

At IAS Part 54 of the Supreme Court, of the State of New York, held in and for the County of New York, held in and for the County of New York at the Courthouse located at 60 Centre Street, New York, New York on the 6 day of ~~January~~ ^{Feb.}, 2015

PRESENT:

HON. SHIRLEY WERNER KORNREICH

Justice of the Supreme Court

JUAN CARLOS MOLINA,

Index No. 603763/2006

Plaintiff/Judgment Creditor,

ORDER

TOTALBANK

Intervenor/Judgment Creditor

-against-

JAMES CHLADEK,

Defendant/Judgment Debtor,

Plaintiff/Judgment Creditor JUAN CARLOS MOLINA, by his attorneys ANES, FRIEDMAN, LEVENTHAL & BALISTRERI, ATTORNEYS AT LAW, PLLC, having moved this Court by Order to Show Cause issued on November 18, 2014, for an Order pursuant to CPLR 5228, appointing ANTHONY MURRAY, ESQ. as Receiver Nunc Pro Tunc to enforce the Judgment entered in this action on October 9, 2008 against Defendant/Judgment Debtor JAMES CHLADEK and in favor of Plaintiff/Judgment Creditor JUAN CARLOS MOLINA, in the sum of TWO MILLION, FIVE HUNDRED FORTY-THREE THOUSAND, SIX HUNDRED FIFTY-NINE DOLLARS AND THIRTY-FIVE CENTS (\$2,543,659.35), with the Receiver being authorized and empowered nunc pro tunc to take control over all Federal Communications Commission

(FCC) Broadcast Licenses issued to and held by Defendant/Judgment Debtor JAMES CHLADEK as Licensee, and to seek FCC permission to transfer one or more of those licenses by sale, and to take possession of all sales proceeds and apply them towards the payment and satisfaction of the aforesaid Judgment, together with such other, further and different relief as this Court may deem just and proper: and

Intervenor/Judgment Creditor TOTALBANK, by its attorneys OLSHAN FROME WOLOSKY, LLP, having moved this Court by Order to Show Cause issued on November 25, 2014, for an Order pursuant to CPLR sections 1012 and 1013, permitting TOTALBANK to intervene in this action and to join in the motion of Plaintiff/Judgment Creditor JUAN CARLOS MOLINA pursuant to CPLR section 5228 for appointment of a Receiver, and pursuant to CPLR section 5228(b) extending the receivership sought by Plaintiff/Judgment Creditor JUAN CARLOS MOLINA to the Judgment against Defendant/Judgment Debtor JAMES CHLADEK and in favor of TOTALBANK in the amount of ONE MILLION, TWELVE THOUSAND, ONE HUNDRED THIRTY FIVE DOLLARS AND NINETY-FOUR CENTS (\$1,012,135.94), which Judgment was issued by the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County in the State of Florida on July 16, 2012 under Case No. CA09-93306 CA 04, and thereafter filed and docketed by the County Clerk of the County of New York on August 28, 2012 under Index No. 103644/2012, pursuant to CPLR section 5402; and

The two Judgment Creditors, JUAN CARLOS MOLINA and TOTAL BANK, by their respective attorneys, having entered into a Stipulation dated December 23, 2014, wherein the Judgment Creditors agreed that:

[a] JUAN CARLOS MOLINA consents to the motion of TOTALBANK to intervene in this action; and

[b] TOTALBANK consents to the motion of JUAN CARLOS MOLINA to have ANTHONY MURRAY, ESQ., appointed Receiver nunc pro tunc as of July 11, 2014, the date of his original appointment as Receiver, pursuant to CPLR 5228 in a proceeding in this Court filed under Index Number 651210/2014 entitled *JUAN CARLOS MOLINA, Petitioner-Judgment Creditor against JAMES CHLADEK, Respondent-Judgment Debtor*; and

[c] The Receiver shall act on behalf of both Judgment Creditors to enforce their respective judgments against the Defendant/Judgment Debtor JAMES CHLADEK, by obtaining and selling all Broadcast licenses issued to and held by said Defendant by the Federal Communications Commission, with the same authority and upon the same terms and conditions as set forth in the Order of the Supreme Court, New York County July 11, 2014 (Debra A. James, J.) in the proceeding entitled *JUAN CARLOS MOLINA, Petitioner-Judgment Creditor against JAMES CHLADEK, Defendant-Judgment Debtor, Index Number 651201/2014*, which Order appointed ANTHONY MURRAY, ESQ. as Receiver pursuant to CPLR 5228, to enforce the Judgment rendered in favor of JUAN CARLOS MOLINA in the above-captioned action; and

[d] As of December 23, 2014 the total amount owed on both Judgments, including principal and interest, is FIVE MILLION, THIRTY-NINE THOUSAND, NINETY-NINE DOLLARS AND SIXTY-EIGHT CENTS (\$5,039,099.68). Seventy-Eight Percent (78%) of that total amount is owed to JUAN CARLOS MOLINA, and Twenty-Two Percent (22%) of that total amount is owed to TOTALBANK.

