

150 A.D.3d 478, 51 N.Y.S.3d 881  
(Mem), 2017 N.Y. Slip Op. 03866

**\*\*1** **Levitt & Kaizer**, Respondent,

v

Wayne Ivory **Charles**, Defendant.

Wayne Ivory **Charles**, II, Nonparty Appellant.

Supreme Court, Appellate Division,

First Department, New York

104127/09, 3987, M-1965, M-2105

May 11, **2017**

CITE TITLE AS: **Levitt & Kaizer v Charles**

#### HEADNOTE

##### Receivers

##### Appointment

Standing as Joint Tenant to Challenge Appointment of Receiver to Enter, Collect Rents on and Sell Property

LaRocca Hornik Rosen Greenberg & Blaha LLP, New York (Eric P. Blaha of counsel), for appellant.

Pollock & Maguire, LLP, White Plains (Peter S. Dawson of counsel), for respondent.

Order, Supreme Court, New York County (Barbara Jaffe, J.), entered July 5, 2016, which denied the motion of nonparty Wayne Ivory **Charles**, II (**Charles** II) to dismiss or deny plaintiff's order to show cause seeking the appointment of a receiver, unanimously modified, on the law, to vacate that part of the order finding that **Charles** II lacked standing, and otherwise affirmed, without costs.

On October 2, 2015, the court granted plaintiff's order to show cause seeking appointment of a receiver to sell the premises jointly held by defendant and **Charles** II. On or about March 19, 2016, **Charles** II moved to dismiss or deny plaintiff's order to show cause, well after it was granted. Accordingly, the court properly denied the motion as moot.

However, in denying the motion, the court erred in finding that **Charles** II lacked standing to oppose the order. Although **\*479** he lacks standing to challenge plaintiff's lien on the property, which was docketed when defendant was its sole owner (CPLR 5203; *Cadlerock Joint Venture, L.P. v Bersson*, 102 AD3d 466 [1st Dept 2013]; *Cadle Co. v Calcador*, 85 AD3d 700, 702 [2d Dept 2011]), since defendant transferred an interest to **Charles** II as a joint tenant, **Charles** II has standing to challenge the appointment of a receiver to enter, collect rents on, and sell the property, worth approximately \$3.6 million, to satisfy plaintiff's \$150,000 judgment against defendant, or to propose alternative solutions (CPLR 5228). Similarly, inasmuch as **Charles** II was aggrieved by the court's finding that he lacked standing, he has standing to maintain the instant appeal (see CPLR 5511; *State of New York v Philip Morris Inc.*, 61 AD3d 575, 578 [1st Dept 2009], *appeal dismissed* 15 NY3d 898 [2010]). Concur—Friedman, J.P., Moskowitz, Manzanet-Daniels, Kapnick and Webber, JJ. [Prior Case History: 2016 NY Slip Op 30794(U).]

Motion to strike portions of brief granted except insofar as **\*\*2** it seeks to strike references to court orders in related proceedings. Cross motion to consolidate denied.

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