

2nd Circ. Gives Citi Win In \$500M Revlon Wire Transfer Fight

By Jon Hill

Law360 (September 8, 2022, 3:54 PM EDT) -- A Second Circuit panel handed Citibank a win Thursday in its battle to recover \$500 million the bank accidentally wired to a group of Revlon Inc. lenders, overturning a New York federal court's decision that said the lenders didn't have to return the money.

The three-judge panel vacated a February 2021 decision that relied on a New York legal doctrine known as discharge-for-value and held that the lenders could keep the mistakenly sent funds as a valid, if unintentional, satisfaction of Revlon's debt to them.

But in an opinion written by U.S. Circuit Judge Pierre N. Leval, the Second Circuit panel called this result a "huge windfall" for the lenders and said they couldn't actually invoke the discharge-for-value defense.

The court noted that Revlon's debt wasn't yet due when Citi wired out the money in August 2020, and the circumstances of the transfer were unusual enough to have put the lenders on notice of Citi's error.

"In our view, the Defendants are not shielded from Citibank's claims for restitution under the discharge-for-value rule because they were on inquiry notice that the unexpected and surprising apparent repayment of the full principal amount of their loans was attributable to mistake," Judge Leval wrote.

In a statement to Law360, a Citi spokesperson said, "Today's ruling reaffirms our long-held belief that these mistakenly transferred funds should be returned as a matter of law, as well as ethics."

"While Citi has taken steps to reduce the likelihood of such an error in the future, today's decision provides welcome stability and upholds the concept of cooperation needed for a well-functioning syndicated lending market," the spokesperson said.

U.S. Circuit Judge Michael H. Park filed a separate concurrence. Also sitting on the panel was U.S. Circuit Judge Robert D. Sack.

Thursday's decision comes a little more than two years after Citi, acting as a loan agent, accidentally wired nearly \$1 billion of its own money to creditors on a syndicated loan to Revlon, paying off the loan three years early at a time when the cosmetics giant was under severe financial pressure.

The mistake, which has been pinned on clunky software and human error, was followed by demands from Citi for repayment. Although about \$400 million was eventually returned, the bank wound up suing a group of asset managers for lenders that refused to give back the rest.

Those asset managers include Brigade Capital Management LP, HPS Investment Partners LLC, Symphony Asset Management LLC and seven other firms.

But U.S. District Judge Jesse Furman rebuffed Citi's clawback effort last year in a stunning upset, siding with the lenders based on his application of a three-decade-old New York state law precedent from another mistaken-transfer case, *Banque Worms v. BankAmerica International*.

Under that precedent, which laid out the discharge-for-value rule, creditors can hold onto erroneously wired funds in situations in which they are owed the money on a debt and aren't on notice that a mistake has been made.

Judge Furman ruled that those conditions fit the lenders, who testified that they had no reason to doubt the transfers at first and instead figured Revlon was simply prepaying its loan. In fact, according to the judge, it would have been "borderline irrational" for them to believe a bank as sophisticated as Citi hadn't actually meant to send out so much money.

But in Thursday's opinion, Judge Leval wrote that while there were some legitimate reasons for the lenders to think the transfers were genuine — the amounts sent matched exactly what each was owed, for example — there were also multiple "red warning flags" pointing to a mistake on Citi's part.

Those included the lack of a heads-up from Citi that a prepayment was coming and the financial distress that Revlon was in at the time. The company, which has since filed for bankruptcy, also could have retired the debt "far more cheaply" by buying up discounted pieces of the loan on the open market rather than paying off the entire thing at face value, Judge Leval said.

"Notwithstanding factors that tended to support genuineness, the factors supporting doubt were sufficiently troublesome to prompt a prudent investor at least to make a telephone call to Citibank. That is all that was needed to satisfy inquiry notice," the judge wrote.

The panel also concluded that the discharge-for-value rule didn't apply to the lenders because Revlon's loan wasn't supposed to fully mature until 2023, meaning they weren't technically "entitled" to receive repayment of the outstanding balance when they did.

"As we read the *Banque Worms* opinion, it made clear that the rule it espoused operated in favor of a recipient of a mistaken payment who was 'entitled' to the money," Judge Leval wrote.

In his concurrence, Judge Park said that he saw this "lack of entitlement" to full repayment as enough of a reason on its own to rule in Citi's favor, describing the case as a "straightforward" one that "many smart people have grossly overcomplicated."

The lenders "were not entitled to payment for another three years after Citibank erroneously sent them half a billion dollars," the judge wrote. "Allowing them to keep that money would turn equity on its head and topple the settled expectations of participants in the multi-trillion-dollar corporate-debt market."

"It would also be brutally unfair," he added.

Thursday's decision remands Citi's lawsuit to Judge Furman and bars the lenders from doing anything with the disputed \$500 million in the meantime. Despite Citi's initial loss in the case, that money has

remained under a court-ordered freeze put in place shortly after the bank sued to get it back.

Citi originally sought an expedited appeal at the Second Circuit, but the panel's ruling comes almost a year after it held oral arguments.

In a candid addendum to his opinion, Judge Leval expressed regret that he "did not get the job done faster" and blamed the delay in part on a "change of disposition," saying he and Judge Sack had both initially wanted to certify the case to the New York Court of Appeals.

"We then decided against certification — primarily because certification ordinarily results in at least a year's further delay and because we became increasingly persuaded, despite initial uncertainties, that the law of New York ... favors Citibank's position," Judge Leval wrote.

While its appeal was pending, Citi moved to stake a claim for reimbursement from Revlon itself. The bank filed a complaint against the cosmetics maker in bankruptcy court last month that asked for confirmation of its "subrogation rights" as a stand-in creditor replacing lenders it accidentally paid off.

Counsel for the lenders did not immediately respond to a request for comment on Thursday.

Citi is represented by Neal Kumar Katyal, Sean Marotta, Reedy C. Swanson, Erin Chapman and Nathaniel A.G. Zelinsky of Hogan Lovells and Matthew D. Ingber, Christopher J. Houpt and Nicole A. Saharsky of Mayer Brown LLP.

The lender defendants are represented by Adam M. Abensohn, David M. Cooper, Robert S. Loigman, Kathleen M. Sullivan and Benjamin I. Finestone of Quinn Emanuel Urquhart & Sullivan LLP.

The case is In re: Citibank August 11, 2020, Wire Transfers, case number 21-487, in the U.S. Court of Appeals for the Second Circuit.

--Editing by Jill Coffey.