[e] The Receiver shall act on behalf of both JUAN CARLOS MOLINA and TOTALBANK to enforce and collect their respective judgments, and the Receiver shall distribute the net proceeds of all money that he obtains, after deducting the Receiver's commissions and expenses allowed by law and approved by the Court, to JUAN CARLOS MOLINA and TOTALBANK, in proportion to the sum that each is owed on their Judgment, so that 78% of the net proceeds obtained by the Receiver shall be paid to JUAN CARLOS MOLINA, and 22% of the net proceeds obtained by the Receiver shall be paid to TOTALBANK.

and

The motion of Plaintiff/Judgment Creditor JUAN CARLOS MOLINA and the motion of Intervenor/Judgment Creditor TOTALBANK, having regularly come before the Court to be heard

on December 23, 2014, January 12, 2015 and January 20, 2015, and Plaintiff Judgment Creditor JUAN CARLOS MOLINA and Intervenor/ Judgment Creditor TOTALBANK having appeared in support of the motions on those dates by counsel, and Defendant/Judgment Debtor JAMES CHLADEK having appeared *prose* in opposition to the motions on December 23, 2014 and having appeared by counsel on January 12, 2015 and on January 20, 2015, and after due deliberation having been held thereon and with the Court having rendered its decision on the Record on January 20, 2015 (copy annexed hereto as Exhibit "A"),

NOW, upon reading and filing of the Order to Show Cause dated November 18, 2014, the supporting Affirmation of CHARLES M. BALISTRERI, ESQ., dated November 14, 2014 and the supporting Affirmation of ANTHONY MURRAY, ESQ., dated November 14, 2014 and exhibits annexed; the Order to Show Cause dated November 24, 2014, the supporting Affirmation of MATTEO J. ROSSELLI, ESQ. and exhibits annexed; the Stipulation dated December 23, 2014 between JUAN CARLOS MOLINA and TOTALBANK; the Supplemental Affirmation of CHARLES M. BALISTRERI, ESQ. dated January 15, 2015 and the Supplemental Affirmation of ANTHONY MURRAY, ESQ. dated January 15, 2015 in support of the Order to Show Cause dated November 18, 2014; the Affirmation of DANIEL J. SCHER, ESQ. dated January 17, 2015 in opposition and the affidavit of SHELLY SADOWSKY, ESQ., sworn to on January 15, 2015 in opposition; the Reply affirmation of CHARLES M. BALISTRERI, ESQ. dated January 20, 2015 in support of the Orders to Show Cause.

NOW, upon motion of ANES, FRIEDMAN, LEVENTHAL & BALISTRERI, ATTORNEYS AT LAW, Attorneys for Plaintiff/Judgment Creditor JUAN CARLOS MOLINA,

and motion of OLSHAN FROME WOLOSKY, LLP, Attorneys for Intervenor/Judgment Creditor TOTALBANK, it is

ORDERED, that the motion of Plaintiff/Judgment Creditor JUAN CARLOS MOLINA and the motion of Intervenor/Judgment Creditor TOTALBANK are hereby granted in all respects, and that ANTHONY MURRAY, ESQ., having an office located at 305 Broadway, 7th Floor, New York, N.Y. 10007, be and he is hereby appointed Receiver pursuant to CPLR 5228, nunc pro tunc as of July 11, 2014 (said date being the date of his original appointment as Receiver to enforce the Judgment in favor of Judgment Creditor JUAN CARLOS MOLINA against Judgment Debtor JAMES CHLADEK pursuant to CPLR 5228, in a proceeding in this Court filed under Index Number 651210/2014 entitled *JUAN CARLOS MOLINA, Petitioner-Judgment Creditor against JAMES CHLADEK, Respondent-Judgment Debtor*); and it is further

ORDERED, that the oath and undertaking filed by ANTHONY MURRAY, ESQ. in this Court on July 16, 2014 under Index Number 651210/2014, to faithfully discharge his duties, with sufficient surety or sureties in the penal sum of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00), shall apply with equal force and effect to duties and obligations of ANTHONY MURRAY, ESQ. under the instant Order appointing ANTHONY MURRAY, ESQ. Receiver nunc pro tunc as of July 11, 2014, pursuant to CPLR 5228; and it is further

