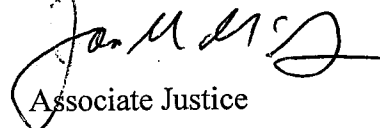


Defendants-Appellants Wachovia Corporation (Wachovia) and Wells Fargo & Co. (Wells Fargo) seek an order vacating the order of Supreme Court (Charles Ramos, J.) providing that the exclusivity termination date under the exclusivity agreement between Wachovia and Citigroup, Inc. (Citigroup) is tolled pending the hearing of the motion of Citigroup. The order before me is not the product of a motion made on notice (*see Sholes v Meagher*, 100 NY2d 333) and thus is reviewable under CPLR 5704(a) (*see Tepper v Lonschein*, 253 AD2d 435). The application is granted, as I believe substantial questions have been raised regarding the authority of Justice Ramos to have issued the order while physically located outside the State of New York. In addition, it appears that whether the order has any effect on the rights of the parties is far from clear, as Wachovia is not ordered to do or refrain from doing anything by the terms of the order. Thus, it also is not clear that the order, to the extent it is construed to grant injunctive relief, could prevent any injury, irreparable or otherwise.

Accordingly, the application is granted to the extent that the order purporting to toll the exclusivity termination date is hereby vacated.

James M. McGuire



Associate Justice

Dated: New York, New York
October 5, 2008