

292 A.D.2d 269

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Citibank, N.A. v. Park 100 Condominium Board of
Managers

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N.Y.A.D.,2002.

292 A.D.2d 269738 N.Y.S.2d 849, 2002 WL
437969, 2002 N.Y. Slip Op. 02314

Citibank, N.A., Respondent,
v.

Park 100 Condominium Board of Managers, Appel-
lant, et al., Defendants.

Supreme Court, Appellate Division, First Depart-
ment, New York

(March 21, 2002)

CITE TITLE AS: Citibank v Park 100 Condomini-
um Bd. of Mgrs.

Order, Supreme Court, New York County (Barry
Cozier, J.), entered on or about January 18, 2001,
which, inter alia, declared in favor of plaintiff bank
that its first mortgage on the subject condominium
unit is prior to the lien thereon claimed by defend-
ant condominium for unpaid common charges, and
order, same court and Justice, entered on or about
January 23, 2001, which, inter alia, directed that the
condominium account to the temporary receiver for
all rents it received for the subject unit after it pur-
ported to take title from the defaulting mortgagors/
shareholders, unanimously affirmed, with one bill
of costs.

A judgment of foreclosure and sale in favor of the
bank was challenged by the condominium for lack of
jurisdiction over it. The IAS court directed a tra-
verse before a special referee, whereupon the bank
moved for permission to discontinue as against the
condominium. That motion was granted without
prejudice to the bank's recommencing the action as
against the condominium, and the condominium did
not appeal. Accordingly, the prior judgment of fore-
closure and sale remains in effect and unchal-

lenged. We reject the condominium's claim that the
instant action, which is the result of the bank's
availing itself of the leave it was given to recom-
mence as against the condominium, is itself a fore-
closure action time-barred by the six-year limita-
tions period in [CPLR 213 \(4\)](#). All that is in issue in
this action is the parties' relative priorities to the
proceeds of the foreclosure sale. The IAS court also
correctly directed the condominium to account for
all rents it collected from the date it purported to
take title to the unit from the defaulting mort-
gagors/shareholders, even though such accounting
would cover a period prior to the temporary receiv-
er's appointment. Such collection of rents, at a time
when the mortgage was not being paid, would have
been unjustified at least to the extent the amount
thereof exceeded the unit's common charges.

Concur--Tom, J.P., Mazzairelli, Rosenberger, Wal-
lach and Marlow, JJ.

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