

REAL ESTATE

Citibank's Billion-Dollar Mistake And How It Turned Out Two Years Later

Joshua Stein Contributor *I write about commercial real estate negotiations, deals and legal issues.*

Sep 12, 2022, 10:15am EDT



Citibank acted as the agent for a large group of lenders that held a large loan to Revlon, a company under financial stress. Arrangements like this are common in corporate lending, including large loans to real estate investment trusts. As agent, Citibank was supposed to receive loan payments from Revlon and then properly distribute them to the lenders in the group.

In August 2020, Revlon paid Citibank a few million dollars to cover some interest on the loan. Citibank distributed that payment to the lenders as appropriate. By mistake, Citibank also wired to all the lenders all the principal due on the loan – about a billion dollars – even though the loan wasn't due and Revlon hadn't actually repaid any principal. So Citibank mistakenly paid off all the lenders in full with the bank's own money. That happened because Citibank's payment software was so badly designed that it almost encouraged bank personnel to make huge mistakes. Nothing in the litigation suggests, however, that similar mistakes had previously occurred.

About half the lenders in the group promptly refunded Citibank's erroneous payments. The other lenders refused. Although New York law required a

recipient of this sort of erroneous payment to return it to the sender, there were exceptions to that law. The recalcitrant lenders thought they qualified for one of those exceptions, because (in part) they said they had no reason to think the payments were erroneous.

Litigation ensued. About six months after Citibank's erroneous payment, a federal district court in New York concluded, in a 100-page decision, that the lucky lenders could keep Citibank's money.

Citibank appealed to the federal Second Circuit Court of Appeals. On September 8, 2022, about two years after the erroneous wire transfer, the appellate court issued a 94-page [decision](#) reversing the district court. Two appellate judges added their own concurring decisions, about another 35 pages.

The appellate court concluded that the lucky lenders weren't so lucky. They had never received any notice that Revlon would prepay the loan. The loan wasn't presently due and payable. The lenders knew Revlon was in such distress that prepayment was highly unlikely. If Revlon had wanted to eliminate the loan it could have bought the lenders' positions for less than a third of their face amount, instead of prepaying the whole loan. The lenders should have known the wire transfer was a mistake. So the lenders had to return Citibank's money.

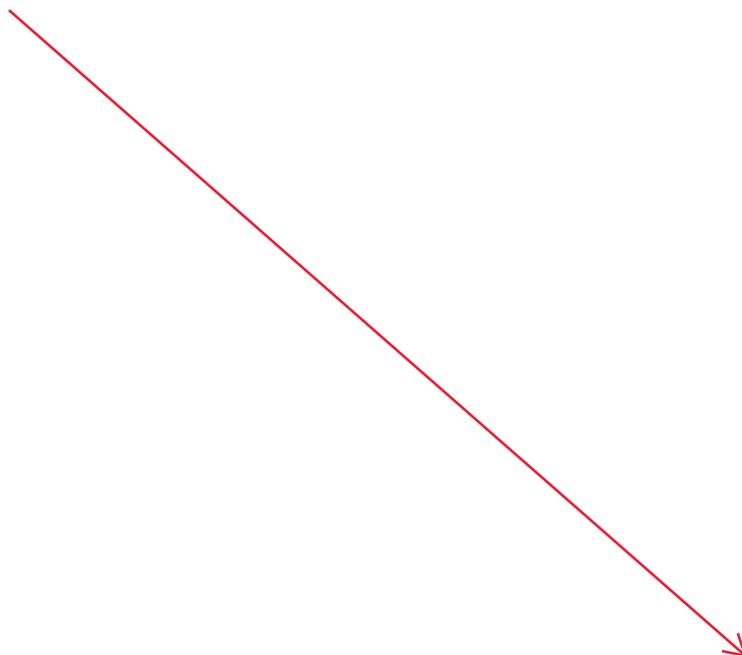


As a substantive matter, that's probably the end of the road for the dispute, unless the lenders can figure out a way to appeal to the United States Supreme Court.

One of the concurring appellate judges declared that a ruling in favor of the lenders would “turn equity on its head and topple the settled expectations of participants in the multi-trillion-dollar corporate-debt market” and also be “brutally unfair.” That’s probably right.



One might think that Revlon’s loan agreement would have addressed the possibility of an erroneous disbursement by Citibank. No one would have objected if the 188-page loan agreement had included a short paragraph requiring all lenders to promptly return any funds that were wired to them by mistake. But the loan agreement was silent on the matter, consistent with many other loan agreements for corporate debt.



Going forward, perhaps all loan agreements will now include a new paragraph to require lenders to return any erroneous payments they might receive. Presumably Citibank will also upgrade its payment software and procedures.

Copyright © 2022 Joshua Stein. Published on Forbes.com September 12th, 2022.



Joshua Stein

I help buyers, sellers, borrowers, lenders, tenants, property owners, and other commercial real estate market participants identify and achieve their business goals. To do that, I need to understand risk, security, numbers, value, financeability, flexibility, and exit strategy. Some legal issues matter a lot and many don't. It's important to know the difference. I write extensively on commercial real estate law and practice – over 300 articles and five books on leasing, lending, and other areas, with some emphasis on ground leases. I occasionally serve as an arbitrator or expert witness in complex real estate disputes. That lets me see how transactions go wrong. Often, the problems could have been avoided by keeping it simple and following the money, but everyone got sidetracked. As a Forbes contributor, I try to tell stories that teach worthwhile lessons for real estate deals. **Read Less**

Editorial Standards

Reprints & Permissions

Join Our Conversation

One Community. Many Voices. Create a free account to share your thoughts. Read our community guidelines [here](#)

Joshua Stein



JS

Be the first to comment...

Powered by OpenWeb

[Terms](#) | [Privacy](#) | [Feedback](#)