational newsletter from Richard A. Klass, Esq.



Out of State, Out of Mind

The partial demise of the “Separate Entity” rule?

The judgment debtor and his wife maintained a joint account at JPMorgan Chase Bank at a branch located in New York. The judgment creditor’s attorney served a restraining notice on Chase’s Court Orders and Levies Department located in Ohio. The bank restrained the joint account and the judgment debtor squawked that the restraining notice should not be honored due to the “separate entity” rule.

The “Separate Entity” Rule

The “Separate Entity” rule derived from a century-old case in which the New York State Court of Appeals held that different branches of a bank are considered separate and distinct from one another. Later court decisions interpreted this rule in the context of judgment enforcement as meaning that a restraining notice served on one bank branch did not extend to the deposits held by

a debtor in another branch. Therefore, a judgment creditor had to serve the restraining notice on the specific bank branch in which the debtor maintained an account.

In *Koehler v. Bank of Bermuda Ltd.*, 12 NY3d 533 [2009], the court held that a turnover order directing a garnishee bank in Bermuda was enforceable because the bank had a presence through a subsidiary in New York. The court held that “a court sitting in New York that has personal jurisdiction over a garnishee bank can order the bank to produce stock certificates located outside New York pursuant to CPLR 5225(b).”

In *Motorola Credit Corp. v. Standard Chartered Bank*, 24 NY3d 149 [2014], the court clarified its prior opinion by holding that “service of a restraining notice on a garnishee bank’s New York

branch is ineffective under the separate entity rule to freeze assets held in the bank's foreign branches." The court recognized that "abolition of the separate entity rule would result in serious consequences in the realm of international banking to the detriment of New York's preeminence in global financial affairs."

Service on Chase's Court Orders and Levies Department upheld

The judgment creditor retained **Richard A. Klass, Esq.**, *Your Court Street Lawyer*, to commence a turnover proceeding to obtain a court order for the bank to turn over the moneys restrained in the joint bank account maintained by the judgment debtor and his wife. Both the judgment debtor and his wife filed opposition papers claiming that, pursuant to the separate entity rule, the restraining notice should be declared ineffective since the specific branch in which they maintained their account was not served but rather at the bank's Court Orders and Levies Department in Ohio.

In reply, the creditor countered that the restraining notice was served at the Court Orders and Levies Department according to the bank's own instructions. The bank accepted the notice and recognized the restraint. Further, the respondents waived any affirmative defense of lack of personal jurisdiction.

The judge determined that the restraining notice was effective against the debtor's account:

A fair reading of *Motorola* indicates the Court of Appeal's primary concern over international banking policies, not the type of transaction the parties in this proceeding present with respect to the assets held by JPMorgan in New York. Specifically, it is readily apparent that JPMorgan should not fear the risks of competing claims and double liability, nor the issue of legal and regulatory schemes inasmuch as this Court's primary concern is the property restrained in New York."

Accordingly, the judge granted the application to continue "the imposition of a restraining notice against the judgment debtor's bank account to secure funds for later transfer to the judgment creditor through a sheriff's execution or turnover proceeding."

At this point, almost all banks maintain central subpoena/legal departments at which restraining notices may be served. The practical effect of the partial abrogation of the separate entity rule is that a creditor is able to serve a bank's central department without having to serve a particular branch where the debtor maintains an account.

— *Richard A. Klass, Esq.*

Richard A. Klass Selected for the Sixth Time for the New York Metro Super Lawyers List

We are pleased to announce that Richard Klass, has been selected to the 2021 New York Metro *Super Lawyers* list. This is an exclusive list, recognizing no more than five percent of attorneys in the New York Metro area.

Super Lawyers, part of Thomson Reuters, is a research-driven, peer influenced rating service of outstanding lawyers who have attained a high degree of peer recognition and professional achievement. Attorneys are selected from more than 70 practice areas and all firm sizes, assuring a credible and relevant annual list.

The annual selections are made using a patented multiphase process that includes:

- Peer nominations
- Independent research by *Super Lawyers*
- Evaluations from a highly credentialed panel of attorneys

The objective of the *Super Lawyers* lists is to create a credible, comprehensive and diverse listing of outstanding attorneys to be used as a resource for both referring attorneys and consumers seeking legal counsel.

For more information about *Super Lawyers*, go to SuperLawyers.com. *Super Lawyers* is a registered trademark of Thomson Reuters.

Richard A. Klass, Esq., maintains a law firm engaged in civil litigation at 16 Court St., 28th Fl., Brooklyn, NY. He may be reached at (718) COURT•ST or RichKlass@courtstreetlaw.com with questions. Prior results do not guarantee a similar outcome.

©2021 Richard A. Klass. **Credits:** Photo of Richard Klass by Rob Abruzzese, 2019. **Marketing agency:** The Innovation Works, Inc. (www.TheInnovationWorks.com) **Image** on page one: Shutterstock



Richard A. Klass, Esq.
Your Court Street LawyerSM

Richard A. Klass, Esq.
Principal
richklass@courtstreetlaw.com

Hillary F. Schultz, Esq.
Associate
hschultz@courtstreetlaw.com

Eucline Spencer
Paralegal
euclinespencer@courtstreetlaw.com

Steven D. Cohn, Esq., Of Counsel

Stefano A. Filippazzo, Esq., Of Counsel

Address
16 Court Street, 28th Floor
Brooklyn NY 11241

Phone
(718) COURT•ST
(718) 643-6063

Fax
(718) 643-9788

Website
www.courtstreetlaw.com