ORDERED, that the Receiver is hereby authorized to and empowered, nunc pro tunc as of July 11, 2014, to take control over all Broadcast licenses issued by the Federal Communications Commission (FCC) to JAMES CHLADEK, including the following:

<u>CALL SIGN</u>	<u>LICENSE CLASS</u>	<u>LOCATION</u>	<u>FCC FACILITY ID</u>
WPMF-CD	Class A	Miami, Florida	30129
WSCT-LP	TV Translator	Melbourne, Florida	15758
W05CJ	TV Translator	Key West, Florida	125642
W10CQ	TV Translator	Key West, Florida	125650

and to seek FCC permission to transfer any or all of the Broadcast licenses, and to sell such licenses either individually or jointly, as well as any broadcasting equipment and broadcast facilities that are owned by the Judgment Debtor JAMES CHLADEK, for the best price or prices that the Receiver can obtain; and it is further

ORDERED, that if the Receiver requires the services of a broker to effectuate the transfer of any of the Broadcast licenses, said Receiver is authorized, subject to the approval of this Court, to retain the services of one or more brokers possessing expertise in the transfer and sale of Broadcast licenses, facilities and equipment; and it is further

ORDERED, that the Receiver is authorized and empowered to take possession of the television stations, broadcasting facilities and equipment as well as the accounts, books and records thereof operating under the authority of the FCC Broadcast licenses identified above and has the authority to operate and incur at the expense of such television stations and broadcasting facilities, such costs and charges, and make such disbursements as may actually be necessary for their operation in order to preserve and maintain the value of the FCC Broadcast licenses identified above; and that any and all persons now or at any time in possession of any personal property, equipment, profits, leases, records, books and papers, upon demand of the Receiver surrender them to him under penalties imposed by law in such cases; and it is further

ORDERED, that Plaintiff/Judgment Creditor JUAN CARLOS MOLINA is authorized to provide any and all assistance and expertise that the Receiver requires in order to fulfill his duties and responsibilities as Receiver; and it is further

ORDERED, that the Receiver shall act on behalf of both JUAN CARLOS MOLINA and TOTALBANK to enforce and collect their respective judgments, and that the Receiver shall, subject to the further Order of this Court, distribute the net proceeds of all money that he obtains after deducting the Receiver's commissions and expenses allowed by law and approved by this Court, to JUAN CARLOS MOLINA and TOTALBANK, in proportion to the sum that each is owed on their Judgment, so that 78% of the net proceeds obtained by the Receiver shall be paid to JUAN CARLOS MOLINA, and 22% of the net proceeds obtained by the Receiver shall be paid to TOTALBANK; and it is further

ORDERED, that JUAN CARLOS MOLINA and TOTALBANK shall furnish Satisfaction of Judgment to JAMES CHLADEK upon full payment, including accrued interest of the two (2) outstanding judgments; and it is further

ORDERED, that any and all surplus monies from the sale of the FCC Broadcast licenses shall be remitted to JAMES CHLADEK; and it is further

ORDERED, that the Receiver may at any time apply to this court for an order or other instructions or powers necessary to enable the Receiver to fulfill his duties; and it is further

ORDERED, that the terms of any sale and the disposition of any proceeds, and any reimbursement to the Receiver for expenses he has incurred or will incur, and any compensation to which the Receiver is lawfully entitled, shall be subject to the approval and further Order of this Court; and it is further

ORDERED, that the Judgment Debtor JAMES CHLADEK, his agents, servants, employees and all persons acting on his behalf, are hereby enjoined and restrained from making any disposition of the FCC Broadcast licenses identified in this Order as well as all property that is in any way connected with the utilization of such licenses, and from encumbering the same in any manner or form whatsoever, and from incurring any debts or obligations or entering into any contract or agreement of any kind whatsoever for the sale of any FCC Broadcast licenses or facilities or equipment used in connection therewith, and from interfering in any way whatsoever with the control, management or operation of carrying on of the activities and responsibilities of the Receiver: and it is further

ORDERED, that the name of TOTALBANK be and is hereby joined in this action as a party Intervenor, and that the title of all papers in the above entitled action including this Order be amended to read:

JUAN CARLOSMOLINA, Plaintiff/Judgment

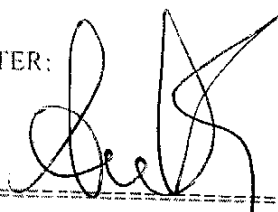
Creditor and

TOTALBANK, Intervenor/Judgment Creditor,

-against-

JAMES CHLADEK, Defendant/Judgment Debtor,

ENTER:

 2/6/15
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SHIRLEY WERNER KORNREICH
Justice Supreme Court