

2016 WL 1212079

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United States Court of Appeals,  
Second Circuit.

In re LEHMAN BROTHERS  
HOLDINGS, INC., Debtor.  
Firstbank Puerto Rico, Plaintiff–Appellant,  
v.  
Barclays Capital Inc., Defendant–Appellee.

No. 15–149–br.  
|  
March 29, 2016.

Appeal from the United States District Court for the Southern  
District of New York ([Buchwald, J.](#)).

#### Attorneys and Law Firms

[Jeffrey A. Mitchell](#), Dickstein Shapiro LLP ([Judith Cohen](#), on  
the brief), New York, NY, for Appellant.

[Boaz S. Morag](#), Cleary Gottlieb Steen & Hamilton LLP  
([Lindsee P. Granfield](#), on the brief), New York, NY, for  
Appellee.

Present [PIERRE N. LEVAL](#), [ROSEMARY S. POOLER](#) and  
[RICHARD C. WESLEY](#), Circuit Judges.

#### SUMMARY ORDER

**\*1 ON CONSIDERATION WHEREOF, IT IS  
HEREBY ORDERED, ADJUDGED, AND DECREED**  
that the order of said District Court be and it hereby is  
**AFFIRMED.**

FirstBank Puerto Rico appeals from the December 29, 2014  
decision of the United States District Court for the Southern  
District of New York ([Buchwald, J.](#)) which affirmed the May  
10, 2013 decision of the United States Bankruptcy Court for  
the Southern District of New York ([Peck, B.J.](#)). The decision  
denied FirstBank's attempt to recover from defendant  
Barclays Capital, Inc. certain securities that FirstBank  
pledged to Lehman Brothers Special Financing Inc. (“LBSF”)  
as security for an interest rate swap agreement. FirstBank

also appeals from the district court's decision affirming  
the bankruptcy court's imposition of sanctions for contempt  
on FirstBank. We assume the parties' familiarity with the  
underlying facts, procedural history, and specification of  
issues for review.

We affirm substantially for the reasons set forth in the  
thorough opinions of the bankruptcy and district courts  
below. The bankruptcy court held, and the district court  
affirmed, that LBSF's sale of the securities that FirstBank  
initially posted as collateral to Lehman Brothers Inc. (“LBI”)  
cut off FirstBank's interest in the collateral against LBI (or any  
subsequent transferee) pursuant to the International Swaps  
and Derivatives Association Master Agreement and Credit  
Support Annex. The bankruptcy and district courts also held  
that the securities at issue were transferred to Barclays as  
part of its purchase of assets in the underlying bankruptcy  
proceedings. The appropriate venue to litigate whether such  
securities were transferred as part of the sale was bankruptcy  
court, not a district court proceeding.

We also affirm the orders requiring FirstBank to pay  
Barclays's “reasonable counsel fees and costs incurred in  
defending against this litigation that has been pursued  
knowingly by FirstBank in violation of the Sale Order.” *In  
re Lehman Bros. Holdings Inc.*, No. 08–13555, 2013 WL  
6283572 (Bankr.S.D.N.Y. Dec. 3, 2013), *aff'd*, 526 B.R.  
481 (S.D.N.Y.2014). As noted by the district court, the  
“Sale Order clearly prohibits suits with respect to ‘Purchased  
Assets’ as defined in the ‘Purchase Agreement,’ the Sale  
Order clearly incorporates the Clarification Letter into its  
definition of the ‘Purchase Agreement,’ and the Clarification  
Letter clearly defines ‘Purchased Assets’ to include the  
collateral.” *In re Lehman Brothers*, 526 B.R. 481, 496  
(S.D.N.Y.2014), *as corrected* (Dec. 29, 2014). Moreover, the  
sanctions were imposed only after extensive discovery and  
after Barclays offered First Bank an opportunity to withdraw  
its lawsuit without sanctions.

We have considered the remainder of FirstBank's arguments  
and find them to be without merit. Accordingly, the order of  
the district court hereby is **AFFIRMED**.

#### All Citations

--- Fed.Appx. ----, 2016 WL 1212079 (Mem)